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Thursday
May 29, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Seattle, WA, and San Francisco, CA, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
Coast Guard
Federal Communications Commission

Advisory Committees
Land Management Bureau

Animal Drugs
Food and Drug Administration

Authority Delegations (Government Agencies)
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Fisheries
National Oceanic and Atmospheric Administration

Flood Insurance
Federal Emergency Management Agency

Government Procurement
Defense Department
General Services Administration
National Aeronautics and Space Administration
Veterans Administration

Health Care
Veterans Administration

Marine Safety
Coast Guard

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Selected Subjects

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

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Agricultural Marketing Service

Natural Gas
Federal Energy Regulatory Commission

Old-Age, Survivors and Disability Insurance
Social Security Administration

Radio Broadcasting
Federal Communications Commission

Reporting and Recordkeeping Requirements
Federal Communications Commission
Surface Mining Reclamation and Enforcement Office

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television Broadcasting
Federal Communications Commission

Veterans
Veterans Administration

Vocational Rehabilitation
Veterans Administration

Wine
Alcohol, Tobacco and Firearms Bureau

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

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

WHO: The Office of the Federal Register.

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

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

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium, Fourth Floor, Federal Building, 915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:
Seattle 206-442-0570
Tacoma 206-383-5230
Portland 503-221-2222

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building, 450 Golden Gate Avenue, San Francisco, CA.

RESERVATIONS: Call the San Francisco Federal Information Center, 415-556-6600

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-53-AD; Amdt. 39-5323]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires functional tests, and repair or replacement, as necessary, of the cold air unit overheat protection circuits on British Aerospace Model BAC 1-11 200 and 400 series airplanes. At least three cold air units have failed, resulting in turbine components beging ejected from the units. Since these incidents happened on the ground, there exists the potential for injury to passengers and ground personnel.

EFFECTIVE DATE: July 3, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace Inc., Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region 17900 Pacific Highway South, Seattle Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires functional tests of the cold air overheat protection on British Aerospace Model BAC-1-11 200 and 400 series airplanes was published in the **Federal Register** on June 28, 1985 (50 FR 26790).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the comments received.

One comment was received. The commenter, a member operator of the Air Transport Association (ATA) of America, supported the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the following rule as proposed.

It is estimated that 60 airplanes will be affected by this AD, that it will take approximately 3 man-hours per airplane to accomplish the required actions, and that the average labor cost will be $40 per man-hour. Based on these figures, the total cost impact of this AD is estimated to be $7,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft..

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 30 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. To detect overspeeding of the cold air unit, accomplish the following within the next 120 days after the effective date of the AD, or prior to reaching the threshold indicated in each paragraph below, whichever is the later, unless already accomplished:

A. Prior to the accumulation of 10,000 flight hours or 8 years in service, whichever is the earlier, and thereafter at intervals not to exceed 3,000 flight hours or 14 months, whichever occurs first, perform a functional test of the cold air unit overheat protection circuits in accordance with paragraph 2.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 21-A-PM5863, Revision 2, dated June 12, 1984. If found faulty, the overheat protection circuits must be repaired before further flight.

B. For aircraft not incorporating Graviner 156D overheat detectors, prior to 300 flight hours after the effective date of this AD, perform a workshop calibration and functional test of the overheat detectors; thereafter, repeat this test at intervals not to exceed 3,000 flght hours or 14 months, whichever occurs first.

C. For aircraft incorporating Graviner 156D overheat detectors which have accumulated 7,000 flight hours or 4 years since new or from last calibration, perform a workshop calibration and functional test of the overheat detectors within the next 3,000 flight hours or fourteen (14) months, whichever is the earlier; thereafter, repeat this test at intervals not to exceed 10,000 flight hours or 6 years, whichever occurs first.

D. Overheat detectors that do not pass the tests of paragraphs B. or C., above, must be replaced before further flight.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle,

Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 3, 1986.

Issued in Seattle, Washington, on May 20, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-11937 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-110-AD; Amdt. 39-5322]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to all Boeing Model 747 airplanes, which requires a repetitive inspection, and as necessary, replacement of all main and nose landing gear wheel bearing. This action is prompted by reports of wheel bearing premature wear and failure, which has caused tire, wheel, and axle damage, blown wheel fuse plugs, and an incident involving wing damage and spilled fuel.

EFFECTIVE DATE: June 13, 1986.

ADDRESSES: The service information specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gray D. Lium, Systems and Equipment Branch, ANM-130S; telephone (206) 431-2946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: In July, 1985, the Timken Company began producing a new bearing configuration as part of a replacement program for Boeing Model 747 wheels. Boeing began receiving a large number of reports from operators of overheating and other discrepancies being found on these bearing after one tire change interval (approximately 150 to 200 landings). Boeing also received a total of three reports of wheel bearing failures that resulted in wheel and axle damage occurring within one tire change interval. One of these occurred at 112 landings. All three of these resulted in the fuse plugs releasing tire air pressure. Some operators have reported as many as 20 percent of the bearings inspected as being damaged.

As a result of the reports of overheat damage to the bearing, Boeing sent a Service Letter to all operators on March 12, 1986, alerting them to the condition and requesting that they postpone the replacement program. After the three reports of wheel and axle damage, Boeing sent a second Service Letter to operators on March 27, 1986, strongly recommending that all the suspect wheel bearings be removed from service within 100 flight cycles.

Bearings that had been produced prior to the change in configuration are included in the AD as a replacement for the problem bearings. These bearings are also subject to a requirement for a periodic inspection and removal, as necessary, because of an incident where a bearing failure caused a wheel to fail on takeoff, with a portion of the wheel puncturing the wing fuel tank, and spilling fuel on the runway. The failure was determined to be due to the bearing having excessive case hardening. The Timken Company has recently developed new bearings, P/N's LM229147C and LM229140C, which do not have the associated problems addressed by the AD.

Since this condition is likely to exists or develop on other airplanes of this type design, the FAA has determined that an AD is necessary which requires repetitive inspections and replacment, as necessary, of all inner and other wheel bearings. Installation of bearings, P/N's LM229147C and LM229140C, constitute terminating action for the repetitive inspections required by the AD.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 airplanes, certificated in any category. To prevent wheel or tire failure as a result of failure of the wheel bearing, accomplish the following, unless already accomplished:

A. Within 100 flight cycles after the effective date of this AD, remove and inspect both the inner and outer wheel bearings, Timken P/N's LM229146 and LM229139, in accordance with the applicable portions of Sections 32-45-01 through 32-45-03 of the Boeing Model 747 maintenance manual. Any wheel bearing found damaged must be replaced with a new or serviceable bearing prior to further flight.

Note: Serviceable bearings are those Timken bearings, P/N's LM229146 and LM229139, which have been inspected with a close visual inspection and found to have no visible damage (i.e., galling, gouging, spauling, overheat, etc.).

B. After accomplishment of the inspection required by paragraph A., above, reinspect both the inner and outer wheel bearings in accordance with the schedule below. Any wheel bearing found damaged as a result of the required inspections must be replaced with a new or serviceable bearing before further flight.

1. Bearings P/N LM229146 and LM229139, date stamped LS and subsequent, except those identified in subparagraph B.2., below, must be reinspected at intervals not to exceed 100 flight cycles.

2. Bearings date stamped LS and subsequent, which are installed on Boeing Model 747SR airplanes which have not incorporated Boeing Service Bulletin 747-32-2272 (which relates to gross weight increase), must be reinspected at intervals not to exceed 200 flight cycles.

3. Bearings date stamped prior to LS must be reinspected at intervals not to exceed 250 flight cycles.

C. Installation of inner and outer Timken wheel bearings, P/N's LM229147C and LM229140C, constitutes terminating action for the repetitive inspections required by paragraph B., above.

D. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate an airplane to a base for the accomplishment of inspections and/or modifications required by this AD.

The service information specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 13, 1986.

Issued in Seattle, Washington, on May 20, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-11936 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AEA-1]

Alteration of Control Zone, Lancaster, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the current hours of the Lancaster, PA, Control Zone from 0630 Local to 0600 Local. This action is taken to provide all users of Lancaster Airport those services associated with the Control Zone and to more correctly align the effective hours of the Control Zone with the operating hours of the Air Traffic Control Tower.

EFFECTIVE DATE: May 29, 1986
Comments must be received on or before June 25, 1986.

ADDRESSES: Send comments on the rule in triplicate to: Howard R. McGlauflin, Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Docket 86-AEA-1, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official docket may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Howard R. McGlauflin, Manager, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves extension of the hours of the Lancaster, PA, Control Zone operation to be effective from 0600 to 2300, local time, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the Federal Aviation Administration (FAA) will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AEA-1" The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to increase the hours of the Lancaster, PA, Control Zone from 0630 to 2300, local time, to be effective from 0600 to 2300, local time. The FAA has identified a discrepancy in the operating hours of the Air Traffic Control Tower and the published effective hours of the Control Zone; therefore, in order to provide all users of the Lancaster Airport those services associated with a control zone and to be consistent with the agency's safety mandate, the Lancaster, PA, Control Zone hours of operation will be increased by one half hour. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6B dated January 2, 1986.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to extend the hours of the Lancaster, PA, Control Zone to be effective from 0600 to 2300, local time. Therefore, I find that notice and public procedure under 5 U.S.C. 533(b) are impracticable and that good cause exists for making this amendment effective upon publication in the **Federal Register.**

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

§ 71.171 [Amended]

2. 71.171 is amended as follows:

Lancaster, PA [Amended]

. . . . "This Control Zone is effective from 0600 to 2300 hours, local time, daily."

Issued in Jamaica, New York, on May 16, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86-11938 Filed 5-28-86, 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 86-AWA-23]

Alteration of R-5201 Fort Drum, NY, Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment changes the boundaries of Restricted Area R-5201 Fort Drum, NY, expanding the area by about 1 mile on the northwest, northeast, southeast and southwest sides, and moving the southwest corner about 2 miles to the east. This alteration is needed because the Department of the Army has determined that several existing artillery and tank firing ranges lie a few hundred feet outside the present restricted area boundaries. Further, a planned runway extension at Wheeler-Sack Army Airfield (AAF) requires that the southwest corner be modified to accommodate aircraft departures from Runway 03. This amendment will insure that the existing ranges are fully contained within the R-5201 boundaries, provide for proper safety buffer zones and enhance safety for nonparticipating aircraft.

DATES: Effective date—0901 UTC, August 28, 1986.

Comments must be received on or before July 14, 1986.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-23, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves modification of the boundaries of Restricted Area R-5201 Fort Drum, NY, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the rule that might suggest the need to modify the rule. Send comments on environmental and land use aspects to: Commander, Headquarters 10th Mountain Division, Fort Drum, NY 13602-5000.

The Rule

The purpose of this amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to enhance aviation safety by modifying the boundaries of Restricted Area R-5201 Fort Drum, NY, so as to include within the restricted area several existing artillery and tank firing ranges which the Department of the Army has determined to be several hundred feet outside the present boundaries of R-5201. Further, a planned extension of Runway 03-21 at Wheeler-Sack AAF necessitates moving the southwest corner of the restricted area to the east to provide airspace to accommodate aircraft departures from Runway 03. The Department of the Army has certified that these changes are in compliance with National Environmental Policy Act (NEPA). Section 73.52 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to modify the boundaries of R-5201 to include all existing firing ranges within the restricted area in the interest of aviation safety. Therefore, I find that notice of public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest.

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 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 73.52 is amended as follows:

R-5201 Fort Drum, NY [Amended]

Remove the present boundaries and substitute the following:

Boundaries. Beginning at lat. 44°01'05"N., long. 75°37'15"W; to lat. 44°03'20"N., long. 75°40'50"W.; to lat. 44°06'55"N., long. 75°42'10"W.; to lat. 44°10'50"N., long. 75°39'00"W.; to lat. 44°16'07"N., long. 75°32'42"W.; to lat. 44°11'24"N., long 75°23'00"W.; to lat. 44°07'10"N., long 75°26'50"W.; thence to point of beginning.

Issued in Washington, DC, on May 21, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-11993 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 225 and 277

[Docket Nos. RM80-8-001 through RM80-8-005]

National Gas Policy Act; Bona Fide Offers; Right of First Refusal; Order Granting in Part and Denying in Part Applications for Rehearing, Reconsideration and Clarification of Order No. 95; Record Retention Approval

Issued: May 21, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB approval of change in record retention requirements.

SUMMARY: The Federal Energy Regulatory Commission granted in part and denied in part applications for rehearing, reconsideration, and clarification of its final rule implementing section 315(b) of the Natural Gas Policy Act of 1978. That section provides that upon expiration of contracts for the sale of certain categories of natural gas removed from the Commission's Natural Gas Act (NGA) jurisdiction, the seller must make a bona fide offer to the purchaser and give the purchaser an opportunity to match a third party offer before selling the gas to a third party. The Commission granted rehearing in order to: (1) Eliminate the Commission's interpretation that § 154.93 of its NGA regulations governs the price escalation clauses which may be included in a bona fide offer, (2) remove the original purchaser's right to alter the delivery terms of a third party offer, (3) eliminate the prohibition on waivers of section 315(b) rights more than one year before contract expiration, (4) provide that the requirement that bona fide offers not be made more than eighteen months before contract expiration does not apply to implied contracts, and (5) limit the record retention requirements to three years.

EFFECTIVE DATE: The final rulemaking published on March 7, 1986, in Order 95-A (51 FR 7923) is effective May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr. Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8308.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget (OMB) regulations, 5 CFR Part 1320 (1985), require that OMB approve certain information collection requirements imposed by agency rule. On April 25, 1985, OMB approved the record retention requirements, as amended, in 18 CFR 225.3 and 277.210 and issued Control Number 1902-0098 for these sections. This control number already appears in the list of OMB control numbers in 18 CFR 389.101. Therefore the Order on Rehearing in Docket Nos. RM80-8-001 through RM80-8-005 will become effective May 21, 1986.

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11897 Filed 5-27-86; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM 79-14]

Natural Gas Policy Act; Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

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

EFFECTIVE DATE: June 1, 1986.

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

Order of Director, OPPR

Publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978

Issued May 23, 1986.

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

Pursuant to that mandate and pursuant to §375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of June 1986 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for June, 1986 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural Gas.

Raymond A. Beirne,

Acting Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar Year 1985]

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental pricing threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA section 102 threshold	3.669	3.690	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130 percent of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar Year 1986]

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental pricing threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493						
NGPA section 102 threshold	4.166	4.191	4.216	4.241	4.264	4.287						
NGPA section 109 threshold	2.539	2.546	2.553	2.460	2.566	2.572						
130 percent of No. 2 fuel oil in New York City threshold	7.370	7.930	5.040	5.290	4.660	3.980						

[FR Doc. 86-12039 Filed 5-28-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegation of Authority and Organization; Commissioner of Food and Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding new authority (relating to cardiac pacemaker device or lead registration and testing) delegated by the Acting Assistant Secretary for Health to the Commissioner of Food and Drugs.

EFFECTIVE DATE: February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: On February 10, 1986, the Acting Assistant Secretary for Health issued a memorandum delegating to the Commissioner of Food and Drugs the authorities vested in the Secretary of Health and Human Services under section 1862(h)(1), (2)(A), and (3) of the Social Security Act (42 U.S.C. 1395y (h)(1), (2)(A), and (3)), as amended, relating to registration and testing of cardiac pacemaker devices or pacemaker leads. The authorities may be redelegated. FDA is amending § 5.10 (21 CFR 5.10) by adding new paragraph (a)(28) to incorporate this delegation.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart A—Delegations of Authority to the Commissioner of Food and Drugs

1. The authority citation for 21 CFR Part 5 is revised to read as follows and the authority citations following all the sections are removed:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 et seq.; 21 U.S.C. 41 et seq., 61-63, 141 et seq., 301-392, 467f(b), 679(b), 801 et seq., 823(f), 1031 et seq.; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 2421, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u et seq., 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1241); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921.

2. Subpart A is amended in § 5.10 by adding new paragraph(a)(28) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a) * * *

(28) Functions vested in the Secretary under section 1862(h) (1), (2)(A), and (3) of the Social Security Act (42 U.S.C. 1395y (h)(1), (2)(A), and (3)), as amended, which provides for a registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this title. The approval and issuance of regulations under that section are reserved to the Secretary, as provided in 21 CFR 5.11.

* * * * *

Dated May 21, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-11948 Filed 5-28-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification: Butamisole Hydrochloride

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Mobay Corp., Animal Health Division, providing for use of butamisole hydrochloride for treatment of whipworms and hookworms in dogs.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Marcia Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, is sponsor of NADA 132-533 for Styquin® (butamisole hydrochloride). The drug is an injectable anthelmintic for treating whipworms and hookworms in dogs. The application is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency had determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively

have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

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

1. The authority citation for 21 CFR 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.234 [Amended]

2. Section 522.234 *Butamisole hydrochloride* is amended in paragraph (b) by removing "No." and inserting "Nos. 000859 and."

Dated: May 22, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-11947 Filed 5-28-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 242

[Docket No. R-85-1234; FR-1806]

Refinancing of HUD-Insured Hospital Mortgages

Correction

In FR. Doc. 85-27673 beginning on page 47726 in the issue of Wednesday, November 20, 1985, make the following correction:

§ 242.96 [Corrected]

On page 47727, in the first column, in § 242.96(a)(2), in the sixth line, "Commissioner, or " should read "Commissioner, of".

BILLING CODE 1505-01

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 85-001A]

Individual Participation in Marine Safety Reporting Program (MSRP); Enforcement Policy.

AGENCY: Coast Guard, DOT.

ACTION: Termination of program and final rule.

SUMMARY: On June 1, 1985, the Office of the Secretary, Department of Transportation initiated a one-year, voluntary Marine Safety Reporting Program (MSRP). As part of this program, the Coast Guard agreed not to impose a civil penalty for certain offenses if a report was filed with MSRP. Title 33, § 1.07 sets forth Coast Guard enforcement policy for participation in the Marine Safety Reporting Program (MSRP). This notice announces the termination of the one-year test and removes references to the Marine Safety Reporting Program from 33 CFR 1.07.

EFFECTIVE DATE: June 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Larry D. Glass, Office of Merchant Marine Safety, (202) 426-6251, 7:30AM to 4:00PM Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department of Transportation initiated the one-year test which began on June 1, 1985. The Marine Safety Reporting Program was meant to supplement existing mandatory reporting requirements by providing the commercial marine industry with a means to report anonymously safety-related incidents and near mishaps involving difficulties encountered with the navigation and control of a commercial vessel. The Marine Safety Reporting Program expires on May 31, 1986. The effective date of this amendment is June 15, 1986 to allow a period of grace for processing of forms submitted late in the program. The Coast Guard will not honor the MSRP enforcement policy for forms received by the Transportation Systems Center subsequent to June 15, 1986. An evaluation of the program will be conducted and is expected to be available in a few months.

This amendment is published as a final rule because the provisions thereof concern matters relating to agency procedures and practices which are excepted under 5 U.S.C. 553 from the requirements for notice and comment. This amendment is being made effective on June 15, 1986. The document originally promulgating these sections stated that the test program would terminate on June 1, 1986. Since the test is concluded and the purpose of this final rule is only to remove those sections pertaining to the test, it has been determined that good cause exists for making this rule effective in less than 30 days.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Coast Guard, Freedom of Information, Penalties.

PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 33 Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart 1.07 is revised to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 49 CFR 1.46.

§ 1.07-17 [Removed]

2. Part 1 is amended by removing § 1.07-17.

§ 1.07.25 [Amended]

3. Section 1.07.25 is amended by removing paragraph (e).

§ 1.07.65 [Amended]

4. Section 1.07.65 is amended by removing paragraph (c).

Dated: May 23, 1986.

John W. Kime,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86-12061 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Care for Veterans Receiving Vocational Training

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is adding two new regulatory provisions which are necessary to implement provisions of the Veterans' Benefits Improvement Act of 1984 (Pub. L. 98-543). The first regulation establishes that certain new pension recipients participating in a temporary program of vocational training authorized by 38 U.S.C. chapter 15 are eligible for hospital care, nursing home care, and medical services during the period in which they are participating in the vocational training program. The second

regulation provides that any veteran whose pension is terminated during the "program period" by reason of increased income from work or training performed or undertaken shall retain, for three years, eligibility for health care benefits as if the pension had not been terminated. The term "program period" means the period from February 1, 1985 through January 31, 1989.

EFFECTVE DATE: These regulations are effective May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Karen O. Walters, Chief, Policies and Procedures Division, Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2143.

SUPPLEMENTARY INFORMATION: On pages 992 and 993 of the **Federal Register** of January 9, 1986, the proposed regulation was published for notice and comment. Interested persons were given 30 days to submit comments, suggestions or recommendations. No comments were received. The proposed regulations, without change, are hereby being set forth as final.

These regulations implement the provisions of section 301 of Pub. L. 98–543. That section first authorized creation of a temporary program of vocational training for certain new VA pension recipients. Veterans who participate in the temporary vocational training program would be eligible, during their training program, to receive health care benefits similar to those now provided to veterans receiving vocational training under chapter 31 of title 38. They could receive hospital care, nursing home care and outpatient medical services, including free basis medical or dental care if the VA is incapable of providing the required medical care economically because of geographical inaccessibility or because of the unavailability of the required services at VA facilities.

Section 301 also provides that, in certain cases, a veteran whose pension is terminated solely by reason of income from work or training shall retain, for 3 years, eligibility for hospital care, nursing home care and medical services for which the veteran would otherwise have been eligible if the pension had not been terminated. In the case of pension recipients who pursue vocational training under the chapter 15 program, the 3 year retention of health care eligibility may be granted at any time the veteran loses pension due to excessive income from work or training performed or undertaken by the veteran. If, however, the veteran did not pursue training under the temporary program, the 3 year retention of health care eligibility may be granted only if the pension was so terminated during the period February 1, 1985 through January 31, 1989. This 3 year extension may only be invoked one time. The term "terminated by reason of income from work or training" means terminated as a result of the veteran's receipt of earnings from activity performed by the veteran for renumeration or gain, but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension.

These regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will they have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator hereby certifies that these final regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These proposed regulations concern the provisions of medical care to veteran who are undergoing a program of vocational training, 38 U.S.C. chapter 15.

Any economic impact on small entities would be small because of the minimal part of their overall operation and income which this activity represents.

Catalog of Federal Domestic Assistance Number: 64.011

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health , Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: May 5, 1986.

Thomas K. Turnage,

Administrator.

PART 17—[AMENDED]

38 CFR Part 17, Medical, is amended by adding a new center heading and new §§ 17.56 and 17.56a to read as follows:

VOCATIONAL TRAINING AND HEALTH-CARE ELIGIBILITY PROTECTION FOR PENSION RECIPIENTS

§ 17.56 Medical care for veterans receiving vocational training under 38 U.S.C. chapter 15.

Hospital care, nursing home care and medical services may be provided to any veteran who is participating in a vocational training program under 38 U.S.C. chapter 15.

(a) For purposes of determining eligibility for this medical benefit, the term "participating in a vocational training program under 38 U.S.C. chapter 15" means the same as the term "participating in a rehabilitation program under 38 U.S.C. chapter 31" as defined in § 17.48(g). Eligibility for such medical care will continue only while the veteran is participating in the vocational training program.

(b) The term "hospital care and medical services" means class V dental care, priority III medical services, nursing home care and non-VA hospital care and/or fee medical/dental care if the VA is unable to provide the required medical care economically at VA or other government facilities because of geographic inaccessibility or because of the unavailability of the required services at VA facilities.

(38 U.S.C. 524, 525, 1516; Pub. L. 98–543)

§ 17.56a Protection of health-care eligibility.

Any veteran whose entitlement to VA pension is terminated by reason of income from work or training shall, subject to paragraphs (a) and (b) of this section, retain for 3 years after the termination, the eligibility for hospital care, nursing home care and medical services (not including dental) which the veteran otherwise would have had if the pension had not been terminated as a result of the veteran's receipt of earnings from activity performed for remuneration or gain by the veteran but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension.

(a) A veteran who participates in a vocational training program under 38 U.S.C. chapter 15 is eligible for the one-time 3 year retention of hospital care, nursing home care and medical services

benefits at any time that the veteran's pension is terminated by reason of income from the veteran's employment.

(b) A veteran who does not participate in a vocational training program under 38 U.S.C. chapter 15 is eligible for the one-time 3 year retention of hospital care and medical services benefits only if the veteran's pension is terminated by reason of income from the veteran's employment during the period February 1, 1985 through January 31, 1989.

(38 U.S.C. 524, 525, 1516; Pub. L. 98-543)

[FR Doc. 86-12077 Filed 5-28-86; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 21

Veterans Education; Nonmatriculated Students

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The law forbids payment of G.I Bill benefits to veterans who are not in a program of education. For several years the VA (Veterans Administration) has had rules for determining whether or not veterans are in a program of education if they are planning on taking courses at two colleges or universities sequentially, but have not matriculated at either one. The VA has found that these rules are too restrictive, and has adopted a new, more liberal rule.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pages 764 and 765 of the Federal Register of January 8, 1986, there was published a notice of intent to amend Part 21 to liberalize the VA's rules concerning nonmatriculated students. Interested people were given 30 days to submit comments, suggestions or objections.

The VA received two letters concerning the proposal. One was from an educational organization. One was from a service organization. Both writers approved of the proposal.

The service organization stated that it believed that one of the results of the amended regulation would be to permit students to take certain courses which, while not necessarily degree-oriented, enhance their career and employment. The VA wishes to make clear that this is not the intent of the amended regulation.

Veterans and eligible persons may receive educational assistance only when they are pursuing an approved program of education. A program of education is defined by law as any curriculum or any combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary to fulfill requirements for the attachment of a predetermined and identified educational, professional, or vocational objective. This amended regulation will not override this provision of law. In fact, the purpose of the regulation is to insure that someone who has not matriculated is pursuing a bona fide educational objective, and is not taking a random selection of courses. Accordingly, the VA has decided to make the proposal final.

The VA has determined that this regulation is not a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The regulation will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign enterprises in domestic or export markets.

The Administrator of Veterans Affairs certifies that promulgation of this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to section 605(b), this regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this change will affect only payments made to individual benefit recipients. The regulation will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

In the proposal published on January 8, 1986, the VA stated that the information collection contained in the proposal had been referred to OMB (Office of Management and Budget) for review. After reviewing the proposal OMB has determined that the regulation is not subject to the Paperwork Reduction Act of 1980. Accordingly, OMB has not assigned a control number to this regulation.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-eduction, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 8, 1985.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR, Part 21, Vocational Rehabilitation and Education, is amended by revising § 21.4252, paragraphs (l)(2) and (l)(3) to read as follows:

§ 21.4252 Courses precluded.

* * * * *

(l) * * *

(2) The first portion of the courses leading to a single degree may be offered at one college or university. The remaining courses are not offered at the college or university, but are offered at a second college or university which grants the degree based upon the combined credits earned by the student. If the student is not required to matriculate during the portion of the program offered at the first college or university, the VA may approve an enrollment in a course or subject that is part of that portion of the program only when the certifications described in either paragraph (l)(2) (i) or (ii) of this section are made.

(i) The college or university granting the degree certifies concurrently with the student's enrollment in the first portion of the program, that

(A) Full credit will be granted for the subjects taken in the portion of the curriculum offered at the first college or university;

(B) In the last 5 years at least three students who have completed the first part of the program have been accepted into the second part of the program;

(C) At least 90 percent of those who have applied for admission to the second part of the program, after successfully completing the first part, have been admitted;

(D) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the second part of the program.

(ii) The college or university offering the first part of the program:

(A) Certifies to the appropriate State approving agency that as a result of an agreement between that college or university and the college or university offering the second part of the program, all of the courses taken by the veteran or eligible person in the first part of the program, will be accepted by the college or university offering the second part of the program without any loss of credit in partial fulfillment of the requirements for an associate or higher degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to the VA that the veteran or eligible person has stated to an appropriate official of the college or university offering the first part of the program that he or she is pursuing the program.

(3) The first portion of the subjects or courses in a baccalaureate program beyond those necessary for an associate degree may be given at a 2-year college, while the remainder may be offered at a 4-year college or university. When the college or university does not require the student to matriculate while pursuing the additional study at the 2-year college, the VA may approve an enrollment in a course offered in the program at the 2-year college only if the certifications described in either paragraph (l)(3) (i) or (ii) of this section are made.

(i) The college or university granting the baccalaureate degree certifies that:

(A) Full credit is granted for the course upon the student's transfer to the college or university granting the baccalaureate degree,

(B) The courses taken at the 2-year college will be acceptable in partial fulfillment for the baccalaureate degree, and

(C) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the college or university granting the baccalaureate degree.

(ii) Either the 2-year college or the college or university granting the baccalaureate degree:

(A) Certifies to the appropriate State approving agency that as a result of agreement between the 2-year college and the college or university offering the baccalaureate degree all of the courses pursued beyond the associate degree will be accepted without any loss of credit in partial fulfillment of the requirements for a baccalaureate degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to the VA that the veteran or eligible person is enrolled in courses covered by the agreement.

(38 U.S.C. 1652)

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[FR Doc. 86-12010 Filed 5-28-86; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 21

Temporary Program for Trial Work Periods and Vocational Rehabilitation for Certain Veterans With Disability Ratings

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: Title I, section 111 of the Veterans' Benefits Improvement Act of 1984 (Pub. L. 98-543) establishes a 4-year pilot program under chapter 11, section 363 of title 38, United States Code to require vocational rehabilitation for certain veterans with total disability ratings due to individual unemployability and to allow these participants to have a trial work period without reduction of the individual unemployability rating. The pilot program is in effect from February 1, 1985, through January 31, 1989.

EFFECTIVE DATE: These regulations are retroactively effective on the same date as the operative date of the provision of law which they implement, February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Boies, (202) 389-2886.

SUPPLEMENTARY INFORMATION: This pilot program is intended to assist qualified service-disabled veterans with VA total disability ratings because of individual unemployability to become employed, either through a program of vocational rehabilitation authorized under 38 U.S.C. chapter 31 or, if the individual is ineligible for that program, through counseling, placement and post-placement services. Veterans for whom vocational rehabilitation is found feasible who already have individual unemployability ratings on February 1, 1985, may participate voluntarily, but those who acquire such ratings during the trial period are required to participate, subject to certain sanctions if they fail to do so. The major features of 38 U.S.C. 363 are:

(1) No total disability rating based on individual unemployability may be reduced during the four-year program period for the reason that the veteran has achieved employability, unless the veteran completes twelve consecutive months of substantially gainful employment; and

(2) All veterans entitled to total disability compensation based on individual unemployability ratings made *on and after February 1, 1985,* are required to undergo an evaluation if evaluation of rehabilitation potential or achievement of a vocational goal is reasonably feasible. If evaluation of rehabilitation potential is reasonably feasible and such a veteran fails to undergo the required evaluation, his or her individual unemployability rating will be reduced to the disability rating otherwise applicable. If vocational rehabilitation is reasonably feasible and other conditions of eligibility for and entitlement to vocational rehabilitation under 38 US.C. chapter 31 are met, a vocational rehabilitation program is developed. Failure to pursue that vocational rehabilitation program may result in a reevaluation of the veteran's continued entitlement to a total disability compensation rating by virtue of his or her individual unemployability. If employment is found to be feasible, but the individual is not eligible or entitled to vocational rehabilitation under chapter 31, he or she will nonetheless be provided employment assistance under 38 U.S.C. 1504(a)(5), counseling as provided in 38 U.S.C. 1504(a)(2), and assistance in securing rehabilitation services under other programs.

(3) Veterans determined to be totally disabled based on individual unemployability ratings made *prior to February 1, 1985,* may elect to receive both the evaluation and the counseling and employment assistance, but are not subject to rating reductions for failure to do so.

A report on the results of the program must be submitted to Congress by April 15, 1988.

The proposed regulations were published in the **Federal Register** of October 22, 1985 at pages 42727 through 42729. The Veterans Administration received two comments on the proposed regulations during the comment period. Our action on these comments is described in the following paragraphs.

One comment from an organization lauded the proposed regulations, stating that they "would go a long way in removing the disincentive to returning to work that has long existed in some individuals rated totally disabled by reason of individual unemployability." The commenter then suggested that the provisions barring a reduction in the veteran's disability rating unless he or she engaged in substantially gainful employment for at least 12 consecutive months, be extended to other severely disabled veterans seeking to return to

employment, including those with disability ratings of less than 100 percent.

The regulations implement provisions of Pub. L. 98–543 which provide eligible veterans with vocational rehabilitation and employment services. Such veterans' total disability ratings are protected during the trial work period. This protection also applies to any service disabled veteran receiving total disability compensation based on individual unemployability who engages in a substantially gainful occupation during the four year period beginning on February 1, 1985, whether or not the veteran is receiving vocational rehabilitation or employment services under this temporary program. On December 26, 1985 (50 FR 52774 & 52775) a final amendment to § 3.343(c) was published in the Federal Register to implement that provision.

For other severely disabled veterans, i.e., those whose disability ratings are not based on unemployability, the fact of employment is generally not a central issue in determining the proper schedular evaluation to be assigned. While social and industrial adaptability are key factors in the evaluation of mental disorders, other conditions are evaluated on the basis of exemination findings and the average loss of earning capacity that may be expected to result from those findings without regard to actual employment.

When examination findings show improved symptomatolgy warranting a reduction in evaluation, the fact that a veteran has been gainfully employed for a reasonable period of time may be viewed as evidence that the noted improvement represents sustained improvement. However, in other than mental disorders, the fact of employment is not sufficient, in and of itself, to warrant reduction in a schedular evaluation.

This is clearly an area for the exercise of sound rating judgment and the provisions of 38 CFR 3.343 and 3.344 are more than adequate safeguards against inappropriate reductions. Such judgment should not be preempted by institution of specific trial work periods unless mandated by legislation.

The second comment was received from an individual concerned with the wording of the phrase "receives an IU rating" in § 21.6503(c). The writer believes that the wording of this paragraph should more clearly identify the date the VA determines that the veteran is entitled to a disability rating of 100 percent based upon individual unemployability as the date the veteran is considered to have received the rating. We agree and have modified the wording in this paragraph accordingly.

In addition to the specific change made in response to comments, a minor editorial change was made in § 21.6517. Neither of the changes made is of such a nature as to significantly amend the substance of the original proposals and republication of the final regulations for comment is not necessary. Therefore, the regulations are hereby adopted as final.

These regulations do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The VA has made these regulations retroactively effective February 1, 1985, because they either are interpretive rules, which construe the meaning of 38 U.S.C. 363, or are general statements of policy. Moreover, the VA finds that good cause exists for making these regulations, in conformance with the provisions of law they implement, retroactively effective on February 1, 1985. To achieve the maximum benefit of this legislation for the affected individuals it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The Administrator certifies that these final rules will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulation changes concern the rights and responsibilities of individual VA beneficiaries and essentially restate 38 U.S.C. 363. Thus, no regulatory burdens are imposed on small entities by these regulations.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 8, 1986.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, *Vocational Rehabilitation and Education*, is amended by adding new Subparts H and I. Subpart H is reserved at this time. Sections 21.6501 to 21.6525 (Subpart I) are set forth below:

PART 21—[AMENDED]

Subpart I—Temporary Program of Vocational Training and Rehabilitation

Sec.

21.6501 Overview.
21.6503 Definitions.
21.6505 Participation in the temporary program.
21.6507 Special benefits for qualified veterans under test program.
21.6509 Notice to qualified veterans.
21.6511 Scheduling an evaluation for a qualified veteran.
21.6513 Qualified veteran fails to participate in an evaluation or reevaluation.
21.6515 Formulation of rehabilitation plan.
21.6517 Failure to pursue rehabilitation plan.
21.6519 Eligibility of qualified veterans for employment and counseling services.
21.6521 Employment of qualified veterans.
21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 1504(a) (2) and (5).
21.6525 Election of benefits by qualified veteran who receives an IU rating during the program period.

Authority: Pub. L. 98–543, sec. 111; 38 U.S.C. 363.

Subpart I—Temporary Program of Vocational Training and Rehabilitation

§ 21.6501 Overview.

(a) *Purpose.* The temporary program for trial work periods and vocational rehabilitation is intended to test the extent to which a veteran, who has been awarded a VA compensation rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of service-connected disability, may benefit from vocational rehabilitation services which may be authorized under 33 U.S.C. ch. 31, and 38 U.S.C. 363. See §§ 3.340 and 3.341 of this title. (38 U.S.C. 363)

(b) *Chapter 31 evaluations required.* All veterans participating in this temporary program are to be evaluated to determine whether:

(1) They are eligible for and entitled to receive assistance under ch. 31; and

(2) Achievement of a vocational goal is reasonably feasible.

(38 U.S.C. 363)

(c) *Applicability of ch. 31 provisions.* The provisions of §§ 21.1 through 21.430, generally applicable to veterans eligible for benefits under ch. 31, apply except

as added to or modified by the provisions of the following sections. Participants not found eligible for ch. 31 benefits may nevertheless receive counseling services under 38 U.S.C. 1504(a)(2) and placement and postplacement services under 38 U.S.C. 1504(a)(5). (38 U.S.C. 363)

§ 21.6503 Definitions.

(a) *Program period.* The term "program period" means the period beginning on February 1, 1985, and ending January 31, 1989. (38 U.S.C. 363(a)(2)(B))

(b) *Qualified veteran.* The term "qualified veteran" means a veteran who has a service-connected disability, or service-connected disabilities, not rated as total, but who has been awarded a rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities. Such a rating is referred to as an IU (individual unemployability) rating. See §§ 3.340, 3.341, and 4.16 of this title. (38 U.S.C. 363(a)(2)(A))

(c) *Receives an IU rating.* The phrase "receives an IU rating" refers to the date of the rating decision authorizing total disability compensation based upon individual unemployability (38 U.S.C. 363(a)(2)(A))

§ 21.6505 Participation in the temporary program.

(a) *General.* Participation in this temporary program of trial work periods and vocational rehabilitation is limited to qualified veterans. (38 U.S.C. 363(a)(2)(A))

(b) *Qualified veterans for whom an evaluation and pursuit of a vocational rehabilitation program is required.*

(1) Each qualified veteran who receives an IU rating during the program period, shall be provided an evaluation of rehabilitation potential to determine whether achievement of a vocational goal under ch. 31 is reasonably feasible.

(i) The VR&C (Vocational Rehabilitation and Counseling) Division will schedule the veteran for an evaluation, unless it is determined that his or her participation in an evaluation is not reasonably feasible;

(ii) A veteran for whom an evaluation is scheduled must appear for and cooperate in the evaluation unless unable to do so for reasons beyond his or her control.

(2) If, following the evaluation, achievement of a vocational goal is found to be reasonably feasible and the veteran is eligible for ch. 31 benefits, the veteran is required to pursue a vocational rehabilitation program. If the veteran fails to pursue or continue to pursue a vocational rehabilitation program, he or she is subject to the provisions of § 21.6517. (38 U.S.C. 363(c))

(c) *Qualified veterans for whom evaluation and pursuit of a vocational rehabilitation program is optional.* A qualified veteran who had an IU rating as of January 31, 1985, may, whether or not already participating in the ch. 31 program, elect to participate in this test program, if otherwise eligible, but is not required to do so. (38 U.S.C. 363 note)

(d) *IU rating awarded while a ch. 31 participant.* A veteran already participating in a ch. 31 program who receives an IU rating during the program period shall be subject to all provisions for required participation in this program, as provided in paragraph (b) of this section. (38 U.S.C. 363 note)

§ 21.6507 Special benefits for qualified veterans under test program.

(a) *Protection of IU rating under 38 CFR 3.343(c)(2).* The total disability rating of any qualified veteran who begins to engage in a substantially gainful occupation during the program period is protected from reduction by the VA on the basis of the veteran's having secured and followed a substantially gainful occupation under the provisions of § 3.343(c)(2) of this title. (38 U.S.C. 363(a))

(b) *Counseling and employment services for qualified veterans.* During the program period, the VA will make the counseling services described in 38 U.S.C. 1504(a)(2), and the placement and postplacement services described in 38 U.S.C. 1504(a)(5), available to each qualified veteran for whom achievement of a vocational goal is reasonably feasible. These services will be made available regardless of the veteran's entitlement to or desire to participate in a vocational rehabilitation program under ch. 31. See § 21.6519. (38 U.S.C. 363(b))

§ 21.6509 Notice to qualified veterans.

(a) *Notice to qualified veterans awarded an IU rating during the program period.* At the time notice is provided to a qualified veteran of an award of an IU rating, the VA shall provide the veteran with an additional statement. A similarly worded statement shall also be sent to veterans awarded an IU rating during the program period who are already participating in a program under ch. 31. These statements shall contain the following information:

(1) Notice of the provisions of 38 U.S.C. 363;

(2) Information explaining the purposes and availability of, as well as eligibility requirements and procedures for pursuing, a vocational rehabilitation program under ch. 31; and

(3) A summary description of the scope of services and assistance available under that chapter. (38 U.S.C. 363(c)(1)(A))

(b) *Notice sent to qualified veterans awarded an IU rating on or before January 31, 1985.* By April 1, 1985, the VA shall provide the information contained in 38 U.S.C. 363(b), and described in paragraphs (a) (2) and (3) of this section to veterans awarded an IU rating on or before January 31, 1985. However, such notice need not be provided to a veteran who has an IU rating which is protected under § 3.952 of this title. (38 U.S.C. 363 note)

§ 21.6511 Scheduling an evaluation for a qualified veteran.

(a) *Evaluation.* The term "evaluation" hereinafter shall be understood to mean the same evaluation accorded in an "initial evaluation" and an "extended evaluation" as those terms are described in § 21.50 and § 21.57. (38 U.S.C. 363(c))

(b) *Timely scheduling and notice of evaluation.* (1) An evaluation will be arranged as promptly as practicable for each qualified veteran required to participate and for any other qualified veteran who elects to participate; and

(2) The veteran shall be provided reasonable notice of the date and time for which the evaluation is initially scheduled. (38 U.S.C. 363(c))

(c) *Evaluations for ch. 31 participants.* A veteran who is a ch. 31 participant at the time he or she becomes a participant in the test program shall be provided a reevaluation limited to:

(1) Affirming the continuing suitability of his or her ch. 31 rehabilitation program; and

(2) Identifying the assistance which may be furnished under § 21.6507. (38 U.S.C. 363 (b), (c))

(d) *Responsible staff member.* The evaluation or reevaluation will be provided by a counseling psychologist in the VR&C (Vocational Rehabilitation and Counseling) Divison. (38 U.S.C. 363(c)(1)(B))

§ 21.6513 Qualified veteran fails to participate in an evaluation or reevaluation.

(a) *Qualified veterans affected by this section.* The provisions of this section are only applicable to qualified veterans who receive an IU rating during the program period. Each of these veterans is required to participate in an evaluation (or reevaluation, if already in a ch. 31 program) and must cooperate to the extent necessary for the counseling

psychologist to accomplish the evaluation, unless the veteran is unable to do so for reasons beyond his or her control. The veteran's responsibility for satisfactory conduct and cooperation in the evaluation shall be considered in the same manner as for ch. 31 applicants. See § 21.50(e) and § 21.362. (38 U.S.C. 363(c)(2))

(b) *Special considerations.* The counseling psychologist shall make every reasonable effort to avoid or minimize nonparticipation or noncooperation in the evaluation. (38 U.S.C. 363(c), (2) and (3))

(c) *Nonparticipation and noncooperation.* (1) If a qualified veteran who is required to participate in this test program fails to participate or cooperate in the evaluation, the VA shall initially take the actions specified for ch. 31 participants under § 21.184, § 21.188, and § 21.364, including discontinuance of the veteran's case, if necessary. (38 U.S.C. 363(a)(2))

(2) The VR&C Division shall inform the Adjudication Division of the discontinuance of the evaluation for a veteran required to participate, if the failure of the qualified veteran to participate or cooperate in carrying out the evaluation is for reasons within his or her control. Upon receipt of such information, the Adjudication Division will take the action required under § 3.341(c) of this title to reduce the IU award. (38 U.S.C. 363(c)(2))

(d) *Followup for veterans unable to participate in an initial evaluation or vocational rehabilitation program.* For each qualified veteran described in paragraph (a) of this section, who does not participate in an evaluation or pursue the vocational rehabilitation program for reasons beyond his or her control, the case shall be reviewed for followup action by the VR&C staff as provided in §§ 21.197(c)(4) and 21.198(d). (38 U.S.C. 363(c)(2))

§ 21.6515 Formulation of rehabilitation plan.

(a) *Formulation of plan.* Following an evaluation, the counseling psychologist will formulate an IWRP (individualized written rehabilitation plan) or an IEAP (individualized employment assistance plan) for each participating qualified veteran for whom achievement of a vocational goal is reasonably feasible. These plans shall be prepared in accordance with § 21.84 (IWRP) or § 21.88 (IEAP). (38 U.S.C. 363(c)).

(b) *Existing plan.* If the veteran already has undertaken a rehabilitation program under ch. 31, a new plan shall not be required unless circumstances indicate that the existing plan should be modified or replaced. (38 U.S.C. 363(c))

§ 21.6517 Failure to pursue rehabilitation plan.

(a) *Failure to pursue required program.* If the case manager determines that a qualified veteran required to participate has failed, for reasons other than those beyond the veteran's control, to pursue or continue to pursue the plan developed under § 21.6515, the VA shall provide the veteran with a notice of the consequences of his or her action. The notice shall inform the veteran, that if he or she fails to initiate or resume pursuit within 60 days (or a period of up to 120 days if circumstances warrant) after the VA provides the notice, the results of the evaluation will be considered by the VA in reviewing the veterans' continued eligibility for a rating of total disability based on inability to secure or follow a substantially gainful occupation. (38 U.S.C. 363(c)(3)(B))

(b) *Referral to Adjudication Division—pursuit required.* If the veteran fails to initiate or resume pursuit of the planned rehabilitation program within the time period specified by the notice described in paragraph (a) of this section, the VR&C Division will forward copies of the notice and the results of the evaluation of the Adjudication Division for appropriate rating consideration. (38 U.S.C. 363(c)(3)(B))

(c) *Pursuit not required.* If the qualified veteran is not required to participate in the test program, failure to pursue or continue to pursue the plan shall result only in action by the VA under ch. 31 procedures provided for such situations. See §§ 21.190, 21.194, 21.362, 21.364, (38 U.S.C. 363(b)(3))

§ 21.6519 Eligibility of qualified veterans for employment and counseling services.

(a) *General.* A qualified veteran for whom vocational rehabilitation and achievenment of a vocational goal are reasonably feasible may be provided the employment and counseling services to which he or she may be entitled under ch. 31. If the qualified veteran is not eligible for such assistance under ch. 31, he or she may be provided, nevertheless, the counseling, placement and postplacement services provided under 38 U.S.C. 1504(a)(2) and (5). The specific services which may be authorized are discussed in §§ 21.100, 21.252 and 21.254(a). (38 U.S.C. 363(b))

(b) *Services under other VA and non-VA programs.* Veterans being provided counseling, placement and postplacement services under §§ 21.100, 21.252, and 21.254(a) will also be aided in identifying services of other VA and non-VA programs which may be of assistance in securing employment. All elements of a program of these services shall be incorporated in the IEAP. (38 U.S.C. 363(b))

(c) *Veteran elects counseling, placement and postplacement services.* If a qualified veteran elects not to undertake the IWRP, whether or not required to do so, and is otherwise eligible for counseling, placement and postplacement services under 38 U.S.C. 1504(a)(2) and (5), he or she may be provided those services as a part of the test program even though action has been taken under either paragraph (b) of (c) § 21.6517. (38 U.S.C. 363(b))

(d) *Duration of services under 38 U.S.C. 1504(a) (2) and (5).* The services provided under 38 U.S.C. 1504(a)(2) and (5), are limited to an 18-month period of employment assistance as described in § 21.73. (38 U.S.C. 363(b))

§ 21.6521 Employment of qualified veterans.

(a) *Provisions of the IEAP (Individualized Employment Assistance Plan).* Each IEAP of a qualified veteran shall require that the:

(1) Case manager maintain close contact with qualified veterans who become employed to help assure adjustment to employment;

(2) Veteran discuss any plan to leave employment during the trial work period with the case manager. (38 U.S.C. 363(c))

(b) *Coordination with the Adjudication Division.* The VR&C Division will inform the Adjudication Division in writing upon employment of the participating qualified veteran during a program of either vocational rehabilitation services or counseling and employment services and when such employment has continued for 12 consecutive months. See § 3.343(c)(2) of this title. (38 U.S.C. 363(a))

§ 21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 1504(a) (2) and (5).

(a) *Dates of entry.* A qualified veteran, not eligible to receive ch. 31 benefits, may not enter or pursue a program of counseling and employment services under 38 U.S.C. 1504(a) (2) and (5), before February 1, 1985, or later than January 31, 1989. (38 U.S.C. 363)

(b) *Reentry.* The provisions of paragraph (a) of this section are also applicable to veterans being provided additional counseling and employment services following a redetermination of eligibility and entitlement to such services. (38 U.S.C. 363)

§ 21.6525 Election of benefits by a qualified veteran who receives an IU rating during the program period.

(a) *General.* A qualified veteran required to participate in the test program must participate in a rehabilitation program under ch. 31, if eligible, regardless of eligibility and entitlement to education benefits under other VA programs, or risk adverse consequences under §§ 21.6513(c) and 21.6517 (a) and (b). (38 U.S.C. 363(c))

(b) *Chapter 34 eligibility.* A qualified veteran required to participate, who is also eligible for assistance under ch. 34, may elect, as part of his or her ch. 31 vocational rehabilitation program, to receive subsistence payments at the ch. 34 rate under § 21.264. The counseling psychologist and the veteran will review the assistance and services available under these options so the veteran can make an informed decision. (38 U.S.C. 363(c))

(c) *Other VA programs.* The counseling psychologist shall inform a qualified veteran required to participate in the test program of any adverse consequences which may result under §§ 21.6513(c) and 21.6517 (a) and (b), if he or she instead elects benefits under another VA program. (38 U.S.C. 363(c))

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BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6715]

National Flood Insurance Administration; Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management meassures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the third column, as of that date, flood insurance is no longer available in the community. However , those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable floodplain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, floodpains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Maine: Boothbay, town of, Lincoln County	230212B	Sept. 8, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Feb. 7, 1975, Mar. 7, 1980, and June 3, 1986	June 3, 1986.
Massachusetts:				
Nantucket, town of, Nantucket County	250230C	Jan. 21, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Sept. 13, 1974, Dec. 3, 1976, Oct. 1, 1983, and June 3, 1986.	Do.
Medford, city of, Middlesex County	250205B	May 20, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	July 26, 1974, Sept. 24, 1976, and June 3, 1986	Do.
Everett, city of, Middlesex County	250192B	June 30, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	July 7, 1974, July 30, 1976, and June 3, 1986	Do.
Hingham, town of, Plymouth County	250268B	June 3, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Sept. 6, 1974, Oct. 15, 1976, and June 3, 1986	Do.
New Hampshire: North Hampton, town of, Rockingham County.	330232B	Nov. 17, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Feb. 27, 1979 and June 3, 1986	Do.
Region IV				
New Jersey: Fairfield, township of, Essex County	340168C	June 23, 1972, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	June 15, 1973, July 1, 1974, July 16, 1976, Mar. 1, 1984, and June 3, 1986.	Do.
Region III				
Pennsylvania: Washington, township of, Franklin County.	421658C	July 1, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Sept. 6, 1974, July 2, 1976, Mar. 11, 1977, and June 3, 1986.	Do.
Region V				
Illinois:				
Galatia, village of, Saline County	170597B	Aug. 25, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 1, 1974, Jan. 30, 1976, June 3, 1986	Do.
Randolph County, unincorporated areas	170575B	Apr. 1, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Dec. 20, 1974, July 15, 1977, and June 3, 1986	Do.
Ohio: Chillicothe, city of, Ross County	390482D	May 6, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986; Susp.	June 25, 1974, May 28, 1976, Aug. 31, 1979, Mar. 17, 1984, and June 3, 1986.	Do.
Region VI				
Texas:				
Corinth, Town of, Denton County	481143B	Mar. 5, 1975, Emerg.; May 15, 1979, Reg.; June 3, 1986, Susp.	July 30, 1976, May 15, 1979, and June 3, 1986	Do.
Westworth Village, village of, Tarrant County	480616B	Jan. 24, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 8, 1974, June 25, 1976, and June 3, 1986	Do.
Kansas: Sedgwick County, unincorporated areas	200321A	July 17, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986. Susp.	Aug. 2, 1974, and June 3, 1986	Do.
Region VIII				
Montana: Red Lodge, city of, Carbon County	300007	June 30, 1975, Emerg.; May 19, 1981, Reg.; June 3, 1986, Susp.	May 19, 1981, and June 3, 1986	Do.
Region IX				
Arizona: Paradise Valley, town of, Maricopa County.	040049C	Sept. 15, 1972, Emerg.; May 1, 1980, Reg.; June 3, 1986, Susp.	Dec. 7, 1973, May 21, 1976, May 1, 1980, and June 3, 1986.	Do.
California:				
Point Arena, city of, Mendocino County	060185C	June 28, 1976, Emerg.; Aug. 3, 1984, Reg.; June 3, 1986, Susp.	Oct. 18, 1974, Dec. 26, 1975, Aug. 3, 1984, and June 3, 1986.	Do.
Mendocino County, unincorporated areas	060183C	Dec. 17, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Jan. 3, 1974, Apr. 25, 1978, June 1, 1983, and June 3, 1986.	Do.
Capitola, city of, Santa Cruz County	060354C	July 2, 1975, Emerg.; Aug. 15, 1984, Reg.; June 3, 1986, Susp.	May 17, 1974, Mar. 19, 1976, Aug. 15, 1984, and June 3, 1986.	Do.
Half Moon Bay, city of, San Mateo County	060319A	July 17, 1975, Emerg.; Aug. 8, 1979, Reg.; June 3, 1986, Susp.	June 3, 1986	June 3, 1987.
Region X				
Oregon: Oakridge, city of, Lane County	410126B	Aug. 28, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Nov. 12, 1976, May 10, 1974, and June 3, 1986	June 3, 1986.
Region VIII—Minimal Conversions				
Montana:				
Chester, town of, Liberty County	300041	May 30, 1975, Emerg.; June 1, 1986, Reg.; June 1, 1986, Susp.	May 10, 1974, Dec. 5, 1975, June 1, 1986	June 1, 1986.
Conrad, city of, Pondera County	300057	Feb. 10, 1975, Emerg.; June 1, 1986, Reg.; June 1, 1986, Susp.	June 7, 1974, Dec. 5, 1975, and June 1, 1986	Do
Vermont:				
Fairfield, town of, Franklin County	500053B	Dec. 29, 1975, Emerg.; Sept. 27, 1985, Reg.; June 3, 1986, Susp.	Jan. 10, 1975, Oct. 1, 1976, and Sept 27, 1985	June 3, 1986.
Orwell, town of, Addison County	500168B	July 2, 1975, Emerg.; Sept. 18, 1985, Reg.; June 3, 1986, Susp.	Nov. 15, 1974, Sept 3, 1975, and Sept. 18, 1985	Do.
Woodford, town of, Bennington County	500023A	Nov. 13, 1975, Emerg.; Sept. 18, 1985, Reg.; June 3, 1986, Susp.	Nov. 15, 1974 and Sept. 18, 1985	Do.
Connecticut: Colebrook, town of, Litchfield County	090180B	May 3, 1976, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 20, 1979 and June 3, 1986	Do.
Vermont: Guilford, town of, Windham County	500130B	Sept. 4, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	July 19, 1974, Dec. 10, 1976, and June 3, 1986	Do.
Region II				
New York:				
Otisco, town of, Onodaga County	360589B	June 1, 1976, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 31, 1974, July 23, 1976, and June 3, 1986	Do.
Wells, town of, Hamilton County	361112A	Mar. 15, 1982, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Nov. 29, 1974 and June 3, 1986	Do.
Region III				
Maryland: Church Hill, town of, Queen Annes County	240057B	Aug. 20, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Aug. 16, 1974, Dec. 19, 1975, and June 3, 1986	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
Alabama:				
Morris, town of, Jefferson County	010264B	Mar. 11, 1980, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Oct. 8, 1976, Dec. 29, 1978, and June 3, 1986	Do.
Ragland, town of St. Clair County	010190D	June 26, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 24, 1974, Jan. 9, 1976, and June 3, 1986	Do.
Florida:				
Monticello, city of Jefferson County	120365A	Apr. 9, 1981, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	July 23, 1976, June 3, 1986	Do.
Worthington Springs, town of, Union County	120594B	May 29, 1980, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	Oct. 13, 1986 and June 3, 1986	Do.
Georgia:				
Arlington, City of, Calhoun & Early Counties	130026A	Nov. 3, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Feb. 21; 1975, and June 3, 1986	Do.
Ivey, town of Wilkinson County	130420B	Aug. 6, 1979, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Dec. 16, 1977, and June 3, 1986	Do.
Kentucky:				
Jenkins, city of, Letcher County	210138B	July 7, 1976, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	June 7, 1974, July 23, 1976, and June 3, 1986	Do.
Spencer County, unincorporated areas	210211B	Aug. 8, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Oct. 21, 1977, and Juen 3, 1986	Do.
Mississippi:				
Goodman, town of, Holmes County	280075B	May 22, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	June 7, 1974, Jan. 16, 1976, and June 3, 1986	Do.
North Carolina:				
Lake Waccamaw, town of, Columbus County	370069B	July 2, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	Dec. 28, 1973, May 14, 1976, and June 3, 1986	Do.
Walnut Cove, town of, Stokes County	370224B	June 13, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	Feb. 8, 1974, May 21, 1976, and June 3, 1986	Do.
South Carolina:				
Mullins, city of, Marion County	450143B	Aug. 4, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	June 28, 1974, Apr. 2, 1976, and June 3, 1986	Do.
Summerton, town of, Claredon County	450054B	Jan. 13, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	May 24, 1974, July 25, 1975, and June 3, 1986	Do.
Ulmer, town of, Allendale County	450012B	Aug. 19, 1976, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	Aug. 16, 1974, June 11, 1976, Apr. 25, 1980, and June 3, 1986.	
Tennessee:				
Decatur, town of, Meigs County	470134E	Mar. 27, 1975, Emerg.; June 3, 1986, Reg., June 3, 1986, Susp.	June 14, 1974, Mar. 11, 1977, Jan. 13, 1978, June 30, 1978, Feb 22, 1980, and June 3, 1986.	Do.
Maynardville, city of, Union County	470210B	May 29, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986 Susp.	May 17, 1974, Sept. 3, 1976, and June 3, 1986	Do.
Philadelphia, city of, Loudon County	470276B	February 18, 1975; Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 8, 1974, Sept. 17, 1976, and June 3, 1986	Do.
Region V				
Michigan: Niles, township of, Berrien County	260041B	Sept. 9, 1974, Emerg; June 3, 1986, Reg.; June 3, 1986, Susp.	June 21, 1974, June 18, 1976, June 3, 1986	Do.
Minnesota:				
Clarissa, city of, Todd County	270476B	Apr. 30, 1974, Emerg; June 3, 1986, Reg.; June 3, 1986, Susp.	May 3, 1974, July 30, 1976, and June 3, 1986	Do.
Nobles County, unincorporated areas	270668B	Sept. 19, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 25, 1979, and June 3, 1986	Do.
Ohio:				
Jacksonville, village of, Athens County	390019B	Mar. 21, 1977, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 17, 1974, Apr. 16, 1976, and June 3, 1986	Do.
Sycamore, village of, Wyandot County	390591B	Apr. 2, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	May 17, 1974, Apr. 9, 1976, and June 3, 1986	Do.
Wisconsin: Chetek, city of, Barron County	550012B	Nov. 8, 1974, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Dec. 7, 1973, May 14, 1976, and June 3, 1986	Do.
Region VII				
Kansas: Lyndon, city of, Osage County	200251B	July 15, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Mar. 1, 1974, Nov. 14, 1975, and June 3, 1986	Do.
Nebraska:				
Bristow, village of, Boyd County	310012B	Jan. 13, 1976, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Jan. 3, 1975, Nov. 21, 1975, and June 3, 1986	Do.
Valparaiso, village of, Saunders County	310203B	Sept. 16, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	Nov. 8, 1974, Mar. 19, 1976, and June 3, 1986	Do.
Region X				
Idaho: Butte County, unincorporated areas	160033A	May 17, 1984, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.	June 3, 1986	June 3, 1987.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Julius W. Becton, Jr.,
Director.
[FR Doc. 86-11949 Filed 5-28-86; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION
Coast Guard
46 CFR Parts 2 and 4
[CGD 85-015]
Vessel Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the shipping regulations by adding requirements to give the Coast Guard prior notification of vessel inspections and to give immediate notification to the Coast Guard if there is reason to believe a vessel is in distress. These regulations apply to individuals in charge of a vessel including vessel owners, charterers, operators, agents and

masters. These regulations implement the reporting requirements of the Maritime Safety Act of 1984. Their purpose is to enhance maritime safety by insuring vessels will be reinspected for certification and also by increasing the likelihood that timely assistance will be provided to vessels in distress.

EFFECTIVE DATE: These rules become effective on May 29, 1986.

ADDRESSES: The Final Evaluation and materials referenced in these final rules are available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council, Commandant (G—CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593 (202–426–1477).

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Jeffrey G. Lantz, Project Officer, (202) 426–4431.

SUPPLEMENTARY INFORMATION: On October 19, 1984, Congress enacted the Maritime Safety Act of 1984 (Pub. L. 98–498, Title II, Subtitle A). The purpose of the Act is to promote maritime safety through various means, one of which is by establishing certain vessel reporting requirements. These requirements are embodied in sections 211(a) and 212 of the Act and entered into force on April 17, 1985. Section 211(a) requires prior notification of vessel inspections to be given to the Coast Guard and section 212 requires notification to be given to the Coast Guard if there is reason to believe a vessel in is distress. These two sections do not specify the official or office within the Coast Guard to receive the notification. These regulations specify how and where to provide notification.

Notice of Proposed Rulemaking

Since these regulations merely clarify new statutory reporting requirements by delineating the proper recipient of the required notifications, notice and opportunity for comment has been determined to be impracticable and unnecessary. Therefore, under the provisions of 5 U.S.C. 553 these amendments are being issued as a final rule without publication of a notice of proposed rulemaking. Since the statute was effective April 17, 1985, good cause exists for making these rules effective upon publication.

Drafting Information

The principal drafters of this document are LCDR Jeffrey G. Lantz, Office of Merchant Marine Safety and LCDR Ronald C. Zabel; Office of Chief Counsel.

Discussion of Changes

1. Section 211(a) of the Maritime Safety Act of 1984 amends 46 U.S.C. 3309 by adding a new paragraph, 3309(c). Under this paragraph, the owner, charterer, managing operator, agent, master, or individual in charge of a vessel, certificated by the Coast Guard, is required to submit a notice to the Coast Guard, stating if the vessel will be required to be reinspected for certification or if the vessel will be operated so as not to require a Certificate of Inspection (COI). This notice need not contain the specifics necessary to schedule the inspection. However, it must be in writing and submitted at least 30 days but not more than 60 days prior to the expiration of the vessel's current COI. The purpose for this requirement is to insure that the ship owner and the Coast Guard are both aware that a vessel is due for inspection and also increase communication between the vessel owner and the Coast Guard to aid both parties in working out the logistics for the inspection. Advance communication with the Coast Guard is especially useful for vessels which primarily operate overseas and as such, have to make arrangements to have their inspections done in a foreign port. This requirement will reduce the occurrences of COI's lapsing because arrangements were not made for the inspection to be done in time.

The purpose of this requirement is best served if the notice is sent to the Coast Guard Marine Safety or Marine Inspection Office that will be doing the inspection. This, however, may not always be possible. Certain types of vessels are operated such that a determination cannot be made where it will be inspected 30 to 60 days prior to the expiration of the COI. In these instances, the best office to receive the notice is the Marine Safety or Marine Inspection Office that last certificated the vessel. This office will have the records of the last inspection for certification and can communicate any information concerning the vessel's upcoming inspection through the Marine Safety Information System. The regulations offer this choice to Coast Guard inspection offices to the submitter of the report.

Regulations presently require an Application for Inspection to be submitted to the Coast Guard prior to a vessel being reinspected for certification. Under section 211(a) of the Act, the Application for Inspection meets the notification requirement for a vessel requiring reinspection for certification. Therefore, an owner who knows where the vessel will be inspected 30 days prior to the inspection will be able to utilize the Application for Inspection as this required notice.

Section 211(a), and consequently 46 U.S.C. 3309(c), is general and applies to all vessels certificated by the Coast Guard under the authority of 46 U.S.C. 3309. Accordingly, 46 CFR Part 2 is being amended to incorporate this reporting requirement rather than including it separately in the vessel specific subchapters of 46 CFR Chapter I.

2. Section 212 of the Martime Safety Act of 1984 adds three complementary vessel reporting requirements to the law and places them in a new section, 46 U.S.C. 2306. First, under 2306(b), a master of a vessel, that is required to report to the United States Flag Merchant Vessel Location Filing System (USMER) under authority of 46 App. U.S.C. 1122a, is required to report to the vessel's owner, charterer, managing operator or agent at least once every 48 hours. Second, under 46 U.S.C. 2306(a)(2) the owner, charterer, managing operator or agent of a vessel required to report to USMER, is required to immediately notify the Coast Guard if 48 hours has passed since last receiving communication from the vessel. Third, under 2306(a)(1) the same notification requirements apply to the owner, charterer, managing operator, or agent of a vessel of the United States who has reason to believe the vessel may be lost or imperiled. Such reasons include, but are not limited to, lack of communication with or nonappearance of the vessel. 46 U.S.C. 2306 (a)(3) further requires that the notification required by 46 U.S.C. 2306(a)(1) and (a)(2) must include the name and identification number of the vessel, names of the individuals on board and other information the Coast Guard may request. Examples of information that may be requested by the Coast Guard include such items as the last known locationof the vessel, intended operations or destination of the vessel, information on the vessel's communication capability and any other information that may be helpful should a search have to be mounted. In addition, the statute requires written confirmation of the notification to be submitted to the Coast Guard within 24 hours.

These reporting requirements are intended to increase the likelihood of timely assistance being available to vessels in distress, especially those that cannot communicate their distress to the vessel's owner or others in a position to help. For vessels under 46 U.S.C. 2306(a)(2) this is best accomplished if the notification is received by the Coast

Guard rescue coordination center (RCC) having jurisdiction over the area the vessel is operating in. Because these vessels are engaged in foreign commerce, an RCC is best equipped to determine if the vessel is in need of assistance and, if so, to make arrangements for assistance to be provided. Additionally, these vessels are generally operated by large companies that have the wherewithal to know which district RCC is appropriate to send the report to.

The notification required by 46 U.S.C. 2306(a)(1) applies more broadly and encompasses all vessels that are documented or numbered under the laws of the United States. This includes all commercial vessels, small and large, as well as practically all pleasure vessels. To require that this notification be sent to an RCC may be burdensome to the owner and operators of small vessels because they may not know where the location of the RCC with jurisdiction. An example is where the vessel involved is a type that operates in one locale, such as a small passenger vessel. In this case it would be more appropriate to contact the local Coast Guard search and rescue authority instead of the RCC, which could be located hundreds of miles away. Therefore, for those vessels reporting under 46 U.S.C. 2306(a)(1), an option is provided. The notification may be given to either the cognizant Coast Guard RCC or the nearest Coast Guard search and rescue authority.

The reporting arrangement in 46 U.S.C. 2306 apply very broadly. The vessels required to report under 46 U.S.C. 2306(a)(2) would almost certainly be commercial vessels regulated under Title 46 Code of Federal Regulations. 46 U.S.C. 2306(a)(1), however, applies to all vessels regulated under Title 46 CFR and 33 CFR Subchapter S. The purpose of these regulations is to clarify the point within the Coast Guard where the notification required by 46 U.S.C. 2306 is to be submitted. Since these regulations apply to individuals not on board the vessel reported on, the Coast Guard has decided that they have much greater applicability to commercial operations than vessels being operated for pleasure where the owner is typically on board. Therefore, the Coast Guard has decided to place the clarifying regulations in 46 CFR Part 4. The heading of part 4 and the section describing the scope of the part is being modified to more accurately reflect the contents of the part.

Final Evaluation

These final rules are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures. A final regulatory evaluation has been prepared and placed in the rulemaking docket.

The evaluation includes an estimate of $152,250/year as the annual cost to the public of these regulations. Of this amount, the requirement to give the prior notification to the Coast Guard of the expiration of a vessel's Certificate of Inspection is estimated to cost $32,500/year. However, this burden can be decreased if more vessels are able to combine this report with the submission of the Application for Inspection. The remainder of the economic burden is attributable to the requirement to give the Coast Guard notification of vessel distress. This requirement is very specific in the law with no means available to mitigate its impact by combining it with a currently required report. The Coast Guard feels that reports of vessel distress have always been and will continue to be made, and while it has not been a regulatory requirement until now, it will not place an undue burden on the public.

The Final Evaluation may be inspected or copied at the location referred to in ADDRESSES. Copies may also be obtained by contacting LCDR Jeffrey G. Lantz at (202) 426-4431.

Environmental Assessment

An environmental assessment has not been prepared since these regulations are considered administrative and procedural. As specified by DOT Order 5610.1C and Commandant Instruction M16714.1A, regulations of this type are excluded from the requirement to prepare an environmental assessment.

Regulatory Flexibility Act Certification

The Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities. For the reports required under section 211(a) virtually all small entities will be able to utilize an existing required report for compliance. The reports required under section 212 are in effect requests for search and rescue service that would be made voluntarily anyway. For these reasons the impact is expected to be minimal.

Paperwork Reduction Act

This final rule contains information collection requirements as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). The requirement for prior notification of vessel inspections in § 2.01-3 is a modification to the information collection requirements incident to inspections approved by the Office of Management and Budget (OMB) under control number 2115-0007 and is included under that approval. The requirements for reporting lack of communication with a vessel or possible distress cases in §§ 4.04-1 to 4.04-5, required by section 212 of the Maritime Safety Act of 1984, have been submitted to OMB for review and have been assigned control number 2115-0551.

List of Subjects

46 CFR Part 2

Coast Guard, Law enforcement, Penalties, Fire protection, Marine safety.

46 CFR Part 4

Administrative practice and procedure, Coast Guard, Investigations, accidents, Marine safety, National Transportation Safety Board, Reporting requirements.

In consideration of the foregoing, 46 CFR Parts 2 and 4 are amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows and all other authority citations within the part are removed.

Authority: 14 U.S.C. 623; 33 U.S.C. 1903; 43 U.S.C. 1333(e); 46 U.S.C. 3306, 3703, 4104, 8105; 46 App. U.S.C. 86, 88a, 1295f and g; 50 U.S.C. E.O. 12234; 45 FR 58801, September 5, 1980; 49 CFR 1.46(b), (n), (z), (hh).

2. By adding a new § 2.01-3 to read as follows:

§ 2.01-3 Notification of inspection.

(a) At least 30 days, but less than 60 days, prior to the expiration of the Certification of Inspection, a vessel's owner, charterer, managing operator, agent, master or individual in charge shall notify the Coast Guard if the vessel will be required to be reinspected for certification or will be operated in such a manner as to not require a Certificate of Inspection.

(b) the notification required by paragraph (a) shall be in writing and shall be submitted to the Officer in Charge, Marine Inspection for the Marine Inspection or Marine Safety Office of the port that:

(1) Will be reinspecting and Certificating the Vessel;

(2) Issued the vessel's current Certificate of Inspection if the vessel's schedule is such that it is not known where the next reinspection will take place; or

(3) Issued the vessel's current Certificate of Inspection if the vessel will not be requiring reinspection for the issuance of a Certificate of Inspection.

PART 4—[AMENDED]

3. The heading of Part 4 is revised to read as follows:

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

4. The authority citation for Part 4 is revised to read as follows and all other authority citations in the part are removed.

Authority: 43 U.S.C. 1333, 46 U.S.C. 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46(b) and (z), except subpart 4.40 for which the authority is: 49 U.S.C. 1903 (a)(1)(E); 49 CFR 1.46(n)(10)(i).

5. By revising § 4.01–1 to read as follows:

§ 4.01–1 Scope of regulation.

The regulations in this part govern the reporting of marine casualties, the investigation of marine casualties and the submittal of reports designed to increase the likelihood of timely assistance to vessels in distress.

6. By adding a new subpart 4.04 to read as follows:

Subpart 4.04—Notice of Potential Vessel Casualty

§ 4.04–1. Reports of potential vessel casualty.

A vessel owner, charterer, managing operator or agent shall immediately notify either of the following Coast Guard officers if there is reason to believe a vessel is lost or imperiled.

(a) The Coast Guard district rescue coordination center (RCC) cognizant over the area the vessel was last operating in; or

(b) The Coast Guard search and rescue authority nearest to where the vessel was last operating.

Reasons for belief that a vessel is in distress include, but are not limited to, lack of communication with or nonappearance of the vessel.

§ 4.04–3 Reports of lack of vessel communication.

The owner, charterer, managing operator or agent of a vessel that is required to report to the United States Flag Merchant Vessel Location Filing System under the authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), shall immediately notify the Coast Guard if more than 48 hours have passed since receiving communication from the vessel. This notification shall be given to the Coast Guard district RCC cognizant over the area the vessel was last operating in.

(Information collection requirements approved by the Office of Management and Budget under control number 2115–0551)

§ 4.04–5 Substance of reports.

The owner, charterer, managing operator or agent, notifying the Coast Guard under § 4.04–1 or § 4.04–3, shall:

(a) Provided the name and identification number of the vessel, the names of the individuals on board, and other information that may be requested by the Coast Guard (when providing the names of the individuals on board for a passenger vessel, the list of passengers need only meet the requirements of 46 U.S.C. 3502); and

(b) Submit written confirmation of that notice to the Coast Guard facility that the notice was given to within 24 hours.

(Information collection requirements approved by the Office of Management and Budget under Control number 2115–0551)

Dated: May 23, 1986.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86–12057 Filed 5–28–86; 8:45 am]

BILLING CODE 4910–14–M

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46 CFR Part 5

[CGD 85–001]

Individual Participation in Marine Safety Reporting Program (MSRP); Enforcement Policy on Suspension and Revocation Proceedings

AGENCY: Coast Guard, DOT.

ACTION: Termination of program and final rule.

SUMMARY: On June 1, 1985, the Office of the Secretary, Department of Transportation initiated a one-year, voluntary Marine Safety Reporting Program (MSRP). As part of this program, the Coast Guard agreed not to impose an order under suspension and revocation proceedings which adversely affects a merchant mariner's license, certificate or document for certain offenses if a report was filed with MSRP. Title 46, Code of Federal Regulations, Part 5, § 5.64 sets forth Coast Guard enforcement policy for participation in MSRP with regard to the suspension and revocation of licenses, certificates and documents. This notice announces the termination of the one-year test and removes references to the Marine Safety Reporting Program from 46 CFR, Part 5.

EFFECTIVE DATE: June 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Larry D. Glass, Office of Merchant Marine Safety, (202) 426–6251, 7:30 AM to 4:00 PM Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department of Transportation initiated the one-year test which began on June 1, 1985. The Marine Safety Reporting Program was meant to supplement existing mandatory reporting requirements by providing the commercial marine industry with a means to report anonymously safety-related incidents and near mishaps involving difficulties encountered with the navigation and control of a commercial vessel. The Marine Safety Reporting Program expires on May 31, 1986. The effective date of this amendment is June 15, 1986 to allow a period of grace for processing of forms submitted late in the program. The Coast Guard will not honor the MSRP enforcement policy for forms received by the Transportation Systems Center subsequent to June 15, 1986. An evaluation of the program will be conducted and is expected to be available in a few months.

This amendment is published as a final rule because the provisions thereof concern matters relating to agency procedures and practices which are excepted under 5 U.S.C. 553 from the requirements for notice and comment. This amendment is being made effective on June 15, 1986. The document originally promulgating these sections stated that the test program would terminate on June 1, 1986. Since the test is concluded and the purpose of this final rule is only to remove those sections pertaining to the test, it has been determined that good cause exists for making this rule effective in less than 30 days.

List of Subjects in 46 CFR Part 5

Administrative practices and procedures, Investigations, Administrative law judge, Investigating officer, Seaman, License, Certificate, Document, Administrative hearings, Suspension, Revocation.

PART 5—[AMENDED]

In consideration of the foregoing, Part 5 of Title 46 Code of Federal Regulations is amended as follows:

1. The authority citation for Part 5 continues to read as follows:

Authority: 46 U.S.C. 7101, 7301, 7701; 50 U.S.C. 198; 49 CFR 1.46(b).

§ 5.64 [Removed]

2. Part 5 is amended by removing § 5.64.

Dated: May 23, 1986.

John W. Kime,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86-12062 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-14-M

46 CFR Part 160

[CGD 84-069b]

Lifesaving Equipment; Thermal Protective Aids

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting specifications for approving thermal protective aids. A thermal protective aid is a bag or suit made of waterproof material with low thermal conductivity. It is required by the Second Set of Amendments to the International Convention for Safety of Life at Sea (SOLAS 74/83) to be carried in a liferaft, lifeboat, or rescue boat to provide protection against hypothermia (body heat loss during prolonged periods of exposure). These specifications are necessary so that the Coast Guard may approve thermal protective aids to be carried aboard U.S. vessels on an international voyage. The effect of the regulations will be to provide guidance to potential manufacturers of the devices so that they can design a product to fulfill the requirements of SOLAS 74/83, and to provide a vehicle for approval of the devices as required by SOLAS 74/83.

EFFECTIVE DATE: June 30, 1986. The Director of the Office of the Federal Register has approved the material incorporated by reference as of June 30, 1986.

ADDRESSES: The comments, final evaluation, and materials referenced in this final rule will be available for examination and copying between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: LCDR William M. Riley (202) 426-1444.

Drafting Information: The principal author of this final rulemaking is LCDR William M. Riley, Office of Merchant Marine Safety, assisted by the Office of the Chief Counsel.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on October 1, 1985 (50 FR 40036), and invited comments for 90 days ending December 30, 1985. Numerous comments were received from four sources including one Great Lakes shipping company and three prospective manufacturers. The following summarizes the comments, suggestions, and actions taken.

Need for Thermal Protective Aids

One commenter suggested that, since exposure suits are far superior in protection, thermal protective aids should not be required on vessels carrying exposure suits. Another commenter stated that thermal protective aids, where carried, should be provided for 100% of the persons on board. Neither of these comments is pertinent to the subject of this rulemaking. Thermal protective aids will be required by the International Convention for Safety of Life at Sea (SOLAS 74/83) in certain survival craft after July 1, 1986. The requirements for vessels to carry thermal protective aids, including the substitution of exposure suits for thermal protective aids where practical, are included in a separate rulemaking.

Cost of Independent Laboratory Testing

Two prospective manufacturers expressed concern over the cost of testing by an independent laboratory. One of these commenters was extremely concerned that only Underwriters Laboratories will be adopted by the Coast Guard for such testing. The other commenter simply felt that the frequency of production inspection could be reduced.

The level of inspection proposed, i.e. prototype testing followed by visual examination of only one out of every 100 thermal protective aids produced, is considered the minimum worthwhile level of quality control and is quite reasonable. Independent laboratory inspection has been determined to be the most advantageous means of quality control for Coast Guard approved lifesaving equipment. The cost figures cited in the Draft Evaluation and Notice of Proposed Rulemaking were the Coast Guard's best estimate. No independent laboratory commented on the proposal and no commenter submitted any information on which to base a more accurate cost estimate. The Coast Guard has no preference for Underwriters Laboratories as an independent laboratory to test thermal protective aids, and will entertain applications from any organization interested in qualifying under 46 CFR Part 159. Underwriters Laboratories, Inc., if interested, will be required to apply for acceptance as an independent laboratory to test this particular product.

Watertightness

One of the prospective manufacturers questioned whether the thermal protective aids as a whole should be watertight. The other prospective manufacturer was adamant that the devices should have watertight zippers and be subjected to a water penetration test comparable to that used for exposure suits.

Thermal protective aids are intended to be used to reduce hypothermia in a survival craft, not in the water. The watertightness of the material is intended only to reduce evaporative heat loss and wind chill. Therefore no requirements for watertight closures have been incorporated.

Flame Resistance

One commenter suggested that the thermal protective aids should be flame resistant, in case the wearer was involved in firefighting or had to pass through a burning area before abandoning ship.

The thermal protective aids are intended to be stowed in a survival craft, to be donned after abandonment by persons who arrive at the embarkation station, or are recovered from the water, without an exposure suit. It is unlikely that the thermal protective aids will be exposed to flame under these conditions. SOLAS 74/83 specifically calls for flame resistance for lifejackets and immersion suits, but flame resistance is conspicuous by its absence in the requirements for thermal protective aids. Therefore no flame resistance test has been included in the final rule.

Material

One commenter suggested that the requirement for the thermal protective aids to be constructed of a "durable insulating or heat reflecting material" was too strict. This comment is without merit. We can envision no material which would be suitable for use in thermal protective aids which would not be encompassed by such broad language.

Feet

One commenter suggested that the thermal protective aids be required to have legs and feet with ankle straps and non-skid soles. SOLAS 74/83 describes a thermal protective aid as a "bag or suit," implying that something resembling a sleeping bag could be used. The Coast Guard feels that arms and hands of sufficient dexterity to enable the wearer to feed himself would be of value during extended periods in a survival craft, but we see no need to

require that the device have legs. It is sufficient that the device is required to cover the wearer's entire body with the exception of the face. It will generally be worn while in a seated position in a survival craft.

Sizes

One commenter suggested that thermal protective aids be made in as many as five sizes ranging from infant to oversize adult. Since only a few thermal protective aids will be required in each survival craft, to be used as a last resort by persons who abandon ship without benefit of exposure suits or other warm clothing, and since the mix of sizes of such victims cannot be predicted, a single size to fit all adults is the only practical approach.

Lifejacket

One commenter suggested that the option be allowed to design the thermal protective aids to be worn either over or under a lifejacket. SOLAS 74/83 requires that a thermal protective aid be capable of being worn over the lifejacket. It is not desirable for a survivor to remove his or her lifejacket even long enough to don the thermal protective aid. The potential need to remove the thermal protective aid in the water in order to swim also makes wearing the lifejacket outside the thermal protective aid impractical.

Buoyancy

One commenter suggested that, if thermal protective aids are buoyant, they be allowed to replace required lifejackets. The thermal protective aids must be compact devices for stowage in survival craft, including inflatable liferafts. Thermal protective aids as envisioned by these regulations would not be buoyant.

Storage Case

One commenter suggested that the description of the storage case is too restrictive, prohibiting the use of many "equally good or better" materials. This comment is without merit. The regulation establishes a minimum standard and any equally good or better material would be approved.

Date of Manufacture

One commenter suggested that the thermal protective aids be marked with the date of manufacture. This point is well taken and has been adopted.

Thermal Conductivity

One commenter pointed out that the units of measurement of thermal conductivity called for are not the same units used in the test methods incorporated by reference. The same commenter also suggested that another test method be used which is more appropriate for textiles.

The units of thermal conductivity used in the proposed rules are those called for by SOLAS 74/83. Reporting of the test results in these internationally accepted units is desirable and the conversion should be within the ability of any independent laboratory competent to perform the test.

Since the nature of the material which will ultimately be used to manufacture thermal protective aids is still unknown, and since American Society for Testing and Materials Method D 1518 is a convenient method for determining the thermal conductivity of textiles, this test method is incorporated in the final rule as an alternative.

Retroreflective Material

One commenter suggested that retroreflective material be required on thermal protective aids. This point is well taken and has been adopted.

Miscellaneous

One commenter submitted information concerning an existing product, in the nature of advertising. The information submitted, although it was addressed to the Commandant (G-CMC/21) and was in response to the notice of proposed rulemaking, did not contain any substantive comments on the proposed rules.

Discussions within the Office of Merchant Marine Safety have led to the conclusion that it will be easier to identify equipment approvals unique to SOLAS 74/83 if a subpart number in the series "160.100" is cited. Therefore, in the final rule, the new subpart has been redesignated 160.174 vice 160.074.

Economic Analysis and Certification

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A final evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

This final rule will improve safety and meet the treaty obligations of the United States. The Coast Guard cannot predict, with any reasonable degree of certainty, the number of lives which might be saved by this final rule. Nevertheless, if even a single life is saved, the benefits will far exceed the costs. The cost of this final rule to the government will be the cost of a government engineer to review the independent laboratory report of the prototype testing, and the clerical cost to issue a certificate of approval for each design. This cost is estimated at $150 per approval for a total of $1,500, assuming some 10 manufacturers enter the market. The manufacturer's cost for testing of each prototype is estimated at $2,250, for a total cost of $22,500 for 10 manufacturers to perform prototype testing. Production testing is expected to cost 50¢ per unit if total production is on the order of 10,000 units. Based upon the estimated cost involved, the Coast Guard certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule making contains information collection requirements in §§ 160.174-15 and 160.174-23. These requirements have been previously submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and have been approved by OMB under control number 2115-0141.

List of Subjects in 46 CFR Part 160

Marine safety, Incorporation by reference.

In consideration of the foregoing, Title 46 of the Code of Federal Regulations is amended as follows:

PART 160—LIFESAVING EQUIPMENT

1. By adding a new Subpart 160.174 to Part 160 to read as follows:

Subpart 160.174—Thermal Protective Aids

Sec.

160.174-1	Scope.
160.174-3	Incorporations by reference.
160.174-5	Independent laboratory.
160.174-7	Approval procedures.
160.174-9	Construction.
160.174-11	Performance.
160.174-13	Storage case.
160.174-15	Instructions.
160.174-17	Approval testing.
160.174-23	Marking.
160.174-25	Productive testing.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart 160.174—Thermal Protective Aids

§ 160.174-4 Scope.

This subpart contains construction and performance requirements, and approval tests for thermal protective aids that are designed to minimize the occurrence of or aid in the recovery from hypothermia (lowered body temperature) during long periods in a survival craft.

§ 160.174-3 Incorporations by reference.

(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of the section, notice of change must be published in the Federal Register and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Survival Systems Branch (G-MVI-3), Washington, DC 20593.

(b) The materials approved for incorporation by reference in this subpart are:

American Society for Testing and Materials

1916 Race Street, Philadelphia, PA 19103

ASTM C 177-76, Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Guarded Hot Plate.

ASTM C 518-76, Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter.

ASTM D 1518-77, Thermal Transmittance of Textile Materials Between Guarded Hot-Plate and Cool Atmosphere.

ASTM D 1004-66, Tear Resistance of Plastic Film and Sheeting.

ASTM D 975-81, Standard Specification for Diesel Fuel Oils.

General Services Administration

Specification Unit (WFSIA), Regional Office Building, Room 6039, 7th and D Streets SW., Washington, DC 20407

Federal Standard No. 751a—Stitches, Seams, and Stitchings.

National Bureau of Standards Special Publication 440—Color, Universal Language and Dictionary of Names.

§ 160.174-5 Independent laboratory.

(a) The approval and production tests and inspections in this subpart must be conducted by an independent laboratory accepted by the Coast Guard under Subpart 159.010 of this chapter.

§ 160.174-7 Approval procedures.

(a) *General.* A thermal protective aid is approved by the Coast Guard under the procedures in Subpart 159.005 of this chapter.

(b) *Approval testing.* Each approval test must be conducted in accordance with 160.174-17.

§ 160.174-9 Construction.

(a) *General.* Each thermal protective aid must be constructed primarily of a durable insulating or heat reflecting material that meets the thermal insulation requirements in § 160.174-11(a). Each aid must be designed to cover the wearer's entire body, except for the area of the mouth, nose, and eyes.

(b) *Seams.* Stitching, if used in structural seams of a thermal protective aid, must be lock type stitching that meets the requirements in Federal Standard No. 751 for one of the following:

(1) Class 300 lockstitch.

(2) Class 700 single thread lock stitch.

(c) *Seam strength.* Each seam must have a strength of at least 225 Newtons (50 lb.).

(d) *Hardware.* All hardware of a thermal protective aid must be of a size and design that allows ease of operation by the wearer. The hardware must be attached to the aid in a manner that allows the wearer to operate it easily and that prevents it from attaining a position in which it can be operated improperly.

(e) *Metal parts.* Each metal part of a thermal protective aid must be—

(1) 410 stainless steel or have salt water and salt air corrosion characteristics equal to or superior to 410 stainless steel; and

(2) Galvanically compatible with each other metal part in contact with it.

(f) *Thermal protective aid exterior.* The primary color of the exterior surface of each thermal protective aid must be vivid reddish orange (color number 34 of National Bureau of Standards Publication 440). The exterior surface of the aid must resist tearing when tested as prescribed in § 160.174-17(i).

(g) *Hand and arm construction.* The hand of each thermal protective aid must be a glove that allows sufficient dexterity for the wearer to close and open the zipper or other hardware of the aid and to open and eat survival rations, unless the glove is removable. The glove may not be removable unless it is attached to the arm and unless it can be secured to the arm or stowed in a pocket on the arm when not in use.

(h) *Retroreflective material.* Each thermal protective aid must be fitted with at least 200 cm^2 (31 sq. in.) of Type I retroreflective material that meets Subpart 164.018 of this chapter.

(i) *Size.* Each thermal protective aid must fit persons ranging in weight from 50 kg. (110 lbs.) to 150 kg. (330 lbs.) and in height from 1.5 m. (59 in.) to 1.9 m. (75 in.).

(j) *Lifejacket.* Each thermal protective aid must be designed so that any Type I Personal Flotation Device meeting the requirements of this Chapter can be worn inside the aid and, when worn, will not damage the aid and will not adversely affect its performance.

§ 160.174-11 Performance.

(a) *Thermal protection.* The thermal protective aid must be designed to protect against loss of body heat as follows:

(1) The thermal conductivity of the material from which the thermal protective aid is constructed must be not more than 0.25 W/(m − °K).

(2) The thermal protective aid must prevent evaporative heat loss.

(3) The aid must function properly at an air temperature of −30° C (−22° F) to +20° C (68° F).

(b) *Donning Time.* Each thermal protective aid must be designed to enable a person to don the aid correctly within one minute after reading the donning and use instructions described in § 160.174-15(a).

(c) *Storage Temperature.* A thermal protective aid must not be damaged by storage in its storage case at any temperature between −30° C (−22° F) and +65 C (149° F).

(d) *In water performance.* The thermal protective aid must be designed to permit the wearer to remove it in the water within two minutes, if it impairs ability to swim.

(e) *Water penetration.* The fabric from which the thermal protective aid is constructed must maintain its watertight integrity when supporting a column of water 2 meters high.

(f) *Oil resistance.* Each thermal protective aid must be designed to be useable after 24 hours exposure to diesel oil.

§ 160.174-13 Storage case.

Each thermal protective aid must be provided with a ziplock bag or equivalent storage case.

§ 160.174-15 Instructions.

(a) Each thermal protective aid must have instructions for its donning and use in an emergency. The instructions must be in English and must not exceed 50 words. Illustrations must be used in addition to the words. The instructions must include advice as to whether to swim in the aid or discard it if the wearer is thrown into the water.

(b) The instructions required by paragraph (a) of this section must be on the exterior of the storage case, printed

on a waterproof card attached to the storage case, or printed on the thermal protective aid and visible through a transparent storage case. The instructions must also be available in 8½ x 11 inch loose-leaf format for inclusion in the vessel's training manual.

§ 160.174–17 Approval testing.

(a) *General.* A thermal protective aid must be tested as prescribed in this section.

(b) *Mobility and swimming tests.* The mobility and swimming capabilities of each thermal protective aid must be tested under the following conditions and procedures:

(1) *Test subjects.* Seven males and three females must be used in the tests described in this paragraph. The subjects must represent each of the three physical types (ectomorphic, endomorphic, and mesomorphic). Each subject must be in good health. The heaviest male subject must weigh at least 25 kg (55 lb) more than the lightest male subject. The heaviest female subject must weigh at least 25 kg (55 lb) more than the lightest female subject. The heaviest subject must weigh 150±5 Kg (330±11 lbs.) and the lightest subject must weigh 50±5 Kg (110±11 lbs.). Each subject must be unfamiliar with the specific thermal protective aid under test. Each subject must wear a standard range of clothing consisting of:

(i) Underwear (short sleeved, short legged);

(ii) shirt (long sleeved);

(iii) Trousers (not woolen);

(iv) Woolen socks;

(v) Rubber soled shoes; and

(vi) A life preserver.

(2) *Donning test.* Each subject is removed from the view of the other subjects and allowed one minute to examine the thermal protective aid and the manufacturer's instructions for donning and use of the aid in an emergency. At the end of this period, the subject attempts to don the thermal protective aid as rapidly as possible. If the subject does not don the thermal protective aid completely, including gloves and any other accessories, within 60 seconds, the subject removes the aid and is given a demonstration of correct donning, and again attempts to don the aid. At least nine out of ten subjects must be able to don the thermal protective aid completely in 60 seconds on at least one of the two attempts.

(3) *Discarding test.* If the thermal protective aid impairs the ability of the wearer to swim, it must be demonstrated that it can be discarded by the test subjects, when immersed in water in not more than two minutes. Caution: During each of the in water tests prescribed in this section, a person ready to render assistance when needed should be near each subject in the water.

(i) Unless the manufacturer specifies in the instructions that the thermal protective aid does impair ability to swim and should always be discarded in the water, each subject, wearing a life preserver, enters the water and swims 25 meters. The subject, after sufficient rest to avoid fatigue, repeats this test wearing a thermal protective aid in addition to the life preserver. At least nine out of ten subjects must be able to swim this distance wearing the thermal protective aid in not more than 125% of the time taken to swim the distance wearing only a life preserver, or the aid will be determined to impair the ability to swim.

(ii) If the thermal protective aid is determined by the above test or specified by the manufacturer to impair the ability to swim, each subject, after entering the water from a height of one meter (three feet), attempts to remove the aid and discard it. At least nine out of ten subjects must be able to discard the device within two minutes.

(d) *Storage temperature.* Two samples of the thermal protective aids, in their storage cases, are alternately subjected to surrounding temperatures of −30° C to +65° C. These alternating cycles need not follow immediately after each other and the following procedure, repeated for a total of ten cycles, is acceptable:

(1) 8 hours conditioning at 65° C to be completed in one day;

(2) The specimens removed from the warm chamber that same day and left exposed under ordinary room conditions until the next day;

(3) 8 hours conditioning at −30° C to be completed the next day; and

(4) The specimens removed from the cold chamber that same day and left exposed under ordinary room conditions until the next day. At the conclusion of step (3) of the final cycle of cold storage, two test subjects who successfully completed the donning test previously enter the cold chamber, unpack and don the thermal protective aids. The aids must not show any damage, such as shrinking, cracking, swelling, dissolution or change of mechanical qualities.

(e) *Water penetration.* A sample of the fabric from which the thermal protective aid is constructed is installed as a membrane at one end of a tube of at least 2.5 cm (one inch) diameter and 2 meters long. The tube is fixed in a vertical position with the membrane at the bottom, and filled with water. After one hour the membrane must continue to support the column of water with no leakage.

(f) *Insulation.* The material from which the thermal protective aid is constructed is tested in accordance with the procedures in ASTM C 177, ASTM C 518, or ASTM D 1518. The material must have a thermal conductivity of not more than 0.25 W/(m−°K).

(g) *Test for oil resistance.* After all its apertures have been sealed, a thermal protective aid is immersed under a 100 mm head of diesel oil, grade no. 2–D as defined in ASTM D–975, for 24 hours. The surface oil is then wiped off and a sample of the material from the aid is again tested in accordance with the procedures in ASTM C 177 or ASTM C 518. The material must still have a thermal conductivity of not more than 0.25 W/(m−°K).

(h) *Seam strength.* The strength of each different type of seam used in a thermal protective aid must be tested under the following conditions and procedures.

(1) *Test equipment.* The following equipment must be used in this test:

(i) A chamber in which air temperature can be kept at 25° C (73.4° F) ±2° C (1.8° F) and in which relative humidity can be kept at 50% ±5%.

(ii) A device to apply tension to the seam by means of a pair of top jaws and a pair of bottom jaws. Each set of jaws must grip the material on both sides so that it does not slip when the load is applied. Each front jaw must be 25 mm (1 inch) wide by 25 mm (1 inch) long. The distance between the jaws before the load is applied must be 75mm (3 inches).

(2) *Test samples.* Each test sample consists of two pieces of the material from which the thermal protective aid is constructed, each of which is 100 mm (4 inches) square. The two pieces are joined by a seam as shown in figure 160.071–17(m)(3). For each type of seam, 5 samples are required. Each sample may be cut from a thermal protective aid or may be prepared specifically for this test. One type of seam is distinguished from another by the type and size of stitch or other joining method used (including orientation of warp and fill, if any) and by the type and thickness of the materials joined at the seam.

(3) *Test procedure.* Each sample is conditioned for at least 40 hours at 23° C±2° C and 50% ±5% relative humidity. Immediately after conditioning, each sample is mounted individually in the tension device as shown in figure 160.071–17(m)(3). The jaws are separated at a rate of 5 mm/second (12 in/minute). The maximum force to

achieve rupture is recorded. The average force at rupture must be at least 225 Newtons (50 lb).

(i) *Tear resistance.* The tear resistance of the material from which a thermal protective aid is constructed must be determined by the method described in ASTM D 1004. If more than one material is used, each material must be tested. If varying thicknesses of a material are used in the aid, samples representing the thinnest portion of the material must be tested. If multiple layers of a material are used in the aid, samples representing the layer on the exterior of the aid must be tested. Any material that is a composite formed of two or more materials bonded together is considered to be a single material. The average tearing strength of each material must be at least 45 Newtons (10 lb).

§ 160.174-23 Marking.

(a) Each thermal protective aid must be marked with the words "Thermal Protective Aid," the name of the manufacturer, the model, the date of manufacture or a lot number from which the date of manufacture may be determined, and the Coast Guard approval number.

(b) Each storage case must be marked with the words "Thermal Protective Aid" or the thermal protective aid must have a similar marking which is visible through a transparent storage case.

§ 160.174-25 Productive testing.

(a) Thermal protective aid production testing is conducted under the procedures in this section and Subpart 159.007 of this chapter.

(b) One out of every 100 thermal protective aids produced must be given a complete visual examination. The sample must be selected at random from a production lot of 100 thermal protective aids and examined by or under the supervision of the independent laboratory. The sample fails if the visual examination shows that the aid does not conform to the approved design.

(c) If a defect in the thermal protective aid is detected upon visual examination, 10 additional samples from the same lot must be selected at random and examined for the defect.

(d) If one or more of the 10 samples fails the examination, each thermal protective aid in the lot must be examined for the defect for which the lot was rejected. Only thermal protective aids that are free of defects may be sold as Coast Guard approved.

Dated: May 23, 1986.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86-12058 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

FCC 86-241

Practice and Procedure; Amendment of the Rules To Allow Publication of Summaries of Orders Designating Applications for Hearing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 1.221(b) of the Commission's Rules to authorize it to publish in the **Federal Register** summaries of hearing designation orders. The Commission is also amending the Rules with clarifying language specifically authorizing **Federal Register** publication of the full hearing designation orders or summaries thereof. This action is taken as part of the Commission's effort to minimize publishing costs.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Tricarico, Secretary, Federal Communications Commission, Washington, DC 20554, (202) 632-6410.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 7, 1986.
Released: May 20, 1986.
By the Commission:

1. By this *Order* the Commission decides that, commencing immediately, it will amend its rules to allow it to publish summaries of orders designating applications for hearing in the **Federal Register**. Current Commission rules generally contemplate **Federal Register** publication of the full text of hearing designation orders.[1] However, due to budgetary constraints and the rising cost of **Federal Register** publication, the Commission has concluded that the publication of summaries of hearing designation orders will be a reasonable and cost-efficient method of apprising potential intervenors of issues that might be of concern to them. The summaries will consist of a summary of the explanatory text of the hearing designation order and the full text of the issues designated for hearing on an application. For mass media services, the summaries will be an abstract of the hearing designation order, and include the names of the parties and list the hearing issues. The list of hearing issues will be keyed to the definitions set forth in the Appendix to this *Order*. The published summaries will additionally advise how copies of the complete hearing designation order may be obtained.[2]

2. Section 309(e) of the Communications Act provides:

> When the Commission has so designated an application for hearing, the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest not more than thirty days after publication of the hearing issues or any substantial amendment thereto in the **Federal Register**.

47 U.S.C. 309(e). Specifically, the legislative history of section 309(e) indicates that Congress sought to balance the intervenor's right to protect his interests and participate in the hearing against the Commission's interest in expediting formal hearings. To effect this balance, Congress decided that the intervenor's filing period would run from the date of publication of the hearing issues, rather than the day set for commencement of the hearing. *See* H.R. Rep. No. 1351, 88th Cong., 2nd Sess. 5 (1964). **Federal Register** publication was designed to afford a potential intervenor sufficient notice "to protect his . . . interest." *Id.* 2; *see also id.* at 5 (FCC report on H.R. 5327).

3. In view of this, the Commission has determined that publication of summaries of hearing designation orders with either the full text of the hearing issues or, for the mass media services, a list of the hearing issues keyed to a definitional Appendix, will give notice of the issues designated on an application and satisfy the statutory purposes of section 309(e). Therefore, the Commission is amending § 1.221(b) of the rules, 47 CFR 1.221(b), which calls

[1] We note, however, that since 1983 the FM Branch, Audio Services Division, Mass Media Bureau, has published hearing designation order abstracts and not their full texts.

[2] The full text of hearing designation orders are available on the date of release from the Office of Congressional and Public Affairs. Thereafter, the full texts will be available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, or as otherwise specified in the summary published in the **Federal Register**. The complete texts may also be purchased from the Commission's duplicating contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

for **Federal Register** publication of full hearing designation orders, to authorize it also to publish a summary of the hearing designation order. The Commission is also amending §§ 1.223(b), 1.223(c), and 1.229(b) of the rules, 47 CFR 1.223(b), 1.223(c), and 1.229(b), with clarifying language explicitly authorizing **Federal Register** publication of the complete hearing designation order or a summary thereof. For mass media services, a hearing designation order summary will include a list of hearing issues which will be keyed to the definitions set forth in the Appendix to this *Order*. Both this *Order* and the Appendix will be published together in the **Federal Register**.

4. Prior notice and public comment procedures are not required because this action is interpretive and procedural in nature. *See* 5 U.S.C. 553(b)(3)(B), 47 CFR 1.412(b)(3) and (5).

5. Accordingly, it is ordered, pursuant to authority provided by sections 4(i), 4(j), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 154(j), and 303(r), that the Commission's Rules ARE AMENDED as shown at the end of this document.

6. It is further ordered that this *Order* is effective upon publication in the **Federal Register**. *See* 5 U.S.C. 553(d)(2), 47 CFR 1.427(b).

* * * * *

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

PART 1—[AMENDED]

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

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

Authority: 47 U.S.C. 154, 303.

2. In § 1.221, paragraph (b) is revised to read as follows.

§ 1.221 Notice of hearing; appearances.

* * * * *

(b) The order designating an application for hearing is mailed to the applicant by the Secretary of the Commission and this order or a summary thereof is published in the **Federal Register**. Reasonable notice of hearing will be given to the parties in all proceedings; and, whenever possible, the Commission will give at least 60 days notice of comparative hearings.

* * * * *

3. In § 1.223, paragraphs (b) and (c) are revised to read as follows:

§ 1.223 Petitions to intervene.

* * * * *

(b) Any other person desiring to participate as a party in any hearing may file a petition for leave to intervene not later than 30 days after the publication in the **Federal Register** of the full text or a summary of the order designating an application for hearing or any substantial amendment thereto. The petition must set forth the interest of petitioner in the proceedings, must show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition. The presiding officer, in his discretion, may grant or deny such petition or may permit intervention by such persons limited to a particular stage of the proceeding.

(c) Any person desiring to file a petition for leave to intervene later than 30 days after the publication in the **Federal Register** of the full text or a summary of the order designating an application for hearing or any substantial amendment thereto shall set forth the interest of petitioner in the proceeding, show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must set forth reasons why it was not possible to file a petition within the time prescribed by paragraphs (a) and (b) of this section. Such petition shall be accompanied by the affidavit of a person with knowledge of the facts set forth in the petition, and where petitioner claims that a grant of the application would cause objectionable interference under applicable provisions of this chapter, the petition to intervene must be accompanied by the affidavit of a qualified radio engineer showing the extent of such alleged interference according to the methods prescribed in paragraph (a) of this section. If, in the opinion of the presiding officer, good cause is shown for the delay in filing, he may in his discretion grant such petition or may permit intervention limited to particular issues or to a particular stage of the proceeding.

* * * * *

4. In § 1.229, paragraph (b) is revised to read as follows:

§ 1.229 Motions to enlarge, change, or delete issues.

* * * * *

(b) Such motions must be filed within 15 days after the full text or a summary of the order designating an application for hearing has been published in the **Federal Register**. In comparative broadcast proceedings (including comparative renewal proceedings), however, such motions shall be filed within 30 days after the full text or a summary of the designation order has been published in the **Federal Register**. Any person desiring to file a motion to modify the issues after expiration of the above specified periods shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modification of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

* * * * *

5. In § 73.3522, paragraph (b)(2) is revised to read as follows:

§ 73.3522 Amendment of applications

* * * * *

(b) *Postdesignation amendment.*

* * * * *

(2) In comparative broadcast cases (including comparative renewal proceedings), amendments relating to issues first raised in the designation order may be filed as a matter of right within 30 days after that Order or a summary thereof is published in the **Federal Register**, or by a date certain to be specified in the Order.

6. In § 73.3594, paragraphs (d)(4) and (f)(4) are revised to read as follows:

§ 73.3594 Local public notice of designation for hearing

* * * * *

(d) * * *

(4) The issues in the hearing as listed in the FCC's order or summary of designation for hearing.

(e) * * *

(f) * * *

(4) The issues in the hearing as listed in the FCC's order or summary of designation for hearing.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Issues

City Coverage—AM—To determine whether the proposal of the applicant(s) would provide coverage of the city sought to be served, as required by §73.24(j) of the Commission's Rules, and, if not, whether circumstances exist which warrant waiver of that Section.

City Coverage—FM—To determine whether the proposal of the applicant(s) would provide coverage of the city sought to be served, as required by §73.315(a) of the Commission's Rules, and, if not, whether circumstances exist which warrant waiver of that Section.

City Coverage—TV—To determine whether the proposal of the applicant(s) would provide coverage of the city sought to be served, as required by §73.685(a) of the Commission's Rules, and, if not, whether circumstances exist which warrant waiver of that Section.

Rule 73.685—To determine, with respect to the applicant(s), whether circumstances exist to warrant a waiver of § 73.685( ) of the Commission's Rules.

Minimum Separations—To determine, with respect to the applicant(s), whether circumstances exist to warrant a waiver of § 73.610 of the Commission's Rules.

Air Hazard—To determine, with respect to the applicant(s), whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

Main Studio—To determine, pursuant to § 73.1125, whether good cause exists for the proposed location of the main studio outside the community of license by the applicant(s).

Site Availability—To determine whether the applicant(s) has reasonable assurance that the transmitter site specified will be available to it.

Environmental Impact—If a final environmental impact statement is issued with respect to the applicant(s), in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules.

Multiple Ownership—To determine, with respect to the applicant(s), whether the common ownership, operation and control of [station/newspaper] and the proposed station is consistent with § 73.3555 of the Commission's Rules and, if not, whether a grant of the application would be in the public interest.

Cross-interest—To determine, with respect to the applicant(s), whether the involvement of [named individual] with [station/newspaper] is consistent with the Commission's cross-interest policy and, if not, whether a grant of the application would be in the public interest.

Satellite—To determine, with respect to the applicant(s), whether circumstances exist which would make the proposed television operation as a "satellite" or "primarily a satellite" necessary for the community.

Alien Control—To determine whether the applicant/licensee is controlled by aliens or their representatives in violation of section 310(b) of the Communications Act of 1934, as amended.

Misrepresentation—To determine whether the applicant/licensee made misrepresentations to the Commission, was lacking in candor in its dealings with the Commission or attempted to deceive or mislead the Commission.

Qualifications—To determine, in light of the evidence adduced pursuant to the issues specified, whether the applicant(s) is qualified to construct and operate the requested facilities as proposed.

Financial Qualifications—To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in this Order, the applicant(s) is financially qualified.

307(b)—To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations; and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio services.

307(b)—Modification—To determine: (a) The areas and populations which would receive primary aural service from the proposal(s) of the applicant(s) for new facilities and the availability of other primary service to such areas and populations; (b) the areas and populations which would gain or lose primary aural service from the proposal(s) of the applicant(s) for modifications of existing facilities and the availability of other primary service to such areas and populations; and (c) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.

307(b)—Noncommercial Educational—To determine: (a) The number of other reserved channel noncommerical educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

Comparative—To determine which of the proposals would, on a comparative basis, [better/best] serve the public interest.

Comparative—Noncommercial Educational TV—To determine: (a) The extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants; (b) the manner in which each applicant's proposed operation meets the needs of the community to be served; and (c) whether the factors in the record demonstrate that one applicant will provide a superior noncommercial educational broadcast service.

Comparative—Noncommercial Educational FM—To determine: (a) Whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof; (b) the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

Contingent Comparative—To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

Contingent Comparative—Noncommercial Educational FM—To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and the objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

Ultimate—To determine, in the light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

[FR Doc. 86–12015 Filed 5–28–86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–339; RM–5062]

Radio Broadcasting Services; Belhaven, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266C2 in lieu of Channel 221A at Belhaven, North Carolina, and modifies the license of Station WKJA to specify operation on the new channel, at the request of Winfas of Belhaven, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–339, adopted May 9, 1986, and released May 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors,

International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 is revised to read:

Authority: 47 U.S.C. 154, 303.

2. § 73.202(b) is amended by revising the following entry for Belhaven, North Carolina.

§ 73.202 Table of allotments.

* * * * *

(b) * * *

North Carolina	Channel No.
* * * * *	
Belhaven	266C2.
* * * * *	

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–12017 Filed 5–28–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–285; RM–5035]

Radio Broadcasting Services; Roosevelt, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 253C2 to Roosevelt, Utah, as that community's second FM service, at the request of Brian Leifson. A site restriction of 0.8 kilometer (0.5 mile) east of Roosevelt is required. With this action, this proceeding is terminated.

DATES: Effective June 27, 1986; the window period for filing applications will open on June 30, 1986, and close on July 28, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–285, adopted April 23, 1986, and released May 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

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

Authority: 47 U.S.C. 154, 303.

2. § 73.202(b) is amended by revising the following entry for Roosevelt, Utah:

§ 73.202 Table of allotments.

* * * * *

(b) * * *

Utah	Channel No.
* * * * *	
Roosevelt	230A, 253C2
* * * * *	

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–12018 Filed 5–28–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–77; RM–4860]

Television Broadcasting Services; Hammond, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns Television Channel 62 to Hammond, Louisiana, that community's first television assignment at the request of Stuart B. Mitchell and Associates. Supporting comments were filed by petitioner. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 27, 1986.

FOR FURTHER INFORMATION CONTACT: D. David Weston (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–77, adopted April 23, 1986, and released May 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

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

Authority: 47 U.S.C. 154, 303.

2. § 73.606(b) is amended by adding the following entry for Hammond, Louisiana.

§ 73.606 Table of assignments.

* * * * *

(b) * * *

Louisiana	Channel No.
* * * * *	
Hammond	62+
* * * * *	

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–12016 Filed 5–28–86; 8:45 am]

BILLING CODE 6712-01-M

VETERANS ADMINISTRATION

48 CFR Part 808

Acquisition Regulations; Ordering From Federal Supply Schedules

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: This revision amends the Veterans Administration Acquisition Regulation (VAAR) to conform with the Federal Acquisition Regulation (FAR) which permits an ordering agency to purchase identical items at a lower price than on Federal Supply Schedule (FSS) Groups 65 and 89 without obtaining approval prior to the actual purchase of the item and to indicate where waivers from FSS Groups 65 and 89 may be sent.

EFFECTIVE DATE: This rule is effective June 27, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas A. Hamilton, Policy and Interagency Service, Office of Procurement and Supply, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 389–2334.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Federal Procurement Policy, and the Administrator, Office of Information and

Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of the Executive Order 12291.

II. Regulatory Flexibility Act (RFA)

Because this rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities because the VAAR subpart will primarily implement the regulations set forth in FAR Subpart 8.4.

III. Paperwork Reduction Act

This rule requires no additional information collection or recordkeeping requirements upon the public.

List of Subjects in 48 CFR Part 808

Government procurement.

Approved: May 16, 1986.

Thomas K. Turnage,

Administrator.

Part 808 of Title 48 of the Code of Federal Regulations is amended to read as follows:

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for Part 808 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486c).

2. Section 808.404–1 is amended by adding the paragraph designation "(a)" at the beginning of the first paragraph and by adding paragraph (b) to read as follows:

808.404–1 Mandatory use.

(a) * * *

(b) *Lower prices for identical items.*

(1) When an ordering agency finds an item which is identical to one listed on FSS Group 65 or 89, but available at a lower delivered price from a lower priority source, the ordering office may purchase the item subject to the requirements set forth in FAR 8.404–1(e). A copy of the purchase order shall be sent to the Director, VA Marketing Center at the time the order is issued.

(2) An identical item is defined as: (i) nondrug item—same manufacturer and model number, or (ii) drug item—have the same National Drug Code (NDC) number.

3. Section 808.404–3 is revised to read as follows:

808.404–3 Requests for waivers.

When an ordering office determines that an item available from FSS Group 65 or 89 will not meet its specific needs, it should submit a request for waiver to the Director, VA Marketing Center. The request shall contain the information set forth in FAR 8.404–3(a)(1) through (4).

[FR Doc. 86–11977 Filed 5–28–86; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 60477–6077]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of rescission of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the rescission in the fishery conservation zone (FCZ) of the season closure of the non-Indian commercial salmon fishery in the fishery conservation zone (FCZ) for all species except coho from the U.S.-Canada border to Cape Falcon, Oregon. The fishery was closed at midnight, May 19, 1986, when it was projected that the harvest quota had been reached. Subsequent evaluation of landings indicate that approximately 6,900 fish remain to be harvested in the troll quota. This reopening is calculated to maximize ocean harvest of chinook salmon without exceeding the established quota.

DATES: Reopening of the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, to non-Indian commercial salmon fishing is effective at 0001 hours Pacific Daylight Time (PDT) May 24, 1986, until 2400 hours PDT May 27, 1986. Comments on this notice will be received until June 13, 1986.

ADDRESS: Comments may be mailed to the Northwest Regional Office, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on an overestimate of actual catch, the Secretary may reopen that fishery for all or part of the remaining original season by publishing a notice in the **Federal Register** under § 661.23, in order to allow the quota to be met so long as the additional period is no less than 24 hours."

The commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, was closed at midnight, May 19, 1986, (51 FR 18795, May 22, 1986) when it was projected that the harvest quota of 33,700 chinook salmon had been caught. A subsequent evaluation of landings indicated that the original projection was based on an overestimate of actual catch. Commercial landings of chinook salmon in the area totaled 26,800 fish.

Since fishermen landed an average of about 1,600 chinook per day during the last four days of fishing, the 6,900 fish remaining in the quota could be harvested in four days. The Secretary therefore issues this notice to reopen the non-Indian commercial fishery in the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, for four days, from 0001 hours PDT May 24, 1986 to 2400 hours PDT on May 27, 1986.

The Regional Director consulted with the Directors of the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW) regarding this reopening. The Directors of WDF and ODFW confirmed that Washington and Oregon will reopen the commercial fishery in State waters adjacent to this area of the FCZ during the same time period.

Other Matters

This action is taken under §§ 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: May 23, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant, Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–12067 Filed 5–23–86; 4:41 pm]

BILLING CODE 3510–22–M

50 CFR Part 661

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California; Corrections

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

ACTION: Final 1986 fishery management measures and request for comments; corrections.

SUMMARY: This document adds an additional footnote and makes corrections to Table 1 in the final 1986

fishery management measures for the ocean salmon fisheries off the coasts of Washington, Oregon, and California, published May 5, 1986, 51 FR 16520.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150; E. Charles Fullerton, 213–514–6195; or the Pacific Fishery Management Council, 503–221–6352.

In FR Doc. 86–10023, on page 16523 in the issue of May 5, 1986, the following corrections are made to Table 1:

1. The footnote symbol "o/" is added to the heading of column 4, to read, "Minimum size limit (inches)°/".

2. The phrase "All except coho" is inserted in column 2 in the line referring to United States-Canada Border to Cape Falcon, "May 14 through earlier of May 31 or chinook quota" in column 1.

3. An additional footnote symbol "d/" is added to the first entry in column 4 under the "Coho" subheading under the "Quotas" heading, which is corrected to read "b/d 30,000".

4. The phrase that begins "June 30" under Cape Blanco to Point Delgada in column 1 is corrected by changing "earlier" to "earliest" and inserting a comma after "Aug. 31", to read ". . . earliest of Aug. 31, coho quota, or chinook quota.".

5. The phrase "All except coho" is inserted in column 2 in the line referring to Cape Blanco to Port Delgada, "Coho quota through earlier of Aug. 31 or chinook quota" in column 1.

6. The word "Lastest" is corrected to "Latest" in column 1 immediately under "Sisters Rocks to Mack Arch:" and "26" is inserted in this line under column 5.

7. Footnote "f/" is corrected by deleting "(Lighthouse Buoy)" and inserting in its place "(Columbia River Buoy)".

8. Footnote "g/" is corrected by adding a period after "463,000 coho" and inserting the word "hooking" before "mortality" in the second sentence.

9. The following footnote is added at the end of the footnotes relating to Table 1 on page 16524:

° Applicable minimum lengths, in inches, for dressed, head-off salmon are as follows:

Chinook		Coho	
Total fish	Headoff (inches)	Total fish	Headoff (inches)
28	21.5	16	12.0
26	19.5	22	16.5

(16 U.S.C. 1801 *et seq.*)

Dated: May 23, 1986.

Carmen J. Blondin,

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

[FR Doc. 86–12065 Filed 5–28–86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 51180–5180]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish optimum yield (OY) allocated to hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska will be achieved on May 26, 1986. A closure of the fishery for sablefish by hook-and-line gear is necessary to limit the harvest of sablefish by hook-and-line gear to the 55 percent of the OY that is permissible by Federal law in this district. This closure is a management measure intended to allocate the sablefish resource between hook-and-line, trawl, and pot gear in the Central Regulatory Area as required by the Fishery Management Plan for Groundfish Fishery of the Gulf of Alaska (FMP).

DATES: This notice is effective at noon, Alaska Daylight Time (ADT), May 26, 1986, until midnight, AST, December 31, 1986. Public comments are invited on this closure until June 10, 1986.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 586–7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act) provides for inseason adjustments of fishing seasons and areas. Regulations at § 672.22(a) specify that these adjustments will be made by the Secretary of Commerce under procedures set out in that section.

Section 672.2 defines three regulatory areas in the Gulf of Alaska. One of these is the Central Regulatory Area. The OY for sablefish in this area is 6,150 metric tons (mt). Section 672.24(b)(2) of the regulations restricts the take of sablefish in this area by hook-and-line gear to 55 percent of the OY, or 3,383 mt.

As many as 100 hook-and-line vessels have conducted a directed fishery for sablefish during the fishing season, which began on April 1, 1986. Landings through May 20, 1986, total 2,864 mt, leaving a balance of the OY allocated to hook-and-line vessels of 519 mt. The fleet will harvest this remainder with hook-and-line gear by May 26, 1986, and further directed sablefish fishing with hook-and-line gear after ADT noon on that date is prohibited. Sablefish landings by hook-and-line vessels west of the Central Regulatory Area i.e., west of 159° West longitude, are expected to increase rapidly as part of the fleet moves west following notice of this closure.

Section 672.24(b) requires the NMFS Regional Director to close fishing for groundfish with a gear type in an area when the sablefish share allocated to that gear type in that area has been taken. At its January 15–17, 1986, meeting, however, the Council recommended that NOAA amend this regulation to allow the Regional Director to prohibit retention of sablefish by a gear type that had taken its share of the sablefish OY in that area but still allow directed fisheries for other groundfish species to continue. Sablefish must be treated as a prohibited species by that gear type, providing that overfishing of sablefish would not result. The Alaska Region has submitted an emergency rule that would amend this regulation to implement the Council's recommendation.

The requirement of § 672.20(b) that all groundfish fishing by a gear type in an area be closed when its sablefish allocation for that area has been taken conflicts with the FMP as interpreted by the Council and NMFS. The Regional Director is therefore, not obliged even before promulgation of the new rule to impose such a closure, provided that continued fishing by that gear type will not cause overfishing of sablefish. The Regional Director has reviewed the bycatches of sablefish that might be taken in other directed groundfish hook-and-line fisheries in the Central Regulatory Area and finds that continued fishing for other groundfish species will not cause overfishing of sablefish.

This closure will be effective when this notice is filed for public inspection with the **Federal Register** and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the **ADDRESS** above for 15 days following its effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Allocation of the sablefish resource between hook-and-line, trawl, and pot gear in the Central Regulatory Area as required by the FMP and the continued health of that resource will be jeopardized unless this closure takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and that its effective date should not delayed.

This action is taken under §§ 672.22 and 672.24 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 23, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service

[FR Doc. 86-11988 Filed 5-23-86; 1:52 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 103
Thursday, May 29, 1986

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 1065

Notice of Proposed Temporary Revision of Diversion Limitation Percentages; Milk in the Nebraska-Western Iowa Marketing Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to relax temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for the months of May through August 1986 the limits on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than June 5, 1986.

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

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of May through August 1986.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include May 1986 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the diversion limitation percentages set forth in § 1065.13(d). The revisions would be applicable for the months of May through August 1986. The specific revisions would increase the diversion limitation percentages for the months of May through August 1986 by 10 percentage points from the present 50 percent to 60 percent.

Section 1065.13(d) of the Nebraska-Western Iowa milk order allows the Director of the Dairy Division to increase the diversion limitation percentages by up to 20 percentage points during any month to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc. (AMPI), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of May through August 1986, the percentage of allowable diversions be increased 10 percentage points.

The cooperative states that Class I needs for January through April 1986 increased less than one percent over the same period in 1985, while producer milk has increased more than 13 percent. According to the association, the milk surplus to the fluid needs of the market must go to manufacturing facilities. For the purposes of preserving milk quality by requiring less pumping and allowing milk to be moved in the most efficient manner possible, the cooperative states that the most desirable way of handling the additional milk is to ship it directly to nonpool plants. AMPI believes that the proposed temporary increase in diversion limits will have no affect on the ability of distributing plants to obtain needed supplies of milk for Class I use, and will prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.13(d) for the months of May through August 1986 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Milk Marketing Orders, Milk, Dairy Products.

The authority citation for 7 CFR Part 1065 continues to read as follows:

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

Signed at Washington, D.C., on: May 22, 1986.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 86-11978 Filed 5-28-86; 8:45 am]
BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 740, 741, and 745

Federally-Insured Credit Unions; National Credit Union Administration

AGENCY: National Credit Union Administration (NCUA).

ACTION: Extension of Comment Period.

SUMMARY: This document extends the comment period on proposed amendments to NCUA's rules on Advertising, Requirements for Insurance and Voluntary Termination on Conversion of Insurance, and Clarification and Definition of Account Insurance Coverage. On April 25, 1986, the NCUA Board proposed to amend these regulations relating to the insurance provided by the National Credit Union Share Insurance Fund (51 FR 16710). Comments were to be received on or before May 30, 1986. However, in light of the importance of the proposed changes and the complexity of the insurance regulations in general, the NCUA Board has extended the public comment period to July 6, 1986.

DATE: Comments due on or before July 6, 1986.

ADDRESS: Written comments should be mailed or hand delivered to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or James J. Engel, Deputy General Counsel, at the above address, or telephone: (202) 357-1065 (Mr. Riley) or (202) 357-1030 (Mr. Engel).

By the National Credit Union Administration Board on May 15, 1986.

Rosemary Brady,

Secretary of Board.

[FR Doc. 86-12014 Filed 5-28-86; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 013CE, Notice No. 23-ACE-12]

Special Conditions; Fairchild Models SA227-AT and SA227-TT Airplanes Incorporating Bendix EFS-10 Electronic Flight Instrument Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This notice proposes special conditions for the Fairchild Aircraft Corporation Models SA227-AT and SA227-TT airplanes incorporating a Bendix EFS-10 Electronic Flight Instrument System (EFIS). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of Part 3 of the Civil Air Regulations (CAR) and Part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of an electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards applicable to the Fairchild Aircraft Corporation Models SA227-AT and SA227-TT airplanes.

DATE: Comments must be received on or before June 30, 1986.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 013CE, Room No. 1558, Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 013CE. Comments may be inspected in the Rules Docket between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Warner, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the promulgation of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 013CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Model SA227-AT airplane is as follows: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by Amendments 3-1 through 3-8; § 23.511 as amended by Amendment 23-7, effective September 14, 1969; § 23.175(d) as amended by Amendment 23-14, effective December 20, 1973; Special Conditions outlined in FAA letters November 19, 1965, August 22, 1967, February 5, 1968, and April 4, 1968; Amendment B of SFAR No. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853(a), (b), (b-1), (b-2), and (b-3) effective September 26, 1978; Part 36, Appendix F, effective December 1, 1969, as amended by Amendments 36-1 through 36-6; and the special conditions that may result from this proposal.

The type certification basis for the Fairchild Aircraft Corporation Model SA227-TT airplane is as follows: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by Amendment 23-17 effective February 1, 1977; Special Conditions outlined in FAA letters November 19, 1965, August 22, 1967, February 5, 1968, and April 4, 1968; SFAR No. 23.27; Amendment B of SFAR 41, including paragraph 4(c) and the compartment interior requirements of § 25.853(a), (b), (b-1), (b-2), and (b-3) effective September 26, 1978; Part 36, Appendix F effective December 1, 1969, as amended by Amendments 36-1 through 36-6; and the special conditions that may result from this proposal.

Background

On March 24, 1986, King Radio Corporation, 400 N. Rogers Road, Olathe, Kansas 66062, made application to the FAA for approval of installation of a Bendix EFS-10 Electronic Flight Instrument System (EFIS) on the Fairchild Aircraft Corporation Model SA227-AT and SA227-TT airplanes. This installation incorporates an electronic attitude direction indicator (ADI) and an electronic horizontal situation indicator (HSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flight crew.

Special conditions may be issued and amended, as necessary, as part of the

type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the EFS–10 EFIS installation in the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT airplanes contains a number of novel or unusual design features not envisaged by the applicable airworthiness standards of Part 3 of the CAR. Special conditions are considered necessary because the airworthiness standards of Part 3 of the CAR and Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the EFS–10 EFIS installation in the Fairchild Aircraft Corporation Model SA227–AT and SA227–TT airplanes.

King Radio Corporation has proposed cathode ray tube (CRT) electronic display units for primary attitude, heading and navigation cockpit displays. The cockpit instrument panel configuration would feature five EFIS displays, an EADI and EHSI on the left and right instrument panels and a multi-function display in the center panel. All other displays; i.e. airspeed, altitude, vertical speed, etc., will be conventional instruments. An optional configuration instruments on the copilot's side, and a multi-function display in the center panel.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single fault" or "fail safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case. Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight after the failure of any *one* of the required instruments; i.e., airspeed, altitude, attitude, and turn and slip (needle and ball). Backup instruments for these instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplanes could be safely flown following a single instrument failure. The basic airman certification program for an IFR rating has long included the required demonstration of ability to fly the airplane safely following failure of any one of the previously cited instruments, and has not required as a basic IFR rating requirement that all IFR airmen must demonstrate abilities using other backup instruments.

A special condition is proposed which would allow installation of electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument, display or system. The proposed special condition would also provide requirements to assure the reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

In installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This is in regard to the collective reliability of the traditional instruments rather than the reliability of a single traditional intrument. For this reason, the proposed special condition includes requirements for identifying complex, safety critical systems, and defines requirements needed for their certification.

The proposed special condition requires a detailed examination of each item of equipment/component of the electronic display system and the system installation to determine if the airplane is dependent upon its function for continued safe flight and landing, or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the proposed special condition.

The proposed special condition also requires that components of system(s) whose function is required and that requires a power supply, be considered an "essential load" on the power supply. The power source(s) and its distribution system must be able to supply power to the electronic display system(s) as stated in the proposed special condition since the operational reliability of the electronic display system(s) is dependent on the airplane electrical source.

The present § 23.1309 has been used as a means of evaluating systems since being incorporated into Part 23 by Amendment 23–14, effective December 20, 1973. The "single fault" or "fail safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment have been used to successfully evaluate most airplane systems and equipment. However the FAA is finding it difficult to apply the "single fault" concept as a means of determining the effect or likelihood of certain failure conditions to complex systems like those proposed for the EFS–10 EFIS installation Therefore, the FAA considers it necessary to include the proposed system analysis requirements in the certification basis in lieu of including present § 23.1309. this will allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probablity of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur.

Use of these rational methods for safety assessment of systems do not mandate use of numerical analysis. An applicant may use numerical analysis to assist in showing compliance, but, in many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently better substantiation of complaince with the various required levels of system reliability than a numerical analysis alone.

The availability of this "rational method" of safety analysis of systems, along with the difficulty in applying the existing "no single fault" or "fail safe" concept, has prompted the FAA to propose this special condition, because the Fairchild Aircraft Corporation Models SA227–At and SA227–TT airplanes incorporating the EFS–10 EFIS installation are proposed to have electronic displays where use of the single fault criterion is an unnecessary burden. The proposed special condition would require that a safety evaluation of the systems be made and specifies a level of safety in qualitative terms.

If it is determined that the airplane includes systems that perform more critical functions, it will be necessary to show that those systems meet more stringent requirements. Systems that perform a function that is needed for continued safety of flight and landing of the airplane, whose failure would be catastrophic, would be required to meet requirements that establish either that there will be no failures of that system, or that a failure is extremely improbable.

The special condition also requires that the occurrence of systems failures which would significantly reduce the airplane's capability, or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree as to lead to potentially catastrophic results.

The proposed condition provides reliability requirements which are based on the criticality of the system's function and will provide the standards needed for certification of complex safety-critical systems being proposed for installation in the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT airplanes.

The Fairchild Aircraft Corporation Models SA227–AT and SA227–TT airplanes incorporating the EFS–10 EFIS installation may have both digital and analog instrumentation cues for the pilot. While a digital indication does show exact numbers, it may not provide adequate sensory cues to the pilot as to whether the numbers are increasing or decreasing, or a sense of how fast they are changing. A digital indication may not show the normal operating range or operational limits. Human factor authorities agree that such digital indications are not equivalent to an analog instrumentation which inherently provides usable sensory cues. Therefore, the proposed special condition includes requirements for sensory cues.

The FAA has considered the features proposed by King Radio Corporation for the EFS–10 installation in the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT airplanes and has concluded that, notwithstanding the existing requirements applicable to these airplanes which did not envision the use of such complex or critical systems, special conditions should be promulgated for the affected systems, in addition to the applicable requirements, that will provide the necessary level of safety. Accordingly, a special condition is proposed.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT when equipped with the Bendix EFS–10 Electronic Flight Instrument System:

1. In addition to the applicable requirements of Part 3 of the Civil Air Regulations, and requirements to the contrary, for instruments, systems, and installations whose design incorporates: Electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system; and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane. The following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each item of equipment, each system, and each installation identified by this examination, upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following additional requirements:

(1) There must be no single failure or probable combination of failures under any anticipated condition which would prevent the continued safe flight and landing of the airplane or which would significantly reduce the capability of the airplane or the crew to cope with adverse operating conditions.

(2) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would ceate additional hazards.

(3) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunctions and damage from foreseeable sources;

(ii) Consequence of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequence;

(iv) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(4) If numerical analysis is used to support the engineering examination:

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane must be shown to be extremely improbable; and

(ii) The occurrence of any other failure condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions must be shown to be improbable.

(b) Each item of equipment of each system, and each installation whose functioning is essential for safe operation and that requires a power supply is an "essential load" on the power supply. The power sources and its distribution system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential equipment of each system (loads) after failure of:

(i) Any one engine on the airplane, or

(ii) Any power converter, or energy storage device, or

(iii) Essential loads for which an alternate source of power is required by this special condition, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(c) In determining compliance with paragraph (b)(2) of this special condition, the power loads may be assumed to be reduced or shed under a monitoring procedure consistent with safety.

(d) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this special condition, the ability to provide continuous, safe service under foreseeable environmental and atmospheric conditions may be shown by tests, design analysis, or reference to previous comparable service experience on other airplanes.

(e) Electronic display units, including those incorporating more thna one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight,

(ii) In any normal mode of operation do not inhibit the primary display of attitude,

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units, and

(iv) Incorporate visual displays of instrument markings, required by §§ 3.756 through 3.757 or visual displays that alert the pilot to abnormal operational values, or approaches to unsafe values, of any parameter required to be displayed by Part 3/SFAR 41 requirements.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to continued safe flight and landing will remain available to the pilot, without need for immediate action by any crew member for continued safe operation, after any single failure or probable combination of failures.

Issued in Kansas City, Missouri, on May 15, 1986.

Jerold M. Chavkin,

Acting Director.

[FR Doc. 86-11990 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-105-AD]

Airworthiness Directives; Boeing Model 737-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which requires replacement of air ducts installed in certain Model 737-300 airplanes air conditioning system. This action is necessary because it has been discovered that the ducts have unsatisfactory flammability characteristics and do not comply with the flammability requirements of FAR 25.853. The ducts presently installed could contribute to the propagation of a fire occurring on the airplane.

DATES: Comments must be received on or before July 18, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-105-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-2932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-105-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: This notice proposes a new airworthiness directive (AD) which would require replacement of air conditioning ducts on Boeing Model 737-300 airplanes with ducts meeting the flammability requirements of FAR 25.853.

The duct material was successfully tested for compliance with FAR 25.853 for original type certification. However, subsequent sampling tests yielded unsatisfactory test results and the material was changed in production. Because the duct material in service may have inadequate flammability characteristics, Boeing has issued Service Bulletin 737-21-1085, dated February 14, 1986, which provides instructions to replace the ducts. The FAA is proposing an AD to require replacement of ducts on all affected airplanes since, in the event of a fire, the ducts could pose a hazard by contributing to the fire propagation.

Approximately 120 airplanes of U.S. registry would be affected by the proposed amendment. It is estimated that 4 manhours would be required to modify each airplane, at an average labor cost of $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators would be $19,200.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26,

1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737-300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737-300 airplanes specified in Boeing Service Bulletin 737-21-1085, dated February 14, 1986, certificated in any category. Compliance required within 180 days after the effective date of this amendment, unless already accomplished.

To ensure air ducts have adequate flammability characteristics, accomplish the following:

A. Replace air ducts in accordance with Boeing Service Bulletin 737-21-1085, dated February 14, 1986, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the applicable service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 20, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-11939 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-9]

Revision of the Salinas, California, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This notice proposes to extend the Salinas, California, control zone to the southeast of the Salinas Municipal Airport. This amendment is necessary to provide controlled airspace for aircraft executing the Instrument Landing System (ILS) approach to the Salinas Airport.

DATE: Comments must be received on or before July 3, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP-520, Docket No. 86-AWP-9, Air Traffic Division, P.O. Box 90027 WWPC, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend the Salinas, California, control zone to the southeast of the Salinas Municipal Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

PART 71—[AMENDED]

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

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.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Salinas, CA—[Revised]

Within a 5-mile radius of the Salinas Municipal Airport (lat. 36°39'40" N., long. 121°36'20" W.); within 2 miles northeast and 3 miles southwest of the Salinas VORTAC 319° radial, extending from the 5-mile radius zone to 6 miles northwest of the VORTAC, excluding the portion within the Fort Ord, CA, control zone; within 2 miles each side of the Salinas localizer extending from the 5-mile radius zone to 11.5 miles southeast of the Salinas VORTAC, excluding the portion within the Monterey, CA, control zone.

Issued in Los Angeles, California, on May 19, 1986.

Wayne C. Newcomb,

Manager, Air Traffic Division.

[FR Doc. 86-11940 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWA-26]

Proposed Alteration of VOR Federal Airways—MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airways V-12 and V-504 in conjunction with the relocation of the Tiger, MO, very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) to the Columbia Regional Airport, MO. Additionally, Tiger, MO, is proposed to be added as a domestic low altitude reporting point.

DATE: Comments must be received on or before July 14, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-26, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airways V-12 and V-504 in conjunction with the relocation of the Tiger MO, VOR/DME (CBI) to the Columbia Regional Airport, MO, (lat. 38°48'23"N., long. 92°13'06"W.), due to expiration and nonrenewal of lease. The description of V-12 will not change, but the charted depiction will. Additionally, the Tiger, MO, VOR/DME is proposed to be added as a low altitude reporting point, as a safety enhancement aid of air traffic control. Sections 71.123 and 71.203 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways, Domestic low altitude reporting points.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) as follows:

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.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-504 [Revised]

From Napoleon, MO, via INT Napoleon 095°T(088°M) and Jefferson City, MO, 308°T(302°M) radials; Jefferson City; INT Jefferson City C24°T(036°M) and Foristell, MO, 277°T(272°M) radials; Foristell.

§ 71.203 [Amended]

3. § 71.203 is amended as follows:

Tiger, MO [New]

Issued in Washington, DC, on May 21, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-11994 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWA-17]

Proposed Alteration of Jet Routes and Establishment of VOR Federal Airways—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposals would alter the descriptions of seven Jet Routes and establish one new Federal Airway located in the States of Virginia, North Carolina, South Carolina and Georgia. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace between New England and Florida. This proposal is a portion of the Expanded East Coast Plan (EECP) to make optimum use of the limited airspace along the east coast corridor. This action would reduce enroute and terminal delays in the Boston, MA, New York, NY, Miami, FL, Chicago, IL, and Atlanta, GA, areas, save fuel and reduce controller workload. The EECP is being implemented in coordinate segments until completed.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-17, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of Jet Routes J-24, J-48, J-51, J-52, J-55, J-61, J-191 and establish new VOR Federal Airway V-577 and alter V-39 located in the states of Virginia, North Carolina, South Carolina and Georgia. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. To alleviate this congestion, the proposed EECP would provide optimum use of airspace along the heavily traveled coastal corridors between New York and Florida and reduce departure/arrival delays in the Boston, MA, Chicago, IL, Atlanta, GA, and New York areas. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR federal airways and jet routes.

The proposed amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 nd 75) 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.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-39 [Amended]

By removing the words "Linden, VA; Shawnee, VA;" and substituting the words "INT Gordonsville 331°T(337°M) and Shawnee, VA, 212°T(220°M) radials; Shawnee;"

V-577 [New]

From Cedar Lake, NJ; INT Cedar Lake 091°T(101°M) and Sea Isle, NJ, 050°T(059°M) radials.

PART 75—[AMENDED]

3. The authority citation for Part 75 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. 97-499, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. § 75.100 is amended as follows:

J-24 [Amended]

By removing the words "Charleston, WV; to Richmond, VA." and substituting the words "Charleston, WV, INT Charleston 101°T(104°M) and Richmond, VA, 286°T(295°M) radials; to Richmond."

J-48 [Amended]

By removing the words "From Pulaski, VA, via Westminster, MD;" and substituting the words "From Toccoa, GA; via Montebello, VA; Casanova, VA; Westminster, MD;"

J-51 [Revised]

From Jacksonville, FL, via Savannah, GA; Columbia, SC; INT Columbia 040°T(042°M) and Flat Rock, VA, 213°T(219°M) radials; to Flat Rock.

J-52 [Amended]

By removing the words "Columbia, SC; Raleigh-Durham, NC;" and substituting the words "Columbia, SC; INT Columbia 040°T(042°M) and Raleigh-Durham, NC, 228°T(232°M) radials; Raleigh-Durham;

J-55 [Amended]

By removing the words "INT of the Florence 007° and the Raleigh, NC, and the Raleigh-Durham, 224° radials;" and substituting whe words "INT Florence 003°T(006°M) and Raleigh-Durham, NC, 228°T(232°M) radials;"

J-61 [Revised]

From INT Wilmington, NC, 028°T(035°M) and Nottingham, MD, 174°T(184°M) radials; Nottingham; Westminster, MD; Philipsburg, PA; to Buffalo, NY.

J-191 [Amended]

By removing the words "Tar River, NC;"

Issued in Washington, D.C., on May 21, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

FR Doc. 86-11992 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 594]

Winemaking Terminology

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend regulations defining various winemaking terms used on labels of wine. It arises from the decision in *Wawszkiewicz v. Department of the Treasury*, 480 F. Supp. 739 (D.D.C. 1979), *aff'd in part, rev'd in part*, 670 F. 2d 296 (D.C. Cir. 1981). The Court of Appeals remanded the case to the lower court with instructions that these regulations (among others) be remanded to ATF for reconsideration and review. ATF has reconsidered these regulations and concludes that they should be amended to specifically define terms used on wine labels to denote winemaking operations performed by the persons identified by name and address on the label. The uses of geographic terms on wine labels, another issue involved in the litigation, are the subjects of other rulemaking projects.

DATE: Written comments must be received by September 26, 1982.

ADDRESSES: Send written comments to:

Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

Copies of written comments received in response to this notice will be available during normal business hours at:

ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION: On August 23, 1978, ATF issued a final rule, Treasury Decision ATF-53 (43 FR 37672, 54624), which extensively revised various regulations governing the labeling of wine. In T.D. ATF-53, ATF also decided not to amend regulations on winemaking terms which denote processes performed by the persons identified by name and address on the label. The plaintiffs in *Wawszkiewicz* challenged regulations governing the use of winemaking terms on wine labels, among other regulations. They argued that the lack of regulatory definitions of these terms sanctioned misleading labeling.

District Court

The District Court held that the challenged regulations were inconsistent with 27 U.S.C. 205(e). For example, in the court's view, the use of a grape variety name implied that 100 percent of the wine was derived from grapes known by that name. The court held that "[b]y assigning inaccurate and undisclosed meanings to words which are otherwise clear and unequivocal, the challenged regulation sanctions the transmittal of false and misleading information." 480 F. Supp. at 744. The district court decision dwelt primarily on the varietal labeling rule but held that similar shortcomings applied to the other contested rules. *Id.* at 745. The court concluded that wine labels should carry concise explanations of any terminology used where the identity of the producer or maker is represented to the consumer. *Id.* at 745. The District Court ordered that the regulations be remanded to ATF for revision consistent with the conclusion described above.

Court of Appeals

The Court of Appeals disagreed with the District Court's rationale in that a court reviewing agency action is not empowered to substitute its judgment for that of the agency. The Court of Appeals held that an agency's decision should be upheld where there is a rational basis for the decision in the facts of the record. 670 F. 2d at 301. Pursuant to this test, the court upheld

the regulations governing varietal labeling but found that the regulations concerning winemaking terminology had not been adequately explained, "either by reference to the records or by a reasoned statement." *Id.* at 304. The Court of Appeals remanded the case to the District Court with instructions that the regulations governing winemaking terminology be remanded to ATF for review and reconsideration in light of the appelate court's decision. The court thus afforded ATF an opportunity either to show that the regulations "meaningfully control misleading labeling and advertising," or to rewrite the regulations" in such fashion that the agency can demonstrate compliance with the statutory mandates." *Id.* at 304. No specific instructions were provided by either court nor were any dates set in connection with the review or reconsideration.

New Rulemaking Projects

Definitions of various winemaking terms which are indicative of specific processes used in the production of wine are proposed in this notice.

ATF has previously issued a general statement of policy, Notice No. 576 (50 FR 51849), explaining its decision on appellation of origin percentages and geographic corporate and trade names, by reference to the records and by reasoned statement.

In previously published notices of proposed rulemaking, ATF has proposed revisions of the geographic brand names regulation, Notice Nos. 522, 534, and 542 (49 FR 19330, 28417, and 34647, respectively).

Current Rules and Winemaking Terminology

Under 27 CFR 4.35, the name and address of the bottler of wine is required to be shown on the label. The word "produced" is defined, and the undefined words "blended," "rectified," "prepared," and "made" are given as examples of words which may appear in conjunction with the required name and address of the bottler. In addition, the undefined word "manufactured" may appear on the label of imitation wine only, in conjunction with the required name and address of the bottler.

In ATF Ruling 79–2, A.T.F.Q.B. 1979–1, 21, ATF defined these and other words contemplated for use in the same context. This ruling defined "made," "prepared," "blended," "rectified," and "cellared" for use in conjunction with the words "bottled by" preceding the required name and address of the bottler.

In *Wawszkiewicz*, the court focused on the definitions of "produced" and "made," finding that "[i]t is by no means intuitively clear why it is not misleading for a winery to represent that it produced a wine when another was heavily involved in its production, or that it made a wine that it in fact purchased." 670 F.2d at 304.

Therefore, ATF is issuing this notice proposing to eliminate the disparity between the definitions of "produced" and "made," and to define other words currently being used on wine labels to denote specific winemaking operations performed by the persons identified by name and address on the label. These definitions are derived, in part, from the ATF Ruling 79–2, and they reflect longstanding ATF policy and industry usage.

Proposed Rules On Winemaking Terminology

This notice proposes that the following words, when used in conjunction with the required name and address legend on a wine label, shall have the meanings described, denoting specific winemaking operations performed by the bottler.

(1) "Produced" or "Made" means that the named winery (a) fermented 75% of the wine at the stated address, or (b) changed the class or type of the wine by addition of alcohol, brandy, flavors, colors, artificial carbonation at the stated address, or (c) produced sparkling wine by secondary fermentation at the stated address.

(2) "Vinified" means that the named winery (a) fermented 75% of the wine at the stated address, or (b) produced sparkling wine by secondary fermentation at the stated address.

(3) "Blended" means that the named winery mixed the wine with other wines of the same class and type at the stated address.

(4) "Cellared", "Vinted", or "Prepared" means that the named winery, at the stated address, subjected the wine to cellar treatment which did not result in changing the class or type, in accordance with § 4.22(c).

This list includes the words "Vinted" and "Vinified" as defined in their ordinary usage on wine labels. These words have not been previously defined in any public document.

The word "rectified", as defined in ATF Ruling 79–2, refers to the production of a wine product at a distilled spirits plant, an activity which was subsequently prohibited by the passage of the Distilled Spirits Tax Revision Act of 1979, Pub. L. 96–39. Therefore, this word will not be included in the defined terms.

The word "manufactured", given as an example of a word which may appear on the label of imitation wine only, will be eliminated. ATF believes that this word has not been used in many years. In addition, the word "artificial" or "imitation" on labels of imitation wines adequately informs the consumer of the presence of synthetic ingredients, and the word "manufactured" serves no purpose in this context.

Conforming changes are proposed relating to words used on imported wines to denote winemaking operations. The words used, or their English-language equivalents, must meet the requirements of the country of origin for wines sold within the country of origin. In addition, the mandatory name and address statements on imported wine are rewritten for clarity.

The requirement to obtain a certificate of label approval will preclude the introduction of new, undefined words denoting winemaking operations. ATF has not determined if there is a need for a procedure to approve the use of new words coined in the future.

ATF Ruling 79–2, A.T.F.Q.B. 1979–1, 21, will be superseded when the final rule is issued.

Public Participants—Written Comments

ATF requests comments from all interested persons concerning the proposed definitions of winemaking terms used on wine labels in conjunction with the name and address legend. This notice proposes one definition for each term, and attempts to define all terms which are currently being used in conjunction with the name and address legend.

AFT requests comments on the following specific questions:

a. Are the proposed definitions correct? If not, which term is incorrectly defined, and what is the correct definition?

b. Are other terms (used in conjunction with the name and address legend) currently in use which are not defined in this notice? If so, what other term is currently in use, and what is that term's correct definition?

c. Should ATF establish a procedure to control the introduction of new terms in the future? What kinds of controls are necessary to regulate the coining of new words?

d. What is an appropriate time period for implementation of the regulation?

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her requests, in writing, to the Director within the 120-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information proposed in this notice have been submitted to the Office of Management and Budget for review under sec. 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

PART 4—[AMENDED]

Based on the above discussion, the Director proposes to amend 27 CFR Part 4—Labeling and Advertising of Wine as follows:

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

Authority: 27 U.S.C. 205

2. Paragraphs (a) and (b) of § 4.35 are revised to read as follows:

§ 4.35 Name and address.

(a) *American wine.* (1) *Mandatory statement.* Each label of each container of American wine shall state either "bottled by" or "packed by" followed by the name of the bottler or packer and address (in accordance with paragraph (c)) of the place where the wine was bottled or packed. In accordance with paragraph (a)(2), other words may also be stated in addition to the required words "bottled by" or "packed by" and the required name and address.

(2) *Optional statements.* (i) In addition to the statement required by paragraph (a)(1), the label may also state the name and address of any other person for whom the wine was bottled or packed, immediately proceded by the words "bottled for" or "packed for" or "distributed by".

(ii) The words defined in paragraphs (a)(2)(iii)–(a)(2)(vi) may be used, in accordance with the definitions given, in addition to the name and address statement required by paragraph (a)(1). Use of these words may be conjoined, using the word "and", with the words "bottled by" or "packed by" only if the same person performed the defined operation at the same address. More than one name and address statement is necessary if a person other than the bottler or packer did not perform the defined operation at the same address.

(iii) "Produced" or "Made" means that the named winery (*A*) fermented 75% of the wine at the stated address, or (*B*) changed the class or type of the wine by addition of alcohol, brandy, flavors, colors, artificial carbonation at the stated address, or (*C*) produced sparkling wine by secondary fermentation at the stated address.

(iv) "Vinified" means that the named winery (*A*) fermented 75% of the wine at the stated address, or (*B*) produced sparkling wine by secondary fermentation at the stated address.

(v) "Blended" means that the named winery mixed the wine with other wines of the same class and type at the stated address.

(vi) "Cellared", "Vinted", or "Prepared" means that the named winery, at the stated address, subjected the wine to cellar treatment which did not result in changing the class or type, in accordance with § 4.22(c).

(b) *Imported wine.* (1) *Mandatory statements.* (i) Each label of each container of imported wine shall state "imported by" or a similar appropriate phrase, followed immediately by the name of the importer, agent, sole distributor, or other person responsible for the importation, followed immediately by the address of the principal place of business in the United States of the named person.

(ii) If the wine was bottled or packed in the United States, the label shall also contain the statement required by either paragraph (b)(1)(ii)(*A*), (b)(1)(ii)(*B*), or (b)(1)(ii)(*C*), as follows:

(*A*) The label shall state the words "bottled by" or "packed by" followed by the name of the bottler or packer and the address (in accordance with paragraph (c)) of the place where the wine was bottled or packed;

(*B*) If the wine was bottled or packed for the person responsible for the importation, the label may state the words "imported by and bottled (packed) in the United States for" (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation; or

(*C*) If the wine was bottled or packed by the person responsible for the importation, the label may state the words "imported and bottled (packed) by" followed by the name and address of the principal place of business in the United States of the person responsible for the importation.

(iii) If the wine was blended, bottled or packed in a foreign country other than the country of origin, and the label identifies the country of origin, the label shall state "blended by," "bottled by," or "packed by," or other appropriate statement, followed by the name of the blender, bottler or packer and the place where the wine was blended, bottled or packed.

(2) *Optional statements.* In addition to the statements required by paragraph (b)(1), the label may also state the name and address of the principal place of business of the foreign producer. Other words, or their English-language equivalents, denoting winemaking operations may be used in accordance with the requirements of the country of origin, for wines sold within the country of origin.

* * * * *

Signed March 10, 1986.

W.T. Drake,

Acting Director.

Approved: May 12, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86-11882 Filed 5-28-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 181 and 183

[CGD 85-002]

Boating Safety; Certification and Safe Powering Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to the Certification regulations in Subpart B of Part 181 and the Safe Powering Standard in Subpart D of Part 183 of Title 33, Code of Federal Regulations. The intended effect of the proposal is to give those boats, which can clearly operate safety with more horsepower than they currently rate under the Coast Guard Safe Powering Standard, more reasonable maximum horsepower capacities. In order to allow greater flexibility in the manner in which the maximum horsepower capacity of these boats is determined, the proposal would establish an optional performance test method as an alternative to the existing calculation method. An additional editorial change to Subpart A of Part 181 would reflect changes in the applicability of the part.

DATE: Comments must be received on or before July 29, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 85-002), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, between *8* a.m. and *4* p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public, and Consumer Affairs (G-BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202) 426-1065, between *8* a.m. and *4* p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written views, data or arguments. Comments should include the name and address of the person making them and identify this notice [CGD 85-002]. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Discussion of Comments: The Coast Guard published an advance notice of proposed rulemaking in the **Federal Register** on March 21, 1985 [50 FR 11383]. An extension of the comment period for the notice was published in the **Federal Register** on May 23, 1985 [50 FR 21311]. Comments were received from three people.

One comment was in favor of the proposal to base the maximum horsepower capacity upon the ability of small outboard runabouts to pass the American Boat and Yacht Council (ABYC) Quick Turn Test.

Another comment was in basic agreement with the proposal to establish a new test procedure for certain boats; however, the comment stated that consideration should be given to the 12-foot maximum length, since law enforcement authorities prohibit boats less than 12 feet from operating on some lakes. The comment does not pertain to the purpose of this proposal, which is to give certain small outboard powered runabouts more reasonable maximum horsepower capacities. This proposal does not affect the manner in which some States regulate the operation of small outboard powered runabouts.

Two comments questioned the need for a minimum 20 inch transom height, since, according to one of the comments, several boats which would otherwise be considered eligible for the optional method for determining a maximum horsepower capacity have a transom lower than 20 inches and continue to perform safely. These comments are accepted. Under the proposal, a 15 inch transom height would be permitted if a bulkhead or motorwell at least 19 inches in height is provided to keep water from entering the boat over the transom.

Another comment objected to the 12-foot length limit. The basis for this new class is the demonstrated ability of boats 12 feet in length to safely complete the Safe Maneuvering Speed and Quick Turn Tests. The comment states that boats more than 12 feet in length could demonstrate the same safe handling characteristics as boats less than 12 feet in length. This comment is partially adopted. The proposal has been changed to include boats 13 feet in length or less. A review of recent Coast Guard reports covering testing for compliance with the Safe Powering Standard indicates that boats larger than 13 feet in length currently rate reasonable maximum horsepower capacities. The intent of the proposal is to give more reasonable maximum horsepower capacities to boats to which the curent application of the standard is unreasonable.

The Coast Guard has removed the proposed "sport boat" classification because the term has been found to cover a wide range of various types of recreational vessels.

Discussion of the Proposed Amendment

The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The Council concurred with the approach suggested by the Coast Guard. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BBS), U.S. Coast Guard, Washington, DC 20593.

Since the Federal Boat Safety Act of 1971 has been recodified as Chapter 43

of Subtitle II of Title 46 of the United States Code (U.S.C.), sections 181.1 and 181.5 would be revised to show that Part 181 prescribes requirements for boats and associated equipment to which 46 U.S.C. Chapter 43 applies. The authority citation for Part 181 is being revised to reflect the recodification.

Section 181.15 would be amended to include additional wording on the certification label stating that a boat eligible for the optional method for determining a maximum horsepower capacity is intended for racing and other high performance activities. The label would also state that the level of skill required to operate such a boat might exceed the abilities of some operators. The additional wording on the label would make it clear that the boat is a special vessel intended for a special type of recreational use.

Section 183.3 would be revised to include new definitions for "transom height," "motorwell," and "motorwell height." These definitions are needed to identify boats which qualify for the optional method of determining a maximum horsepower capacity. Section 183.3 would also be amended to include a new figure that illustrates these definitions.

Section 183.53 would be amended to include an optional method for determining the maximum horsepower capacity calculation method in § 183. 53, the maximum horsepower capacity of certain small outboard runabouts could be determined based upon successful completion of a series of maneuvers through a test course and a 180° turn of the sterring wheel at top speed. The 180° turn of the wheel simulates the maximum rotation of the wheel and the sharpest turn into which an operator might accidentally throw the boat. The test course and quick turn test are based upon American Boat and Yacht Council (ABYC) Standard H–26 which establishes a method for determining the safe maneuvering speed of a boat. Section 183.53 would also be amended to include a new figure that illustrates the test course to be used.

Regulatory Evaluation

The proposed regulations are considered to be non-major under Executive Order No. 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FRE 11034; Feb. 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The proposal to establish a new method for determining the maximum horsepower capacity of certain small outboard runabouts is a relief from the application of the current standard. There is no increased cost per boat. Since the impact of this proposal is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Parts 181 and 183

Marine safety.

In consideration of the foregoing, the Coast Guard proposes to amend Parts 181 and 183 of Title 33, Code of Federal Regulations to read as follows:

PART 181—MANUFACTURER REQUIREMENTS

1. The authority citation for Part 181 is revised to read as follows and all other authority citations in Part 181 are removed:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. By revising § 181.1 to read as follows:

§ 181.1 Purpose and applicability.

This Part prescribes requirements for the certification of boats and associated equipment and identification of boats to which 46 U.S.C. Chapter 43 applies.

3. By revising § 181.5 to read as follows:

§181.5 Purpose and applicability.

This subpart prescribes requirements for the certification of boats and associated equipment to which 46 U.S.C. Chapter 43 applies and to which a safety standard prescribed in Part 183 of this chapter applies.

4. In § 181.15, by adding a new paragraph (f) to read as follows:

§ 181.15 Contents of labels.

* * * * *

(f) Each boat which displays a maximum horsepower capacity determined in accordance with § 183.53(e) must, in addition to the information required by paragraphs (a), (b) and (d) of this section, display on the certification label, the following statement in letters no less than one-quarter of an inch in height: "THIS BOAT IS INTENDED FOR RACING AND OTHER HIGH PERFORMANCE ACTIVITIES. THE SKILL REQUIRED MAY EXCEED THE ABILITIES OF SOME OPERATORS."

PART 183—BOATS AND ASSOCIATED EQUIPMENT

5. The authority citation for Part 183 is revised to read as follows and all other authority citations in Part 183 are removed:

Authority: 46 U.S.C. 4302; 49 CFR 1.46(n)(1).

6. By revising § 183.1 to read as follows:

§ 183.1 Purpose and applicability.

This subpart prescribes requirements for the certification of boats and associated equipment to which 46 U.S.C. Chapter 43 applies and to which certification requirements in Part 181 of this subchapter apply.

7. In § 183.3, by adding three new paragraphs (l), (m) and (n) to read as follows:

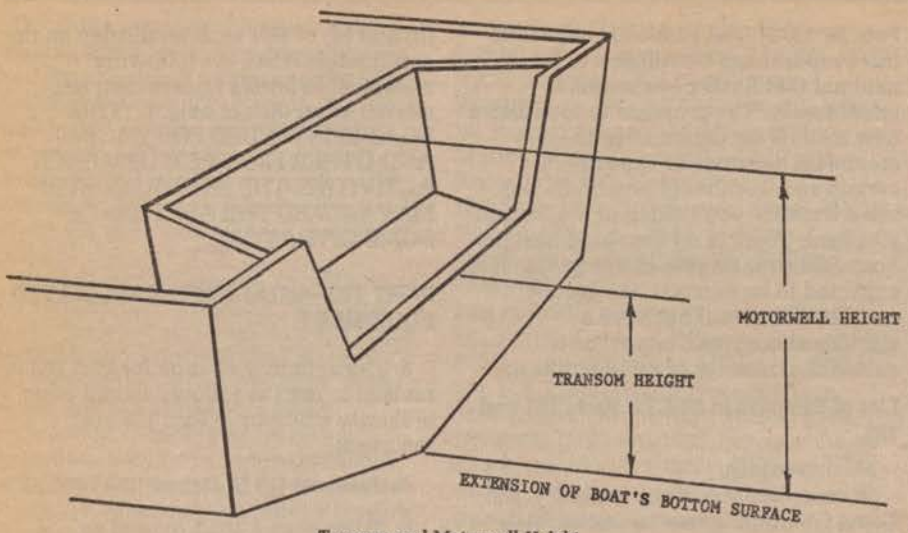
§ 183.3 Definitions.

* * * * *

(l) "Transom height" means the vertical distance from the lowest point of water ingress along the top of the transom to a line representing a longitudinal extension of the centerline of the boat's bottom surface, excluding keels. This distance is measured as a projection on the centerline plane of the boat. See Figure 183.3.

(m) "Motorwell" means any arrangement of bulkheads or structures that prevents water from entering the passenger carrying area of the boat through any cutout area in the transom for mounting an outboard motor.

(n) "Motorwell height" means the vertical distance from the lowest point of water ingress along the top of the motorwell to a line representing a longitudinal extension of the centerline of the boat's bottom surface, excluding keels. This distance is measured as a projection on the centerline plane of the boat. See Figure 183.3



Transom and Motorwell Height

8. By revising § 183.53 to read as follows:

§ 183.53 Horsepower capacity.

The maximum horsepower capacity marked on a boat must not exceed the horsepower capacity determined by the computation method discussed in paragraph (a) of this section, or for certain qualifying boats, the performance test method discussed in paragraph (b) of this section.

(a) The maximum horsepower capacity must be computed as follows:

(1) Compute a factor by multiplying the boat length in feet by the maximum transom width in feet excluding handles and other similar fittings, attachments, and extensions. If the boat does not have a full transom, the tramsom width is the broadest beam in the aftermost quarter length of the boat.

(2) Locate horsepower capacity corresponding to the factor in Table 183.53.

(3) For a boat with a factor over 52.5, if the horsepower capacity calculated in Table 183.53 is not an exact multiple of 5, it may be raised to the next exact multiple of 5.

(4) For flat bottom hard chine boats with a factor of 52 or less, the horsepower capacity must be reduced by one horsepower capacity increment in Table 183.53.

TABLE 183.53—OUTBOARD BOAT HORSEPOWER CAPACITY

Compute: Factor=Boat Length X Transom Width

If factor (nearest integer) is	0–35	36–39	40–42	43–45	46–52
Horsepower Capacity is	3	5	7.5	10	15

Note: For flat bottom hard chine boats, with factor of 52 or less, reduce one capacity limit (e.g. 5 to 3)

If factor is over 52.5 and the boat has	Remote steering and at least 20" transom height	No remote steering, or less then 20" transom height	
		For flat bottom hard chine boats	For other boats
Horsepower capacity is (raise to nearest multiple of 5).	(2 X Factor) – 90	(0.5 X Factor) – 15	(0.8 X Factor) – 25

(b) For boats qualifying under this paragraph, the performance test method described in this paragraph may be used to determine the horsepower capacity.

(1) *Qualifying criteria.*

(i) Thirteen feet or less in length;

(ii) Remote wheel steering;

(iii) Transom Height.

(A) Minimum 19 inch transom height; or,

(B) For boats with at least a 19 inch motorwell height, a minimum 15 inch transom height;

(iv) Maximum Persons Capacity not over two persons;

(2) *Boat preparation.*

(i) The boat must be rigged with equipment recommended or provided by the boat and motor manufacturer and tested with the highest horsepower production powerplant for which the boat is to be rated, not to exceed 40 horsepower.

(ii) Standard equipment must be installed in accordance with manufacturers' instructions.

(iii) The lowest ratio (quickest) steering system offered on the boat model being tested must be installed.

(iv) The outboard motor must be fitted with the manufacturer's recommended propeller providing maximum speed.

(v) Standard permanently installed fuel tanks must be no more than one-half full. Boats without permanent tanks must be tested with one full portable tank.

(vi) Portable tanks must be in their designated location or placed as far aft as possible.

(vii) The outboard motor must be placed in the lowest vertical position on the transom or, if mounting instructions are provided with the boat, at the height recommeded.

(viii) Boat bottom, motor and propeller must be in new or almost new condition.

Note: The use of the following special equipment should be considered because of the potential for exceeding the capabilities of the boat while performing the test:

Racing Type Personal Flotation Device
Helmet.

(3) *Test conditions.* Testing must be conducted on smooth, calm water with the wind speed below 10 knots. The test must be conducted with no load other than driver who must weight no more than 200 pounds. The motor trim angle must be adjusted to provide maximum full throttle speed short of excessive porpoising or propeller ventilation of "cavitation", so that there is no loss of directional control.

(4) *Quick turn test procedure.* Set throttle at a low maneuvering speed and steer the boat straight ahead. Turn the steering wheel 180° in the direction of least resistance in 1/2 second or less and hold it at that position without changing the throttle or trim settings during or after the wheel change. The boat completes the maneuver successfully if it is capable of completing a 90° turn without the driver losing control of the boat or reducing the throttle setting. Gradually increase the boat's turn entry speed incrementally until the boat does not complete the Quick Turn Test successfully or successfully completes it at maximum speed.

Note: It is recognized that operator skill and familiarity with a particular boat and motor combination will affect the test results. It is permissible to make a number of practice runs through the quick turn test at any throttle setting.

(5) *Test course method.* Set throttle for 30 miles per hour boat speed and run the test course set up in accordance with Figure 183.53, passing outside the designated avoidance marker for 35 to 37.5 miles per hour without contacting any of the course markers. If the boat successfully completes this run of the test course, increase the throttle setting

to 35 to 37.5 miles per hour boat speed and run the course passing outside the designated avoidance marker for that speed without contacting any of the course markers. If the boat successfully completes this run of the test course and the motor was not at full throttle, increase the throttle setting to 37.5 to 42.5 miles per hour boat speed and run the course passing outside the designated avoidance marker for that speed without contracting any of the course markers. If the boat successfully completes this run of the test course and the motor was not at full throttle, increase the throttle setting to 42.5 miles per hour or more and run the course passing outside the designated avoidance marker for that speed without contracting any of the course markers. If the boat successfully completes this run of the test course and the motor was not at full throttle, continue to increase the throttle setting and run the test course passing outside the designated avoidance marker for 42.5 miles per hour or more until the boat fails to complete the test successfully or the boat completes the test course maneuvers successfully at full throttle. The boat successfully completes the test course if the driver is able to maneuver it between the designated avoidance markers without striking the markers and without losing control of the boat or reducing the throttle setting. There must be no change in position of any equipment on board and there must be no change of position of personnel in order to influence the test results. There must be no instability evidenced by oscillating motion in the roll and yaw axes exhibited while negotiating the course.

Note: It is recognized that operator skill and familiarity with a particular boat and motor combination will affect the test results. It is therefore considered permissible to make a number of practice runs through the test course at any throttle setting.

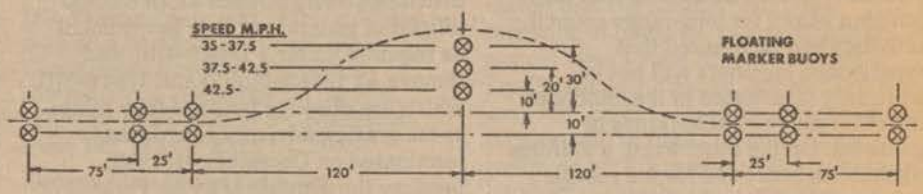
(6) *Maximum horsepower capacity.*

(i) For boats capable of less than 35 miles per hour, the maximum horsepower capacity must be the maximum horsepower with which the boat was able to successfully complete the Quick Turn Test Procedure in § 183.53(b)(4) at full throttle or the maximum horsepower determined under the calculations in § 183.53(a) of this section.

(ii) For boats capable of 35 miles per hour or more, the maximum horsepower capacity must be the maximum horsepower with which the boat was able to successfully complete with the Quick Turn Procedure in § 183.53(b)(4) and the Test Course Method in § 183.53(b)(5) at full throttle or the calculations in § 183.53(a) of this section.

(c) The maximum horsepower capacity determined in accordance with § 183.53(b) must not exceed 40 horsepower.

Figure 183.53



Boat Horsepower Capacity Test Course
35 mph or more

Dated: May 12, 1985.

T.T. Matteson,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 86-12060 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1780

Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rulemaking would amend Subpart 1784 of this title to redefine the conditions under which members may be reappointed to district advisory councils; remove the section on the California Desert Conservation Area Advisory Committee, which terminated and whose functions were assumed by the California Desert District Advisory Council in 1981; delete the requirement for biennial calls for nominations for appointments to district advisory councils, which no longer applies; and remove 2 obsolete references to the grazing advisory boards that terminated on December 31, 1985.

DATES: Comments should be submitted by July 28, 1986. Comments received or postmarked after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular working hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David S. Johnson, (202) 343-2054.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would amend § 1784.3(b) of Title 43 of the Code of Federal Regulations to remove the 6-year limit on additional terms for members of the district advisory councils of the Bureau of Land Management (BLM) and substitute a provision for 2 consecutive 3-year terms with the opportunity for appointment to additional 3-year terms following a 3-year non-membership period. There would also be provision, however, for the Secretary to appoint council members to 1-year terms, without the lapse of 3 years following completion of 2 consecutive 3-year terms, if the Secretary determines that it would be in the public interest and critical to the effective functioning of the council, and provided that the district manager has certified that the need exists.

The final sentence of the existing § 1784.3(b), which concerns the appointment of members to district advisory councils, reads as follows: "At the discretion of the Secretary, members may be reappointed to additional terms, not to exceed a total of six years." The Department of the Interior has interpreted this provision to impose a lifetime limit on service, allowing additional terms, but not to exceed a total of six years beyond the initial term. Under the present regulation, therefore, members can serve a total of no more than 9 years (an initial 3-year

appointment plus six additional years). This presents two distinct problems: (1) A lifetime limit could rapidly deplete the number of local qualified, experienced candidates; and (2) nine years of continuous service might not provide adequate member turnover. BLM district managers need some control over continuity of membership so that they can plan ahead for long-range council activities and be assured that experienced members will not be arbitrarily terminated in the middle of critical reviews of BLM issues or problems. On the other hand, a uniform mechanism is needed for the regular turnover of membership, after a reasonable period of service, to ensure the introduction of new experience, ideas, and approaches and to discourage a handful of persons from monopolizing the membership.

In many BLM districts, it is often difficult to find qualified candidates who are willing to serve on the councils, and who possess the required skills, knowledge, and experience for a particular position on a council. The past experience of those who have served on a council increases their value to the district manager. They constitute a "bank of experience" from which he must draw when fresh sources of talent are depleted. Recurring service must therefore be an available option. Occasionally, a member may become essential to the effective functioning of a council due to unusual circumstances, such as a lack of qualified candidates for the position, or a need to conclude assigned studies or resolve issues. In these situations, it may be necessary to reappoint a member for a brief, additional period so that a replacement can be found or critical council business can be concluded.

The proposed rulemaking would continue the present practice for filling a vacancy, which is to make an appointment for the balance of the unexpired term. Section 1784.3(b)(4) of the rulemaking would provide, however, that such an appointee would be eligible to be reappointed to 2 successive 3-year terms if 3 years had passed since he or she last served a full 3-year term on the council before being appointed to that vacancy.

The proposed rulemaking would remove §§ 1784.0–3(b)(2) and 1784.6–3 which relate to the California Desert Conservation Area Advisory Committee. This committee terminated on December 31, 1981, and its functions were taken over by the California Desert District Advisory Council. The California Desert Conservation Area is wholly included in the California Desert District. The proposed rulemaking would also amend § 1784.6–4(b) to make it consistent with § 1784.3(b) by removing the provision for biennial concurrent appointments. Further, it would amend § 1784.3(b) to state clearly the length of the term of a person appointed to a district advisory council as an elected official of general purpose government as required under § 1784.6–4(b), and remove §§ 1784.0–3(b)(3) and 1784.6–5(f), which are obsolete because they relate to the grazing advisory boards that terminated on December 31, 1985, because the provisions of the Federal Land Policy and Management Act of 1976 that authorized them expired on that date.

The principal author of this proposed rulemaking is David S. Johnson of the Office of Congressional Affairs, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determinated that this document is not a major rulemaking under Executive Order 12291 and certifies that it 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 not affect the economy to the extent of $100,000,000 per year, and would impose no new restrictions on commercial operations of any size.

This proposed rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

It is hereby determined that this proposed 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 Enviromental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subject in 43 CFR Part 1780

Administrative practice and procedure, Advisory committees, Land Management Bureau, Public lands.

Under the provisions of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and 5 U.S.C. Appendix I, it is proposed to amend Part 1780, Group 1700, Subchapter A, Chapter II, Title 43 of the Code of Federal Regulations by amending Subpart 1784 as set forth below:

GROUP 1700—Program Management

PART 1780—Cooperative Relations

Subpart 1784—Advisory Committees

1. The authority for Subpart 1784 continues to read as follows:

Authority: 5 U.S.C. Appendix I, 43 U.S.C. 1701 *et seq.*)

§ 1784.0–3 [Amended]

2. Section 1784.0–3, paragraph (b) is revised to read as follows:

* * * * *

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), requires establishment of advisory councils representative of major citizen interests concerned with resource management planning or the management of public lands.

§ 1784.3 [Amended]

* * * * *

(b) Appointment to district advisory councils shall be for 3–year terms, on the established staggered-term basis, with as near as possible to one-third of each council subject to appointment each year. Terms and appointment are governed by the following:

(1) The term of the member of a council who is an elected official of general purpose government shall end upon that person's departure from such elective office if such departure occurs before his or her term of appointment or reappointment to the council would otherwise expire. The position shall then be filled in accordance with paragraph (b)(2) of this section;

(2) A vacancy occurring by reason of removal, resignation, death, or loss of elected office shall be filled for the balance of the vacating member's term using the same method by which the original appointment was made;

(3) A person who has served a full 3-year term on a council may be reappointed to a second consecutive 3-year term;

(4) A person who has served an appointed term of less than 3 years on a council to fill a vacancy, if 3 years had elapsed since the completion of that person's last 3-year term before being appointed to the vacancy, may be reappointed to 2 consecutive 3-year terms;

(5) A person who has served 2 consecutive 3-year terms on a council may be reappointed no earlier than 3

years after his or her last date of membership on that council. However, the Secretary may waive this 3-year waiting period and reappoint that person to a 1-year term, upon determining that the member's continued or renewed service on the council is in the public interest and critical to the effective functioning of the council, and the responsible district manager has certified that these conditions have been met.

§ 1784.6-3 [Removed]

4. Section 1784.6-3 is removed and reserved.

§ 1784.6-4 [Amended]

5. In § 1784.6-4, the first sentence of paragraph (b) is revised to read as follows:

* * * * *

(b) The Secretary or his designee shall appoint not less than 10 nor more than 15 members to serve on each council in accordance with the provisions of § 1784.3(b) of this title. * * *

§ 1784.6-5 [Amended]

6. § 1784.6-5(f) is removed.

J. Steven Griles,

Assistant Secretary of the Interior.

May 12, 1986.

[FR Doc. 86-12011 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket 86-192, FCC 86-247]

Common Carrier Services; Elimination of Reporting Requirement for Maritime Radio Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend §43.21 of its Rules with respect to the filing of annual reports by maritime radio carriers. If adopted the carriers will no longer have to file an annual report Form M. This proposal is part of the Commission's overall effort to eliminate unnecessary and burdensome reporting requirements.

DATES: Comments must be submitted on or before June 13 and reply comments on or before June 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Katie Rangos at (202) 632-0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking, CC Docket 86-192, adopted May 9, 1986 and released May 15, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M St., Northwest, Suite 140, Washington, DC 20037.

Summary Notice of Proposed Rulemaking

1. Section 43.21 of this Commission's Rules, 47 CFR 43.21, requires maritime radio carriers to submit annual reports. In this Notice of Proposed Rulemaking (Notice) we propose to eliminate from this section a reporting requirement that is unnecessary and burdensome. Specifically, we propose to eliminate the requirement that maritime radio carriers file annual reports.

2. Communication carriers in the maritime radio service having annual revenues in excess of $50,000 file three copies of the annual report Form M with this Commission. Since 1977, Central Radio Telegraph Company has been the only maritime carrier filing an annual report Form M. The Form M is a 93 page report that contains detailed information on stock and stockholders; officers and directors; and financial and operating data of the companies.

3. The maritime carrier Form M reports have only been used on an infrequent and limited basis. There is only one schedule in the Form M which applies to maritime carrier operations. The other Form M schedules pertain to telephone carrier operations. We do not publish any information from the maritime reports comparable to the statistical tabulations of the telephone carrier reports.

4. Eliminating the maritime carrier requirement does not preclude this Commission from directing those carriers to file detailed information should the need arise. We think that our needs for data can be adequately served in a more efficient manner. When necessary, special data requests can be tailored to special needs. Since there is no recurring use of this data, special studies will eliminate the need for maritime carriers to submit annually. This will not only reduce the costs to the carriers, it will also reduce this Commission's costs.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. However, modification of the information collection requirement will not generate a burden change.

6. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the reporting of maritime radio carriers on annual report Form M will not have a significant economic impact and will ease the recordkeeping and reporting requirement of these carriers. The rationale for the proposed elimination is outlined in the above discussions.

7. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible ex parte contacts.

8. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

Ordering Clauses

9. Accordingly, it is ordered, That pursuant to the provisions of sections 219 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 219 and 403 there is hereby instituted a notice of proposed rulemaking into the foregoing matter.

10. It is further ordered, That all interested persons may file comments on the specific proposals discussed in the Notice on or before June 13, 1986. Reply comments shall be filed on or before June 30, 1986. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulation, 47 CFR § 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket reference room; 1919 M Street, NW, Washington, DC.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and record keeping requirements, Marine.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-12022 Filed 5-28-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-283, RM-4975]

Radio Broadcasting Services; Lovelock, NV

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document dismisses the request of Radio 1200 to allocate Channel 236 to Lovelock, Nevada, as the community's first local FM service, due to the lack of continuing interest. The proposed rule in this proceeding was published October 3, 1985, at 50 FR 40414.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-283, adopted May 5, 1986, and released May 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12023 Filed 5-28-86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 103
Thursday, May 29, 1986

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

Rural Electrification Administration

Environmental Statement, Middle Tennessee Electric Membership Corporation

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500–1508) and REA's Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to a proposed project by Middle Tennessee Electric Membership Corporation (MTEMC). The project consists of the construction of new office facilities on approximately 5 hectares (12.5 acres) of land near the City of Franklin in Williamson County, Tennessee.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment (EA) and MTEMC's Borrower's Environmental Report (BER) may be reviewed in the office of the Chief, Distribution and Transmission Engineering Branch, Southeast Area—Electric, Room 0270, South Agriculture Building, REA, Washington, DC 20250, telephone (202) 382–8436, or at MTEMC's office (Mr. James O. Baker, Manager), P.O. Box 608, Murfreesboro, Tennessee 37130, telephone (615) 890–9762.

SUPPLEMENTARY INFORMATION: REA has reviewed MTEMC's BER and has determined that it represents an accurate description of the environmental impacts of the proposed project. The BER has been incorporated as an appendix to the EA. The proposed project will consist of a 1,255 square meter (sq. mtr.) (13,505 square foot [sq. ft.]) office building, a 304 square meter (3,271 sq. ft.) warehouse, a 203 square meter (2,184 sq. ft.) maintenance building, a pole storage area, a transformer storage area, two parking lots with spaces for 80 employee and visitor vehicles, parking spaces for 14 small trucks, gasoline storage and pumping facilities, and a microwave tower approximately 30 meters (100 feet) in height.

The proposed site is located in Williamson County, Tennessee, just outside the city limits of Franklin between Curd Lane and Interstate 65 approximately 805 meters (one-half mile) north of the interchange at Interstate 65 and Murfreesboro Road.

REA determined that the proposed project is not likely to affect flora or fauna on the Federal list of threatened or endangered species of critical habitat, property listed or eligible for listing in the National Register of Historic Places, wetlands, the 100-year floodplain, important farmland, or water quality. No other matters of potential environmental concern have been discovered.

REA considered the alternatives of taking no action, evaluating alternative sites, and approving the proposed project as submitted by MTEMC. REA has determined that the project as proposed by MTEMC is the best alternative to meet MTEMC's needs with negligible impact to the quality of the human environment.

Based upon METMC's BER and supporting documents, REA prepared an EA concerning the proposed project and its impacts. In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, MTEMC advertised that a BER for the project was available for review concerning the environmental aspects of the proposed project. No request for the BER were received.

REA concluded that approval to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not necessary. This program is listed in the Catalog of Federal Domestic Assistance as 18.850–Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: May 21, 1986.

Harold V. Hunter,

Administrator.

[FR Doc. 86–11987 Filed 5–28–86; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–505]

Oil Country Tubular Goods from Taiwan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that oil country tubular goods (OCTG) from Taiwan are being, or are likely to be, sold in the United States at less than fair value and that critical circumstances do not exist, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend the liquidation of all entries of OCTG from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the notice of the preliminary determination, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–5404 or (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that OCTG from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 731 of the

Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act). The estimated margin was based on all the respondent's sales of the class or kind of merchandise to the United States during the period of investigation. Comparisons were based on the U.S. purchase price and the constructed value, since there were no sales in the home market or to third countries. We also found that critical circumstances do not exist. The margin found for the company investigated is listed in the "Suspension of Liquidation" section of this notice.

Case History

On July 22, 1985, we received a petition, filed in proper form from Lone Star Steel Company and CF&I Steel Corporation on behalf of the U.S. industry producing OCTG. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on August 9, 1985 (50 FR 33388), and notified the ITC of our action.

On August 21, 1985, a questionnaire was presented to counsel for the respondent.

On September 5, 1985, the ITC found that there is a reasonable indication that imports of OCTG from Taiwan are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1747, September 1985).

On October 10, 1985, the respondent filed a response to our questionnaire. We investigated Far East Machinery Company (FEMCO), the manufacturer who accounts for all Taiwanese exports of the merchandise to the United States. We examined 100 percent of the sales made by this company.

On December 23, 1985, we made our preliminary determination, which was based on the information contained in the response.

On February 24 through 27, 1986, we conducted a verification at FEMCO's offices.

On February 22, 1986, we postponed the final determination at the request of FEMCO pursuant to 19 U.S.C. 1673d(a)(2) until not later than May 21, 1986 (51 FR 7308).

We held a public hearing on April 28, 1986.

Scope of the Investigation

The products under investigation are "oil country tubular goods," which are hollow steel products of circular cross section intended for use in drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non API specifications (such as proprietary) as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) items, 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are in both finished and unfinished condition.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the C and F packed price. We made deductions for foreign inland freight, ocean freight, handling and brokerage charges.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we used "constructed value" to determine the foreign market value, because Far East Machinery Co., Ltd. has not sold a product "such or similar" to that sold in the United States in either its home market or in a third country. To determine constructed value we examined production costs, including materials, labor, research and development, other manufacturing costs, selling, other general expenses and profit.

Our final determination was based on verified cost information relatng to production during 1985 rather than 1984 as submitted by respondent. We used unit costs based on the actual costs incurred for production. We revised the costs as presented by the respondent in its submission of October 16 and December 2, 1985, related to the following:

- Rebate credits claimed by the respondent for raw materials were only allocated to 4.5 inch pipe produced during the period of investigation.
- The theoretical weight adjustment was corrected for 2.375 inch pipe and excluded from 4.5 inch pipe cost calculations.
- The annual bonus was allocated throughout the year to labor costs per hour.
- Direct labor costs were corrected to reflect the weighted average monthly cost of regular and overtime hours.
- Factory overhead expenses were adjusted for supplies, indirect labor and other costs.
- Factory overhead was allocated on production volume.
- Fixed overhead was allocated on an average monthly basis.
- Labor and material costs for packing expenses were corrected.

We used the actual selling, general and administrative (SG&A) expenses which exceeded the statutory 10 percent of the material and conversion costs. We revised the SG&A costs as presented by the respondent related to the following:

- Selling, general and administrative expenses were adjusted to include direct and indirect selling, financial and interest expenses.

We calculated profit based on the eight percent minimum, as prescribed in section 773(e)(1)(B)(ii) of the Act.

Negative Determination of Critical Circumstances

The petitioners alleged that imports of OCTG from Taiwan present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we find that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

We generally consider the following concerning massive imports: (1) The

volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for oil country tubular goods from Taiwan for equal periods immediately preceding and following the filing of the petition. Based on this analysis, we find that imports of the subject merchandise from Taiwan during the period subsequent to receipt of the petition have not been massive when compared to recent import levels and import penetration ratios.

We therefore, did not need to consider whether there is a history of dumping or whether importers knew or should have known that the exporters were dumping the merchandise.

For reasons described above, we determine that "critical circumstances" do not exist with respect to oil country tubular goods from Taiwan.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the company involved. We used standard verification procedures, including examination of relevant sales and financial records of the company.

Petitioners' Comments

Comment 1

Due to an absence of verified information, the petitioners contend that the Department should disallow all rebates claimed by the respondent for coil purchases and use, as best information, a weighted average of prices paid by respondent for shipments of coil during 1984 and 1985.

DOC Position

We disagree. Because we could not verify whether 1984 or 1985 coil purchases were used to produce the 2.375 inch pipe under investigation, we used the 1985 purchases, the most recent cost of coil purchased prior to the sales under investigation. The 1984 coil purchases appear to be used for pipe other than OCTG which was produced in 1984. Because we could not verify that the rebate claimed by the respondent was related to these 1985 coil purchases, the rebate was not allowed for 2.375 inch pipe. However, we verified that a rebate credit was received on coil used in the production of 4.5 inch pipes and, therefore, have allocated the rebate to the cost of coil used.

Comment 2

The petitioners assert that the Department should not allow any credits claimed by respondent for waste. The credits are based on theoretical yield rates, not verified data.

DOC Position

We disagree. We computed the credit for waste recovery based on the second quality pipe and the scrap sales values as verified and the yield rates supplied by the respondent. The Department reviewed all the facts pertaining to the yield rates and, based on these facts and because the yield rates were within industry experience, the Department used the company's yield rates for calculating the credit.

Comment 3

The petitioners believe that the variance adjustment for the tolerance standards should be disallowed by the Department. The adjustment in the submission was incorrectly applied to pipe which was not affected by the variance.

DOC Position

We partially agree. For the 4.5 inch pipe we disallowed the theoretical weight adjustment because the thickness of the coil used by the respondent was the same as the thickness of the coil upon which the theoretical weight was measured. Therefore, there would not be a tolerance weight-saving adjustment.

However, for the 2.375 inch pipe we adjusted the theoretical weight adjustment to reflect the verified actual weight savings.

Comment 4

The petitioners contend that annual bonuses paid by the respondent should be allocated throughout the year since they are a recurring annual labor expense

DOC Position

We agree. Annual bonuses have been allocated throughout the year.

Comment 5

The petitioners assert that the Department should derive an overtime premium to be added to respondent's labor cost for the product under investigation, since the records of the overtime worked were not properly maintained.

DOC Position

We agree. Since the direct labor costs submitted did not adequately reflect overtime, they were adjusted to reflect the weighted average of the monthly cost of the regular and the overtime hours.

Comment 6

The petitioners believe that certain factory overhead charges such as supplies, repair costs, intermediate material costs, and employee welfare expenses should be included in the respondent's factory overhead costs.

DOC Position

We agree. These costs have been included in factory overhead since they were incurred as indirect production costs for the product under investigation.

Comment 7

The petitioners contend that the Department should treat as current expenses, capitalized organizational and the initial testing expenses which are being amortized over five years by the company.

DOC Position

We have accepted the respondent's normal accounting method for amortizing the cost over five years. However, we have included a portion of the amortization expenses which the respondent had excluded in the period of investigation, since these costs relate to the start-up expenses of the operations.

Comment 8

The petitioners assert that the Department should include the transit interest charge on the letters of credit, direct selling expenses such as the Joint Export Promotion Council levy, the expenses attributable to the financial division and the cost of the president's office in selling, general and administrative (SG&A) costs.

DOC Position

We agree. The Department included all of the direct selling expenses for the U.S. sales, including the transit interest charge on letters of credit, because there were no sales of OCTG in the home or third country market. The administrative cost of the financial division and the cost of all corporate administrative expenses, including the cost of the president's office, have been included in general and administrative expenses.

Comment 9

The petitioners contend that the Department should use their information as best information for packing costs since submitted packing costs could not be verified.

DOC Position

We disagree. During verification we obtained sufficient data for packing costs which we used in our calculations.

Comment 10

The petitioners contend that the Department should only allow the amount of those brokerage handling charges on U.S. sales which were verified.

DOC Position

We agree. We have only deducted the verified brokerage and port charges.

Respondent's Comments

Comment 1

The respondent states that the Department should use 1984 raw material costs for 2.375 inch OCTG cost of production and if that is not acceptable, a weighted average of 1984 and 1985 costs.

DOC Position

See response to petitioner's *Comment 1.*

Comment 2

The respondent contends that the Department should apply the entire amount of the discount rebate to the 2.375 inch raw materials purchased in 1984.

DOC Position

See response to petitioner's *Comment 1.*

Comment 3

The respondent asserts that the Department should use the prices of scrap and seconds sold which were verified and not amounts contained in the submission.

DOC Position

The actual verified sales prices of scrap and seconds which were sold were used for the final determination.

Comment 4

The respondent believes that the Department should include in the cost of production an offset for raw materials sold as scrap which was verified.

DOC Position

We agree. The Department included an offset to the cost for raw materials which were sold.

Comment 5

The respondent contends that annual bonuses paid by it should be allocated throughout this year.

DOC Position

See response to petitioners' *Comment 4.*

Comment 6

The respondent alleges that although production records did not provide a basis that any overtime was utilized in OCTG production, submitted unit labor costs accurately reflect overtime hours. No further adjustment should be made to labor costs.

DOC Position

We disagree. While submitted labor costs did purport to account for overtime, these labor costs could not be reconciled with the actual labor information. See response to petitioners' *Comment 1.*

Comment 7

The respondent asserts that factory overhead should be allocated to OCTG production based on labor hours rather than on production quantity.

DOC Position

We disagree. Under the facts in this case, we believe that production volume (measured by weight) is the most appropriate allocation basis for overhead costs. This was the method employed by the respondent in its original submission. The Department concludes that labor hours would not appropriately allocate the costs to the products being manufactured, since this basis did not reflect the actual production time of each product.

Comment 8

The respondent believes that fixed overhead costs should be averaged throughout the year to avoid fluctuations caused by the payments for such expenses not occurring evenly throughout the year.

DOC Position

We agree. We use a method of allocation which averaged fixed overhead costs throughout the year.

Comment 9

The respondent contends that the Department should allocate intermediate supply costs which are not included in the submission by using a basis of labor hours.

DOC Position

We disagree. We believe the cost of the intermediate supplies not included in the submission should be allocated to OCTG under investigation based on production volume since these were incurred as indirect production costs and were included in the factory overhead.

Comment 10

The respondent asserts that the organizational and the initial testing expenses treated as deferred expenses by it were related to OCTG products not under investigation.

DOC Position

Since such costs were related to the production of OCTG as a product line, a proportional amount was included for the product under investigation.

Comment 11

The respondent believes that the research and development and interest expenses it incurred were not related to OCTG products under investigation and, therefore, should not be included.

DOC Position

We disagree. Since we could not verify the nature of the R&D costs, such costs were allocated over all products sold. Interest costs, considered by the Department to be a general corporate expense, likewise were allocated over all products sold.

Comment 12

The respondent contends that the Department should not include any selling costs from the Chia Yi office in SG&A expenses because it handles only domestic sales of which there were none of OCTG.

DOC Position

We agree. Because the product under investigation was not sold in the home market or third country markets, we have used the direct and indirect selling costs for the U.S. market. The costs of the Chia Yi office were not included.

Comment 13

The respondent alleges that packing costs reported in the submission are the best estimate of those costs and should be used by the Department.

DOC Position

See response to petitioner's *Comment 9.*

Comment 14

The respondent requests that the Department extend the period of investigation by one day in order to include one additional sale to the United States so as to have a more representative universe.

DOC Position

We agree and have done so.

Comment 15

The respondent contends that certain charges relating to U.S. sales, such as bank commissions, transit interest charged by banks, contribution to a government reserve for the promotion of trade, etc., should not be deducted from the U.S. sales price because these charges are not additional costs incident to bringing the merchandise to the place of delivery in the United States.

DOC Position

We agree. However, we have added them to the foreign market value because they are part of the SG&A expenses.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of OCTG from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date which is on or after the date of publication of the final determination notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. However, we made a negative determination in the final countervailing duty determination on OCTG from Taiwan, because we found that the subsidies were *de minimis*. Therefore, the bonding rate will not be reduced since there were no export subsidies.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Far East Machinery Company, Ltd.	26.32%
All others	26.32%

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on OCTG from Taiwan entered, or withdrawn from warehouse, for consumption equal to the amount by which the foreign market value exceeds the United States price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d))

Paul Freedenberg,

Assistant Secretary for Trade Administration.

May 21, 1986.

[FR Doc. 86-12045 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-004]

Toy Balloons (Including Punchballs) and Playballs From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On March 11, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty orders on toy balloons (including punchballs) and playballs from Mexico. The review covers the period April 1, 1983 through December 31, 1983 and seven programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Marselian or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 45039) the final results of its last administrative review of the countervailing duty orders on toy balloons (including punchballs) and playballs from Mexico (47 FR 57532, December 27, 1982). We began this review of the orders under our old regulations on March 2, 1984 and sent a questionnaire to the Mexican government on that day. After the promulgation of our new regulations, the Mexican government, on November 15, 1985, requested that we complete the administrative review, in accordance with § 355.10(a) of the Commerce Regulations. We published the new initiation on November 27, 1985 (50 FR 48825) and the preliminary results of administrative review on March 11, 1986 (51 FR 8347). We have now completed the administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Mexican toy balloons (including punchballs) and playballs. Such merchandise is currently classifiable under items 735.0990 and 737.9536 of the Tariff Schedules of the United States Annotated.

The review covers the period April 1, 1983 through December 31, 1983 and seven programs: (1) FOMEX; (2) CEPROFI; (3) CEDI; (4) FONEI; (5) FOGAIN; (6) import duty reductions and exemptions; and (7) state tax incentives.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, we determine the total bounty or grant to be 4.54 percent *ad valorem* for toy balloons (including punchballs) and 3.45 percent *ad valorem* for playballs for the period of review.

The Department will instruct the Customs Service to assess countervailing duties of 4.54 percent of the f.o.b. invoice price on any shipments of toy balloons (including punchballs) and 3.45 percent of the f.o.b. invoice price on any shipments of playballs exported on or after April 1, 1983 and on or before December 31, 1983.

Further, because of the change noted in our preliminary results, the

Department will instruct the Custom Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.92 percent of the f.o.b. invoice price of toy balloons (including punchballs) and 1.98 percent of the f.o.b. invoice price of playballs on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: May 22, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-12046 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-479-503]

Certain Welded Carbon Steel Pipe and Tube Products From Yugoslavia; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Orders

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Orders.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty orders on certain welded carbon steel pipe and tube products from Yugoslavia. The review covers the period from October 16, 1985. The petitioners have notified the Department that they are no longer interested in the countervailing duty orders. This affirmative statement of no interest from domestic interested parties provides a reasonable basis for the Department to revoke the orders. Therefore, we tentatively determine to revoke the orders. In accordance with the petitioners' notification, the revocation will apply to all welded carbon steel pipe and tube products from Yugoslavia entered, or withdrawn from warehouse, for consumption on or after October 16, 1985.

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

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or John Miller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1985, the Department of Commerce ("the Department") published in the **Federal Register**, (50 FR 41546) countervailing duty orders on certain welded carbon steel pipe and tube products from Yugoslavia.

The petitioners, the Standard and the Line Pipe Subcommittees of the Committee on Pipe and Tube Imports and Individual producer members of these subcommittees, informed the Department that they are no longer interested in the orders and stated their support of revocation of the orders. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by the review are shipments of Yugoslavian welded carbon steel pipe and tube products of the following description: (1) Welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness, currently classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA), commonly referred to in the industry as standard pipe or structural tubing, produced to various ASTM specifications, most notably A-120, A-53 or A-135; and (2) welded carbon steel line pipe with an outside diameter of 0.375 inch or more but not over 16 inches, and with a wall thickness of not less than 0.065 inch, currently classifiable under items 610.4308 and 610.3209 of the TSUSA, produced to various API specifications for line pipe, most notably API-5L or API-5LX. The review covers the period from October 16, 1985.

Preliminary Results of Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in the continuation of the countervailing duty orders on certain welded carbon steel pipe and tube products from Yugoslavia provides a reasonable basis for revocation of the orders. In light of the October 16, 1985 effective date for revocation requested by the domestic parties, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the orders on certain welded carbon steel pipe and tube products from Yugoslavia effective October 16, 1985. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 16, 1985, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 55 days from the date of publication, or the last workday preceding. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

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

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-12047 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-DS-M

The 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 10, 1986, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: June 16, 1986 at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. The meeting will continue to its conclusion on June 17, 1986, in Room 1092, the Herbert C. Hoover Building.

Agenda:

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Public comments invited on revisions to:

CCL–1529—Electronic Test Equipment
CCL–1531—Frequency Synthesizers
CCL–1522—Lasers and Laser Systems
CCL–1533—Radio Spectrum Analysers
CCL–1521—Solid State Broadband Amplifiers
CCL–1541—Cathode Ray Tubes
CCL–1572—Recording and Reproduce Equipment.

Comments should consider the need for revision (strengthening, relaxation, or decontrol) of the current regulations based on technological trends, foreign availability, and national security. The committee is interested in proposals for revision to PRC guidelines and G–COM regulations for the above commodities as well.

Executive Session:

4. 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 January 10, 1986, 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 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 classifed under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof are 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 telephone: 202/377–4217.

Dated: May 23, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–12048 Filed 5–28–86; 8:45 am]

BILLING CODE 3810–DT–M

National Oceanic and Atmospheric Administration

Marine Sanctuaries; Scoping Meeting on the Proposed Flower Gardens National Marine Sanctuary, TX

AGENCY: Office of Ocean and Coastal Resources Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering the East and West Flower Garden Banks in the Gulf of Mexico for designation as a national marine sanctuary. NOAA will hold a public meeting to gather information to determine the range and significance of issues related to sanctuary designation and management. This meeting will be held on June 24, 1986, from 7:00 to 10:00 PM in the auditorium of the Classroom/Laboratory Building, Texas A&M Mitchell Campus, Pelican Island, Galveston, Texas. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, (202) 673–5122.

ADDRESS: Division of Marine and Estuarine Management, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC. 20235.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972 as amended, 16 U.S.C. 1431 *et. seq.* (the Act), authorizes the Secretary of Commerce to designate ocean waters, over which the United States exercises jurisdiction consistent with international law, as national marine sanctuaries. The purpose of designating national marine sanctuaries is to protect and manage distinctive areas of the marine environment for those conservation, recreational, ecological, historical, research, educational or aesthetic values which give these areas special national significance. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Division of Marine and Estuarine Management (DMEM).

Natural Resources

The East and West Flower Garden Banks are some 115 miles (185 km) southeast of Galveston, Texas, at the edge of the continental shelf. The Banks, approximately 16 miles (25 km) apart, are salt domes from which coral reefs rise from a depth of 148 feet (45 m) to a crest of about 50 feet (15 m) below the water surface. The living reefs, consisting of massive, closely-packed heads produced by at least 18 species of tropical corals, are the northernmost tropical Atlantic coral reefs on the continental shelf.

The Flower Garden Banks support the most ecologically complex and biologically productive reef communities of the Texas-Louisiana outer continental shelf. These Banks harbor at least 80 species of algae, 196 known macro-invertebrate species, and more than 175 fish species. One of the most scientifically interesting components of the Bank ecosystem lies well below the coral reefs. At a depth of 233 feet (71 m) on the margin of East Flower Garden Bank, a community of organisms exists in the area of a brine seep, where the high salinity, high sulfide, anoxic brine would be toxic to most marine biota.

Higher on the Banks, the reef-building corals and coralline algae are the most important organisms because they maintain the substratum for the benthic reef communities. These reefs are characterized by a diverse assemblage of epibenthos. The Banks are believed to be a significant nursery area for brown shrimp, a species of commercial importance. Several species of lobster have been observed on the reefs. The pelagic fish found at the Banks include several commercially important species of snappers and groupers. Loggerhead turtles and spotted dolphins are casual visitors to the Flower Gardens.

Human Uses

Oil and gas production operations occur outside of a no-activity zone, established by the Minerals Management Service, encompassing the 100 meter isobath surrounding each Bank. The Banks are close to a shipping safety fairway, and the area is transited by commercial cargo vessels. Commercial fishermen harvest red and vermilion snapper and groupers in Bank

waters. Recreational use consists of sport fishing and diving.

The Designation Process

The preliminary consultation on the Flower Garden Banks as a potential site for a national marine sanctuary was initiated with a notice published in the Federal Register on May 4, 1984, 49 FR 19094. A summary of comments received in the preliminary consultation was published August 2, 1984, in an announcement that the Flower Garden Banks had been selected as an active candidate for sanctuary designation and the NOAA intended to prepare a draft environmental impact statement and management plan for the proposed sanctuary, 49 FR 30988.

The announcement marked the second time that the Flower Garden Banks had become an active candidate. In 1979 the site was placed on the list of active candidates, but was removed in 1982 when it appeared that the Flower Gardens would be adequately protected by a Coral Fishery Management Plan (FMP). The FMP, however, does not regulate anchoring on the Banks by large cargo vessels. Such anchoring has been identified as the major cause of damage to the Flower Garden coral reefs. A more detailed discussion of the history of the Flower Gardens as an active candidate and the reasons for its reselection can be found in the selection announcement, 49 FR 30988.

The management plan to be prepared for the proposed sanctuary will specify the goals and objectives of sanctuary designation and describe programs for resource protection, research and interpretation. Implementation of the management plan is analyzed in the environmental impact statement.

Opportunites for public participation in NOAA's development of an environmental impact statement and management plan will be provided through the June scoping meeting, solicitation of comments on the draft environmental impact statement, and formal public hearings.

The June scoping meeting will attempt to identify issues in establishing a Flower Gardens national marine sanctuary and generate suggestions for resolving them. Topics for discussion will include the following: (1) Boundary alternatives, (2) Management alternatives, (3) Resource protection, (4) Research opportunities and (5) Interpretive opportunities.

Federal Domestic Assistance Catalog No. 11.429 Marine Sanctuary Program

Dated: May 22, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-11967 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Visa Requirement for Cotton, Wool and Man-Made Fiber Apparel Exported from the Republic of Maldives

May 22, 1986.

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 May 28, 1986. For further information contact Claudia Wolfe, International Economist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377-4212.

Background

A CITA directive dated August 18, 1982, (47 FR 36879, Aug. 24, 1982) established a new export visa requirement for cotton, wool, and man-made fiber apparel products in categories 330-359, and 630-659, produced or manufactured in the Maldives and exported to the United States.

The purpose of this notice is to inform the public of the new visa stamp.

The new stamp is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

May 22, 1986.

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 August 18, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements which established an export visa requirement for cotton, wool and man-made fiber apparel products from the Republic of Maldives.

Effective on May 29, 1986, the directive of August 18, 1982 if further amended to discontinue use of the current visa stamp. Such goods, exported on and after May 29, 1986, shall be visaed using a circular stamp in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice when such form is used) and will be signed by an authorized official of the Government of the Republic of Maldives. A facsimile of the visa stamp is enclosed.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Commissioner for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Enclosure



[FR Doc. 86-11963 Filed 5-28-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATON

Federal Acquisition Regulation (FAR), Agency Information Collection Activities Under OMB Review.

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office

of Management and Budget (OMB) a request to review and approve a new information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781 or Mr. Owen Greene, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

This request covers the collection of information to implement the requirements of Title II, Section 201, Pub. L. 99–234, Federal Civilian Employee and Contractor Travel Expense Act of 1985. implementation of the statute required creation of a justification document to support higher actual cost reimbursements for lodging, meals, and incidental expenses than permitted by normally prescribed per diem rates. The creation of this document is required only in extraordinary and temporary situations when application of normal per diem rates is inappropriate. The justification is needed to (1) assure that use of the higher actual cost method is controlled and not abused, and (2) provide a basis for audit verfication of contractor actions.

b. Annual reporting burden

This is estimated as follows: Respondents, 16,000; reponses 160,000; and reporting and recordkeeping hours, 40,000.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GS Building, Washington, DC 20405, telephone (202) 523–4755.

Dated: May 23, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–12029 Filed 5–28–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF EDUCATION

Proposed Information Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before June 30, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submisson of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, exisiting or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 23, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: EXTENSION
Title: Application for Assistance under the College Housing Program
Agency Form Number: ED 866
Frequency: Annually
Affected Public: Non-profit institution
Reporting Burden:
Responses: 400
Burden Hours: 9,600
Recordkeeping Burden:
Recordkeepers: 20
Burden Hours: 20

Abstract: The Application for Assistance under the College Housing Program is required of postsecondary institutions in order to apply and compete for low interest loans for the construction, rehabilitation, and purchase of housing and related facilities.

Office of Postsecondary Education

Type of Review: EXTENSION
Title: Application for Fulbright-Hays Training Grants—Seminar Abroad Program
Agency Form Number: ED 356–1, 356–2, 356–3
Frequency: Once only
Affected Public: Individuals or households
Reporting Burden:
Responses: 4,100
Burden Hours: 4,100
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form is to be used by applicants under the Fulbright-Hays Training Grants—Seminars Abroad Program which provides opportunities for U.S. educators to participate in short-term training seminars in a variety of topics.

[FR Doc. 86–12007 Filed 5–28–86; 8:45 am]

BILLING CODE 4000–01–M

National Council on Educational Research; Meeting

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Council on Educational Research. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: June 13, 1986, 9 a.m.–5 p.m.

ADDRESS: U.S. Department of Education, FOB–6, Conference Room 3000, 400 Maryland Avenue, SW., Third Floor, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Acting Executive Director, National Council on Educational Research, 2000 L St., NW., Suite 617 B, Washington, DC 20036, (202) 254–7490.

SUPPLEMENTARY INFORMATION: The National Council on Educational Research is established under section 405 of the General Education Provisions Act (20 U.S.C. 1221e); Department of Education organization plan

implemented pursuant to section 413 of Pub. L. 96–88 and notice to Congress dated July 2, 1985. The Council is established to advise the Secretary of Education on policies and priorities for the Office of Educational Research and Improvement (OERI), and to review the conduct of OERI and to advise the Secretary of Education and the Assistant Secretary of OERI on development of programs to be carried out by OERI.

The meeting of the Council is open to the public. The agenda includes: reports from committee chairmen, from OERI officials, and from Dr. Patrick Groff, Professor of Education at San Diego State University, on reading instruction research.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Council on Educational Research, 2000 L St., NW., Suite 617 B, Washington, DC, 20036, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Dated: May 23, 1986.

Mary Grace Lucier,

Acting Executive Director.

[FR Doc. 86–12012 Filed 5–28–86; 8:45am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement".

The subsequent arrangement involves the loan of 6,780 kilograms of depleted uranium for use as a calorimeter at the Centre European De Reches Nucleaires (CERN), Geneva, Switzerland. Contract Number WC–SD–24 has been assigned for this transaction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: May 23, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–12040 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council Economic and Environmental Impacts Task Group; Meeting

Notice is hereby given that the Economic and Environmental Impacts Task Group will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Economic and Environmental Impacts Task Group will evaluate the impact of the 1970's energy crises on the U.S. economics—economic growth, employment, inflation, oil and gas industry cash flow, capital investment, international trade, the financial markets (U.S. and international), real interest rates, etc. This Task Group will also analyze the potential future economic impact of the factors on issues identified by the other Task Groups.

The Economic and Environmental Impacts Task Group will hold its second meeting on Monday, June 2, 1986, starting at 10:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Economic and Environmental Impacts Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review and rank factors affecting supply and demand.
3. Discuss Group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Economic and Environmental Impacts Task Group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of public who wishes to file a written statment with the Economic and Environmental Impacts Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 21, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–11983 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Energy Stripper Well Exemption Litigation; Execution of Agreement

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Execution of Settlement Agreement in the *Department of Energy Stripper Well Exemption Litigation.*

SUMMARY: The Economic Regulatory Administration of the United States Department of Energy (DOE) hereby gives notice that on May 21, 1986, the Under Secretary of Energy, Joseph F. Salgado, signed a Settlement Agreement in the *Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378 (D. Kan.). The Agreement will not become effective until approved by the United States District Court for the District of Kansas. If approved, the Agreement will resolve the distribution of funds held in escrow by the court as well as provide for the disposition of funds resulting from other pending crude oil overcharge cases where refunds cannot be made to identifiable injured parties. It will also resolve a number of cases concerning the Entitlements Program, 10 CFR 211.66, 211.69, including *Texaco, Inc. et al.* v. *Department of Energy, et al.,* Nos. 3–44 through 3–49, (Temp. Em. Ct. App.). The Agreement has been submitted to the district court for its approval and a June 13, 1986, hearing on the agreement that has been sought.

FOR FURTHER INFORMATION CONTACT: Carl A. Corallo, Solicitor, Economic Regulatory Administration, U.S. Department of Energy, RG–40, 1000 Independence Avenue SW., Washington, DC 20585, 202–252–4167.

A copy of the Agreement is available for inspection or copying at the DOE Freedom of Information Reading Room. The Reading Room is located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, and can be reached at 202–252–6020.

Issued in Washington, DC, on May 22, 1986.

Marshall A. Staunton,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 86–11962 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-348; OFP Case No. 65038-9314-20-24]

Order Granting to O.L.S. Energy-Camarillo Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to O.L.S. Energy-Camarillo 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 O.L.S. Energy-Camarillo (OLS), Camarillo, California. The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a 27.5 MW (net, approximate) combined cycle cogeneration facility designed to produce electricity and process steam at the Camarillo State Hospital (CSH), Camarillo, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on July 26, 1986. 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, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 252-1774

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 February 24, 1986, OLS 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 27.5 MW (net, approximate) combined cycle cogeneration facility consisting of a gas turbine generator, a waste heat recovery boiler, a steam extraction turbine generator and ancillary equipment. As all of the net annual generation of electric power from the unit will be sold to Southern California Edison Company, the unit is, by definition, an electric powerplant under 10 CFR 500.2. The facility will produce approximately 10,650 lbs. of low pressure steam per hour which will supply CSH's heating and process steam needs. OLS will operate the facility.

Basis for Permanent Exemption Order: The permanent exemption order is based upon evidence in the record including OLS'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 accordance 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 March 26, 1986 (51 FR 10423), 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 May 12, 1986; 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 within 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 OLS 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 OLS to permit the use of natural gas as the primary energy source for its cogeneration facility at CHS in Camarillo, 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 thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC, on May 20, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11984 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-18-NG]

Chieftain International, Inc.; Order Granting Blanket Authorization To Import Natural Gas from Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to Chieftain International Inc. (Chieftain). The order issued in ERA Docket No. 86-18-NG authorizes Chieftain to import up to 10 Bcf annually over a two-year period for sale in the domestic short-term market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, Except holidays.

Issued in Washington, DC, May 19, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11952 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-17-NG]

Community Gas Acquisition, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to Community Gas Acquisition, Inc. (Community). The order issued in ERA Docket No. 86-17-NG authorizes Community to import up to 300 Bcf of natural gas over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 15, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11953 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA DOCKET NO. 85-24-NG]

Natural Gas Pipeline Co. of America; Order Approving Amendments to an Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Approving Amendments To Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order approving amendments to import natural gas from Canada to Natural Gas Pipeline Company of America (Natural). The order issued in ERA No. 85-24-NG authorizes Natural to continue to import up to 75,000 Mcf per day through October 31, 1987, from ProGas Limited (ProGas) under a modified two-part demand-commodity pricing structure that eliminates take-or-pay requirements and provides for periodic price Adjustment based on changes in fixed facility costs and competing alternate fuels.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., (202-252-9478), Monday through Friday, except holidays.

Issued in Washington, DC, May 16, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11956 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-15-NG]

Ocelot Energy Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Order Granting Blanket Authorization To Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to the Ocelot Energy Corporation (Ocelot). The order issued in ERA Docket No. 86-15-NG authorizes Ocelot to import up to 300 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on May 15, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11954 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-19-NG]

Texas Eastern Gas Trading Co.; Order Approving a Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Approving a Blanket Authorization To Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Texas Eastern Gas Trading Company (GTC) to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 86-19-NG authorizes GTC to import 1 Bcf of Canadian natural gas per day for a two-year term beginning on the date of first delivery of the import.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 20, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11955 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-41; OFP Case No. 62020-9318-20, 21-24]

Double "C" CoGen, Inc.; Acceptance of Petition For Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Double "C" Co-Gen, Inc.

SUMMARY: On May 7, 1986, Double "C" CoGen, Inc. (Double "C" CoGen) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption for a cogeneration facility to be located in Kern County, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Double "C" CoGen is petitioning for an exemption based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibition of Title II of FUA are found in 10 CFR 503.32.

The proposed facility for which the petition was filed will consist of two

natural gas-fired combustion turbine generators, and two unfired heat recovery steam generators which will produce approximately 48.8 megawatts (net) of electricity. The gas turbine exhaust gases will be ducted to the heat recovery steam generators. The steam generators will utilize the heat in the hot exhaust gases to produce approximately 108,400 pounds per hour of steam to be used for enhanced oil recovery by Carrec Oil Associates and by Cities Service Oil and Gas Corporation. The electricity produced will be sold to the Pacific Gas & Electric Company.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. 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.

The public file containing a copy of this Notice of Acceptance and Availability of Certification 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, DC 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 REA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATE: Written comments are due on or before July 14, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESS: 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–093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA–C&E–86–41 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–093, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 252–6769

Steven E. Ferguson, Esq., Office in General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW, Washington, DC 29585, Telepone (202) 252–6947

SUPPLEMENTARY INFORMATION: Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exist, as required under § 503.9 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certification discussed above), Double "C" CoGen has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Double "C" CoGen is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the pulbic comment period provided for in this notice.

Issued in Washington, DC, on May 19, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–11986 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–13–NG]

Koch Hydrocarbon Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization To Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Koch Hydrocarbon Company (Koch) blanket authorization to import natural gas from Canada. The order, issued in ERA Docket No. 86–13–NG, authorizes Koch to import up to 100,000 Mcf per day, or 73 Bcf over a two-year period, for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 22, 1986.

Barton R. House,

Deputy Director Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–11985 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

Avant Petroleum, Inc.; Final Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Avant Petroleum, Inc. (Avant) shall be made final as proposed. The Consent Order resolves the issues of Avant's compliance for the period August 1978 through December 1980 with DOE's regulations regarding resales of crude oil. Avant will pay to the DOE $1,700,000 for distribution pursuant to 10 CFR Part 205, Subpart V. Persons claiming to have been harmed by Avant's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Avant Consent Order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT: Ben Lemos, Director, Office of Field Operations, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207, Tel: (214) 767–4646.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On April 1, 1986, ERA published a Notice announcing a proposed Consent Order between DOE and Avant which would resolve matters pertaining to Avant's compliance with the regulations regarding resales of crude oil (51 FR 11095). The proposed Consent Order required Avant to pay $1,700,000.

The April 1, Notice sets forth ERA's view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement, and whether the settlement should be made final.

II. Comments Received

ERA received two timely written comments. The comments addressed only the ultimate disposition or distribution of the Avant settlelement funds. The adequacy of the settlement amount or the terms and conditions of the proposed Consent Order was not addressed.

III. Analysis of Comments

The April 1 Notice solicited written comments to enable the ERA to receive information from the public relevant to the decision as to whether the proposed Consent Order should be finalized as proposed, modified or rejected.

The comments received voiced no objection to the basis or adequacy of the settlement.

ERA has determined that the distribution of the settlement funds should be the subject of a separate Subpart V proceeding conducted by OHA, to be initiated shortly after publication of this Notice. This is consistent with ERA's general policy that the special refund procedures of Subpart V are best suited for cases, such as this, in which ERA cannot readily identify the injured parties or their relative amount of economic harm.

Comments on the actual disbursement of money, accordingly, will not be addressed here, but will be referred to OHA for consideration in the Avant Consent Order claims proceeding.

The review and analysis of the comments did not provide any information that would support the modification or rejection of the proposed Consent Order with Avant. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

IV. Decision

By this Notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Avant and DOE executed on February 6, 1986, is made a final Order of the Department of Energy, effective on the date of publication of this Notice in the **Federal Register**.

Issued in Dallas, Texas, on the 5th day of May, 1986.

Ben Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 86–11961 Filed 5–28–86; 8:45 am]
BILLING CODE 6450–01–M

[ERA Docket No. 86–11–NG]

Petro-Canada Hydrocarbons Inc.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy; Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas from Canada for direct sale to an industrial end user.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 18, 1986, of an application filed by Petro-Canada Hydrocarbons Inc. (PCH) for authorization to import up to 20,500 Mcf per day of Canadian natural gas, not to exceed a total of 150 Bcf over a 20-year period beginning on or about July 1, 1986. The gas would be imported form PCH's parent company, Petro-Canada Inc. (PCI), and sold directly to the United States Borax & Chemical Corporation (Borax) for use in Borax's manufacturing operations. The price of the gas to PCH would be determined by adjusting on initial base price of $4.10 per MMBtu each month based on changes in the price at which PCH resells the gas to Borax which, in turn, would reflect changes in the acquisition costs for natural gas in California and the world average crude oil price.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., e.d.t., on June 30, 1986.

FOR FURTHER INFORMATION CONTACT:
Stanley C. Vass, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9482
Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: On February 18, 1986, PCH filed an application with the ERA to import up to 20,500 Mcf per day of Canadian natural gas, not to exceed a total of 150 Bcf over a 20-year term beginning on or about July 1, 1986. PCH proposes to import the gas from its parent company, PCI, whose parent company, in turn, is Petro-Canada, a company wholly-owned by the Canadian government. PCH states that the gas would be impored via the import point near Sumas, Washington, and sold directly to Borax for use in Borax's manufacturing operations. Transportation of the gas from the Canadian border to the California border would be either through pipelines owned by Northwest Pipeline Corporation or Pacific Gas Transmission Company, or both, or by the El Paso Natural Gas Company. Transportation from the California border to Borax's facilities in Boron, California, would be via pipelines owned by the Pacific Gas and Electric Company. Only existng facilities would be used under PCH's import proposal.

The natural gas sale and purchase agreement dated January 1, 1986, between PCH and PCI provides that the selling price of the gas to PCH will be determined by adjusting an initial base price of $4.10 per MMBtu each month based on changes in the price at which PCH resells the gas to Borax, which, in turn, would be determined monthly in response to changes in the average acquisition costs for natural gas in California and the average world crude oil price. The seling price to PCH, however, may not be lower than the Canadian natural gas export floor price for exports from British Columbia. PCH is required by the gas sale and purchase agreement to take or pay for a quantity of natural gas equal to seventy percent of the annual contract quantity. The take-or-pay obligation in the PCH/PCI purchase agreement is automatically adjusted in accordance with adjustments in the take-or-pay obligations made under the PCH/Borax gas supply agreement. Take-or-pay gas may be made up in subsequent years of the contract. Although there is no market-out provision, take-or-pay obligations may be reduced under certain circumstances specified in a force majeure clause contained in the PCH/PCI contract.

I support of its import proposal, PCH asserts that the primary source of the gas to be imported will be from gas wells owned by PCI in British Columbia. PCH points out that Canadian gas has long been a secure and dependable source of natural gas supply. Since the gas is not for pipeline supply or local distribution resale, PCH also asserts that marketability and need for the gas is established by the fact that the arrangement was negotiated at arm's length with the ultimate industrial consumer of the gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. They must be filed no later than 4:30 p.m. June 30, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PCH's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, (202) 252–9478, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 20, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–11957 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 82–08–NG]

Natural Gas Imports; Texas Gas Transmission Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of the receipt on March 27, 1986, of an amendment to the application of Texas Gas Transmission Corporation (Texas Gas) filed on July 16, 1982. The amendment reduces the quantity, price and term of the proposed arrangement.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than June 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Divisoin, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 252–6667.

SUPPLEMENTARY INFORMATION: The Texas Gas application, filed on July 16, 1982, and noticed in the **Federal Register** on September 9, 1982 (47 FR 39716), has been held in abeyance since April 16, 1984, at the request of Texas Gas, to enable it to amend its application to conform with the new DOE policy guidelines as directed by the ERA's order of February 16, 1984.

The original gas sales arrangement between Texas Gas and ProGas, dated October 29, 1981, was amended by subsequent agreements dated March 26, 1982 and June 11, 1982, (47 FR 39716). An August 29, 1985, agreement, reducing the volume from 186,200 Mcf per day to 135,000 Mcf per day, was superseded by a January 23, 1986, agreement both of which were submitted to the ERA as a part of the present filing. The latter and most recent agreement contains quantity, price, renegotiation, and cancellation provisions which modify the 1981 amended agreement.

With respect to the daily contract quantity, the volumes imported prior to November 1, 1987, will be on a best-efforts basis. Commencing November 1, 1987, Texas Gas requests authorization to import a reduced volume of up to 50,000 Mcf per day; commencing November 1, 1988, a volume of up to 100,000 Mcf per day; and, commencing November 1, 1989, and thereafter, a volume of up to 135,000 Mcf per day.

The price of the gas would be determined by a two-part rate. The initial monthly demand charge would be $15.21 (U.S.) per Mcf of daily contract quantity in effect during the month and the initial commodity charge would be $2.00 (U.S.) per MMBtu, both to be adjusted semi-annually at the request of either party and subject to arbitration if either party cannot agree upon a new price. The monthly demand charge would be obtained by multiplying the daily contract quantity for a particular month by the demand charge per Mcf for that month, and the commodity charge would be determined by multiplying the MMBtu's of imported gas by the commodity charge for that month. Texas Gas and ProGas recognize that there may be situations where special term and price arrangements are necessary in order to assure a market for some portion of the available gas. Under these circumstances, ProGas may offer certain volumes of gas as special purchase gas at a price determined by multiplying the MMBtu's of such gas by a special commodity charge as agreed to by the parties.

If, as result of the uncertainty of the Federal Energy Regulatory Commission's Order No. 436, particularly if Part D (block billing) is adopted, it is not poossible to determine that the initial demand and commodity prices are competitive, the parties propose to meet to determine demand and commodity price levels that are low enough to be competitive in the Texas Gas marketplace. However, if the parties cannot agree, either party may cancel the January 23, 1986, agreement by giving the other party 30-days written notice.

For the contract years commencing November 1, 1987, and thereafter, the monthly demand charge is proposed to be the product of the daily contract quantity and the sum of a TransCanada Toll, a NOVA Toll, a Producer Toll, and a ProGas Toll, all per Mcf. The TransCanada Toll is the transportation cost of firm gas on TransCanada PipeLines Limited's system to the point of delivery; the NOVA Toll is the average monthly demand toll billed by NOVA, an Alberta corporation, to ProGas in the preceding contract year; the Producer Toll is the average monthly fixed cost for gas purchased by ProGas from producers in the Province of Alberta in the preceding contract year; and the ProGas Toll is the average monthly toll billed by ProGas to Texas Gas for monthly services in the preceding contract year. The tolls would be determined in Canadian dollars and converted to U.S. dollars, and the monthly demand charge based upon the tolls would be adjusted up or down as appropriate. The commodity charge would be adjusted by an equivalent amount in the opposite direction so that the unit charge remains the same at 100 percent load factor.

Texas Gas under the purchase agreement, in order to avoid extreme variations between summer and winter deliveries, proposes to purchase volumes in the contract year commencing November 1, 1987, and each contract year thereafter, which are no less than ratable with its purchases from domestic producers during the seven month period from April 1 to October 31. Under the same agreement, ProGas proposes, on a best-efforts basis within authorized limitations, to provide volumes exceeding the daily contract quantity upon request by Texas Gas. Texas Gas has not requested the ERA to authorize any contract quantities exceeding the volumes previously stated.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

Unless specifically requested to do so, the ERA has decided not to give further consideration to the comments or requests for further procedures from intervenors in response to the notice of application in this docket published in the **Federal Register** on September 9, 1982 (47 FR 39716). Those responses have been overtaken by events, including amendments to the 1981 sales agreement in 1985 and 1986 and subsequent changes in both U.S. and Canadian energy policy, regulation, and natural gas markets. However, those intervenors are parties to this application and their comments on this amendment are solicited herein.

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m. e.d.t., June 30, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional witten comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is

material and relevent to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Texas Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, May 20, 1986

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11958 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-39; OFP Case No. 61060-9315-20-24]

Capitol District Energy Center Cogeneration Associates; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification from Capitol District Energy Center Cogeneration Associates.

SUMMARY: On March 24, 1986, Capitol District Energy Center Cogeneration Associates ("Petitioner"), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration facility ("Facility") on Aetna Life & Casualty Company's (Aetna) Capitol Avenue property in Hartford, Connecticut, 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"). The facility will be located on Capitol Avenue, west of and adjacent to Aetna's Capitol Avenue office building.

Title II of FUA prohibits both the use of petroleum and natural gas as primary energy sources in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. 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 cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The petitioner proposes to construct a cogeneration facility on Aetna's Capitol Avenue property in Hartford, Connecticut. The project will be owned by a joint venture named Capitol District Energy Center Co-generation Associates. The facility will generate electricity to meet all of Aetna's needs, with approximately 45 MWe to be sold to Northeast Utilities (NU). The system has been designed to provide firm power to Aetna, as well as baseload steam supply to Aetna and the district heating system.

Oil and gas consumed by the facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility. It is expected that more than 50 percent of the new annual electrical power produced by the facility will be sold causing the proposed facility to be classified as a new electric powerplant under FUA.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. 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 to written request that ERA convene a public hearing.

The public file containing a copy of the Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., 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.**

DATES: Written comments are due on or before July 13, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESS: 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-098, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-39 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone: (202) 252-4523

Steven E. Ferguson, Esq. Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-111, 100 Independence Avenue, SW., Washington, DC 20585, Telephone: (202)252-6947.

SUPPLEMENTARY INFORMATION: The facility will consist of a General Electric Model PG6531 gas turbine (hereinafter "Frame 6"), a two pressure Waste Heat Recovery Boiler (WHRB), a condensing-extraction steam turbine, three 45,000 pph package boilers and four 900 ton two stage absorption chillers. The primary fuel to the plant will be natural gas with fuel oil serving as back-up. It will produce electricity, steam and chilled water from natural gas or fuel oil. Electricity will be provided to meet all of Aetna's needs and approximately 45 MWe sold to Connecticut Light & Power, subsidiary of Northeast Utilities. Steam and chilled water, which will be generated from the gas turbine exhaust, will be sold to Energy Network Inc.'s (ENI) Capitol District Heating and Cooling (CDHC) System. Steam will also be sold to Aetna for heating their Farmington Avenue complex. The CDHC System is being developed to serve heating and cooling requirements in the Capitol area, including Aetna's office buildings, the new State of Connecticut Legislative Office Building the twin office towers of the Underwood Park Development, and other existing commercial and institutional buildings located in the Capitol Area. Cooling and heating energy will be delivered by a circulating water systems through pre-insulated underground piping. In

addition, steam will be provided to heat Aetna's Farmington Avenue complex.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), the petitioner has certified to ERA that:

1. The oil or gas to be consumed by the subject cogeneration unit will be less than that which would otherwise be consumed in the absence of the unit, pursuant to the methodology for computing such savings set forth in 10 CFR 503.37; and

2. The use of a mixture of natural gas and coal or oil and coal is not economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above) the petitioner has included as part of the petition:

1. Exhibits containing the basis for the certification described above; and

2. An environmental impact analysis as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitoner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for this notice.

Issued in Washington, DC, May 12, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11959 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E-86-40; OFP Case No. 5224-9319-20-24]

Pacific Gas and Electric Co.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by the Pacific Gas and Electric Company.

SUMMARY: On April 21, 1986, the Pacific Gas and Electric Company (PGandE) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be known as the San Francisco Cogeneration facility and to be located in San Francisco, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" of "the Act"). Title II of the FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use the alternate fuel as a primary energy source. 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 congeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

PGandE is requesting a permanent cogeneration exemption to construct and operate the San Francisco Cogeneration facility. The proposed facility, to be built on land immediately adjacent to PGandE's presently operating installation, will contain a gas turbine generator and an exhaust Heat Recovery Steam Generator. The facility is to be located in San Francisco, California and all power produced will be sold to PGandE's customers. The entire 32-49.9 MW of new capacity to be provided by the proposed San Francisco Cogeneration Facility is projected to displace less efficient gas and/or oil fired units at PGandE's two older powerplants.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. 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 is regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification 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, DC 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 therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before July 13, 1986. 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-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA C&E-86-40 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4807;

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) 252-6749.

SUPPLEMENTARY INFORMATION: Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration

exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), PGandE has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR § 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), PGandE has included as part of its petition:

1. Exhibits containing the basis for the certification described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) and Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that PGandE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 12, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-11960 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-31-NG]

Czar Resources Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 28, 1986, of an application filed by Czar Resources Inc. (Czar Inc.) for blanket authorization to import from Canada up to 100 Bcf of natural gas per year over a two-year period beginning on the date of first delivery. Czar Inc. is a wholly-owned subsidiary of Czar Resources Ltd. (Czar Ltd.), a Canadian corporation. The gas would be supplied by Czar Ltd. and other Canadian producers and sold by Czar Inc. on a short-term or spot basis to U.S. customers that include, but are not limited to, pipelines, gas distributors, electric utilities, industrial users and agricultural end-users. Czar Inc. would act on its own behalf or as an agent on behalf of U.S. purchasers and/or Canadian suppliers. Czar Inc. asserts that no new pipeline facilities will be required to import the gas. The primary points of importation will be Eastpoint, Idaho, Sumas, Washington, and Detroit, Michigan, through the systems of Pacific Gas Transmission Company, Northwest Pipeline Corporation and Panhandle Eastern Pipeline Company, respectively.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than June 30, 1986.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-4819.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this impoort arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. They must be filed no later than 4:30 p.m. June 30, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially

advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is schedules, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the Czar Inc. application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, May 8, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–12041 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Physics Review Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Physics Review Panel of the Energy Research Advisory Board (ERAB).

Date & time: June 13, 1986—9:00 a.m.–5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW, Room 4A–110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–5767.

Purpose of the parent board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the panel: The Physics Review Panel is a subgroup of ERAB and reports to the parent Board. The Physics Review Panel will review the National Research Council's report, "Physics through the 1990's" and, in particular, assess its specific suggestions for initiatives that are recommended for the Department of Energy.

Tentative Agenda

June 13, 1986

- Administrative items.
- Briefings from Federal agencies on support for physics research programs.
- Future meeting dates.
- Public Comment (10 minute rule).

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the meeting: Available for public review and copying at the Freedom of Information Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 22, 1986.

Charles. E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 86–11982 Filed 5–28–86; 8:45 am]

BILLING CODE 6465–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP86–478–000 et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP86–478–000]

May 20, 1986.

Take notice that on April 28, 1986, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86–478–000 a request pursuant to Sections 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for the delivery of natural gas to 14 end-users under authorization issued in Docket Nos. CP83–140–000, CP83–140–001 and CP83–140–002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to construct and operate 14 sales taps for irrigation, grain drying and small commercial end-users located along its jurisdictional pipeline in the States of Kansas and Nebraska. K N states that the approximate total quantity to be sold to the end-users would be 647 Mcf on a peak day and 14,320 Mcf on an annual basis. It is further stated that the estimated cost of constructing the individual sales taps would range from approximately $850 to $3,400 and that the customers would reimburse to K N a portion of these costs through the imposition of a connection charge which amounts to $250 in the State of Kansas and $400 in the State of Nebraska.

K N states that the proposed sales taps are not prohibited by any of K N's existing tariffs. K N further states that the proposed sales taps would have no significant impact on its peak day and annual deliveries. K N asserts that the natural gas delivered and sold by it to the various end-users would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

Comment date: July 7, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP86–485–000]

May 22, 1986.

Take notice that on April 30, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–485–000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to transport, on an interruptible basis, up to 10,000 dekatherms (dt) equivalent of natural gas per day for Texas Eastern Transmission Corporation (Tetco), with pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement with Tetco dated March 18, 1986, Tetco would tender gas to ANR at a point of receipt on High Island Offshore System (HIOS) at the subsea valve in High Island Area Block A–539, offshore Texas. ANR states that it would then transport the volumes within its dedicated capacity in HIOS and its own facilities and deliver the volumes, adjusted for fuel, to Tetco, at an existing interconnection of the

facilities of ANR and Tetco in St. Landry Parish, Louisiana.

ANR states that it would charge Tetco 17.58 cents per dt delivered, with such charge comprised of 5.10 cents per dt for gas transported through ANR's facilities plus 12.48 cents per dt, the currently effective HIOS overrun rate. ANR further requests authority to collect the HIOS overrun rate from Tetco by including such rate in its charge to Tetco. ANR requests authorization to transport for a term of two years and for such additional term as ANR and Tetco may agree. ANR states that no facilities are required to be constructed by ANR to effect the proposed service.

Comment date: June 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. High Island Offshore System

[Docket No. CP86-484-000]

May 22, 1986.

Take notice that on April 30, 1986, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-484-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities in the offshore Texas area, all as more fully set forth in the application which is on file and open to public inspection.

HIOS proposes to construct and operate approximately 1.5 miles of 30-inch pipeline and appurtenant facilities which would constitute an extension of the existing West Leg of HIOS. It is stated that the proposed facilities would extend due south from the present terminus of the West Leg of HIOS in High Island Area A-582, offshore Texas. It is further stated that such facilities would not increase the capacity of the HIOS system but would permit HIOS to attach new reserves which are currently being developed in the East Breaks area, offshore Texas, and reserves in various other blocks in the vicinity which are expected to be developed.

It is explained that the facilities are proposed to be constructed and ready for service on or about November 1, 1986.

HIOS estimates that the cost of the proposed facilities would be approximately $3,500,000, of which approximately $1,000,000 would be contributed by producers. Such facilities it is asserted would be financed from cash on hand.

It is noted that ANR Pipeline Company has filed an application in Docket No. CP86-483-000 to transport gas for Standard Oil Production Company which would be produced in East Breaks area Block 165, offshore Texas. Such gas, it is indicated, would be transported, in part, through the facilities proposed in Docket No. CP86-484-000.

Comment date: June 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP86-481-000]

May 22, 1986.

Take notice that on April 29, 1986, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet, Houston, Texas 77251-1642, filed in Docket No. CP86-481-000 an application for permission and approval to abandon its Montezuma-South Alta storage field located in Vermillion County, Indiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle states that the underground reservoir is producing an unusually high level of hydrogen sulfide which has caused significant corrosion in withdrawal wells, gathering lines and other plant facilities and that immediate expenditures of $800,000 would be required for repairs caused by such corrosion. Panhandle indicates that even if repairs were made, working storage capacity would only be 800,000 Mcf, down 1.0 Bcf from the authorized level of 1.8 Bcf, and that the daily withdrawal rate would be 10,000 Mcf. Panhandle states that the corrosion problems are expected to continue due to the high hydrogen sulfide level and the limited working storage capacity of the field does not justify the continued high operating cost associated with the field. Therefore, Panhandle states that it is more economical to abandon, rather than operate, the Montezuma-South Alta storage field.

Panhandle estimates that approximately 740,000 Mcf of gas, valued at $280,000, would not be economically recoverable and that all recoverable gas would be withdrawn by the end of 1987. The estimated cost of plugging and abandoning storage wells and removal of equipment, net of salvage, is $515,000 it is stated.

Panhandle states that the abandonment of the Montezuma-South Alta storage field would reduce its system working storage capacity by only 1.0 percent and upon such abandonment, Panhandle would have on its system 193 Bcf and 74 Bcf of storage capacity and working storage capacity, respectively.

Comment date: June 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation, United Gas Pipe Line Company

[Docket No. CP86-229-001]

May 22, 1986.

Take notice that on May 7, 1986, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas, 77252, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86-229-001 a joint petition to amend the order issued March 26, 1986, in Docket No. CP86-229-000 pursuant to Section 7 of the Nautral Gas Act so as to authorize the construction and operation of interconnecting facilities between their systems, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is explained that Texas Eastern and United have received authorization in Docket No. CP86-229-000 to exchange up to 275,000 dt equivalent of natural gas per day. In order to facilitate this exchange Texas Eastern and United propose to construct and operate interconnecting facilities near Loggy Bayou in Red River Parish, Louisiana, and near Raceland in LaFourche Parish, Louisiana.

Specifically, Texas Eastern proposes to construct and operate an interconnection between its facilities and those of United near Loggy Bayou at an estimated cost of $860,000. United proposes to construct and operate an interconnection between its facilities and those of Texas Eastern near Raceland at an estimated cost of $507,300.

Comment date: June 13, 1986, in accordance with the first subparagraph of Standard paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiciton conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12038 Filed 5-28-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

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 $50,174 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with E. B. Lynn Oil Company of Allentown, Pennsylvania (Case No. HEF-0064). The fund will be available to customers who purchased motor gasoline from Lynn during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed no later than 90 days after publication of this notice in the Federal Register and should be addressed to: Lynn Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case No. HEF-0064.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by E. B. Lynn Oil Company of Allentown, Pennsylvania. The Consent Order settled possible pricing violations with respect to the firm's sales of motor gasoline to customers during the May 1, 1979 through April 30, 1980 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on November 1, 1985. 50 FR 46344 (November 7, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the Federal Register. Applications will be accepted from reseller customers who purchased motor gasoline from Lynn during the 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: May 13, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 13, 1986.

Name of Firm: E. B. Lynn Oil Company
Date of Filing: October 13, 1983
Case Number: HEF-0064

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and E. B. Lynn Oil Company (Lynn) of Allentown, Pennsylvania.

I. Background

Lynn sells motor gasoline to other motor gasoline marketers (resellers and retailers) and in bulk to certain end-users. Lynn was therefore a "reseller-retailer" subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. An ERA audit of Lynn's business transactions during the period May 1, 1979 through April 30, 1980 (the audit period) revealed possible overcharges totalling $121,279.32 in sales of motor gasoline to Lynn's five classes of purchaser. Subsequently, Lynn entered into a Consent Order with the DOE on September 20, 1981 in order to settle all disputes and claims between Lynn and the DOE regarding Lynn's compliance with the DOE price regulations in sales of motor gasoline during the audit period (hereinafter referred to as the consent order period). The Consent Order refers to the ERA's allegations of overcharges, but notes that no formal findings of violation were made. Additionally, the Consent Order states that Lynn does not admit it committed any such violations.

In the Consent Order, Lynn agreed to refund $11,182 directly to members of its two end-user classes of purchaser and remit $42,063 to the DOE for deposit in an interest-bearing escrow account.

This Decision and Order concerns the distribution of the funds that were deposited in the escrow account, plus accrued interest.[1]

On November 1, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 50 FR 46344 (November 7, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of Lynn's pricing practices during the consent order period. A copy of the PD&O was published in the Federal Register on November 7, 1985, and comments were solicited regarding the proposed refund procedures. We have received no comments regarding those procedures.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process in order to distribute such funds. 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 ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Lynn consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted.

The distribution of refunds will take place in two stages. In the first stage, refund monies will be refunded to customers who purchased Lynn motor gasoline during the consent order period and who demonstrate that they were injured by Lynn's pricing practices. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund.

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) (*Amoco*). However, we will not discuss second stage refund procedures in this Decision and Order.

A. Refund Claimants

As indicated earlier, Lynn's end-user customers received direct refunds from Lynn pursuant to the Consent Order. They will therefore not be eligible for refunds in this proceeding. Claimants in the Lynn refund proceeding will belong to one of the three classes of purchaser which did not receive refunds directly from Lynn, i.e., resellers (including retailers) of Lynn motor gasoline in Lynn's classes of purchaser 1, 3, or 4.

These three classes are described in the ERA audit file as follows:

Class 1: Large volume reseller which purchased trailer loads of Lynn motor gasoline.

Class 3: Retail gasoline station which received shipments of over 7,000 gallons per month from Lynn.

Class 4: Retail gasoline station which received shipments of less than 7,000 gallons per month from Lynn.

The ERA audit file identifies customers in each of the three classes, but does not list customer-specific overcharge amounts.[2] These customers are listed by class in Appendix B to this Decision and Order. We recognize, however, that there may be other resellers who purchased motor gasoline from Lynn and who may have been injured by Lynn's pricing practices during the consent order period. As proposed, we will accept applications for refund from reseller customers not listed in Appendix B, provided they can prove that they were injured by Lynn's alleged pricing violations.

B. Showing of Injury

To demonstrate injury, a reseller claimant must provide evidence that it would have maintained its prices for the motor gasoline purchased from Lynn at the same level had the alleged overcharges not occurred. Accordingly, any reseller of Lynn motor gasoline should show that at the time it purchased motor gasoline from Lynn, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982). In addition, a reseller must show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[3] As we noted in the PD&O, however, the maintenance of a bank will not automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

The presumptions proposed in the PD&O are being adopted here and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. *See* 10 CFR 205.282(e).

1. Applicants Claiming a Refund of $5,000 or Less

Making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of motor gasoline from Lynn. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove that they did not pass on the alleged overcharges to their own customers. The cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury should also not exceed the amount of the refund to be gained. We will therefore adopt a small claims presumption in this case. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corps*, 12 DOE ¶ 85,014 (1984) (*Marion*). Any reseller applicant claiming a refund of $5,000 or less, based upon the volumetric refund amounts in this proceeding, need not make a detailed showing of injury in order to be eligible to receive a refund.[4]

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[1] Lynn remitted a total of $50,174 of the DOE. This amount includes interest on Lynn's installment payments of the consent order amount to the DOE.

[2] In two instances, the same firm appears as a customer in one of Lynn's end-user classes and in one of its reseller classes. These two customers, as well as any other customer who is a member of both an end-user class and a reseller class, will be eligible to apply for refunds only on the basis of those volumes which they purchased from Lynn and resold.

[3] Retailer applicants will not be required to submit bank information in connection with sales made after July 15, 1979, the date on which the amendment to the price rule eliminating the banking requirement for retailers became effective. 44 FR 42541 (July 19, 1979).

[4] As in prior refund cases, resellers whose calculated refund exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

2. Spot Purchasers

We further adopt our proposal that resellers that made spot purchases from Lynn be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers*, 8 DOE at 85,396–97. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of its spot purchase(s).

C. Calculation of Refund Amounts

We will use a volumetric method to divide the consent order fund among successful applicants. This method generally presumes that the alleged overcharges were spread equally over all the gallons of the consent order product(s) sold by a consent order firm. *See e.g., Vickers*. Moreover, we will use the information contained in the ERA audit file to fashion a refund plan which corresponds more closely to the injuries experienced than would a plan based solely on a volumetric approach. *See e.g., Marion* (applicant could choose between volumetric refund and pro rata share of alleged overcharges). In the present case, we will presume that the effects of the alleged overcharges were dispersed equally within each individual reseller class of Lynn customers, and not equally over all sales to all customers. *See e.g., Blex Oil, Inc.*, 13 DOE ¶ 85,019 (1985) (*Blex*). The ERA audit file in the present case indicates that there is a marked difference in the amount of the per gallon overcharge allegedly experienced by each of the three classes. Therefore, in order to distribute the refund monies to firms in a manner which more closely approximates their actual injury, we will grant refunds to claimants in the three classes of customer based on three different volumetric refund amounts. *See e.g., Collins Oil Co.*, 13 DOE ¶ 85,077 at 88,213 n.7 (1985), and *Eugene Endicott*, 13 DOE ¶ 85,086 at 88,233 n.9 (1985) (combination of pro rata share of alleged overcharges and volumetric presumption for certain classes of purchaser). *See also Blex*. The volumetric refund amount is calculated by dividing the consent order settlement amount attributable to each class of purchaser by the gallonage of motor gasoline sold by Lynn to that class during the consent order period.[5] The per gallon volumetric refund amounts, exclusive of interest, are set forth in Appendix A.[6] An eligible claimant's refund will be calculated by multiplying the appropriate volumetric refund amount by the number of gallons of motor gasoline the claimant purchased from Lynn during the consent order period.[7] In addition, the interest which has accrued on the money in the Lynn escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the costs of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1985).

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Lynn consent order fund. Acccordingly, we shall now accept applications for refund from eligible customers who purchased Lynn motor gasoline during the consent order period. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund:

1. The name of the consent order firm: E.B. Lynn Oil Company, the case number: HEF–0064, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used the Lynn motor gasoline, i.e., whether it was a reseller or end-user.

4. The volume of Lynn motor gasoline that the applicant purchased in each month of the period of time for which it is claiming it was injured by the alleged overcharges.

5. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations from the month in which purchases were first made until the termination of banking regulations (July 15, 1979 for retailers; April 30, 1980 for resellers and retailer-resellers).

(b) Submit evidence to establish that it did not pass through the alleged overcharges to its customers. For example, a firm may compare the prices it paid for Lynn motor gasoline with the prices paid for that product by its competitors to show that price increases to recover alleged overchanges were infeasible.

6. A statement of whether the applicant was in any way affiliated with Lynn. If so, the applicant should state the nature of the affiliation.

7. A statement of whether there has been any change in ownership of the entity that purchased the motor gasoline from Lynn since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

8. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. 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).

9. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW.,

[5] The consent order settlement amount for each class of purchaser represents a share of the total consent order fund that is proportional to the share of the total alleged overcharges experienced by that class.

[6] We recognize that the impact on an individual purchaser could have been greater than the applicable volumetric refund amount, and we will allow any purchaser to file a refund application based on a claim that it suffered a disproportionate injury as a result of Lynn's pricing practices. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984) and cases cited therein.

[7] One Lynn customer, Airport Garage, was listed as being in two reseller classes of customer. In determining the total refund for which it may be eligible, we will multiply the amount of motor gasoline it purchases as a member of each class by the appropriate volumetric refund amount for that class.

Washington, D.C. Any applicant that 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 material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

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 Refund from the funds remitted to the Department of Energy by E.B. Lynn Oil Company pursuant to the Consent Order executed on September 20, 1981 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: May 13, 1986

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A

Name of Firm: E.B. Lynn Oil Company
Consent Order Period: May 1, 1979—April 30, 1980
Product Covered: Motor Gasoline
Consent Order Amount: $50,174.00

Class of purchaser	Portion of consent order fund	Per gallon volumetric amount
No. 1	$2,894.00	$0.001694
No. 3	21,811.00	.015778
No. 4	25,469.00	.019760

Appendix B

The following is a list of Lynn's identified reseller customers according to class:

Class 1

Hill Oil Company

Class 3

Rudy's Amoco
*Dick's Amoco
Rolland Amsallan
Fluck & Sloyer
C.B. Schnick
Fuys Exxon
Walters
*K Amoco
John Kelson
Dries Supply
Airport Garage

Class 4

*F. Koerbler
*Rome Dilorenzo
*Randy Knessler
*Schlosser Bros.
*Frank Klotz
*Fred Debaradinis
*A. Dinardo
S & R Amoco
Art's Service Center
*Robert Hedrick
*John Kelbon
*Fat Boy's Amoco
Gutshall Chevco
Faulkner Olds
Trexler Oil
Hurnish Oil
Orkin
Ernest Altyeh Jr.
W. S. Reichenbach & Son Inc.
Art Houser
Lamar Wolfgang
Airport Garage
Union
Moch Truck
J & R Amoco
Call Chronicle News
George Lightwalner

*We have obtained addresses for customers whose names have been marked with an asterisk and have sent them copies of this Decision and Order. We do not have addresses for those customers whose names have not been marked, but they remain eligible for refunds and may contact the Office of Hearings and Appeals to request a copy of this Decision. We plan to make further efforts to locate these customers.

[FR Doc. 86-11950 Filed 5-28-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 31 through April 4, 1986

During the week of March 31 through April 4, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Beco Corporation, 04/02/86; KEA-0021

BECO Corporation filed an Appeal from a denial by the Manager, Idaho Operations Office of a request for information which the company had submitted pursuant to the Freedom of Information Act. The company had sought access to responses to a cancelled Request for Proposal (RFP), which was subsequently reissued. In considering the Appeal, the DOE found that the reissued RFP was substantially similar to the prior RFP. The DOE determined that the responses could be used by competitors to the detriment of the original submitters. The DOE therefore determined that the proposals were properly withheld prior to the time of selection of a winning proposal pursuant to 5 U.S.C. 552(b)(4). Accordingly, the Appeal was denied.

Requests for Exception

Otis Ainsworth, 04/04/86; HEE-0066

Otis Ainsworth filed an Application for Exception in which he sought to be relieved of his obligation to make restitution under the terms of a Remedial Order. In considering the request, the DOE found that (i) the doctrine of laches was applicable to exception proceedings, (ii) Ainsworth's delay in applying for relief was not excusable, and (iii) the delay resulted in prejudice to the DOE and third parties. Accordingly, exception relief was denied.

Bernard Schafer Petroleum, 03/31/86; HEE-0132

Bernard Schafer Petroleum filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the request, the DOE found that the 12 hours per month that the firm needed to complete the form placed a disproportionate burden on Schafer. Accordingly, the DOE granted the Application for Exception, permitting Schafer to file the form using estimated data.

Implementation of Special Refund Procedures

Fine Petroleum Company, 04/04/86; HEF-0072

The Office of Hearings and Appeals issued a final Decision and Order establishing special refund procedures for the distribution of $25,000, plus interest, obtained as a result of a consent order entered into by the DOE and Fine Petroleum Company. Under these procedures, the funds will be distributed to customers who purchased refined petroleum products from Fine during the period November 1, 1973 through February 29, 1976 and who establish that they were injured as a result of Fine's pricing practices. The Decision stated, however, that end-users and resellers requesting refunds of $5,000 or less will not be required to make a detailed showing of injury. Successful applicants will generally receive refunds proportionate to the volumes of petroleum products that they purchased from Fine during the consent order period.

U.S.A. Petroleum, 04/04/86; HEF-0500

The DOE issued a Decision and Order implementing a plan for the distribution of $1,750,000 plus interest, received as a result of a consent order with U.S.A. Petroleum. The DOE first decided that a portion of the fund related to U.S.A.'s participation in the Crude Oil Entitlements Program should be set aside for distribution pursuant to DOE policy. The DOE determined that the remaining portion of the settlement fund, $962,500, should be distributed to customers who were injured as a result of purchases of petroleum products from U.S.A. Petroleum during the period August 1973 through January 1981. The Decision stated, however, that end-users and resellers requesting refunds of $5,000 or less would not be required to make a detailed showing of injury. The DOE provided that successful applicants would generally receive refunds proportionate to the volumes of U.S.A.'s refined products that they purchased.

Wellen Oil, Inc., 04/03/86; HEF-0584

The Office of Hearings and Appeals issued a final Decision and Order establishing special refund procedures for the distribution of $69,216.58 plus interest, obtained as a result of a Consent Order entered into by the DOE and Wellen Oil, Inc. Under these procedures, the funds will be distributed to customers who purchased petroleum products from Wellen during the period September 1, 1973 through December 31, 1973, and who establish that they were injured as a result of Wellen's pricing practices. The Decision states, however, that end-users or resellers requesting refunds of $5,000 or less will not be required to make a detailed showing of injury. Successful applicants will receive refunds proportionate to the volumes of petroleum products they purchased from Wellen during the consent order period.

Refund Applications

Appalachian Flying Service/Pendley Constructors, Inc., et al., 04/01/86; RF234-1, ET AL.

The DOE issued a Decision and Order concerning Applications for Refund filed by six end-users of aviation fuel and aviation gasoline purchased from Appalachian Flying Service. In accordance with the Procedures establishes in the Appalachian Special Refund Proceeding, the DOE determined that each applicant should receive a refund based on the volumes of aviation fuel and aviation gasoline it purchased from Appalachian during the consent order period. The total amount of refunds approved in this Decision is $2,700 ($2,402 principal plus $298 interest).

Earth Resources Company/Defense Logistics Agency, 03/31/86; RF239-3

The DOE issued a Decision and Order concerning an Application for Refund filed by the Defense Logistics Agency (DLA), an ultimate consumer of Earth Resources Company petroleum products. The DLA applied for a refund based on the procedures outlined in *Earth Resources Co.*, 13 DOE ¶85,384 (1986), governing the disbursement of settlement funds received from Earth Resources pursuant to a 1981 consent order. Those procedures specified that DLA was eligible to file for a refund equal to the amount of credit payments due DLA under the terms of the consent order, but never paid to the firm by Earth Resources. The DOE concluded that DLA should receive a total refund of $2,225,585, consisting of the consent order credit payments of $1,540,632 and $684,953 in accrued interest.

F.O. Fletcher, Inc./Franklin Oil Company, 04/01/86; RF172-22

The DOE issued a Decision and Order concerning an Application for Refund filed by Franklin Oil Company in connection with a consent order fund made available by F.O. Fletcher, Inc. Franklin, a reseller of diesel fuel, provided evidence that it purchased diesel fuel from Fletcher during the consent order period, but was unable to make an adequate showing of injury to merit a refund over the $5,000 small claims threshold established in the Fletcher Special Refund Proceeding. Accordingly, the DOE granted Franklin a refund of $5,000. The total refund amount approved in this Decision is $9,598 ($5,000 in principal plus $4,598 in interest).

F.O. Fletcher, Inc./McCall Oil and Chemical Corporation, 03/31/86; RF172-26

The DOE issued a Decision and Order concerning an Application for Refund filed by McCall Oil and Chemical Corporation, in connection with a consent order fund made available by F.O. Fletcher, Inc. McCall, a retailer of No. 2 heating oil and kerosene, provided evidence that it purchased these products from Fletcher during the consent order period, but was unable to make an adequate showing of injury to merit a refund over the $5,000 small claims threshold established in the Fletcher Special Refund Proceeding. Accordingly, the DOE granted McCall a refund of $5,000. The total refund amount approved in this Decision is $9,598 ($5,000 in principal plus $4,598 in interest).

Gulf Oil Corporation Finley's Gulf, et al., 03/31/86; RF40-00396, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed by retailers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. The DOE concluded that they should receive a total refund of $16,204, consisting of $13,634 in principal and $2,570 in interest.

Gulf Oil Corporation/Rollins Gulf Station, Inc., 04/01/86 RF40-1195

The DOE issued a Decision concerning an Application for Refund from the Gulf Oil Corporation escrow account filed by Rollins Gulf Station, Inc. The DOE cited the requirement that Gulf refund applicants demonstrate that they would not have been required to pass through to their customers a cost reduction equal to the refund claimed. The DOE then found that the firm had negative cost banks during the period November 1, 1973 through January 31, 1976, and higher profit margins in August through October 1973 than during the May 1973 base period. The DOE therefore concluded that the firm suffered no injury during the consent order period and would be required to pass through any refund to its customers. Accordingly, Rollins' refund application was denied.

Gulf Oil Corporation/State of Connecticut, 04/04/86; RF40-3119

The DOE issued a Decision and Order concerning an Application for Refund filed by the State of Connecticut in connection with a consent order fund made available by Gulf Oil Corporation. The State, and end-user of Gulf petroleum products, purchased the products directly from Gulf. Pursuant to procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), the State submitted evidence showing that it purchased 156,200 gallons of Gulf product. The DOE concluded that the State should therefore receive a total of $226 ($190 in principal plus $36 in interest).

Gulf Oil Corporation/State of Tennessee, 04/01/86; RF40-3132

The DOE issued a Decision and Order granting an additional refund to the State of Tennessee in the Gulf Oil Corporation special refund proceeding, based on 1,285,072 gallons of Gulf product that were not included in the calculation of the State's original refund. The additional refund totaled $1,864, representing $1,568 in principal and $296 in interest.

Gulf Oil Corporation/The Cincinnati Vulcan Oil Co., et al., 04/01/86; RF40-534, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed on the basis of the procedures set forth in *Gulf Oil Corp.*, 12 DOE ¶ 85.048 (1984). In accordance with these procedures, the applicants, all direct purchasers of Gulf motor gasoline, demonstrated that they would not have been required to pass through to customers a cost reduction equal to the refund claimed. The DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this decision totaled $139,451.03 ($117,737.20 in principal and $21,713.83 in interest).

Inland U.S.A., Inc./Midwest Petroleum Company, 04-04-86; RF176-16

The DOE issued a Decision and Order concerning an Application for Refund filed by Midwest Petroleum Company, in connection with a consent order fund made available by Insland U.S.A., Inc. Midwest, a reseller of motor gasoline, provided evidence that it purchased motor galoline from Inland during the consent order period and was injured by the alleged Inland overcharges. Accordingly, the DOE granted Midwest a refund based on the full amount allocable to the firm under the procedures set forth in the Inland Special Refund Proceeding. The total refund amount approved in this Decision is $75,697 ($52,040 in principal plus $23,657 in interest).

Inland U.S.A., Inc./Sieveking Company, Inc., et al., 04-04-86; RF176-14, et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed in connection with a consent order fund made available by Inland U.S.A., Inc. Each applicant was a reseller that provided evidence that it purchased motor gasoline from Inland during the consent order period, but none was able to make an adequate showing of injury to merit a refund over the $5,000 small claims threshold. Accordingly, the DOE granted each applicant a refund of $5,000. The total amount of refunds approved in this Decision is $21,819 ($15,000 in principal plus $6,819 in interest).

Leese Oil Company/Mitchell Construction Company, 04-04-86; RF211-10

The DOE issued a Decision and Order concerning an Application for Refund filed by Mitchell Construction Company, in connection with a consent order fund made available by Leese Oil Company. In accordance with the procedures established in the Leese Special Refund Proceeding, the DOE determined that Mitchell, an end-user of Leese motor gasoline, should receive a refund based on the full volume of motor gasoline it purchased from Leese during the consent order period. The total refund amount approved in this Decision is $433 ($368 in principal plus $65 in interest).

Little America Refining Company/Service Oil Company, Mountain States Petroleum Corporation, 04–04–86; RF112–69, RF112–179

The DOE issued a Decision and Order granting refunds from the Little America Refining Company deposit escrow account to Service Oil Company and Mountain States Petroleum Corporation, two purchasers of Larco petroleum products. Both of the applicants submitted claims for less than the $5,000 small claims threshold, and were therefore not required to submit additional evidence of injury. The refunds to these firms totaled $5,455, representing $3,649 in principal and $1,806 in interest.

Placid Refining Company, et al., 03/31/86; RF171–32, et al.

The DOE issued an order directing immediate payment of claims filed by ten recipients of exception relief from the Crude Oil Entitlements Program. Funds sufficient to pay those claims had previously been segregated into interest-bearing escrow accounts, pending resolution of related litigation. The order directed the disbursement of a total of $29,393,974 plus interest to the ten firms.

Saber Energy, Inc./Land O' Lakes, Inc., et al., 04/03/86; RF192–2, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by resellers and end-users of Saver refined petroleum and natural gas liquid products. All of the claimants applied for refunds based on the procedures outlined in *Saver Energy, Inc.*, 13 DOE ¶ 85,134 (1985). The applicants elected to limit their claims to the $5,000 presumption amount. After disallowing portions of those claims based on purchases of products that had been decontrolled prior to the date of purchase, the DOE granted refunds totaling $66,943, including $47,976 in principal and $18,967 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.
Don's Sinclair RF112–89
G. & L. Oil Company RF143–5

Copies of the full text of these decisions and orders are available in the Public Reference 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 lose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 9, 1986.

[FR Doc. 86–11951 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures; Farstad Oil Co.

AGENCY: Office of Hearings and Appeals.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $67,623.34 obtained as a result of a consent order which the DOE entered into with Farstad Oil Company, a reseller-retailer of petroleum products located in Minot, North Dakota. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 20 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0567.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6602.

SUPPLEMENTARY INFORMATION: In Accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $67,623.34 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Farstad Oil Company (Farstad). The funds were provided to the DOE by Farstad to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline and No. 1 and No. 2 diesel fuel during the period November 1, 1973, through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals that purchased Farstad motor gasoline and No. 1 and No. 2 diesel fuel during the consent order period, provided that they have not already received a direct refund from the firm. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of Farstad motor gasoline and No. 1 and No 2 diesel fuel and to demonstrate that it was injured by Farstad's pricing practices. The specific requirements for providing injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-Stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 20, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of The Department of Energy—Implementation of Special Refund Procedures

May 20, 1986

Name of Firm: Farstad Oil Company
Date of Filing: March 6, 1985
Case Number: HEF 0567

Under the procedural regulations of the department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On March 6, 1985, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Farstad Oil Company (Farstad).

I. Background

Farstad is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Minot, North Dakota. A DOE audit of Farstad's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged

that between November 1, 1973, and April 30, 1974, Farstad committed possible pricing violations in its sales of motor gasoline and No 1 and No. 2 diesel fuel.

In order to settle all claims and disputes between Farstad and the DOE regarding the firm's sales of motor gasoline and No. 1 and No. 2 diesel fuel during the period covered by the audit, Farstad and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Farstad does not admit that it violated the regulations.

Under the terms of the consent order, Farstad agreed to refund $78,636.17, plus interest, as follows: First, Farstad was to directly issue checks totaling $27,472.56, plus interest, to its end-user customers; second, in order to make restitution to its wholesale customers, Farstad was required to deposit $51,163.61, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. On February 14, 1984, Farstad remitted $67,623.34 to the DOE. In addition to the $66,981.67 paid as settlement for the alleged wholesale overcharges, this sum included $641.67 assigned to the end-user customers which Farstad could not locate.[1] This Decision and Order proposes procedures to distribute the $67,623.34 received from Farstad plus the interest which has accrued on the escrow account.[2]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline and No. 1 and No. 2 diesel fuel that may have been injured by Farstad's pricing practices during the period November 1, 1973, through April 30, 1974, provided that they have not already received direct refunds from Farstad. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In thr first stage of the Farstad refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Farstad's alleged overcharges, provided that they have not already received direct refunds from the firm.[3] As we have done in many prior refund cases, we propose to adopt certain presumptions and findings which will be used to help determine the level of a purchaser's injury.

The presumptions and findings we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all of Farstad's sales of motor gasoline and No. 1 and No. 2 diesel fuel made during the consent order period. This presumption is called a volumetric methold. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making proposed findings that end users, certain types of regulated firms, and cooperatives were injured by Farstad's pricing practices.

The pro rata, or volumatric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product covered by the consent order. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to reveive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE § 85,054 at 88,164 (1984), and cases cited therein.

Under the volumeric method we plan to adopt, a claimant will be eligible to receive a refund equal to the a number of gallons of Farstad motor gasoline and No. 1 and No. 2 diesel fuel that it purchased during the consent order period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.007551 per gallon.[4] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that purchasers of Farstad motor gasoline and No. 1 and No. 2 diesel fuel that are seeking small refunds were injured by the firm's pricing practices. Under this presumption, a claimant which is a reseller or retailer would not be required to submit any additional evidence of injury beyond volumes of Farstad motor gasoline and No. 1 and No. 2 diesel fuel purchased if its refund claim is below $5,000. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069, at 88,210 (1984); *Office of Special Counsel, 11 DOE ¶ 85,226 (1984) (Conoco)*, and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm might make such a showing, a firm is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices.[5]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. Firms which made only spot purchases of Farstad products will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured.

As noted above, we have concluded that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would thereofre be beyond the scope of a special refund proceding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) *(PVM)*;

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[1] The end users that received direct refunds, all of which are affilliated with the United States Government, are not eligible to apply for refunds in this proceeding. However, applications will be accepted from end users that did not receive direct refunds from Farstad. All of these latter customers are either individuals or non-U.S. Government entities.

[2] The total value of the Farstad account stood at $81,858.60 as of April 30, 1986.

[3] The Appendix to this Proposed Decision and Order contains the names of some customers that may have purchased petroleum products from Farstad during the consent order period. We will accept information regarding the present locations of these purchasers for a period of 90 days following publication of a final Decision and Order in this proceeding.

[4] This figure is computed by dividing the $67,623.34 received from Farstad by the 8,956,072 gallons of motor gasoline and No. 1 and No. 2 diesel fuel sold by Farstad during the consent order period to customers that did not receive direct refunds from the firm.

[5] Resellers or retailers that claim a refund in excess of $5,000 but which do not attempt to establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims of $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982).

See also Texas Oil & Gas Corp., 12 DOE at 88,209, and cases cited therein.[6]

In additon, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the petroleum product overcharges alleged by ERA. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Farstad's alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982 *(Tenneco), and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) *(Pennzoil)*. Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. See, e.g., *Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases of Farstad motor gasoline and No. 1 and No. 2 diesel fuel as well as all relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. It there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to be applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private actions filed under Section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Farstad Oil Company pursuant to the Consent Order executed on September 1, 1981, will be distributed in accordance with the foregoing decision.

Appendix

Farstad Oil Company—First Purchasers

Ahmann's Service
William Albrecht
American Grain & Cattle
Thomas Anderson
Armours Oil Co.
Lynn Arneson
Arrowhead Tesero
Art's Body Shop
Austads
B & B Friendly Service
Bair's Truck Stop
Bell Communications
Ken Benson
Big Steer Restaurant
Bigwood Oil Co.
Bill's Husky
John Blake
Bottineau Oil Co.
Brown's Service
Jerry Buettner
Burlington Texaco
Campus Texaco
Lloyd Charron
City Shop
T.W. Cockrell
Cole Petroleum
Columbus Oil Co.
Coop Oil Association
D & E Oil
Phil Dahle
Dale's Cash Supply
Dale's Truck Stop
Dave's Oil Co.
Andy Dejarlais
Denius Oil Co.
Dickinson Husky
John Dickman
Don Moe Dodge
Dunseith Public Schools
Economy Fuel
Emerald Moggard
Errco Service
Farmers Elevator
Farmers Grain and Oil
Farmers Union Oil Co.
Fish Garbarge Service
Floyd Frieze Exxon
Floyd's Interstate
Garden Valley Exxon
Norman Glenz
Goulding Mobil
Green Oil Co.
Gary Gross
Peter A. Gross
Gustafson Oil Co.
Gwinner Oil Co.
Haas Mobil
Marlin Hankinson
Heringer Oil Co.
Hershey-Patterson
Norris Heskin
Highway Corners Texaco
Husky Truck Stop
Hutton Oil Co.
I-94 Oasis Skelly
I-94 Truck Oasis
Ihringer Oil Co.
Independent Farmers Oil
Interstate Oil Co.
Industrial Builders
Bob Irwin
Jake's Auto Glass
Jamestown Truck Plaza
Johnson Chevrolet
Fred Johnson
Irver Johnson
Jones Oil Co.
Kal's Texaco
Leonard Kassner
Joan King
Elmer Knutson
Kraft's Grocery
Clarence Kringlee
Lake Region Coop Oil
Lane Sheet Metal
Laraway Bulk Station
Larry's Auto
Ernest Livingston
Lockrem Oil Co.
Stan Lozensky
Don Lund
Roger Lund
Ken Lystad
Maddock Oil Co.
Major Brands
Jules Mathis
Maxbass Oil Co.
Mayer Truck
Merv's Errco Service
Guy Metzdorf
Midland Coop
Midland Diesel
Midwest Service
City of Minot
Minot Salvage
Minot Sand and Gravel
Mohler Oil Co.
Morty Oil Co.
Mouse River Oil

[6] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

Mutchler Grain Co.
Muus Lumber
Myles Myhre
Lowell Ness
New Rockford Fessenden Co-op
Nifta Enterprises
Nolan Surge Service
Erwin Norenberg
North Dakota State Highway Department
North Hill Texaco
Northwest Grain and Salvage
Northwest Spraying
Nortonville Oil Co.
O'Day Equipment
Ohio Brass Co.
Oskey Brothers
Ostby Service
Ottoshine
Overby Oil Co.
Palrojes Brothers
Parker and Parker
Payne Brothers
Peavy Co.
Perry's Grocery
Perry's Texaco
Pioneer Construction
Prime Petroleum
Rabbit Marketing
Ralph Harford Texaco
Refrigerator Equipment
Jim Reinharts
Rensch Garage
Rick's Skelly
Riverside Texaco
Robo Wash
Rolla Oil Co.
Roughrider Truck Stop
Ron Ruther
Ruthville Texaco
Schaan Oil Co.
Paul Schoty
Merle Schumocher
Shunk's Oil Co.
Jim Soltis
Soo Line Railroad
Sornsin Construction
Southdale Texaco
Speedway Service
Speedy's Tire Center
Roy Stenson
Jim Storud
Struckness Construction
Surry Grocery
Surry Skelly
Carl Swartout
Rube Swenson
Taste Rite Packing
Taylor Oil Co.
Ted's Garage
Tesoro Oil
Texaco Co., New Rockford
Thomas Enterprises
Thomas, Inc.
Tocley Texaco
Roy Tripp
Turtle Mountain Oil
Twin City Barge & Towing
United Parcel Service
Joe Volk
Larry Vannett
Ward County
Westlie Skelly Truck Stop
Jerry Wolfe
Wood River Oil and Refining
Conrad Ziegler
Alec Zorn

[FR Doc. 86-11981 Filed 5-28-86; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Ramos Oil Co., Inc.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $21,818.84 obtained as a result of a Consent Order which the DOE entered into with Ramos Oil Company, Inc., a reseller-retailer of petroleum products located in West Sacramento, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0159.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $21,818.84 plus accrued interest obtained by the DOE under the terms of a Consent Order entered into with Ramos Oil Company, Inc. (Ramos). The funds were provided to the DOE by Ramos to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price and allocation regulations with respect to its sales of motor gasoline, No. 2 diesel fuel, and lubricants (covered products) during the period August 20, 1973, through January 27, 1981.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals that purchased Ramos covered products during the consent order period. In order to obtain a refund, each claimant will be required to submit a schedule, broken down by product, of its monthly purchases of Ramos motor gasoline, No. 2 diesel fuel, and lubricants and to demonstrate that it was injured by Ramos' pricing practices. The specific requirements for proving injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 20, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of The Department of Energy—Implementation of Special Refund Procedures

May 20, 1986.

Name of Firm: Ramos Oil Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0159.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administraton (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Ramos Oil Company, Inc. (Ramos).

I. Background

Ramos is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR § 212.31 and is located in West

Sacramento, California. A DOE audit of Ramos' records revealed possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to the firm's sales of motor gasoline, No. 2 diesel fuel, and lubricants (covered products).

In order to settle all claims and disputes between Ramos and the DOE regarding the firm's sales of covered products during the period August 20, 1973, through January 27, 1981, Ramos and the DOE entered into a consent order on May 19, 1983. The consent order refers to ERA's allegations of regulatory violations but notes that there was no finding that infractions occurred. Additionally, the consent order states that Ramos does not admit that it violated the regulations.

Under the terms of the consent order, Ramos was required, in three annual installments, to deposit a total of $19,000, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Ramos made its final payment on May 30, 1985.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of covered products which may have been injured by Ramos' pricing practices during the period August 20, 1973, through January 27, 1981. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Ramos refund proceeding, we propose to distribute the funds currently in escrow to claimants which demonstrate that they were injured by Ramos's alleged overcharges.[2] As we have done in many prior refund cases, we propose to adopt certain presumptions and findings which will be used to help determine the level of a purchaser's injury.

The presumptions and findings we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund application in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all of Ramos' sales of covered products made during the consent order period. This presumption is called a volumetric method. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making proposed findings that end users, certain types of regulated firms, and cooperatives were injured by Ramos' pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product covered by the consent order. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

Under the volumetric method we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons of Ramos covered products that it purchased during the consent order period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.000213 per gallon.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that purchasers of Ramos covered products seeking small refunds were injured by the firm's pricing practices. Under this presumption, a claimant that is a reseller or retailer would not be required to submit any additional evidence of injury beyond volumes of Ramos covered products purchased if its refund claim is below $5,000. *See Texas Oil & Gas Corp.*, 12 Doe ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm might make such a showing, a claimant is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices.[4]

A modification of the standard injury requirement is necessary in this proceeding because for a portion of the 7½-year Ramos consent order period, retailers and resellers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 Fed. Reg. 29,546 (1980). Instead, effective July 16, 1979, for retailers and May 1, 1980, for resellers, these firms were required to calculate their MLSPs by adding a fixed-margin to their cost of product. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Since as of those dates retailers and resellers of motor gasoline were not required to maintain or compute cost banks, any requirement that these claimants make demonstrations of injury based on unrecovered banks would effectively eliminate all non-threshold applicants for a portion of the consent order period. Therefore, in this proceeding, we will not require retailers and resellers to submit

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[1] Ramos paid $21,818.84, including installment interest, into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Ramos escrow account stood at $24,948.09 as of April 30, 1986.

[2] At present, the record does not contain any information which indicates that allocation violations were uncovered during the audit investigation. However, since the consent order resolves disputes between Ramos and the DOE concerning the firm's compliance with the Mandatory Petroleum Allocation Regulations, as well as the price regulations, the escrow funds may be used to provide restitution to individuals and firms which show that they were injured by Ramos's allocation practices. For these claimants, we apropose to implement the same procedures that have been used in prior Subpart V proceedings involving alleged allocation violations. *See* Power Pak Co., Inc., 14 DOE $ 85,001 (1986).

[3] This figure is computed by dividing the $21,818.84 received from Ramos by the 102,402,443 gallons of covered products estimated to have been sold by the firm during the consent order period.

[4] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

cost banks for the periods after July 16, 1979, and May 1, 1980, respectively.[5] However, retailers and resellers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costs, *e.g.*, through a demonstration of reduced profit margins, decreased market shares, depressed sales volumes or competitive disadvantage.[6]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 86,396–97. Firms which made only spot purchases of Ramos covered products will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured.

As noted above, we have concluded that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[7]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the petroleum products overcharges alleged by ERA. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Ramos' alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after anlayzing all appropriate claims.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases of Ramos motor gasoline, No. 2 diesel fuel, and lubricants as well as all relevant information necessary to support its claim in accordance with the presumptions and findings outlined above.[8] A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private actions filed under Section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Ramos Oil Company, Inc. pursuant to the Consent Order executed on May 19, 1983, will be distributed in accordance with the foregoing decision.

[FR Doc. 86–11980 Filed 5–28–86; 8:45 am]

BILLING CODE 6450–01–M

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[5] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982).

[6] Resellers or retailers which claim a refund in excess of $5,000 but who do not attempt to establish that they did not pass through the price increase will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982).

[7] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

[8] Although the price of motor gasoline was controlled until January 27, 1981, No. 2 diesel fuel and lubricants were deregulated on July 1, 1976, and September 1, 1976, respectively. In compiling its schedule of monthly purchases a claimant should not include purchases of deregulated products.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36122; FRL-3023-3]

Pesticide Programs; Guide Standard and Protocol for Microbiological Water Purifiers; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: This notice announces the development of a guide standard and protocol for testing microbiological water purifier units submitted to the EPA for registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This standard includes specific requirements for three basic types of microbiological water purifiers. Only two types of units are subject to registration under FIFRA (ceramic candles and/or units with a chemical agent and halogented resins and/or units). This notice is applicable only to these two types of units. The standard will also serve as the basic framework for developing appropriate modifications to evaluate and test other basic types of microbiological water purifier units that might be registered under FIFRA in the future. The Office of Pesticide Programs (OPP) is soliciting public comments on this guide standard in order to consider any pertinent concern before publishing the protocol as a final guideline available from the National Technical Information Service (NTIS). Copies of the guide standard, as proposed are available from Ms. Dorothy Portner whose address and telephone number are given under **FOR FURTHER INFORMATION CONTACT.**

DATE: Written comments must be received by July 14, 1986.

ADDRESS: Submit three copies of comments, identified by the control number "OPP-36122," by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm., 236, CM#2, 1921 Jefferson Davis Highway, Arlington, Va.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dorothy Portner, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C 20460. Office location and telephone number: Rm. 711, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0484). Contact Ms. Portner for a copy of the proposed guide standard.

SUPPLEMENTARY INFORMATION: Several Federal offices, as well as industrial and consumer groups, have been involved in responding to questions and problems relating to microbiological water purifer equipment and have recognized the need for a guide standard and testing protocol to evaluate these units. In July 1984, the Office of Drinking Water (ODW) and OPP formed a work group to recommend a standard and to develop a testing protocol for microbiological water purifiers. A committee was selected, consisting of a broad multi-disciplinary group of experts from academia, industry, and government. The committee was chaired by Stephen A. Schaub, Ph.D., U.S. Army Medical Bioengineering Research and Development Laboratory. The committee's objective was to produce a comprehensive document that would be useful for government, industry, and consumers:

1. As a basic framework for testing and evaluating microbiological water purifiers for EPA registration.

2. As a guide to the acceptance of water treatment units where point-of-use units may be needed to treat a contaminated public water supply or for emergency situations.

3. As a test guide to manufacturers wishing to consider and evaluate their units as microbiological water purifiers, whether registered or not.

4. As a guide to consumers regarding the performance to be expected from microbiological water purifiers tested according to this standard and protocol.

5. To assist in the evaluation of microbiological treatment units for military applications.

This guide standard covers three basic types of units subject to registration and/or regulation under FIFRA. These units are identified by their principal means of action: (1) Ceramic candles and/or units (with or without an antimicrobial agent): filtration and adsorption, and antimicrobial activity if a chemical is included; (2) halogented resin and/or units: chemical disinfection and possibly filtration; and (3) ultraviolet (UV) units: UV irradiation with possible add-on treatment for adsorption and filtration. The performance requirements and a comprehensive protocol with detailed microbiological test procedures, developed under defined basic principles, are specified for these three basic types of devices. OPP intends to utilize applicable sections of this guide standard as the basis for deriving efficacy data to support the registration of ceramic candle units with an antimicrobial agent and halogented resin units (types 1 and 2). Other sections of this standard may be used by other Federal offices, device manufacturers, and consumer groups as a guide to evaluate the effectiveness of devices that are regulated under FIFRA only as microbiological water purifiers (ceramic candle units without an antimicrobial agent and UV units).

Dated: May 20, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 86-11998 Filed 5-28-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1591]

Petitions for Reconsideration and Applications for Review of Actions in Rulemaking Proceedings

May 20, 1986.

Petitions for reconsideration and applications for review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to oppositions must be filed within 10 days after the time for filing oppositions has expired.

Subject: Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers (CC Docket No. 84-800, Phase I).

Number of petitions received: 3.

Applications for Review Filed

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Oak Beach and Bay Shore, New York.) (MM Docket No. 84–293, RM–4611.)

Number of applications received: 2.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–12024 Filed 5–28–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC 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, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004059–003
Title: San Francisco Terminal Agreement
Parties: The San Francisco Port Commission California Stevedore & Ballast, Co.
Synopsis: The purpose of this amendment is to extend the term of the basic agreement until June 30, 1987, with all other terms and conditions remaining in force. The parties have requested a shortened review period.

Agreement No.: 224–004177–001
Title: Port of Seattle and Seattle International Terminal, Inc., Terminal and Crane Lease Agreement
Parties: Port of Seattle (Port) Seattle International Terminal, Inc. (Lessee)
Synopsis: The proposed amendment would convert 5.17 acres of backup storage yard to container yard use, and provide for a construction rental abatement. It would also give the Port's formal consent to a corporate reorganization by the Lessee. The parties have requested a shortened review period.

Agreement No.: 224–010944
Title: Jacksonville Terminal Agreement
Parties: Jacksonville Port Authority (Port), United States Line, Inc. (USL)
Synopsis: The proposed agreement specifies the incentives the Port will offer to USL as an inducement to utilize its facilities at the Port of Jacksonville, Florida. The incentives consist of: (1) A payment of $35.00 to USL for every loaded container transitting the Port by water up to a maximum of 250 containers per vessel for the first ten vessels and (2) a waiver of the Port's $75.00 gate charge specified in its tariff. The agreement provides that USL will make a minimum of ten calls in the year's duration of the agreement.

Dated: May 23, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86–12052 Filed 5–28–86; 8:45 am]

BILLING CODE 6730–01–M

[Agreement No. 224–010925]

Port of Charleston Terminal Agreement; Erratum

The **Federal Register** Notice of May 9, 1986 (Vol. 51, No. 90, page (17245) stated that the term of Agreement No. 224–010925 was for three years, with the option to renew for an additional two-year term. The parties have since notified the Commission that it was their intention to specify that the renewal option would be for two (2) consecutive three-year terms.

By Order of the Federal Maritime Commission.

Dated: May 23, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–12053 Filed 5–28–86; 8:45 am]

BILLING CODE 6730–01–M

[Agreement No. 224–010930]

Port of Los Angeles Terminal Agreement; Erratum

The **Federal Register** Notice of May 15, 1986 (Vol. 51, No. 94, page 17829) stated that the crane assignment would require SSA to pay the City $87,780 per year for each crane for up to 3000 hours of use. It should have read the crane assignment would require SSA to pay the City $1,053,360 per year in twelve (12) equal monthly installments of $87,780.

By Order of the Federal Maritime Commission.

Dated: May 23, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–12054 Filed 5–28–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Continental Illinois Corp. et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) 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)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than June 20, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Continental Illinois Corporation,* Chicago, Illinois; to acquire 100 percent of the voting shares of First National Bank of Deerfield, Deerfield, Illinois.

2. *St. Joseph Bankcorporation, Inc.,* South Bend, Indiana; to acquire 100 percent of the voting shares of Angola Bancorporation, Angola, Indiana, and thereby indirectly acquire First National Bank of Angola, Angola, Indiana.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp,* Evansville, Indiana; to acquire 100 percent of the voting shares of The Rockville National Bank, Rockville, Indiana.

2. *Southside Bancshares Corp.,* St. Louis, Missouri; to acquire at least 92.3

percent of the voting shares of Weldon Spring Bank, Weldon Spring, Missouri.

Board of Governors of the Federal Reserve System, May 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12033 Filed 5-28-86; 8:45 am]

BILLING CODE 6210-01-M

Fidelity Financial Corp. of Michigan 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 interest, 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 question 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 June 18, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Fidelity Financial Corporation of Michigan*, Birmingham, Michigan; to engage *de novo* through its subsidiary, Fidelity Leasing Corporation, Birmingham, Michigan, in leasing personal and real property pursuant to §225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by June 10, 1986.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sanger First National Holding Co., Inc. of Texas*, Sanger, Texas; to engage directly in the activity of providing to others financially related data processing and data transmission services, facilities and data bases; or access to them pursuant to §225.25(b)(7) of the Board's Regulation Y.

Board of Govenors of the Federal Reserve System, May 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12034 Filed 5-28-86; 8:45 am]

BILLING CODE 6210-01-M

Marisub, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C 1842) to become a bank holding company to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marisub, Inc.*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Marine Bank National Association, Milwaukee, Wisconsin; Marine Bank West, Waukesha, Wisconsin; Marine Bank South, National Association, Racine, Wisconsin; Marine Bank Dane County, Madison, Wisconsin; West Bend Marine Bank, West Bend, Wisconsin; Marine Bank of Beaver Dam, Beaver Dam, Wisconsin; Fidelity Marine Bank Antigo, Wisconsin; and Marine First National Bank, Janesville, Wisconsin.

Marisub, Inc., Milwaukee, Wisconsin; has also applied to acquire the (1) Marine Bank Services Corporation, Milwaukee, Wisconsin, and thereby engage in data processing, data print and transmission services, facilities (including data processing and data transmission hardware, software, documentation or operation personnel), data bases or access to such services, facilities and data bases pursuant to § 225.25(b)(7) of the Board's Regulation Y; (2) Marinebanc Leasing Company, Inc., Milwaukee, Wisconsin, and thereby engage in leasing personal property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y; (3) Marine Mortgage Company, Inc., New Berlin, Wisconsin, and thereby engage in making, acquiring, or servicing mortgage loans or other extensions of credit for the company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y; and (4) The Marine Trust Company, N.A., Waukesha, Wisconsin, and thereby engage in performing functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-12035 Filed 5-28-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Community-Based Cardiovascular Disease Prevention Program; Program Annoucement and Notice of Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC) announces that competitive Cooperative Agreement applications are being accepted for a Community-Based Cardiovascular Disease Prevention Program. The catalog of Federal Domestic Assistance Number is 13.283.

Program Objective

Cardiovascular disease (CVD) is the leading cause of death in the United States, accounting for almost half of all deaths. Epidemiologic studies have demonstrated strong and consistent associations between behavioral risk factors—such as cigarette smoking, poor nutrition, physical inactivity, and uncontrolled high blood pressure—and CVD morbidity and mortality. In addition, studies have suggested that the recent declines in CVD can be attributed in large part to reductions in these behavioral risk factors. Most recently, investigators have attempted to demonstrate that community-based health promotion programs could produce reductions in CVD risk behaviors and ultimately in disease morbidity and mortality. In North Karelia, Finland and in northern California, community-based research programs have been shown to be effective in decreasing levels of CVD risk factors. The North Karelia results suggested that a decline in CVD morbidity and mortality had occurred as well. With funding from the National Heart, Lung and Blood Institute, current research efforts in Minnesota, Rhode Island (Pawtucket), and California (Stanford) are attempting to corroborate and expand on these previous findings.

The overall objective of the CDC Community-based CVD Prevention Program is to make practical application of current research findings at the State and community level. The CVD program is intended to develop and then replicate cost-effective, pubic health-based programs in communities across the country which will result in sustained reductions in behavioral risk factors and, ultimately, reductions in CVD. Public health departments provide an obvious framework from which these programs could develop. It is intended that these programs build upon the existing State and local health department expertise and resources to organize, conduct, and evaluate community-based CVD risk reduction activities. The following principles and assumptions form the conceptual framework for the development of these intervention programs:

Setting: The program should specify a community approach. Intervention strategies should be applied to the entire community and programs should be integrated with the existing social, education, and health service structures of the community.

Intervention: It is expected that a successful intervention will include strategies directed both at the individual and the community in which he/she lives. These intervention strategies will target multiple settings such as schools and worksites, various communication channels such as mass media and patient eduction, multiple community characteristics such as prevailing tax policies (cigarette taxes) and clean indoor air ordinances, and multiple resource development efforts such as the mobilization of community organizations and networks and the identification of new community resources.

The CVD Prevention Program should attempt to modify the health policies and societal influences surrounding CVD and which affect the community as a whole. This derives from the observation that the majority of CVD occurs among low or moderate risk individuals and strategies to reach these individuals are most effective when applied in a broad, community-wide effort. Nevertheless, interventions targeted at high risk individuals and population subgroups with defined CVD risk as well as adequate treatment for those identified should also be an important objective of the program. These two strategies are viewed as complementary rather than conflicting.

As a simple model for community-based CVD reduction, it is assumed that the intervention will produce changes in the community which are supportive of health promoting behaviors. These "community influences" include physician attitudes regarding health risk behaviors, the proportion of worksites with smoking cessation programs or clean indoor ordinances, and grocery store or restaurant food labeling programs, etc. It is also expected that change will occur in a sequence from awareness of the risk factors and of the intervention, to participation, behavioral change, risk reduction and, eventually, disease reduction.

Evaluation: The intent of this program is to determine whether a community-based intervention can be implemented and demonstrated to be effective at the local level at an affordable cost. The evaluation should include two basic components:

1. Evaluation of the *process* of implementing a community-based CVD intervention program, with a detailed formative assessment. This evaluation will be coordinated through the recipient State health department. This evaluation will include the assessment of such elements as the expansion of worksite lifestyle programs, enhancement of school health curricula, changes in food store marketing practices, mobilization of community resources, availability of program materials, and the passage of laws or regulations affecting smoking behavior such as increased cigarette taxes or expanded designation of smoke-free areas in public buildings.

2. Evaluation of the *effectiveness* of the program by contrasting changes in the intervention community over time with those observed in a comparison community. This component of the evaluation will measure changes in self-reported knowledge, attitudes and behavior which affect CVD risks, such as smoking, sedentary lifestyle, therapeutic compliance, and dietary patterns. The ultimate goal of the program is to reduce CVD morbidity and mortality. The assessment of these outcomes in the short term will be difficult because of the long lag time between behavioral or physiologic changes and actual changes in disease outcomes. However a surveillance mechanism for monitoring behavioral as well as morbidity and mortality outcomes will be established to permit tracking of changes over time.

Because of the cost limitations of this evaluation, methods such as telephone surveys may be used to assess changes in awareness, attitudes, and health behaviors. Morbidity changes should be monitored through mechanisms such as sentinel physicians, HMO's, and hospital admissions and discharges with diagnoses relating to CVD such as strokes, hypertensive crises, and myocardial infarctions. Other morbidity data for monitoring changes may come from self-reported levels of blood pressure, cholesterol, and body weight. In addition, these kinds of physiological data may be obtained from intervention activities such as worksite lifestyle programs. Mortality data relating to CVD will also be monitored to establish

a system that can demonstrate changes over time.

Authority

This program is authorized under section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended.

Eligibility Requirements

Eligible applicants are the official health departments of any State, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Availability of Funds

It is expected that approximately $300,000 will be available in Fiscal Year 1986 to fund approximately one or two awards. The awards will range from approximately $150,000 to $300,000. The awards will be funded with 12-month annual budget periods with a 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives, and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Type of Assistance

Awards resulting from this announcement will be Cooperative Agreements. One or two awards will be made.

I. Recipient Activities

a. Select one or more communities which are committed to and capable of implementing a community-wide CVD prevention program commensurate with the conceptual framework of the program. The intervention community should encompass at least 50,000 persons and will have demonstrated interest and activities in community-based health promotion. It is also desirable for the selected community to have a diverse ethnic and socioeconomic composition and diverse employment opportunities.

b. Select a comparison community of approximately the same size, demographic composition, and sociocultural profile as the intervention community. This comparison community should be as isolated and removed from the intervention community as practicable and in a different media market. It should be surveyed in a manner similar to that of the intervention community in order to demonstrate that the baseline level of behavioral risk factors and health promotion activities in regard to CVD is comparable to the intervention community, thus affording comparisons that will enable program effectiveness to be evaluated. The recipient may elect to incorporate a different evaluation approach; this will be acceptable, provided the evaluation method selected can demonstrate that any changes which occur in the intervention community are not part of a secular trend.

c. Assist the selected intervention community(s) to design a community program which should include:

(1) Obtaining community-level data which describe CVD mortality and morbidity and behavioral risk factors, community influences, health policies, knowledge, attitudes, options and community resources affecting CVD. The behavioral component of the community-level data should include health enhancing behaviors such as physical exercise and efforts to reduce elevated blood pressure and cholesterol levels and health damaging behaviors such as smoking.

(2) Convening a panel of community representatives to review the analysis of the above data and set community objectives for the prevention and reduction of CVD.

(3) Designing, organizing, implementing, and evaluating the effectiveness of health promotion/education strategies which incorporate the following components in meeting the community objectives:

(a) Identifying, improving, and integrating CVD preventive services including a broad range of primary prevention efforts into existing community efforts such as treatment for individuals with CVD risk factors, training of public health and medical personnel, laboratory quality control and evaluation, and related measures.

(b) Educating people about the relationship between behaviors and their health, motivating them to adopt desirable personal health practices, increasing their skills through self-help, and helping them to maintain the acquired personal health practices through social supports.

(c) Producing changes in the community to create opportunities for healthy actions.

(d) Mobilizing the community for broad changes to support the adoption of healthy behavior.

(4) Evaluating the critical program indicators such as those described in Part c. 1), above.

d. Prepare and disseminate information pertinent to the program through presentation and publication in appropriate State and national forums.

e. Implement or expand a State surveillance system of CVD to include mortality, morbidity, behavioral risk factors, and community influences which affect health behaviors.

2. CDC Activities

a. Provide technical assistance and training to assure that State health department staff have the appropriate skills and expertise to, in turn, train, advise, and prepare local health representatives to conduct the program functions.

b. Provide technical assistance in the design and development of methods for training, data collection, and data analysis that can be adapted to future programs.

c. Develop and recommend program intervention strategies.

d. Collaborate in the selection of the intervention and comparison communities.

e. Participate in selected aspects of training and technical assistance to the selected community(s).

f. Provide technical assistance in the collection and analysis of data gathered from program activities.

Applications

1. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before July 28, 1986: Grants Management Branch, Procurement and Grants Office Centers For Disease Control Room 321, 255 East Paces Ferry Road, Atlanta, Georgia 30305.

Application forms should be available in the institution's business office or from the above address.

2. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private matered postmarks shall not be acceptable as proof of timely mailing.)

3. Late Application

Applications which do not meet the criteria in either paragraph 2.a. or b. immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

5. Content

Applications must incude a narrative which details the following:

a. Background and needs including items relevant to the evaluation of the application.

b. Program plan which includes goals and specific measurable objectives, methods and activities which will be undertaken to accomplish the objectives, and evaluation plan.

c. Supporting material which includes the organizational location of the project, supporting and complementary personnel and resources, details of the applicant's previous experience in community-based CVD prevention and other chronic disease efforts, curriculum vitae of critical staff, previous scientific publications related to CVD, State health promotion plans related to CVD, and any other related material which will aid in the evaluation of the appropriateness of the applicant's experience and commitment to the program.

d. Description of duties for a public health advisor assignee, if being requested.

e. Index of the above.

Review Criteria

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. State Commitment

a. Evidence of the applicant's commitment to CVD prevention as evidenced by prior and current activities to promote State and community policies conducive to the reduction of CVD and plans for new activities.

b. Evidence of applicant's ability and willingness to make a long-term commitment to CVD prevention, including the possibility of providing additional State/local funds and staff resources.

c. The documented intent of the applicant to extend the program in more than one community within the allowable Federal budget or in combination with State and community resources.

2. State Capability

a. Evidence of the applicant's experience in implementing and managing chronic disease programs and evidence of how these activities would be integrated with the community-level risk factor reduction efforts.

b. Degree of prior experience in data collection which is appropriate to this project, such as behavioral risk factor surveys or surveillance; analysis of morbidity or mortality data related to behavioral risks associated with CVD; and assessments of the surrounding influences in the community which affect health behaviors.

c. Evidence of applicant's ability to generate community leadership, organization, priority-setting, and financial support for community-based CVD prevention, such as experience with CHPE's Planned Approach to Community Health (PATCH) Program.

d. The quality of the applicant's plans for community technical and organizational assistance.

e. The qualifications and time allocation of proposed staff and availability of equipment and facilities to be used during the project.

3. Project Design

a. The applicant's understanding of community-based CVD prevention, including practical intervention strategies and their behavioral science foundations.

b. Appropriateness of stated goals and objectives in addressing the stipulated recipient activities.

c. The adequacy of the procedures and criteria to be used in selecting the community in which the project is to be implemented.

d. Assurances of and special steps to achieve rapid indentification of the intervention and comparison communities and the necessary project personnel.

e. The overall quality of the evaluation plan.

f. Innovative approaches to program design, particularly those which may help evaluate changes in physiologic factors and/or morbidity.

g. Availability of morbidity data from which long term guidance and general assessment could be based and innovative approaches to the acquisition and use of such data.

h. The extent to which the budget is reasonable and consistent with the intended uses of the requested funds.

4. Potential for Public Health Impact

a. The proportion of the State's population at increased risk of CVD, based on race and sociodemographic characteristics, in whom intervention could have the greatest potential impact on morbidity and mortality.

b. Evidence of the applicant's ability to implement effective improvements in chronic disease or risk reduction programs and to institute these changes throughout the State, especially in communities with an increased level of CVD risks.

Supplementary Information

1. Use of Funds

a. Funds may be used to support personnel and purchase supplies, services, and equipment directly related to planning, organizing, implementing, and evaluating the project.

b. Funds may not be used for office equipment and furniture, and renting or leasing office space unless specifically approved.

c. Funds may not be used for construction or renovation.

d. Funds may not be used for diagnosis and treatment.

2. Reporting Requirements

Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status reports are required 90 days after the end of a project period.

3. Other

The Centers for Disease Control may provide a public health advisor in addition to the awarded funds. States interested in such an assignee should indicate their interest with their application along with a description of the intended duties and responsibilities of the assignee. The assignment of a public health advisor and his/her responsibilities will be negotiated after the award of the cooperative agreement.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Luther E. DeWeese, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575.

Technical assistance may be obtained from Gary C. Hogelin, Field Services Branch, Division of Nutrition, Center for Health Promotion and Education, Centers For Disease Control, 1600 Clifton Rd, NE., Atlanta, Georgia 30333, telephone (404) 329-3075 or FTS 236-3075.

Dated: May 22, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-11975 Filed 5-28-86; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Refugee Resettlement Program; Formula for Allocations to States of FY 1986 Funds for Social Services for Refugees and Cuban/Haitian Entrants

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Final Notice.

SUMMARY: This notice establishes the formula for allocation to States of FY 1986 funds for social services under the Refugee Resettlement Program (RRP). The formula yields the allowable allocation of FY 1986 refugee and Cuban/Haitian entrant social service funds for each State participating in the RRP.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: David Howell, (202) 245–1923.

SUPPLEMENTARY INFORMATION: Notice of the proposed formula for the allocation of FY social service funds was published in the **Federal Register** on February 27, 1986 (51 FR 6943). No major changes have been made in the formula as a result of comments on the previously published proposal. However, the total funds to be allocated by formula have been increased from approximately $35,800,000 to $58,200,000.

I. Amounts Available for Allocation

The Office of Refugee Resettlement (ORR) will make available $68,617,000 in FY 1986 refugee/entrant social service funds. This determination is based upon the Continuing Resolution for FY year 1986 (Pub. L. 99–190) which provides that funding for social services be at the same level as in FY 1985. This figure, $71,700,000, was then reduced by 4.3% to $68,617,000 under the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99–177), generally referred to as Gramm-Rudman-Hollings. A proposal made by the President on February 5, 1986, to rescind funds in excess of the $44,802,000 originally requested for FY 1986 was not approved by Congress within the required 45 legislative days and therefore did not take effect.

Of the total of $68,617,000 in social service funds, the Director of ORR will make available to States during FY 1986 approximately $58,200,000 (85 %) under the allocation formulas set out in this notice. These funds will be made available for the purpose of providing social services to refugees and entrants.

All allocation figures include both refugees and entrants since both populations may be served through funds addressed in this notice.

Of the $58,225,465 covered by this notice, the Director will allocate funds directly to States in the following manner:

- $55,000,000 will be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. less than 3 years as of October 1, 1985.
- $330,693 will be allocated to States which have particular needs associated with small refugee/entrant populations in order to provide a floor of $75,000 for States with fewer than 500 refugees/entrants.
- $2,894,772 will be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (including a floor amount of $5,000 to States with small refugee populations) in order to provide an incentive for States to fund refugee/entrant mutual assistance associations (MAAs). The amount being allocated to MAAs, exclusive of the floor, is $2,871,000; this reflects the 4.3% Gramm-Rudman reduction as compared with the FY 1985 formula amount of $3,000,000. A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The $10,391,535 remaining in social service funds will be used on a discretionary basis to carry out specifically directed initiatives intended to contribute to the effectiveness and efficiency of the refugee resettlement program in service delivery and self-support, as described in the previous notice.

While the formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's or entrant's length of residence. (A State must, however, have an approved State plan for the Cuban-Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

ORR funds may not be used to provide services to United States citizens since they are not covered under the refugee and entrant legislation (except that services may be provided to a U.S.-born minor child in a family in which both parents are refugees or entrants or, if only one parent is present, in which that parent is a refugee or entrant).

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice are subject (as were FY 1985 funds) to a requirement that at least 85% of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objectives that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act, section 412(a)(1)(B).) As in FY 1985, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must be able to demonstrate to the satisfaction of the Director, ORR, that two of the following three conditions exist: The cash assistance rate for time-eligible refugees/entrants in the State is below the national average for all time-eligible refugees/entrants in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees/entrants; and/or there are nonemployment-related service needs which are so extreme as to justify an allowance above the basic 15%.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees/entrants who participate in alternative projects. The Continuing Resolution for FY 1985 (Pub. L. 98–473), in addition to providing funds for the refugee program, amended the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlment agencies and service providers.[1]

The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583; June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in

[1] This provision, generally known as the Wilson/Fish Amendment, was originally included in 1985 in the House-passed reauthorization of the Refugee Act, H.R. 3729, as modified and reported by the Senate Judiciary Committee.

planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. The belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official shall provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

(1) That such funds will be used to fund refugee/entrant mutual assistance associations for the direct provision of services to refugee and entrant clients.

(2) That the MAA incentive allocation is subject to and included under ORR's requirement that 85% of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

(3) That the State agency will observe the following definition of a mutual assistance association:

(a) That the organization must be legally incorporated as a non-profit organization; *and*

(b) That not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees/entrants or former refugees/entrants.

(4) That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee and entrant clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street, SW., Washington, DC 20201, with a duplicate copy to the appropriate ORR Regional Director. States must respond by June 30, 1986, in order to avail themselves of this special allocation.

II. Discussion of Comments Received

Fourteen comments were received during the public comment period in response to the notice of the proposed formula for the allocation to States of FY 1986 funds for social services for refugees and Cuban/Haitian entrants. Most of the commenters expressed concern primarily about the proposed amount of social service funds. Several also commented on other aspects of the proposal, and a few included recommendations for particular changes. The comments are summarized below and are followed in each case by the Department's response.

Comment: Nine commenters opposed the amount of funds announced as available under the proposed rescission. The reduction was felt to be both too great in absolute terms and also too great a change to be announced so late in the fiscal year.

Response: Since Congress did not approve the request there will be no rescission for FY 1986, as explained above. The Department continues to make every effort to provide public notice regarding potential and actual funding amounts as soon as figures are known.

Comment: Seven comments were received regarding the amount of funds set aside for discretionary use, as opposed to being allocated to States through the formula. The commenters felt that the $7,000,000 proposed for discretionary use was too high, given the proposed formula amount of $33,700,000. One commenter suggested that all social service funds should be allocated directly through the formula.

Response: The Department believes that, given the range and variation of need for social services among the State programs, there is strong justification to use a portion of the social service appropriation for specially directed service initiatives. This is further supported by the fact that with continuing high social service funding levels in the RRP, the possibility for States to preserve a variety of existing program initiatives has been maintained. While we continue to feel that most of the funds should be allocated by formula, we also believe that there is an increasing need to provide an opportunity for States to seek supplemental project funds to help meet identifiable special needs.

Of the $68,617,000 now available, the Department has decided to use approximately $10,400,000 (15%) for discretionary purposes. Most of these discretionary funds will be awarded to States, principally for competitive project awards for Comprehensive Discretionary Social Services (CDSS), of which States have previously been advised, and for continuation of ORR's mental health initiative under agreement with the Public Health Service. ORR estimates that, overall, 95% of the available $68,617,000 will be awarded to States; the remainder will be used, as noted in the proposal, to support special program initiatives and program development activities.

Comment: A few commenters suggested alternatives to the allocation formula itself: Two commenters suggested the use of time-expired refugees in the input data, and two suggested allocating funds on the basis of cash assistance rates. One commenter suggested an alternative method for calculating allocations for small States, while two stated that small States' awards should be reduced or eliminated.

Response; The Department has argued elsewhere (47 FR 22566; 47 FR 42634; 48 FR 24996; 49 FR 36702; 49 FR 45073; 50 FR 8194; as well as in the proposal under discussion at 51 FR 6943) that the 3-year population base is a sound approach to social service allocations because (1) it reflects population trends over a period of time in which refugees have the greatest need for services, (2) it is not subject to the instability of short-term biases, (3) it provides some incentive for States to use their program funds for priority services, and (4) it is consistent with program policies and priorities of ORR to provide services to refugees in order that they become self-sufficient as quickly as possible. The Department continues to believe that the 3-year population base is most appropriate for the allocation of social service funds. Further, the Department believes that the targeted assistance funds allocated over the previous 3 fiscal years, in addition to the targeted assistance funds to be made available in FY 1986, as well as funding for various special initiatives, have already provided the most appropriate means of addressing needs based on longer term populations and on extended use of cash assistance.

With regard to the floor for small States, we concur that a change may be appropriate in the way in which the floor is determined and believe the commenter's suggestion has merit. However, since that suggestion would yield some allocations less than the $45,000 proposed in the February 1986 notice, we believe that it would be preferable to propose an alternative floor for FY 1987 rather than adopt it now for FY 1986. In view of the greater total funding now available for social

services in FY 1986 we have decided to adopt a floor of $75,000, the same as last year's floor, rather than the $45,000 proposed in the February notice.

III. Allocation Formula

Of the funds available for FY 1986 for social services, $55,000,000 will be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and entrants who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capital amount will be multiplied by—

3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1985, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States.

IV. Basis of Refugee and Entrant Population Estimates

The population estimates for the allocation of funds in FY 1986 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1985, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after September 30, 1982. Slight changes have been made in the estimated State refugee population totals since the publication of the proposed formula on February 27, 1986, to reflect new data received. Six States submitted convincing evidence of larger time-eligible populations than had been estimated previously, and their population estimates were revised accordingly.

For fiscal year 1986, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1983, 1984, and 1985. Therefore estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1982, and September 30, 1985, who are thought to be living in each State as of October 1, 1985. The population estimates for the FY 1986 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

All States submitted data on their secondary in-migration on Form ORR–11 in time for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the total arrival figure, resulting in a revised population estimate. This estimate was converted into a percentage of the total 3-year refugee population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in February 1985. Where a significant discrepancy between the two percentage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 23 States were adjusted in this manner. Finally, each State's population was inflated by approximately 1.5 percent, to bring the sum of the State figures to the known national total.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. In doing so, ORR excluded from the populaton totals nationwide 3,567 refugees who were resettled subject to a full Federal match of $1,000 under ORR's matching-grant program with national voluntary refugee resettlement agencies. The social service funds available to serve non-matching-grant refugees are limited and are, therefore, directed to the areas where those refugees live.

Table 1 below, shows the estimated 3-year populations, as of October 1, 1985, of all refugees and entrants (col. 1), excluding those matching-grant refugees discussed above; the formula amounts which the population estimates yield (col. 2); the total allocation amounts after allowing for the minimum amounts (col. 3), and the amounts available as an incentive to States to use MMAs as service providers (col. 4).

V. Allocation Amounts

The following amounts are allocated for refugee social services in FY 1986:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1986

State	Total population (1)	Formula amount (2)	Allocation (3)	MAA incentive allocation (4)
Alabama	939	$260,535	$260,535	$13,800
Arizona	2,300	638,157	638,157	33,312
Arkansas	807	223,910	223,910	11,688
California	65,000	18,034,879	18,034,879	941,421
Colorado	2,316	642,597	642,597	33,544
Connecticut	2,485	689,487	689,487	35,991
Delaware	27	7,491	75,000	5,000
District of Columbia	498	138,175	138,175	7,213
Florida	4,557	1,264,384	1,264,384	66,001
Georgia	3,350	929,490	929,490	48,519
Guam	36	9,989	75,000	5,000
Hawaii	839	232,789	232,789	12,152
Idaho	865	240,003	240,003	12,528
Illinois	8,250	2,289,042	2,289,042	119,488
Indiana	643	178,407	178,407	9,313
Iowa	1,886	523,289	523,289	27,316
Kansas	2,620	726,944	726,944	37,946
Kentucky	671	186,175	186,175	9,718
Louisiana	2,898	804,078	804,078	41,973
Maine	936	259,702	259,702	13,556
Maryland	3,450	957,236	957,236	49,968
Massachusetts	8,568	2,377,275	2,377,275	124,094
Michigan	3,445	955,849	955,849	49,895
Minnesota	5,050	1,401,171	1,401,171	73,141
Mississippi	401	111,261	111,261	5,808
Missouri	2,319	643,429	643,429	33,587
Montana	77	21,364	75,000	5,000
Nebraska	464	128,741	128,741	6,720
Nevada	896	248,604	248,604	12,977
New Hampshire	367	101,828	101,828	5,315
New Jersey	2,852	791,315	791,315	41,307
New Mexico	450	124,857	124,857	6,518
New York	14,692	4,076,438	4,076,438	212,790
North Carolina	1,778	493,323	493,323	25,751
North Dakota	420	116,533	116,533	6,083
Ohio	2,780	771,338	771,338	40,264
Oklahoma	1,853	514,133	514,133	26,838
Oregon	2,670	740,817	740,817	38,671
Pennsylvania	6,493	1,801,546	1,801,546	94,041
Rhode Island	1,600	443,935	443,935	23,173
South Carolina	390	108,209	108,209	5,649
South Dakota	371	102,938	102,938	5,373
Tennessee	1,857	515,243	515,243	26,896
Texas	14,606	4,052,576	4,052,576	211,544
Utah	1,931	535,775	535,775	27,967
Vermont	196	54,382	75,000	5,000
Virginia	6,353	1,762,701	1,762,701	92,013
Washington	7,969	2,211,076	2,211,076	115,418
West Virginia	66	18,312	75,000	5,000
Wisconsim	1,912	530,503	530,503	27,692
Wyoming	28	7,769	75,000	5,000
Total	198,227	$55,000,000	$55,330,693	$2,894,772

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: May 9, 1986.

Billie F. Gee,

Acting Director, Office of Refugee Resettlement.

[FR Doc. 86–12008 Filed 5–28–86; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

[FDA 225-72-2001]

Memorandum of Understanding With the Agricultural Marketing Service; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an error in Attachment A to a memorandum of understanding (MOU) with the Agricultural Marketing Service (AMS) that sets forth the working arrangements being followed or adopted to enable the AMS and FDA to discharge their responsibilities relating to the inspection, sampling, and examination of imported dates and date material (51 FR 11480; April 3, 1986). In footnote one of Attachment A—Sample Collection Criteria, "180 pounds" is being corrected to read "100 pounds."

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-44-1583.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-7379 appearing at page 11480 in the **Federal Register** of Thursday, April 3, 1986, on page 11481 at the bottom of the second column in footnote 1, "180 pounds" is changed to read "100 pounds."

Dated: May 21, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

FR Doc. 86-11946 Filed 5-28-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

National Organ Transplant Act; Grants for Organ Procurement Organizations

Correction

In FR Doc. 86-11418 beginning on page 18509 in the issue of Tuesday, May 20, 1986, make the following corrections:

1. On page 18509, in the third column:

a. In the SUMMARY, in the second line, "application" should read "applications".

b. In the DATE caption, in the second line, insert "by" after "received".

2. On page 18510, in the first column, in the **FOR FURTHER INFORMATION CONTACT** caption, in the first line, "Action Director" should read "Acting Director", and in the fourth line, the telephone number should read "301/443-7577".

3. On page 18511, in the first column:

a. Under the heading **V. Evaluation Priorities,** in the first line, "award" should read "awards", and in the 14th line, "exist" should read "exists".

b. In the footnote, in the first line, "operation" was misspelled.

4. On page 18511, in the second column:

a. Under the hearding *1. Amount and Duration of Grants,* in the fifth line, "award" should read "awards".

b. In the 10th line from the bottom of the column, "fund" should read "funds".

BILING CODE 1505-01-M

Public Health Service

Advisory Committees; Meetings

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 bodies scheduled to meet during the month of June 1986:

Name: Health Services Development Grants Review Subcommittee.

Date and Time: June 11-13, 1986, 8:30 AM.

Place: Linden Hill Hotel (Room to be announced), 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open June 11, 8:30 AM to 9:30 AM.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting of June 11 from 8:30 AM to 9:30 AM will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Care Technology Study Section

Date and Time: June 9-11, 1986, 8:30 AM.

Place: Bethesda Ramada Hotel, Ambassador Two Room, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Open June 9, 8:30 AM to 10:00 AM.

Closed for remainder of meeting.

Purpose: The Committee is charged with the initial review of health research grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session from 8:30 AM to 10:00 AM on June 9 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed portion of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Services Research Review Subcommittee.

Date and Time: June 24-26, 1986, 1:00 PM.

Place: Hyatt Regency Hotel, Congressional Room, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open June 25, 8:00 AM to 9:00 AM.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting of June 25 from 8:00 AM to 9:30 AM will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This

information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Dated: May 21, 1986.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

FR Doc. 86–12037 Filed 5–28–86; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Social Security Benefits for the Aged, Blind, and Disabled; List of New or Improved Diagnostic Techniques for Determining Impairment Severity

SUMMARY: This notice provides a cumulative list of medical diagnostic and evaluative techniques which have come into use since 1970 and which may be reported and considered by the Social Security Administration (SSA) in determining a person's continuing eligibility for Social Security disability benefits and/or Supplemental Security Income benfits based on disability. This notice also provides the date each of these new or imrpoved techniques became generally available. These new of improved techniques may permit a more accurate diagnostic determination in a particular case than the techniques previously used in that case. Moreover, they may disclose that a person on the benefit rolls because of disability has a less severe or a more severe impairment than was previoulsy thought. These listed techniques are not equal in diagnostic accuracy or accuracy in determining the physical or mental deficit caused by an impairment. Additionally, diagnostic accuracy or accuracy in the measurement of physical or mental deficit may depend upon numerous factors which vary with the clinical situations in which the techniques are applied. However, a cessation of disability and termination of benefits may be required if medical findings from the technique(s)—(1) More accurately reflect a person's true clinical status than the technique(s) previously used to evaluate severity; and (2) Show that the person's impairment or combination of impairments are not as disabling as they had been considered to be and that he or she has the ability to perform substantial gainful activity (SGA).

Authority: Publication of the notice is required by the provisions of 20 CFR 404.1579(d)(2)(ii)(B), 404.1594(d)(3)(ii)(B), 416.994(b)(3)(iii)(B)(*2*), and 416.994(c)(3)(ii)(B)(*2*) contained in final regulations published on December 6, 1985 in the **Federal Register** at 50 FR 50118.

Comments: We welcome any comments concerning the medical diagnostic and evaluative techniques on the attached list, the clinical findings derived from these techniques, and their application to the evaluation of a person's physical or mental impairment. We will revise an item on this attached list at the time we publish the next periodic cumulative list if a comment shows the need for a change or correction.

ADDRESS: Comments should be submitted to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lou Perkins, Disability Analyst, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–8642.

SUPPLEMENTARY INFORMATION: Section 2 of Pub. L. 98–460 (The Social Security Disability Benefits Reform Act of 1984) amended sections 223(f), 216(i)(2)(D), and 1614(a) of the Social Security Act (the Act) by specifying a standard for determining whether a beneficiary's disability should cease. Subject to certain exceptions, this standard is that disability ceases only if there has been medical improvement in the beneficiary's impairment(s) that can be related to his or her ability to work and he or she can perform SGA. This notice concerns one of the exceptions to this standard; i.e., where new or improved diagnostic or evaluative techniques brought about by the changing methodologies and advances in medicine have improved the methods for measuring and documenting the effect of the various impairments on the ability to work. In accordance with sections 223(f)(3), 216(i)(2)(D), and 1614(a)(5)(C) of the Act (added to the Act by section 2 of Pub. L. 98–460), a beneficiary may be determined not entitled to benefits on the basis that his or her physical or mental impairment has ceased if substantial evidence demonstrates, *that on the basis of new or improved diagnostic techniques or evaluations,* the beneficiary's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that found the beneficiary to be disabled, and that—

(1) The beneficiary is able to enage in SGA; or

(2) The beneficiary receiving widow's or surviving divorced wife's benefits under section 202(e) of the Act or widower's or surviving divorced husband's benefits under section 202(f) of the Act, does not have an impairment or impairments of sufficient severity as to be considered under regulations prescribed by the Secretary, to be precluded from engaging in gainful work.

We published regulations for implementing the statutory provisions in section 2 of Pub. L. 98–460. (See 50 FR 50118 dated Decembe 6, 1985.) In §§ 404.1579(d)(2)(ii), 404.1594(d)(3)(ii), 416.994(b)(3)(iii)(B), and 416.994(c)(3)(ii)(B) of these regulations, we provide two methods for informing the public of the techniques we consider to be new or improved and how they are to be applied in determining a person's continuing eligibility for benefits.

The first method we will use to inform the public of new or improved techniques will involve the listing of impairments in 20 CFR Part 404, Appendix I of Subpart P of the regulations. When changes in these listings are published in the **Federal Register**, we will describe those changes made because new or improved medical techniques became generally available.

(The listing of impairments describes the medical impairments that we consider severe enough to prevent a person from performing gainful work.) These listing changes will be published in a Notice of Proposed Rulemaking (NPRM). After considering any public comments, a final rule including the listing changes will be published. This approach is consistent with our past practice. For example, the ECG exercise test included in the attached material, which is a primary basis for evaluating ischemic heart disease impairments, was included in the July 1979 revision of Appendix I. Also, we included the two following tests in a revised Appendix I published on December 6, 1985 in the **Federal Register** (see 50 FR 50068). First,

an exercise arterial blood gas study for documenting the severity of a gas exchange impairment in pulmonary conditions was included under listing 3.00 of Appendix I. Second, a serum drug level test for documenting the use of anti-convulsant medication when evaluating the severity of epilepsy was included under listing 11.00 of Appendix I.

The second method we will use to inform the public of new or improved techniques is to publish in the **Federal Register** at periodic intervals cumlative lists of the new or improved medical techniques that have become generally available and may affect our evaluation of the severity of impairments. We identify a new or improved medical technique to include in a published cumulative list in several ways. The technique results may have been presented as medical evidence by persons filing for Social Security benefits based on disability. The technique may have been discussed in medical literature by a medical professional group or studied by a government bureau. From these and other sources, we catalogue the new techniques and determine when they became generally available. By "generally available," we mean that a technique is no longer experimental or available only at centers of medical learning and research. Rather, the technique (with appropriate equipment) has become generally available to the appropriate practitioners throughout the country and the technique results are accepted by the medical community. We will omit from any published cumulative list the medical techniques generally available prior to 1970 since few, if any, claims should involve evaluation for continuing disability eligibility for periods before 1970.

The first of these periodic cumulative lists describing the new or improved techniques in effect since 1970, how they will apply in determining disability, and the date they became generally available, is attached.

Paperwork Reduction Act—This notice does not impose recordkeeping or reporting requirements on the public.

Dated: May 22, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Cumulative List of New or Improved Medical Techniques and Evaluations

I. Miscellaneous Tests Applicable to Several Body Systems

1. Radionuclide Imaging—(Generally available since September 1979.)

This technique uses radioactive tracers to visualize internal body structures which take up certain macromolecules which are radio labeled and thus are detectable by radionuclide scans. The commonly used scans include bone, cardiac, liver/spleen, and pancreatic. An abnormal nonhomogeneous scan is a nonspecific finding indicative of parenchymal liver disease. These scans are better techniques because they are essentially noninvasive ways of visualizing anatomical structures which, in conjunction with other techniques, may provide diagnostic evidence that would otherwise be unavailable.

2. Fiberoptic Endoscopy—(Generally available since September 1981.)

Fiberoptic endoscopy permits the visualization of internal linings of hollow organs accessible via the transoral or transanal route. It is a better diagnostic tool because it provides for the direct visualization of mucosal erosions, ulcers, mass lesions, fistulae, bleeding sources, and obstructive lesions in the gastrointestinal tract and bronchial tree. Biopsies may be obtained for histologic confirmation of lesions. Endoscopic retrograde cholangiopancreatography (ERCP) requires the injection of radiopaque dye into the pancreatic and biliary ducts through the endoscope and permits visualization of biliary or pancreatic ducts radiographically. The test is used for detection of lesions of the biliary and pancreatic ducts. Percutaneous transhepatic cholangiography is an alternative technique to visualize the biliary system. This procedure requires the injection of dye through a needle rather than through endoscopy. Which procedure is utilized depends on the available facilities.

3. Computerized Axial Tomography (CAT Scan)—(Generally available since January 1977 for CAT scan of the head; CAT scans for other parts of the body since September 1982.)

The CAT scan has made it possible to produce cross-sectional X-ray images of the internal structures of the body. The CAT scan not only provides the cross-sectional X-ray images but the sensitivity and resolution are so great that small differences in X-ray absorption can be detected so that it is possible to differentiate various types of soft tissues and detect small concentrations of contrast material within blood vessels. The CAT scan is most appropriate and sensitive for the detection of mass lesions, usually tumors. It is also possible to define anatomic defects such as cerebral infarcts, dilatation of ducts, and the presence of fluid in the pericardial, pleural, or peritoneal cavities. Its impact on the evaluation of impairments is to provide a noninvasive means for the detection of lesions in a multitude of organ systems.

4. Digital Subtraction Scanning or Angiography—(Generally available since January 1982.)

This is a special radiologic imaging technique which increases the radiodensity of blood over that of surrounding structures and, therefore, increases the resolution of the radiographic images of blood vessels. The scanning technique allows dye to be injected intravenously to visualize, by X-rays, the aorta, coronary, renal, and iliac vessels in order to estimate the blood flow in these vessels or the presence or absence of obstructive lesions. It is an improved technique because it can be performed on an outpatient basis with less risk and less discomfort to the patient than direct arteriography. In some cases, this technique will permit the exclusion of direct arteriography.

II. Cardiovascular

1. Coronary Arteriography—(Generally available since January 1970.)

Coronary arteriography demonstrates radiographically the anatomy of the coronary arteries. It provides direct documentation of the anatomic extent and distribution of obstruction of those arteries.

This is a better technique because it provides anatomical evidence for a diagnosis of coronary artery disease. During the test it is also possible to visualize the contracting heart to measure cardiac output and to evaluate, thereby, ventricular function.

2. ECG Exercise Test—(Generally available since January 1975).

The ECG exercise test produces a graphic tracing of the electric current produced by the polarization and depolarization of the heart muscle. It is a multi-stage, progressive, continuous test that measures cardiac current while the subject is at rest and is performing different levels of exercise. Variations from normal can be helpful in the diagnosis of ischemia, of exercise-induced arrhythmias and in the assessement of cardiac performace in certain clinical circumstances. It is improved technique over the Master Two-Step procedure which it replaced because the amount of exertion can be specifically quantified and the ECG monitoring during and after exercise provides greater specificity and sensitivity in the diagnosis of ischemia.

3. Multigated Radionuclide Ventriculography (MCUA Scan)—(Generally availble since September 1979).

The MUGA is a radionuclide imaging procedure otherwise known as multi-gated blood pool ventriculograph using, most commonly, technetium-99 sodium pertechnetate (99m/tc) as the tracer. The use of this technique at rest and after exercise provides for an evaluation of myocardial function and wall motion abnormalities indicative of ischemic heart disease. Left ventricular dysfunction and ejection fraction can be estimated from the test. When done at rest and after exercise, detection of exercise-induced wall motion abnormalities and/or a fall or failure of rise of ejection fraction is highly suggestive of severe heart disease. It is an improved technique because, without invasive cardiac catheterization, some gross estimate of cardiac dysfunction can be made by this test if there is a fall or failure to rise of ejection fraction, or exercise-induced dyskinesia, or akinesia of the left ventricular wall.

4. Thallium Perfusion Scan—(Generally availble since September 1979).

The thallium perfusion scan measures the perfusion of blood through the myocardium. The radionuclide thallium-201 is employed at the tracer. Resting and exercise radionuclide images are compared to detect fixed lesions present during rest and exercise and transient perfusion defects indicative of ischemia induced by exercise. As such, this is a better technque for disagnosis of ischemia and of old myocardial infarctions. Assessments of cardiac function can be made when this technque is performed in conjunction with an ECG exercise test.

5. M Mode Echocardiograph—(Generally available since August 1979).

This test records ultrasound waves reflected by heart structures. It is used to assess the motion and dimensions, of heart chambers, wall, and valves; but its reliability is far greter for left than right-sided heart structures (and only limited views of these structures are visualized at any one time). This technique is especially helpful in evaluating the mitral valve, the aortic valve, the thickness of the ventricular wall, and the presence or absence of fluid in the pericardial space. It is a better technique because it is noninvasive and may provide diagnostic evidence that would otherwise be unavailable.

6. Holter Reading—(Generally available since March 1980).

The Holter monitor produces continuous electrocardiographic tracings over extended periods of time so that ambulatory monitoring of patients is possible. The electrocardiograms can be correlated with the individual's activities and symptoms. Variations from normal are useful in the assessment of cardiac arrhythmias and of exertional or stress-induced ischemia. The fact that ECG tracings are produced over a long time period makes this an improved diagnostic technique for detection of arrhythmias and ischemia.

7. Venous Occlusive Plethysmography—(Generally available since October 1980).

Venous plethysmography records changes in volume of a limb after inflation and deflation of a cuff applied to the limb. The technique is useful in the noninvasive determination of the presence of deep vein thrombosis. In many situations this is a better technique because it can be diagnostic for deep vein thrombosis without resorting to a venogram, an uncomfortable procedure and one that is sometimes associated with noxious side effects (such as an allergic reaction or new thrombosis). In the absence of venographic results, this technique provides a better basis for diagnosis than clinical observations alone.

8. Doppler Vascular Ultrasonography—(Generally available since October 1980).

Doppler ultrasonography is based on the shift in ultrasound frequency that arises if an ultrasound beam is transmitted to and reflected from moving blood cells. The frequency of shift is proportional to the velocity of the blood flow. The Doppler ultrasound is used to determine systolic arterial pressues. This is applicable particularly in the distal lower extremities where the blood pressure cannot be measured accurately by the regular cuff method. Measurements of segmental pressures at various levels of the lower extremities help to distinguish between aorto-iliac, femoropopliteal, or combined disease. Doppler ultrasound can measure the ankle to brachial artery pressure index at rest and after exercise. This is an improved technique because it allows a quantitative, noninvasive determination of the severity of peripheral arterial disease. The estimate of severity is especially useful if this technique is repeated after the patient exercises.

9. Carotid Phonoangiography (CPA)—(Generally available since November 1980).

Carotid Phonoangiography (CPA) is used to record and evaluate alterations in the sound emanating from the carotid artery. It is a technical extension of auscultation and is used to assess the possibility of carotid obstruction. Although it can be used alone, its primary value is as an adjunct to hemodynamically based studies such as oculoplethysmography (OPG). It is an improved technique because it provides noninvasive evidence for the diagnosis of narrowing of the carotid artery.

10. 2 D Echocardiography—(Generally available since October 1984).

This test, like the M mode echocardiography (item 5 above), records ultrasound waves reflected by heart structures. It allows visualization over time of the cardiac structures and the great vessels (aorta and pulmonary artery). It displays the anatomic relationships of these structures as well as their movement during the cardiac cycle. It is better because it is noninvasive and, as such, may provide evidence which would otherwise be unavailable for detection of cardiac dysfunction.

11. Doppler Echocardiography—(Generally available since October 1984).

Doppler echocardiography records changing velocity of ultrasound waves generated by variations in blood flow in the heart and in the great vessels. It is used in the assessment of intracardiac and extracardiac shunts, valve flow, and cardiac output. It permits measurements of valvular gradients, quantitates valvular stenosis, and regurgitation and, in so doing, aids in estimating cardiac output. It is an improved technique because it provides data prevously obtainable only by catheterization of the heart or blood vessels, eliminating the need for catheterization in many patients.

12. Electrophysiologic Testing—(Generally available since October 1984).

Electrophysiologic testing requires cardiac catheterization and the placement of electrode catheters within selected portions of the heart. The application of an electrical current is used to assess the propensity of the patient to develop selected cardiac arrhythmias and of the value of various drugs in preventing these arrhythmias. It is a better technique because it may document severe, nonresponsive ventricular arrhythmias.

III. Gastrointestinal System Tests

Peritoneoscopy—(Generally available since September 1981).

This is an improved diagnostic technique because it permits the visualization of the peritoneal cavity and the peritoneal surfaces of intra-abdominal organs such as liver, ovaries, and uterus. It is useful in obtaining direct liver biopsies and in the detection

of intra-abdominal malignancies or metastases.

IV. Musculoskeletal

1. Arthroscopy—(Generally available since January 1972).

Arthroscopy is a diagnostic procedure for the evaluation of the integrity and status of joint spaces, mainly the knee, shoulder, ankle, and elbow. It would confirm the nature and extent of abnormalities of the joint involvement that may not be seen on ordinary x-ray and, thus, aid in evaluating severity. It is a better diagnostic tool because it permits direct visualization of the joint spaces and surrounding anatomical structures without extensive surgical intervention.

2. Arthrogram Studies—(Generally available since January 1978).

These are X-ray studies performed by injecting radiopaque material within specific joints such as shoulder, knee, hip, elbow, wrist, and ankle to more accurately delineate various pathological conditions and, because of this, is an improved technique.

3. Metrizamide Myelography with CAT Scan—(Generally available since January 1978).

This is a contrast-enhanced computed tomographic study of the spinal cord to determine the presence and degree of various pathologic conditions such as spinal stenosis, lateral recess syndrome, arachnoiditis, herniated disc, etc. This test provides a more sensitive and better resolution of X-ray images of the spinal structures.

V. Ophthalomology

1. Electro-Oculography (EOG)—(Generally available since January 1970).

Electro-oculography (EOG) is a diagnostic method to determine whether a disorder of the retinal pigment epithelium exists. It would apply to Listing 2.02 of Appendix I.

2. Visual Evoked Responses (VER)—(Generally available since January 1980).

The results of this testing technique may apply to Listing 2.02 of Appendix I. Stimulation of the retina changes the electrical activity of the cerebral cortex. A normal VER is a significant finding in the assessment of alleged reduction of visual acuity without demonstrable cause. It is an improved technique because it can be used to evaluate individuals who are unwilling or unable to cooperate in other techniques.

VI. Otolaryngology

1. Electronystagmogram (ENG)—(Generally available since January 1972).

Electronystagmography is an accepted, reliable, and accurate method for determining the status of a patient's vestibular functions. The test is based on recording eye movements based on the cornea-retinal potentials. The printed record of the nystagmus makes it available for comparison with subsequent tracings. It is a better technique for diagnosing true vertigo or labyrinthine disease.

2. Brainstem Auditory Evoked Response (BAER)—(Generally available since January 1972).

BAER is a technique of evoking production of electrical responses when stimulated by controlled sound. It is an improved technique because it is a valuable tool for assessing hearing when the test subject is incapable or unwilling to respond to auditory testing. The test is particularly useful in testing infants or young children.

3. All-Night Sleep Recordings for Diagnosis of Sleep Apnea—(Generally available since January 1975).

The parameters of interest that are usually monitored during sleep are as follows:

a. REM: Electro-oculogram of rapid eye movement to determine depth or stage of sleep.

b. Respirations: rate, tidal volumes, chest excursion.

c. ECG monitoring mainly for rate and arrhythmia.

d. Blood pressure (BP).

In particular cases, more comprehensive evaluations include:

a. Electroencephalogram (EEG).

b. Esophageal pressure.

c. Audiovisual taping.

d. Electromyogram (EMG).

e. Arterial blood gas analysis.

f. Oral and nasal respiration.

g. Chest and abdominal excursion.

The finding of obstructive sleep apnea under this comprehensive monitoring provides an improved diagnostic technique for evaluation of impairments of the cardiopulmonary system.

VII. Psychological Tests

1. Boston Diagnostic Aphasia Examination—(Generally available since January 1972).

A comprehensive examination of all language and speech functions. It is an improved technique because it provides more comprehensive and better organized quantitative data.

2. McCarthy Scales of Childrens' Abilities—(Generally available since January 1972).

Assesses motor and intellectual development of children 2½–8½ years of age. Yields 6 separate subscales, including a *General Cognitive Index* (GCI) which can be used as an Intelligence Quotient (IQ) score. It is a better technique because it is more current in terms of normative data.

3. Standford-Binet Intelligence Scale (Third Revision)—(Generally available since January 1973).

A measure of general intelligence for those aged 2 years and above. It provides a single overall IQ and there are no organized subtests or summary Verbal and Performance IQs. The measure is primarily verbal, especially at adult age levels. Because this test is more current in terms of normative data, it is an improvement over earlier tests.

4. Wechsler Intelligence Scale for Children-Revised (WISC–R)—(Generally available since January 1974).

Assesses a wide range of intellectual abilities in children ages 5 through 16. It yields a Verbal, Performance, and Full Scale IQ. This is an improved technique because it is more current in terms of normative data.

5. Wechsler Adult Intelligence Scale-Revised (WAIS–R)—(Generally available since January 1981).

Copyrighted and available for general use in 1981, it is an updated and renormed edition of the WAIS and, as such, is a better test. It assesses a wide range of intellectual abilities in those aged 16 through 74 and yields a Verbal, Performance, and Full Scale IQ.

6. Peabody Picture Vocabulary Test-Revised (PPVT–R)—(Generally available since January 1981).

An individually administered measure of hearing vocabulary for those aged 2 1/2 thru adulthood. It provides a quick estimate of verbal ability and scholastic aptitude. Because this revised test is more current in terms of normative data, it is a better technique.

7. Luria-Nebraska Neuropsychological Battery—(Generally available since January 1981).

A comprehensive neuropsychological test battery designed to assess the functioning of all major lobes of the brain. It is a better technique because it provides a low cost, portable, relatively brief alternative to the Halstead-Reitan Neuropsychological Battery.

8.a. Millon Behavioral Health Inventory—(Generally available since January 1982).

Yields information regarding a patient's style of relating to health professionals, problematic psychosocial attitudes and stressors, and psychosomatic aspects to physical complaints. It is an improved technique because it is more current, presents a more systematic approach, and is better organized.

8.b. Millon Adolescent Personality Survey—(Generally available since January 1982).

Developed to be compatible with the "Diagnostic and Statistical Manual of Mental Disorders; Third Edition" (DSM–III), this test assesses overall configuration of an adolescent's personality including coping style, expressed concerns, and behavioral patterns. It is an improved technique because of is compatability with the DSM–III.

8.c. Millon Clinical Multiaxial Inventory—(Generally available since January 1984).

Designed for the assessment of the DSM–III categories of personality disorders and clinical syndromes. Theory-derived constructs are quantitatively measured to suggest diagnoses and psychodynamics, as well as testable hypotheses about patient history and behavior. It is an improved technique because it assesses pathology in a format which can be readily used with the DSM–III.

9. Kaufman Test of Educational Achievement (K–TEA)—(Generally available since January 1983).

Assesses reading, spelling, and mathematical knowledge in children in grades 1 thru 12.

10. Kaufman Assessment Battery for Children (K–ABC)—(Generally available since January 1984).

This is a clinical instrument for the evaluation of preschool and elementary school children (2 1/2 thru 12 1/2 years of age). Developed from recent research and theory in neuropsychology and cognitive psychology, it assesses problem-solving ability using both simultaneous and sequential mental processes. It also includes an achievement scale which assesses acquired knowledge in reading and arithmetic. It is an improved technique because it generates data that coincides with recent research relating particular functions to parts of the brain.

11. The Scale of Independent Behavior—(Generally available since January 1984).

Assesses 14 critical areas of independent and adaptive behavior including self-care, motor, socialization and community independence skills.

The potential evaluation consequences of all the above psychological tests is a more accurate and objective adjudication based on standardized, validated instruments.

[FR Doc. 86–12013 Filed 5–28–86; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. I–86–138]

Combined Notice: Intent To Issue a Finding of No Significant Impact and Compliance With Executive Order 11988

The Department of Housing and Urban Development gives notice concerning the purposed Fairfield Village Subdivision, located in Harris County, Texas, and within the extraterritorial jurisdiction of the City of Houston, that: (1) It intends to issue a Finding of No Significant Impact (FONSI) based upon an Environmental Assessment (EA) for the project; and (2) provides an explanation of why the action is proposed to be partially located in a floodplain as required by Executive Order 11988 on Floodplain Management. Comments are solicited before the HUD-Fort Worth Regional Administrator makes a final determination whether to proceed without preparing an Environmental Impact Statement (EIS).

Description

The Friendswood Development Company of Houston, Texas, has filed an application with the Houston Office of the Department of Housing and Urban Development to accept the proposed 1,500 acre subdivision for mortgage insurance under section 203(b) of Title I of the National Housing act of 1934, as amended. The proposed subdivision is located in the northwest corner of Harris County, but is within the extraterritorial jurisdiction of the City of Houston. The tract is bordered on the south by U.S. Highway 290, approximately midway between the towns of Waller and Jersey City. The proposed subdivision, to be known as Fairfield Village, is a portion of a tract which was known as Nine Bar Ranch. When fully developed, the subdivision will provide housing for approximately 18,000 persons.

Purpose of FONSI Notice

Pursuant to HUD's environmental regulations, 24 CFR Part 50, an EA has been prepared by the HUD Houston Office to determine whether or not an EIS is required. It is the finding of the EA that there would be no significant impact upon the human environment and that the project is in compliance with the National Environmental Policy Act and related environmental laws and authorities cited at 24 CFR 50.4. Therefore, in accordance with the applicable regulations, a proposed FONSI has been prepared and a notice to the effect is hereby published. Pursuant to 40 CFR 1501.4(e)(2) of Council on Environmental Quality regulations, there will be a thirty (30) day comment period before HUD makes its final determination on the FONSI. Interested individuals, governmental agencies, and private organizations are invited to comment on the FONSI by the date and to the addresses set forth below.

Purpose of the Floodplain Notice

As required by Executive Order 11988, Floodplain Management, this notice shall serve as the second (final) notice explaining the Department's decision to approve the Fairfield Village Subdivision with the successful completion of the process described above. Public notice to this effect was published in the *Houston Chronicle* on March 16, 1986. The Harris County Water Control Improvement District No. 155 has approved a plan for reclaiming the area. A series of drainage channels has been designed to eliminate flooding from the subdivision. Application for a Final Letter of Map Amendment (FLOMA) will be made to the Federal Emergency Management Agency (FEMA) when all improvements have been completed. Until a FLOMA has been issued, flood insurance will be required on all residential properties shown to be within a designated 100-year floodplain by FEMA maps.

Additional Information and Comments

The EA which serves as the basis for the FONSI and supporting documentation are available for review until the close of the comment period at the HUD Houston Office and the Fort Worth Regional Office during regular business hours. Contacts concerning review should be made with Mr. James M. Wilson, Manager, HUD Houston Office, National Bank of Texas Building, 2211 Norfork, Suite 300, Houston, TX 77098–4096, Commercial Telephone No. (713) 229–3950 or FTS 526–7951, or I. J. Ramsbottom, Regional Environmental Officer, HUD Fort Worth Regional Office, 1600 Throckmorton Street, Fort Worth, TX 76113–2905, Commercial Telephone No. (817) 885–5482 or FTS 728–5428 (these are not toll-free commercial numbers).

Written comments on the FONSI should be submitted to the Forth Worth Regional Administrator, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, Texas 76113–2905 (Attention: Regional Environmental Officer) within thirty (30) days of the publication of this notice.

Dated: May 19, 1986.

Dorothy Williams,

Deputy Director, Office of Environment and Energy

FR Doc. 86-11932 Filed 5-28-86; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-21963]

Arizona; Public Land Exchange, Maricopa County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action, exchange of public lands in Maricopa County, Arizona.

SUMMARY: The following described public lands have been determined to be potentially suitable for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 3 W.,
Secs. 3, 7;
T. 1 N., R. 4 W.,
Secs. 1, 11-14;
T. 1 N., R. 5 W.,
Sec. 27;
T. 2 N., R. 3 W.,
Secs. 4, 5, 8, 9, 14, 15, 17-22, 26-29, 33-35;
T. 2 N., R. 4 W.,
Sec. 1;
T. 2 N., R. 5 W.,
Secs. 1-10, 18, 19, 36;
T. 3 N., R. 4 W.,
Secs. 1, 11-14, 24, 25, 36;
T. 4 N., R. 4 W.,
Sec. 36;
T. 3 N., R. 5 W.,
Secs. 12-14, 20-36;
T. 5 N., R. 5 W.,
Secs. 6, 16-21, 28-33;
T. 1 S., R. 2 W.,
Secs. 8, 9, 12, 13, 24, 25, 30-32, 36;
T. 2 S., R. 2 W.,
Secs. 5, 6;
T. 1 S., R. 3 W.,
Secs. 24, 25.

Comprising 43,553.66 acres of public land.

Public lands to be transferred from the United States will be subject to the following reservations, terms and conditions.

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. A reservation of all existing oil and gas leases until lease termination dates.

3. All valid existing rights, privileges and reservations of record on the date of patent issuance which would include rights-of-way and grazing permits.

A complete listing of legal descriptions for the lands listed in this Notice is available at the Phoenix District Office.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands described in this Notice from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

This Notice will cancel and replace the segregative effects on all previously published Notices on the public lands described herein.

The segregation of the above-described lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation or the passage of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, from date of publication, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: May 20, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-11965 Filed 5-28-86; 8:45am]

BILLING CODE 4310-32-M

Susanville District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior; Susanville District Advisory Council, Susanville, California 96130.

ACTION: Postponement of District Advisory Council Meeting.

SUMMARY: Notice is hereby given that the Susanville District Advisory Council Meeting, scheduled for May 13-14, 1986, as noted in the **Federal Register** April 24, 1986, Vol. 51, No. 79, page 15547 is postponed. The new dates for the meeting are June 18-19, 1986.

FOR FURTHER INFORMATION CONTACT: Louisa Beld, Public Affairs Officer, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130, 916/257-5381.

C. Rex Cleary,

District Manager.

[FR Doc. 86-11968 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-40-M

[W-49234]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-49234 for lands in Carbon County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-49234 effective March 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-11966 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-22-M

Colorado; Filing of Plats of Survey

May 19, 1986.

The plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., May 19, 1986.

The supplemental plat showing amended lottings in section 30, T. 4 S., R. 96 W., Sixth Principal Meridian, Colorado, was accepted May 2, 1986.

This plat was prepared to meet certain administrative needs of this Bureau.

The plat, in three sheets, of the survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., July 10, 1986.

The plat, in three sheets, representing the dependent resurvey of portions of the east and south boundaries, and subdivisional lines, the segregation of certain mineral surveys, and the survey of the subdivision of section 36, T. 44 N. R. 6 W., New Mexico Principal Meridian, Colorado; the Dependent

resurvey of Capitol City Townsite and the segregation of certain mineral surveys in Unsurveyed Tps. 43 N., Rs. 5 and 6 W., New Mexico Principal Meridian, Colorado, Group No. 759, was accepted May 9, 1986.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-11964 Filed 5-28-85; 8:45 am]

BILLING CODE 4310-84-M

Butte District, MT; District Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Butte District Advisory Council will be held Thursday and Friday, June 26 and 27, 1986.

The meeting will begin at 1 p.m., June 26 in the Butte District Office conference room, 106 North Parkmont (Industrial Park), Butte Montana. The agenda will include (1) recreation access to public lands, (2) the district's land adjustment program, (3) surface management (3809) regulation administration, (4) the Centennial Mountains wilderness study, (5) a discussion of the district's range program, including the Bureau's riparian initiative, weed control, Cooperative Management Agreements and grazing fees, (6) the District's reforestation program, (7) Peregrine Falcon reintroduction efforts, and (8) hazardous waste management.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make advance arrangements with the district manager.

Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: May 20, 1986.

Jack A. McIntosh,

District Manager, Butte District.

[FR Doc. 86-11974 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 1084 and 1091, Blocks 74 and 92, respectively, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on May 16, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 19, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-11969 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1187, Block 27, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 19, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 19, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-11970 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-MR-M

Royalty Management Advisory Committee; Cancellation of Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of cancellation of meeting.

On May 8, 1986, a notice was published in the Federal Register (51 FR

17109), announcing a meeting of the Royalty Management Advisory Committee on June 3, and June 4, 1986, at the Clarion Hotel, 3203 Quebec, Denver, Colorado to receive reports from six technical working panels.

The purpose of this notice is to announce cancellation of that meeting, which will be rescheduled at a later date.

The date and location of the rescheduled meeting will be announced in a subsequent Federal Register notice.

Dated: May 23, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-12042 Filed 5-28-86;8:45am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

[INT-FES 86-10]

Grand Valley Unit, Stage Two Development, Colorado River Basin Salinity Control Project; Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental statement on a proposed salinity control project that would reduce salt loading to the Colorado River system by lining canal laterals in Mesa County in western Colorado.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Department of the Interior, Bureau of Reclamation, Room 7423, Washington, DC 20240, Telephone: (202) 343-4991

Document Systems Management Branch, Library Section, Code D-823, Engineering and Research Center Library, Room 450, Denver, Colorado 80225, Telephone: (303) 236-6963, Hours: 7:30 a.m.-4:00 p.m.

Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84147, Telephone: (801) 524-5592

Grand Junction Projects Office, Bureau of Reclamation, 2597B 3/4 Road, P.O. Box 1889, Grand Junction, Colorado 81502, Telephone: (303) 242-8621

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, the Regional Director, or the Grand Junction Projects Office at the above addresses. Copies also will be available for inspection in libraries in the project vicinity.

Dated: May 23, 1986.

James E. Cook,

Acting Commissioner.

[FR Doc. 86-12026 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-09-M

San Joaquin Valley Conveyance Project, California; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior's Bureau of Reclamation proposes to prepare an environmental impact statement for the San Joaquin Valley Conveyance Project, which would be located in portions of Merced, Madera, Fresno, Tulare, Kings and Kern Counties, California. The purpose of the project is to provide an additional water supply to the San Joaquin Valley to relieve the present groundwater overdraft, expected to increase to 2 million acre-feet per year by the year 2010. Other objectives of the project include drainage and fish and wildlife enactment.

Alternatives under consideration include various canal alignments, new construction and enlargements of existing canals. Five alternatives, including "No Action", will be evaluated:

(1) *Enlarged Westside/Mid-Valley Canal.* Under this alternative, the Bureau would proceed with the construction of two canals out of the Mendota Pool. The north branch would go from the Mendota Pool to a terminus at the Chowchilla River. The second and third stages of the project would enlarge the Delta-Mendota Canal (DMC) from O'Neill Forebay to Mendota Pool and either enlarge the California Aqueduct or the DMC from the Delta to O'Neill Forebay. The project would allow a total of 2,000 cfs of water to move through the facilities.

(2) *East Side Canal.* Under this alternative, and East Side Canal from the Delta to a terminus at the Kern River would be built. The maximum capacity of the canal would be 3,000 cfs.

(3) *East Side Canal to San Joaquin River/Mid-Valley Canal.* This alternative would combine features of Alternatives 1 and 2. An East Side Canal and the main branch of Mid-Valley Canal would be constructed. The capacity of the project would be 2,000 cfs.

(4) *Reduced East Side/Mid-Valley Canal.* Both an East Side Canal and a Mid-Valley Canal would be constructed. The capacity of the main branch would be less than in Alternative 3, but the difference would be made up by extending the East Side Canal to the White River. Capacity would be 2,000 cfs.

A workshop will be held to solicit information from interested public entities and persons to assist in determining the scope of the environmental impact statement and the significant issues related to the proposed alternatives. The workshop will be held on June 17, 1986, at 7:30 p.m., at the Convention Center, Apricot Room, 700 M Street, Fresno, California.

The contact person for the environmental impact statement is: Bill Payne, Environmental Specialist, Mid-Pacific Region (MP-750), 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978-5130.

Dated: May 23, 1986.

James E. Cook,

Acting Commissioner.

[FR Doc. 86-12027 Filed 5-28-86; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-143]

Certain Amorphous Metal Alloys and Amorphous Metal Articles; Decision to Extend Period for Determining Whether to Review an Initial Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Extension of period for determining whether to review an initial advisory opinion.

SUMMARY: The Commission has extended from May 19, 1986, to June 5, 1986, its administrative deadline for determining whether to review the March 3, 1986, initial advisory opinion issued by the presiding administrative law judge in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION: *Background.* Investigation No. 337-TA-143, entitled *Certain Amorphous Metal Alloys and Amorphous Metal Articles,* was conducted to determine whether there was a violation of section 337 of the Tariff Act of 1930 by the importation or sale of certain amorphous metal alloys and amorphous metal articles from Japan and West Germany. (*See* 48 FR 15963 (Apr. 13, 1983); 48 FR 43108 (Sept. 21, 1983); 49 FR 4047 (Feb. 1, 1984).) After finding a violation in the

importation of the accused articles, the Commission issued a general exclusion order, which prohibited the entry of amorphous metal articles manufactured abroad by casting processes disclosed in claims 1, 2, 3, 5, 8, or 12 of complainant Allied Corp.'s U.S. Letters Patent No. 4,221,257 (the '257 patent). (*See* 49 FR 42803 (Oct. 24, 1984); USITC Publication 1664 (October 1984).

In response to motions filed by certain respondents, the Commission currently is conducting advisory opinion proceedings to determine whether the modified casting processes of those respondents would infringe the '257 patent. (*See* Motion No. 143–86"C" filed by respondents Hitachi Metals, Ltd., and Hitachi Metals International, Ltd.; Commission Action and Order of July 26, 1985; Motion No. 143–89"C" filed by respondent Vacuumschmelze GmbH; Commission Action and Order of Sept. 11, 1985.) On March 3, 1986, the presiding administrative law judge issued an initial advisory opinion (IAO) stating that the respondents' modified processes are noninfringing.

The previously scheduled administrative deadline for the Commission to determine whether to review the IAO was the close of business on Monday, May 19, 1986. (*See* 50 FR 9534 (Mar. 19, 1986).) The Commission has determined that this administrative deadline will be extended to the close of business on Thursday, June 5, 1986.

Written submissions. Further submissions from the parties will not be accepted during the extended period for determining whether to review the IAO.

Public inspection. All nonconfidential documents filed in the current proceedings and the original investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information concerning the current proceedings and the original investigation can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: May 19, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–12069 Filed 5–28–86; 8:45 am]

BILLING CODE 1020–02–M

[Investigation No. 337–TA–183]

Certain Indomethacin

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on June 13, 1986, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: May 20, 1986.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 86–12068 Filed 5–28–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–247]

Certain Sickle Guards; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 337.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on April 24, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of National-Standard Company, 1618 Terminal Road, Niles, Michigan 49120. Supplements to the complaint were filed on May 9 and May 13, 1986. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain sickle guards into the United States, and in their sale, by reason of alleged: (1) Direct, contributory, and induced infringement of claims 1, 4, 5, 7, and 8 of U.S. Letters Patent 3,978,645; (2) common law trademark infringement; (3) false designation of origin; and (4) passing off. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation and sale of the articles in question into the United States, except under bond, and temporary cease and desist orders. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Robert D. Litowitz, Esq., or Gary L. Kaplan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–4693 and 202–523–1088, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 201.12)

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 20, 1986, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (1) of section 337 in the unlawful importation of certain sickle guards into the United States, or in their sale, by reason of alleged: (1) Direct, contributory, and induced infringement of claims 1, 4, 5, 7, and 8 of U.S. Letters Patent 3,978,645; (2) common law trademark infringement; (3) false representation of source; and (4) passing off, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed on April 24, 1986, shall be forwarded to the presiding administrative law judge for an initial determination pursuant to § 210.53(b) of the rules;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

National-Standard Company, 1618 Terminal Road, Niles, Michigan 49120

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Kimber Die and Tool Company Ltd., Woodhall Works, Foxoak Street, Cradley Health, Warley, West Midlands, B64 5DH England

P.D. Rasspe Sohne GMBH & Company, 565 Solingen 1, Stocken 17, Federal Republic of Germany

Busatis-Werke GMBu & Company, KG, 5630 Remscheid-Lennep, Rostfach 5609, Huckeswagen, Federal Republic of Germany

OMNI-USA, Inc., 16236 San Diguito Road, P.O. Box 8766, Rancho Sante Fe, California 92067
Herschel Corporation, 1301 N. 14th Street, Indianola, Iowa 50125
MCM Industries, 16401 S. Frontage Road, Oak Forest, Illinois 60452
Stocker & Son, Inc., 34 Suydam Lane, Bayport, New York 11705
Veldmaster, Inc., Subsidiary, Union Steel Corp. of South Africa, 34 S. Broadway, White Plains, New York 10601
Southern Supply Company, Inc., 8351 Moberly Lane, P.O. Box 270669, Dallas, Texas 75227
Omni Supply Inc., 8351 Moberly Lane, P.O. Box 270669, Dallas, Texas 75227

(c) Robert D. Litowitz, Esq., and Gary L. Kaplan, Esq., Office of Unfair Import Investigations, United States International Trade Commission, 701 E Street NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorneys, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge. Pursuant to § 210.24(e) of the Commission's Rules of Practice and Procedure, the presiding administrative law judge shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint and motion for temporary relief, except for any confidential infomation contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: May 22, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12066 Filed 5-28-86; 8:45 am]

BILLING CODE-7020-02-M

[Investigation No. 701-TA-274 (Preliminary)]

Softwood Lumber From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-274 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of softwood lumber, rough, dressed, or worked (including softwood flooring classified as lumber), provided for in items 202.03 through 202.30, inclusive, softwood siding, not drilled or treated, provided for in items 202.47 through 202.50, inclusive; other softwood lumber and siding, provided for in item 202.52; item 202.54; and softwood flooring provided for in item 202.60 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Canada. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by July 3, 1986.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-523-1793), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on May 19, 1986 by the Coalition for Fair Lumber Imports, a group of U.S. softwood lumber manufacturers and associations representing U.S. softwood lumber manufacturers and foresters.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and address of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operation has scheduled a conference in connection with this investigation for 9:30 a.m. on June 10, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-523-1793) not

later than June 5, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submission.—Any person may submit to the Commission on or before June 12, 1986 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submission except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: May 20, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12074 Filed 5-28-86; 8:45 am]

BILLING CODE 7020-02-M

[332-221]

The Effects of Eximbank Financing Programs on U.S. Industries and Employment

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: The Commission, following receipt on October 11, 1985, of a Congressionally mandated request from the Export-Import Bank of the United States (Eximbank), on December 31, 1985, instituted investigation No. 332-221 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The purpose of the investigation was to assess the impact of the Bank's activities on industries and employment in the United States.

On February 3, 1986, the Commission received a written request from Eximbank Chairman Draper to defer further work on the investigation due to new budgetary constraints at Eximbank, which do not permit funding of the study. In response to Chairman Draper's request, the Commission has terminated the subject investigation. The request for termination of work on the study also indicated that Eximbank hoped to provide funding for the study in a future budget and would notify the Commission when Eximbank could again request that the investigation move forward.

Notice of the institution of the investigation was published in the **Federal Register** of January 8, 1986 (51 FR 787).

Effective Date: May 15, 1986.

Issued: May 20, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12071 Filed 5-28-86 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-273 (Preliminary) and 731-TA-320-325 (Preliminary)]

Certain Unfinished Mirrors From Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, Turkey, and the United Kingdom

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930, that there is no reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Turkey of unfinished glass mirrors, 15 square feet and over in reflecting area, provided for in item 544.54 of the Tariff Schedules of the United States, which are allegedly being subsidized. The Commission also determines,[3] pursuant to section 733(a) of the Act, that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom, which are allegedly being sold at less than fair value (LTFV).

Background

The Commission instituted these investigations on April 1, 1986, following the receipt of a petition from the National Association of Mirror Manufacturers, Potomac, MD, which alleged that subsidized imports of the above articles from Turkey and LTFV imports from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom are being sold in the United States and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 9, 1986 (51 FR 12221). The conference was held in Washington, DC, on April 23, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 16, 1986. The Views of the Commission are contained in USITC Publication 1850 (May 1986), entitled "Certain Unfinished Mirrors from Belgium, The Federal Republic of Germany, Italy, Japan, Portugal, Turkey, and The United Kingdom: Determinations of the Commission in Investigation No. 701-TA-273 (Preliminary) and Determinations of the Commission in Investigations Nos. 731-TA-320 through 325 (Preliminary), Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: May 19, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-12070 Filed 5-28-86; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Eckes and Lodwick dissenting.

[3] Vice Chairman Liebeler and Commissioners Rohr and Brunsdale dissenting.

DEPARTMENT OF LABOR

Employment and Training Administration

Final Planning Estimates for Program Year (PY) 1986 for Basic Labor Exchange Activities Under the Wagner-Peyser Act.

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final planning estimates for Program Year (PY) 1986 (July 1, 1986, through June 30, 1987) for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Richard C. Gilliland, Director, United States Employment Service (Attention: TEES) 601 D Street, NW., Washington, DC 20213. Telephone: 202–376–6750.

SUPPLEMENTARY INFORMATION: In accord with section 6(b)(5) of the Wagner-Peyser Act, the Employment and Training Administration is publishing final estimates for each State's projected allotment for Program Year (PY) 1986 (July 1, 1986, through June 30, 1987). Preliminary planning estimates were published in the Federal Register on March 11, 1986. 51 FR 8373. The total amount of funds currently available for distribution to States for public employment service activities is $792,200,000 less $34,065,000 sequestered from the Fiscal Year (FY) 1986 appropriation, as mandated by the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99–177). An additional. $14,000,000 is being witheld to finance postage costs associated with the conduct of employment service activities; and $3,911,000 is being withheld to reflect a proposed reduction in the Department of Labor's trust fund authority, pending before Congress. Funds will be distributed in accord with formula criteria established in section 6(a) and (b) of the Wagner-Peyser Act. Civilian labor force (CLF) and unemployment data for Calendar Year 1985 were used in making the formula calculations.

The Secretary of Labor reserved three percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment service activities. In accordance with this provision, $22,206,720 has been set aside for distribution through the same administrative formula used since the Wagner-Peyser Act was amended by Pub. L. 97–177. See 51 FR 8373 (March 11, 1986); and 51 FR 2589 (January 17, 1986). The three percent distribution is included in the total allotment.

Of this total, $9,347,049 is allotted to thirteen States whose relative share decreased and which have a CLF below one million and are below the median CLF density. These States are held harmless at 100 percent of their PY 1985 relative share of resources. The remaining $12,859,671 is distributed to States losing in relative share from PY 1985 but who do not meet the CLF size and density criteria.

Signed at Washington DC, on May 12, 1986.

Roberts T. Jones,

Deputy Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
FINAL PY 1986 WAGNER-PEYSER ALLOTMENTS TO STATES
04-25-1986

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1*	STEP 2**	TOTAL	ALLOTMENT***
Alabama	11,081,925	0	525,222	525,222	11,607,147
Alaska	7,024,142	1,022,448	0	1,022,448	8,046,590
Arizona	8,164,285	0	0	0	8,164,285
Arkansas	6,946,102	0	738,543	738,543	7,684,645
California	73,859,711	0	0	0	73,859,711
Colorado	9,226,204	0	0	0	9,226,204
Connecticut	8,722,628	0	0	0	8,722,628
Delaware	2,005,395	0	62,180	62,180	2,067,575
District of Columbia	5,168,128	0	549,500	549,500	5,717,628
Florida	28,777,986	0	0	0	28,777,986
Georgia	15,857,061	0	0	0	15,857,061
Hawaii	2,765,343	0	294,025	294,025	3,059,368
Idaho	5,852,358	851,881	0	851,881	6,704,239
Illinois	35,117,870	0	0	0	35,117,870
Indiana	16,088,330	0	0	0	16,088,330
Iowa	8,825,078	0	938,325	938,325	9,763,403
Kansas	6,384,978	0	0	0	6,384,978
Kentucky	10,693,930	0	0	0	10,693,930
Louisiana	13,585,458	0	0	0	13,585,458
Maine	3,480,342	506,606	0	506,606	3,986,948
Maryland	11,321,755	0	70,558	70,558	11,392,313
Massachusetts	14,888,563	0	123,176	123,176	15,011,739
Michigan	27,968,616	0	326,730	326,730	28,295,346
Minnesota	12,030,699	0	0	0	12,030,699
Mississippi	7,660,988	0	814,553	814,553	8,475,541
Missouri	13,620,699	0	0	0	13,620,699
Montana	4,782,578	696,162	0	696,162	5,478,740
Nebraska	5,747,718	836,649	0	836,649	6,584,367
Nevada	4,649,169	676,742	0	676,742	5,325,911
New Hampshire	2,606,018	0	0	0	2,606,018
New Jersey	20,452,733	0	0	0	20,452,733
New Mexico	5,366,892	781,216	0	781,216	6,148,108
New York	53,252,036	0	5,662,013	5,662,013	58,914,049
North Carolina	16,259,824	0	147,582	147,582	16,407,406
North Dakota	4,870,094	708,901	0	708,901	5,578,995
Ohio	31,524,647	0	0	0	31,524,647
Oklahoma	12,175,674	0	1,294,576	1,294,576	13,470,250
Oregon	8,522,464	0	906,150	906,150	9,428,614
Pennsylvania	32,677,233	0	138,695	138,695	32,815,928
Puerto Rico	9,213,546	0	0	0	9,213,546
Rhode Island	2,568,404	0	267,843	267,843	2,836,247
South Carolina	8,780,650	0	0	0	8,780,650
South Dakota	4,501,088	655,187	0	655,187	5,156,275
Tennessee	13,297,669	0	0	0	13,297,669
Texas	45,571,426	0	0	0	45,571,426
Utah	9,844,426	1,432,973	0	1,432,973	11,277,399
Vermont	2,108,568	306,927	0	306,927	2,415,495
Virginia	15,206,350	0	0	0	15,206,350
Washington	12,526,397	0	0	0	12,526,397
West Virginia	5,538,835	363,031	0	363,031	5,901,866
Wisconsin	13,557,697	0	0	0	13,557,697
Wyoming	3,492,162	508,326	0	508,326	4,000,488
FORMULA TOTAL	716,212,872	9,347,049	12,859,671	22,206,720	738,419,592
Guam	346,367	0	0	0	346,367
Virgin Islands	1,458,041	0	0	0	1,458,041
NATIONAL TOTAL	718,017,280	9,347,049	12,859,671	22,206,720	740,224,000

* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1985 TO THE PY 1986 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1985 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 16 STATES LOSING IN RELATIVE SHARE FROM PY 1985 TO THE PY 1986 BASIC FORMULA AMOUNT.

*** - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

[FR Doc. 86-11934 Filed 5-28-86; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303(a).

DATE: Comments must be received in writing on or before July 28, 1986.

ADDRESS: Address comments and requests for single copies of schedules indentified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The contol number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records in the form or paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration (N1–AFU–86–40). Medical Quality Assurance (QA) Records

2. Department of the Army, Records Management Operations Office (N1–AU–86–50). Reproduction manuscript cancellation files.

3. Department of the Army, Centers (N1–338–86–6). Facilitative records of US Army Centers, ca. 1950–65 (schedule provides for permanent retention of historically valuable Center records).

4. Department of the Army, Boards (N1–338–86–7). Facilitative records of U.S. Army Boards, ca. 1950–65 (schedule provides for permanent retention of historically valuable Board records).

5. Department of the Army, Tank, QM, Transportation Center/Commands (N1–338–86–8). Facilitative records of U.S. Army Center/Commands, ca. 1950–65 (schedule provides for permanent retention of historically valuable Center/Commands records).

6. Departments of the Army and the Air Force, Army and Air Force Exchange Service, Administration Division (N1–334–86–1). Administrative and operational records.

7. Farm Credit Administration (N1–103–86–1). Individual association case files including administrative correspondence, charters, bylaws, organization papers, and stockholder disclosure information.

8. U.S. General Accounting Office, Office of Civil Rights (NC1–217–85–1). Records relating to personnel matters, including merit selection, noncompetitive promotions, equal employment opportunity, discrimination complaints, adverse action cases, and other matters.

9. Department of the Interior, National Park Service (NC1–79–85–1). Comprehensive schedule covering headquarters and field records of the U.S. Park Police.

10. Department of Justice, Community Relations Service, Cuban and Haitian Entrant Program NC1–379–85–2). Grant case and policy files, entrant and unaccompanied minor case files, and program case and procedural files.

11. Department of State, Assistant Secretary, Office of the Comptroller (N1–59–86–3). General subject files concerning budgetary and administrative activities, travel vouchers, internal control, financial plans, and related materials.

Dated: May 21, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–12025 Filed 5–28–86; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[86–38]

Intent To Grant Limited Exclusive Patent Licenses; HealthMate, Inc., et al.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Limited Exclusive Patent Licenses.

SUMMARY: NASA hereby gives notice of intent to grant to HealthMate, Inc., of Northbrook, Illinois, and Power Controls International Pty., Ltd., of Sydney, Australia limited, exclusive, revocable licenses to practice the following patented inventions in Australia, Japan, Hong Kong and Singapore. The inventions are the foreign counterparts of the nonradioactive isotope version of U.S. Patent No. 4,142,101 for a "Low Intensity X-Ray and Gamma-Ray Imaging Device," which issued on February 27, 1979; U.S. Patent No. 4,510,476 for a "High Voltage Isolation Transformer," which issued on January 9, 1985; U.S. Patent No. 4,517,472 for a "High Voltage Power Supply," which issued on May 14, 1985; and U.S. Patent No. 4,521,688 for a "Three Dimensional and Tomographic Imaging Device for X-Ray and Gamma-Ray Emitting Objects," which issued on June 4, 1985. The proposed limited exclusive licenses will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the limited exclusive licenses unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the Grant, together with supporting documentation. The Director of Patent Licensing will review

all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the limited exclusive licenses.

DATE: Comments to this Notice must be received by July 28, 1986.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: May 19, 1986.

John E. O'Brien,

General Counsel.

[FR Doc. 86–11944 Filed 5–28–86; 8:45 am]

BILLING CODE 7510–01–M

[86–39]

Intent To Grant Limited Exclusive Patent Licenses; Techniblast

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Limited Exclusive Patent Licenses.

SUMMARY: NASA hereby gives notice to grant to Techniblast of Seminole, Oklahoma, and Artech Corporation of Falls Church, Virginia, limited exclusive, royalty-bearing, revocable licenses to practice the inventions as described in U.S. Patent No. 3,754,976 for a "Peen Plating," which issued on August 28, 1973, and U.S. Patent No. 4,552,784 for a "Method of Coating a Substrate With a Rapidly Solidified Metal," which issued on November 12, 1985. The proposed limited exclusive licenses will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the limited exclusive licenses unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the limited exclusive licenses.

DATE: Comments to this Notice must be received by July 28, 1986.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: May 19, 1986.

John E. O'Brien,

General Counsel.

[FR Doc. 86–11945 Filed 5–28–86; 8:45 am]

BILLING CODE 7510–01–M

[85–37]

Government-owned Inventions; Availability for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North American Continent.) Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, John G. Mannix, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 453–2430.

Patent Application 641,152: 1-[Diorganooxyphosphonyl] methy 1]-2,4- and 2,6-Dinitro and Diamino Benzenes and Their Derivatives; filed August 16, 1984.

Patent Application 692,740: Ferroresonant Regulated Power Supply; filed January 18, 1985.

Patent Application 727,838: Brushless DC Motor Control System Responsive to Control Signals Generated by a Computer of the Like; filed April 26, 1985.

Patent Application 734,366: Polyenamines from Aromatic Diacetylinic Diketones and Diamines; filed May 15, 1985.

Patent Application: 738,816: Rapid Adhesive Specimen Bonding; filed May 29, 1985

Patent Application: 737, 018: Self-locking Double Retention Redundant Pull Pin Release; filed May 23, 1985.

Patent Application: 738,931: Fluid Leak Indicator; filed May 29, 1985.

Patent Application: 746,901: Copolyimides With a Combination of Flexibilizing Groups; filed June 20, 1985.

Patent Application: 745,977: Method of Fabricating an Imaging X-Ray Spectrometer; filed June 18, 1985.

Patent Application: 746,160: Segmented Tubular Cushion Springs and Spring Assembly; Filed June 18, 1985.

Patent Application: 748,532: Cure-in-place Composite Fastener; filed June 25, 1985.

Patent Application: 745,973: Long Grain Length Solar Pumped Box Laser; filed June 18, 1985.

Patent Application: 746,809: A Water-Absorbing Capacitor System for Measuring Relative Humidity; filed June 20, 1985

Patent Application 746,162: Aerobraking Orbital Transfer Vehicle; filed June 18, 1985.

Patent Application 760,799: Mobile Remote Manipulator Vehicle System; filed July 31, 1985.

Patent Application 761,235: Oxidation Protection Coatings for Polymers; filed July 31, 1985.

Patent Application 751,691: Dual Motion Valve with Single Motion Input; filed July 3, 1985.

Patent Application 751,695: Acoustic Guide for Noise Transmission Testing of Aircraft; filed July 3, 1985.

Patent Application 754,706: Advanced Vapor Supply Manifold; filed July 15, 1985.

Patent Application 760,378: Deployable M-Braced Truss Structure; filed July 30, 1985.

Patent Application 751,643: Cathode for Primary Battery; filed July 3, 1985.

Patent Application 760,790: Method and Apparatus for Enhancing Laser Absorption Sensitivity; filed July 31, 1985.

Patent Application 761,233: Telescoping Space Station Modules; filed July 31, 1985.

Patent Application 754,362: Process for Preparing Phthalocyanine Polymers; field July 12, 1985.

Patent Application 754,707: Programmable Electronic Synthesized Capacitance; filed July 15, 1985.

Patent Application 768,771: Polyimides Containing ATBN Elastomers and the Process for Preparing Same; filed August 23, 1985.

Patent Application 771,537: Flexible Diaphram-Extreme Temperature Usage; filed August 30, 1985.

Patent Application 764,812: Method of Producing High TC Superconducting NbN Films; filed August 12, 1985.

Patent Application 765,978: Method for Forming Hermetic Seals; filed August 15, 1985.

Patent Application 765,981: A method and Apparatus for Making an Optical

Element Having a Dielectric Film; filed August 15, 1985.

Patent Application 770,920: Method of Repairing Hidden Leaks in Tubes; filed August 30, 1985.

Patent Application 764,805: Sun Shields; filed August 12, 1985.

Patent Application 781,812: Means for Phase Locking the Outputs of a Surface Emitting Laser Diode Array; filed September 30, 1985.

Patent Application 775,968: Ion Beam Sputter Etching; filed September 13, 1985.

Patent Application 779,742: Fluidic Momentum Controller; filed September 24, 1985.

Patent Application 775,990: Method and Apparatus for Telemetry Adaptive Bandwidth Compression; filed September 13, 1985.

Patent Application 779,744: Closed Loop Fiber Optic Rotation Sensor; filed September 24, 1985.

Patent Application 783,887: Method Means for Generation of Tunable Laser Sidebands in the Far-Infrared Region; filed October 3, 1985.

Patent Application 790,594: Multiplex Electric Discharge Gas Laser System; filed October 23, 1985.

Patent Application 789,266: Single Mode Levitation and Translation; filed October 18, 1985.

Patent Application 790,556: Airplane Automatic Control Force Trimming Device for Asymmetric Engine Failure; filed October 23, 1985.

Patent Application 783,890: Welding Torch With Arc Light Reflector; filed October 3, 1985.

Patent Application 790,596: Universal Clamp; filed October 23, 1985.

Patent Application 783,888: Preloadable Vector Sensitive Latch; filed October 3, 1985.

Patent Application 783,886: Self Contained, Single-Use Hose and Tubing Cleaning Module; filed October 3, 1985.

Dated: May 19, 1986.

John E. O'Brien,

General Counsel.

[FR Doc. 86-11943 Filed 5-28-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

President's Committee on the Arts and Humanities; Meeting

Thursday, June 19, 1986 at nine o'clock in the morning has been designated by the President's Committee on the Arts and Humanities for Plenary Meeting XII. This meeting has been scheduled at the Winterthur Museum in Wilmington, Delaware. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported. The meeting is expected to adjourn before lunch.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment the Committee's operational costs and support projects and programs which have been initiated by the President's Committee.

The primary presentations of the meeting will be that of—

Dr. Stanley N. Katz, president elect of the American Council of Learned Societies, who will speak on *Private Investment in the Public Sphere*

David Rockefeller, Jr., Chairman of Rockefeller Brothers Fund Executive Committee and Vice Chairman of Rockefeller Family and Associates, who will discuss the *Charitable Giving in America*

A special progress report will be made by Barry Gaither, project supervisor and Director of the Museum of the National Center of Afro-American Artists in Boston and Debra Spencer, who is project director of the President's Committee's model program, *Collections Survey of Black Universities.*

For further information individuals may call 202-682-5409.

May 21, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-11971 Filed 5-28-86; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Crafts Fellowships Section) to the National Council on the Arts will be held on June 16-19, 1986 from 9:00 a.m. to 8:00 p.m., and on June 20, 1986 from 9:00 a.m. to 6:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

May 21, 1986.

[FR Doc. 86-11972 Filed 5-28-86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-369 and 50-370]

Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Duke Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-9 and NPF-17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would expand subparagraph 2.K.e of Facility Operating License NPF-9 for Unit 1 and subparagraph 2.J.e of Facility Operating License NPF-17 for Unit 2 to authorize use of Transnuclear, Inc. multielement spent fuel shipping cask, Model Numbers TN-8 and TN-8L, for receipt of irradiated Oconee fuel. These subparagraphs of the licenses presently limit such receipt of Oconee spend fuel at McGuire to use of the NSF-4 (NAC-1) and NLI-1/2 casks, which are single-element casks. The new authorization would be in addition to existing authorized casks and would otherwise be subject to all existing requirements of license paragraphs 2.K (Unit 1) and 2.J (Unit 2). This change was requested in the licensee's application for amendment dated March 20, 1986.

Before issuance of the proposed license amendments, 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.

TN–8 and TN–8L are multielement truck casks which are physically capable of accommodating up to three PWR fuel assemblies. The two models have the same dimensions, but TN–8L is about one ton lighter than TN–8's forty tons because it has fewer external cooling fins and, hence, a lower maximum authorized heat load. These casks have received a Certificate of Compliance for radioactive materials packages, which was recently renewed by the Commission (Certificate No. 9015, Revision 12, expiration date January 31, 1991).

By letter dated March 20, 1986, the licensee notes that in order to maintain acceptable reserve spent fuel storage capacity (needed for potential full core off-loading, reload batch and upender access) in the shared Oconee Units 1 and 2 spend fuel pool, it is necessary to use a multielement spent fuel shipping cask. The licensee notes that in addition to maintaining the necessary shipment rate, miltielement casks have the advantage of fewer shipments (and hence lower probability of adverse offsite impact), lower station manpower requirements and reduced total radiation exposure to personnel.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards consideration and of actions likely to involve significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and has determined that should this request be implemented, it would not (1) involve a significant increase in the consequences of an accident previously evaluated, (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 for the following reasons.

The licensee's letter of March 20, 1986, includes cask drop evaluations for use of the TN–8 and TN–8L truck casks which demonstrate that results would be identical to those for the single-element cask drop. The new casks would not enter the spent fuel pool and would not cause significant structural damage or damage to any safety-related equipment. The requirements for obtaining a Certificate of Compliance, including those associated with offsite transportation accidents, impose more severe conditions on the cask and its contents than would be experienced during handling at the McGuire site. The fuel and cask would remain intact in the event of a dropped cask during handling at the McGuire site, and therefore the radiological consequences would be no more severe than those associated with use of the single-element casks. The licensee's evaluation also finds that use of the new casks is within the existing design capacities of the spend fuel cask handling and auxiliary cranes and lifting devices, including the guidelines of NUREG–0612, and does not require significant alteration of existing single-element cask handling procedures. Preliminary review by the Commission supports these findings by the licensee.

The Commission also finds that implementation of this request would not involve a significant increase in the probability of an accident previously evaluated. Previously evaluated cask accident casual mechanisms are not being changed by use of the new casks. Because the new casks require less manpower and handling and only one third as many shipments as the single-element casks for a given number of assemblies, the opportunity for and probability of an accident are significantly reduced.

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 final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By June 27, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person who 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 appropriation order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(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 an amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, 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 B. J. Youngblood: 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 Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, 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 presiding Atomic Safety and Licensing Board that the petition and/or request should be granted 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 Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 22nd day of May 1986.

For the Nuclear Regulatory Commission.

Paul O'Connor,

Acting Director, PWR Project Directorate #4, Division of PWR Licensing–A, NRR.

[FR Doc. 86–11931 Filed 5–28–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275 and 50–323]

Issuance of Environmental Assessment and Finding of No Significant Impact; Pacific Gas and Electric Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 located in San Luis Obispo County, California.

Identification of Proposed Action. The amendments would consist of changes to the operating licenses and Technical Specifications (TSs) and would authorize an increase of the storage capacity of the spent fuel pool (SFP) for each unit from 290 fuel assemblies to 1324 fuel assemblies with enrichments no greater than 4.5 weight percent U–235.

The amendments to the TSs are responsive to the licensee's application dated October 30, 1985. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment By the Officer of Nuclear Reactor Regulation Relating to the Expansion of Spent Fuel Pools, Facility Operating License Nos. DPR–80 and DPR–82, Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant Unit Nos. 1 and 2, Docket Nos. 50–275 and 323," dated May 21, 1986.

Summary of Environmental Assessment. The Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), Volumes 1–3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in SFP designs, the FGEIS recommended evaluating SFP expansions on a case-by-case basis.

For the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, the expansion of the storage capacity of the SFPs will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary is less than 0.1 millirem per year; the estimated dose to the population within a 50-mile radius is estimated to be less than 0.1 person-rem per year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pools is estimated to be less than 2.5 person-rem per year. This is less than 1% of the average annual occupational dose.

The only non-radiological impact affected by the SFP expansion is the waste heat rejected to the Pacific Ocean. The increase in total plant waste heat is less than 0.1%. There is no significant environmental impact attributable to the waste heat from the plant due to this very small increase.

Finding of no Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facilities relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendments to the licenses will have no significant

impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, an environmental impact statement need not be prepared for this action.

For further details with respect to this action, see (1) the application for amendments to the Technical Specifications dated October 30, 1986 and additional information provided by the licensee in letters dated September 19, December 20 and December 24, 1985 and January 28 (2 letters), March 11, and April 24 (2 letters), 1986, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for the Diablo Canyon Nuclear Power Plant, Units 1 and 2 issued May 1973, and (4) the Environmental Assessment dated May 21, 1986. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 21st day of May 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, PWR Project Directorate No. 3, Division of PWR Licensing-A, NRR.

[FR Doc. 86–11930 Filed 5–28–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Duke Power Company (the licensee) for the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would authorize on an emergency basis a one-time release of the existing contents of the Conventional (non-radioactive) Wastewater Basin, containing trace amounts of tritium, into the Catawba River. Technical Specification (TS) 3.11.1.1. and its referenced Figure 5.1–4, "Site Boundary for Liquid Effluents" define the authorized discharge point for radioactive material released in liquid effluents to unrestricted areas as being only to Lake Norman. The proposed authorization would be accomplished by the addition of a footnote to TS Figure 5.1–4 at the discharge point for the Conventional Wastewater Basis into the Catawba River, stating that this discharge point is authorized for a one-time discharge of water which contains trace amounts of tritium in addition to the normally processed effluents of the Waste Water Collection Basin, effective the date of Commission approval. The change would not affect any existing limits or procedures regarding the processing of conventional (i.e., non-radioactive) contaminants.

The proposed amendment is in accordance with the licensee's request of May 20, 1986.

The Need for the Proposed Action

An unexpected release of tritium into the Conventional Wastewater Basin has created the need for prompt action as proposed above for two reasons, both stemming from the fact that the Basin is nearly full. First, excessive rainfall could result in an overflow of the Basin, resulting in an uncontrolled release. Second, lack of available volume in the Basin will impair the station's ability to process conventional (nonradiological) liquid waste as required by the NPDES permit issued by the State of North Carolina and, thereby, result in an extended plant outage.

Environmental Impacts of the Proposed Action

Non-radioactive chemical wastes from the McGuire Station (e.g., turbine building drains, water treatment system filter backwashes, demineralizer regeneration wastes) are routed through the Conventional Waste Water Treatment System (CWWTS) and subjected to physiocochemical treatment. The CWWTS includes a Basin of two parallel stream settling ponds with a capacity of about 2 million gallons each. Upon completion of treatment, the discharges from this system are released to the Catawba River downstream of Cowans Ford Dam. The discharge from the CWWTS may also be mixed with water from the Standby Nuclear Service Water Pond to dilute waste concentrations prior to discharge to the river. Waste containing radioactive material is not intented for the CWWTS; rather such waste is routed to separate Liquid Radwaste Systems (see FSAR section 11.2) for recycling, processing and disposal.

A. Radiological

By letter dated May 20, 1986, the licensee noted that tritium, but no other radionuclide, had entered the Basin and had subsequently been diluted to a concentration of 1.4×10^5 microcuries per milliliter. The licensee proposed to discharge the 4 million gallons of water in the Basin, along with its tritium, to the river at a rate of 500 gpm over a duration of 133 hours. The Basin discharge would also be mixed by equal flow from the Standby Nuclear Service Water Pond, such that the tritium concentration at the river release point would be 7×10^{-6} microcuries per milliliter. The concentration is well within the limit of 3×10^{-3} microcuries per milliliter specified by 10 CFR 20.106 and associated Appendix B, Table II, for tritium concentrations in water. The total activity which would be released by the proposed discharge would be about 0.25 curies of tritium, which is well within the annual tritium release from the plant estimated by the Commission in Table 3.3 of the Final Environmental Statement (NUREG–0063) to be about 940 curies per year.

The NRC has evaluated doses resulting from the proposed discharge using models and assumptions in Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Release of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I." For tritium the dominant exposure pathway is drinking water. The fish consumption pathway also makes a small contribution to the dose. Other potential pathways (such as due to irrigation or swimming) are negligible because of the properties of tritium, i.e., tritium does not accumulate either in the food chain or the body and it does not constitute a significant source of external radiation. The total body dose to a child or infant assumed to drink water from the river release point and to consume fish located at this release point was calculated by the Commission to be about 0.01 millirem. Corresponding doses to an adult or teenager were lower (i.e., about 0.008 and 0.006 millirem, respectively). Section II.A of Appendix I to 10 CFR Part 50 states that the calculated annual total quantity of all radioactive material above background to be released from each nuclear power reactor to unrestricted areas should not result in an estimated annual dose or dose commitment from liquid effluents for any individual in an unrestricted area from all pathways of exposure in excess of 3 millirems to the total body. Because the doses calculated for the proposed river discharge represent only a very small contribution to this annual dose criterion of Appendix I, we find the proposed action to be consistent with Appendix I criterion.

The licensee calculated similar but lower doses in its letter of May 20, 1986. Unlike the licensee's calculations, the NRC results conservatively assume no credit for dilution of the tritium concentration within the river. Nevertheless, we find that the discharge concentrations of tritium and resultant doses determined by the NRC are sufficiently low as to represent no significant adverse impact on the quality of the human environment.

B. Non Radiological

The licensee states that the waste within the Conventional Wastewater Basin has completed the treatment process, and (except for the presence of tritium) is otherwise within the specifications for discharge required by the NPDES permit. The change does not affect any existing limits or procedures regarding the processing of conventional (i.e., non-radioactive) contaminants. Therefore, no additional or unanalyzed impact on the environment would result from non-radioactive effluents as a result of this proposed change.

C. Conclusions

Except for the presence of tritium, no additional or unanalyzed impact on the environment would result from non-radioactive effluents as a result of the proposed change. The very low concentrations of tritium within the Conventional Wastewater Basin are well below limits permitted by 10 CFR Part 20, and if discharged to the Catawba River as proposed, would result in insignifcant doses consistent with the guidance of Appendix I to 10 CFR Part 50. Accordingly, the Commission concludes that the proposed action would result in no significant adverse impact to the quality of the human environment.

Alternative to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives to the actions proposed would not result in substantial improvement in the quality of the environment and therefore need not be evaluated.

The principal alternative would be to deny the requested amendments. That alternative, in effect, is the same as the "no action" alternative. Neither alternative would significantly reduce environmental impacts but would result in extended plant outage, and possibly result in uncontrolled discharges due to rain.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated April 1976 or its addendum dated January 1981 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of May 20, 1986, and except for the State of North Carolina, did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based on this environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated May 20, 1986, and the Commission's Final Environmental Statement dated April 1976 with its addendum dated January 1981, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina. 28242.

Dated at Behesda, Maryland, this 23rd day of May 1986.

For the Nuclear Regulatory Commission.

Paul O'Connor,

Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.

[FR Doc. 86-12055 Filed 5-28-86; 8:45 am]

BILLING CODE 7590-01-M

Reassertion of Certain Regulatory Authority in the State of New Mexico

By letter dated March 18, 1986 Governor Toney Anaya of New Mexico, requested that the NRC reassert its authority over uranium milling and mill tailings in New Mexico. The Governor stated that because of severe budget constraints, as well as other compelling reasons, the State can no longer assume regulatory responsibility for uranium mill tailings. The other reasons found compelling by Governor Anaya related to legal problems in attempting to enforce Federal regulations directly, difficulties anticipated in upgrading the New Mexico regulations and mill surety arrangements and high staff turnover. A copy of the Governor's letter is on file in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Pursuant to the provisions of section 274j of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission granted the Governor's request. The Commission found that it is necessary to terminate that part of New Mexico's agreement relinquishing NRC authority over uranium and thorium milling activities and mill tailings and to reassert NRC licensing and regulatory authority over these activities and the mill tailings produced in order to protect the public health and safety. This finding ensures that there will be no lapse of licensing and regulatory authority over these activities and materials upon relinquishment of this authority by the State of New Mexico. This reassertion of authority will become effective on June 1, 1986. This action does not affect the remaining portion of the New Mexico Agreement State Program which covers regulation of byproduct material (as defined in section 11(e)(1) of the Atomic Energy Act), source material, and special nuclear material in quantities not sufficient to form a critical mass.

Persons seeking licenses for activities within New Mexico involving byproduct material as defined in section 11e(2) of the Atomic Energy Act of 1954, as amended, or activities resulting in the production of such byproduct material should file such applications with the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, Box 25325, Denver, Colorado 80225, Attention R. Dale Smith, Director.

Existing uranium milling licensees in New Mexico are being advised of this change in regulatory authority. Pursuant to a Commission order published with this notice, existing New Mexico licenses affected by this change will become effective NRC licenses under conditions set forth in the order.

For information regarding this reassertion action contact the NRC's Office of State Programs, Mr. Donald A. Nussbaumer (301-492-7767) or John F. Kendig (301-492-9886).

Dated at Washington, DC, this 22d day of May, 1986.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-2044 Filed 5-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362] Denial of

Southern California Edison Co. et al.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees

for an amendment to Facility Operating License Nos. NPF–10, and NPF–15 issued to the Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, respectively, in San Diego County, California. The Notice of Consideration of Issuance of Amendments was published in the Federal Register on February 12, 1986 (51 FR 5278).

The amendment, as proposed by the licensees, would change the Unit 2 and 3 Technical Specifications. The licensees proposed to remove values associated with the secondary system (such as main steam isolation valves, and main feedwater isolation valves) from Table 3.6–1 of the Technical Specifications (TS). The justification provided by the licensees is: (1) General Design Criteria (GDC) 54 and 57 are not applicable to these secondary system isolation valves, as indicated in FSAR Table 6.2–35, and (2) some of these valves have requirements in other sections of the Technical Specifications. The Commission's staff finds that some of valves are not adequately covered the other Technical Specifications. Therefore, the staff finds that the proposed change to remove certain isolation valves associated with the secondary system is not acceptable. Therefore, this request is denied in part.

By June 16, 1986, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a writtten petition for leave to intervene.

A request for a hearing or petition for leave to intervene most be filed with the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rules and Procedures Branch, Office of Administration, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorney for the licensees.

For further details with respect to this action, see: (1) The applications for amendment dated January 25, April 27, and November 30, 1984, and the supplemental letter dated October 16, 1985, and (2) The Commission's Safety Evaluation issued with Amendments 46 and 35 to NPF–10 and NPF–15 dated May 16, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing–B.

Dated at Bethesda, Maryland, this 16th day of May 1986.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing–B.

[FR Doc. 86–12056 Filed 5–28–86: 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 25–24104]

Filing Under the Public Utility Holding Company Act of 1935 ("Act")

May 22, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulged thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 16, 1986 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevent applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric Transmission (70–7213)

New England Electric Transmission ("NEET"), 4 Park Street, Concord, New Hampshire 03301, an electric utility subsidiary of New England Electric System, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7.

NEET seeks authority, during the period from July 1, 1986 to June 30, 1988, to enter into a line of credit with The First National Bank of Boston providing for borrowings, to be repaid in less than one year from the date thereof, up to aggregate amount outstanding (not including borrowing to be repaid with new borrowings) of $5 million.

Northeast Utilities (70–7240)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, has filed an application-declaration pursuant to sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

By orders dated December 10, 1981, and February 20, 1985 (HCAR Nos. 22323 and 23607), Northeast was authorized to issue and sell, from time to time through December 31, 1988, its authorized but unissued common shares pursuant to its Dividend Reinvestment and Common Share Purchase Plan ("Plan"). Northeast now intendes to amend and restate the Plan so that Northeast will no longer issue and sell, new shares direclty to the participants. Rather, it is proposed that an agent for the participants will, from time to time through December 31, 1989, apply dividsnds and optional cash payments to acquire, in the open market, approximately 2.5 million common shares per year, up to a maximum of 10 million common shares in the aggregate. The purchase price per share to a participant for shares purchased will be equal to the weighted average price paid by the agent for all shares during the period in which the participant's shares were purchased.

Columbus and Southern Ohio Electric Company (70–7257)

Columbus and Southern Ohio Electric Company ("C&SOE") a subsidiary of American Electric Power Company, Inc., a registered holding company, and Conesville Coal Preparation Company ("CCPC"), a wholly owned subsidiary of C&SOE, both located at 215 North Front Street, Columbus, Ohio 43215, have filed a proposal pursuant to sections 6, 7, 9, 10, 12(b) and 13(b) of the Act and Rules 45, 90 and 91 thereunder.

C&SOE proposes to continue the arrangements described in the initial

application and authorized by the Commission (HCAR No. 23463, October 26, 1984), with the following modifications: (i) That C&SOE's Conesville Coal Preparation Plant ("Plant") be transferred to CCPC; (ii) that the purchase of the Plant be financed by the issuance of CCPC of a 30 year promissory note and by the payment of cash by CCPC to C&SOE, which cash payment will be offset by an equivalent cash capital contribution by C&SOE to CCPC; (iii) that the interest rate on the note issued by CCPC to C&SOE will be equal to 11.15%, the effective interest cost of C&SOE's most recently issued series of First Mortgage Bonds (11% series due 1989, issued May 1985). The rate of return on the capital contribution by C&SOE is proposed to be 14.84% based on a weighted average rate of return of 15.40% on C&SOE's invesment attributed to funds provided by the equity portion of C&SOE's capitalization consisting of common equity and preferred stock and (iv) that, in connection with the transfer, C&SOE and CCPC will also enter into an Amended Coal Washing Agreement pursuant to which CCPC will provide washing services to C&SOE at cost, including, but not limited to, costs attributable to CCPC's ownership of the Plant, interest costs attributable to the notes and an amount equal to C&SOE's return on equity.

Consolidated Natural Gas Company, et al. (70–7260)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company, The Peoples Natural Gas Company, Four Gateway Center, Pittsburgh, Pennsylvania 15222, Consolidated Gas Transmission Corporation, Consolidated System LNG Company, 445 West Main Street, Clarksburg, West Virginia 26301, CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130, West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802, CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street, Cleveland, Ohio 44114, Hope Gas, Inc. and Union Natural Gas Center West, Clarksburg, West Virginia 26301, have filed an application-declaration subject to sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50 thereunder.

A notice of the original application-declaration was issued on May 15, 1986, HCAR No. 24095. Consolidated also proposes to acquire an aggregate of $51,600,000 in capital stock, $100 par value, to be issued and sold from time to time through June 15, 1987 by four subsidiary companies, as set forth below:

Company	Amount
CNG Coal Company	$500,000
CNG Development Company	21,000,000
CNG Producing Company	30,000,000
CNG Research Company	100,000
Total	51,600,000

New Orleans Public Service Inc. (70–7262)

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

NOPSI proposes to issue, pursuant to a negotiated private placement with one or more institutional investors, not to exceed $25 million aggregate principal amount of secured notes. The company requests authorization to negotiate the terms of the issuance of said notes. It may do so. Such terms are to be filed by amendment. The notes will be sold at the price of 100% of the principal amount, will have a maturity of not to exceed approximately 10 years, and will bear interest at a fixed rate per annum, estimated to be in the range of 9% to 12%. It is contemplated that the notes will be secured initially by a second lien on certain of NOPSI's assets (suborinate to the lien of its Mortgage). NOPSI proposes as soon as practicable after its earnings become sufficient to support the issuance of a sufficient amount first mortgage bonds or after the company is otherwise permitted by the terms of the Mortgage to issue first mortgage bonds (i.e., based upon retirements of bonds) to issue and deliver such bonds ("Collateral Bonds") as security for the notes. The subordinate lien therefore granted to secure the notes would then be released. In the event that by December 31, 1986, the notes are not secured by the Collateral Bonds, the fixed interest rate on the notes will thereafter be increased by up to 0.50%, and the notes will remain secured solely by the second lien until maturity.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–12051 Filed 5–28–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23257; File Nos. SR–CBOE–86–02 and 04]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Changes

On January 13 and 29, 1986, the Chicago Board Options Exchange, Inc. ("CBOE") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] proposed rule changes relating to expiration months. The proposals would allow CBOE to have (1) up to six expiration months in foreign currency options contracts, ranging from one to twelve months to expiration from the date of listing; [3] and (2) up to five expiration months in stock index options, also ranging from one to twelve months to expiration from the date of listing.[4]

At the present time CBOE employs the following patterns of expiration months: (1) S&P 100 stock options, four consecutive months;[5] (2) S&P 500 index options, two nearby consecutive months and the next three months from the March cycle;[6] and (3) foreign currency

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1985).

[3] File No. SR–CBOE–86–02, noticed in Securities Exchange Act Release No. 22836 (January 24, 1986), 51 FR 4059 (January 31, 1986).

[4] File No. SR–CBOE–86–04, noticed in Securities Exchange Act Release No. 22876 (February 7, 1986), 51 FR 5626 (February 14, 1986). On March 6, 1986, CBOE submitted Amendment No. 1 to this filing deleting a provision describing the precise expiration month pattern for Standard & Poor's ("S&P") 500 index options because adoption of the instant proposal, which would apply to all of CBOE's index options, renders this provision unnecessary. Because of its technical nature the Commission did not publish separate notice of Amendment No. 1.

[5] Letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Sharon Lawson, Attorney, Division of Market Regulation, SEC, dated April 28, 1986 ("CBOE Letter"). Currently, CBOE lists S&P 100 index option series that expire in June, July, August and September. *Id.*

[6] Currently, CBOE lists S&P 500 index option series that expire in June, July, September, and December and March. CBOE Letter, *supra note 5.*

options, three nearby consecutive months and the next two months from the March quarterly cycle.[7] The CBOE does not intend to use the authority it would possess under the proposals to change its current expiration months at this time, and had agreed to file any changes to these patterns as rule changes under section 19(b)(3)(A) of the Act.[8]

As described above, CBOE currently has authority to list series of index options in up to five different expiration months and series of foreign currency options in up to six different expiration months.[9] The instant rule filings would enlarge upon this existing authority by allowing CBOE to: (1) have discretion to select the precise arrangement of the same limited number of expiration months, subject to CBOE's agreement to file changes to existing patterns with the Commission under Section 19(b)(3)(A) of the Act;[10] and (2) list series of index options with 12 months to expiration.[11]

The Commission previously has indicated that the choice of expiration cycles may be left primarily to the business judgment of the exchanges, so long as each exercise of this judgement reflects an appropriate balance between ensuring that market participants are provided an array of expirations adequate to their investment demands and ensuring that this array does not cause an excessive dilution of liquidity in open options series.[12] The Commission believes that it is appropriate for an exchange in the first instance to exercise judgment as to what precise arrangement of a limited number of expiration months with a maximum time to expiration of twelve months best establishes this balance, with the Commission retaining the ability to review each particular exercise of this judgement under section 19(b)(3)(A) of the Act. The commission also believes the CBOE's proposal to allow twelve-month index options series represents an appropriate balance of the relevant considerations. The Commission has no reason to question CBOE's judgment that the twelve-month series allowed under CBOE's proposal will exhibit significantly less liquidity than the far-term eleven-month series currently available in S&P 500 index options.[13] Finally, the Commission finds that the CBOE's proposed new pattern for foreign currency options—three nearby months and the next two months from the March cycle—is appropriate.[14]

For these reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6[15] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule changes are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Dated: May 20, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12049 Filed 5-28-86; 8:45 am]

BILLING CODE 8010-01-M

[7] CBOE letter, *supra* note 5. CBOE currently lists series of foreign currency options that expire in June, July, August, September and December.

[8] 15 U.S.C. 78s(b)(3)(A)(1982). CBOE Letter, *supra* note 5.

[9] The Commission approved these CBOE rules in Securities Exchange Act Release Nos. 22471 and 22952 (September 26, 1985 and February 26, 1986), 50 FR 40636 and 51 FR 7511. The Commission has approved similar rules for other exchanges. *See, e.g.*, Securities Exchange Act Release No. 22478 (September 27, 1985), 50 FR 41277 [six expiration months for Philadelphia Stock Exchange, Inc. ("Phlx") foreign currency options] ("Phlx Release"); and Securities Exchange Act Release Nos. 20330 and 20414 (October 26 and November 25, 1983), 48 FR 50651 and 54308 (New York and American Stock Exchange proposals, index options).

[10] Rule changes filed under Section 19(b)(3)(A) become effective upon filing with the Commission, but the Commission may abrogate such rules within 60 days of the date of their effectiveness. *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C) 1982).

[11] CBOE's rules currently allow series of index options with a maximum of 11 months to expiration. CBOE's rules already allow series of foreign currency options with 12 months to expiration.

[12] Securities Exchange Act Release No. 22952 (February 26, 1986), 51 FR 7511 (approving up to five expiration months for S&P 500 index options) ("S&P 500 Release").

[13] Although the existing far-term eleven-month series of S&P 500 index options exhibit little volume relative to the near-term months, the Commission assumes that volume for the proposed twelve-month series would be similar and not significantly less than for the existing eleven-months series. Of S&P 500 Release, *supra* note 12, n.10.

[14] The Commission previously has approved three consecutive nearby months and three additional months from a quarterly cycle for the Phlx. See Phlx Release, *supra note 9.* The CBOE rules currently provide only for two nearby consecutive months and the next three from the March cycle. The CBOE instituted its current foreign currency procedures on an interim basis while the instant omnibus filing was pending with the Commission.

[15] 15 U.S.C. 78f (1982).

[16] 15 U.S.C. 78s(b) (2) (1982).

[17] 17 CFR 200.30-3(a)(12) (1985).

[Release No. IC-15111; File No. 812-6327]

Application and Opportunity for Hearing; Commercial Life Insurance Co., et al.

May 21, 1986.

Notice is hereby given that Commercial Life Insurance Company ("Commercial"), Commercial Separate Account A ("Separate Account A"), and Continental Equities Corporation of America ("Continental Equities") (collectively, "Applicants"), filed an application on March 28, 1986, and an amendment thereto on April 25, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of sections 2(a)(32), 22(c), 26 (a)(2), 27(c)(1), 27(c)(2) and 27(d) of the Act, and from Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13), 6e-3(T)(c)(1) and 22c-1 promulgated thereunder, to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and are referred to the Act and the rules thereunder for the complete text of those provisions that are relevant to the application.

General Account Funding

Applicants state that Commercial, a subsidiary of The Continental Corporation, is a stock life insurance company organized under the laws of the State of Wisconsin, and Separate Account A is a segregated investment account of Commercial that is registered under the Act as a unit investment trust. Applicants further state that Continental Equities, a wholly-owned subsidiary of Commercial, is the principal underwriter and distributor of individual flexible premium variable life insurance contracts ("Contracts"), as defined in paragraph (c)(1) of Rule 6e-3(T), funded through Separate Account A.

Applicants state that under the Contracts, contractowners will be able to allocate premium payments and transfer (subject to certain restrictions) portions of the cash value among the general asset account of Commercial ("General Account") and the sub-accounts of Separate Account A. According to the application, each of the three sub-accounts of Separate Account A currently invests solely in the shares of the Continental Series Trust ("Fund") that are issued by one of its three portfolios, each having a specified investment objective. Applicants state that amounts allocated to the General Account earn interest at a rate not less than the guaranteed interest rate of 4% per annum. Applicants note that the allocation or transfer of funds to the General Account does not entitle a contractowner to share in the investment experience of the General Account.

Applicants state that the Contracts allow the contractowner, subject to

certain limitations, to vary the frequency and amount of premium payments. Applicants state that the death benefits under the Contract will be the greater of: (i) The face amount on the date of death, or (ii) a specified percentage of the cash value. The death benefit will be reduced by any contract debt and, if death occurs during a grace period, any unpaid charges. Applicants generally note that a contractowner will have various rights under the Contract, including rights to a Contract loan, to request an increase or decrease in the face amount of the Contract, to a partial withdrawal of the Contract's cash value, and to a full surrender of the Contract.

Applicants request an exemption from Rule 6e–3(T)(c)(1) to resolve any uncertainty as to whether the term "flexible premium variable life insurance contract," as defined in that provision, includes flexible premium variable life insurance contracts under which contractowners may allocate amounts available for investment to the General Account.

Applicants assert that because paragraph (c)(1) does not explicitly require *exclusive* funding by a separate account, the Commission intended to permit allocation of premiums, and transfer of cash value, to general accounts as well as separate accounts. Applicants further assert that the requested relief is consistent with the Commission's administration of flexible premium variable life insurance under the Act prior to and after the adoption of Rule 6e–3(T), consistent with the Commission's administration of scheduled premium variable life insurance pursuant to Rule 6e–2 under the Act, and consistent with the Commission's administration of the Act in the context of variable annuities. Applicants believe that the General Account option will be beneficial to contractowners because it provides an additional funding option under the Contract. Applicants represent that the charges under the Contract that are equally applicable to the cash value allocated to the General Account and the cash value allocated to the sub-accounts of Separate Account A will be applied uniformly.

Applicants state that they recognize that any Commission order granting exemptive relief in this regard will not constitute a judgment of the Commission as to the propriety or impropriety of registration or non-registration of either interests in the General Account as securities under the Securities Act of 1933 or the General Account as an investment company under the Act.

Contingent Deferred Charge for Premium Taxes and Issuance Expenses

Applicants state that the Contract provides for the calculation of the amount of a contingent deferred surrender charge ("Surrender Charge") upon the issuance of the Contract and upon an increase in the face amount of the Contract. Applicants represent that the Surrender Charge set upon the issuance of the contract has three elements: (1) A charge equal to 9% of the initial premium for sales load, (2) a charge equal to 2% of the initial premium for premium taxes (the average rate expected to be paid on all contracts), and (3) a charge equal to $5 per $1,000 of Face Amount (minimum—$100, maximum—$400) plus $50 for administrative costs Commercial incurs in issuing the Contract. An additional Surrender Charge, calculated in the same manner, is set in the event a Contract's face amount is increased.

Applicants state that the 2% permium tax component of the Surrender Charge is designed to assist Commercial in recovering state taxes imposed on premiums that it receives under the Contracts. Applicants also state that the administrative charge component of the Surrender Charge is designed to reimburse Commercial for the cost of processing applications for Contracts, or requests for increases in a Contracts face amount, conducting medical examinations, determining insurability and the insured's risk class, and establishing or revising records relating to the Contract.

According to the application, the Surrender Charge will be imposed upon lapse or surrender during the first nine years following the issuance of the Contract or following a requested increase in a Contract's face amount. The application states that the Surrender Charge remains level for the first five years in the relevant nine-year period, and then reduces in annual increments until it becomes zero at the end of nine years.

Applicants request exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13)(iii) and 22c-1 to the extent necessary to permit the administrative charge for issuance expenses and the 2% premium tax charge to be deducted upon a full or partial surrender of the Contract's cash value. Applicants state that imposition of these charges in the form of a contingent deferred charge, as described above, has several advantages for contractowners over a charge deducted entirely from premiums in the first Contract year. First, the amount of the contractowner's investment in Separate Account A is not reduced as it would be if these charges were taken in full in the first Contract year. Second, the total amount charged to any contractowner is no greater than if these charges were taken in full in the first Contract year, and it is less for contractowners who do not lapse or surrender during the first five Contract years. Third, deductions for the cost of insurance charge may be lower because the net amount at risk may be less when these charges are deferred rather than deducted up front. Fourth, in the event the death benefit is paid under the Contract, these charges are not deducted from the amount payable, thereby resulting in contractowners receiving the primary benefit of their Contracts (insurance protection) withut incurring such charges. Finally, if the death benefit is determined by multiplying the cash value on the date of death times the applicable death benefit factor, the fact that the Surrender Charge has not been deducted will favorably affect the amount of the death benefit since the cash value will be greater.

Applicants represent that the level of these two components of the Surrender Charge (*i.e.*, state premium tax and administrative charge components) are the same as they would have been if these charges had been deducted from premium payments prior to allocation to Separate Account A or the General Account, and that in setting the levels of these two components, Applicants did not take into account the time value of money or increase these charges to reflect the fact that not all contractowners will incur a Surrender Charge.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 16, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-12050 Filed 5-28-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.571-1A, Damage-Tolerance and Fatigue Evaluation of Structure.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.571-1A, Damage-Tolerance and Fatigue Evalution of Structure. The AC provides guidance for use in demonstrating compliance with the provisions of Part 25 of the Federal Aviation Regulations (FAR) dealing with the damage-tolerance and fatigue evaluation requirements of aircraft structure.

DATE: Advisory Circular 25.571-1A was issued by the Transport Airplane Certification Directorate in Seattle, Washington, on March 5, 1986.

How to Obtain Copies: A copy of AC 25.571-1A may be obtained by writing to the U.S. Department of Transportation, M-494.3, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on May 16, 1986.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 86-11941 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-789]

Farrell Lines Inc.; Application To Provide Trade Route 10 Service

Farrell Lines Incorporated (Farrell), by application dated February 18, 1986, has requested an amendment to Appendix B of Operating-Differential Subsidy Agreement, Contract MA/MSB-482 (OSDA) to provide Trade Route (TR) 10 (U.S. North Atlantic/Mediterranean) service with a C8-S-81b type vessel named AUSTRAL RAINBOW.

The service plan by Farrell would permit it to provide the service necessary to approximate its contractual requirements. Under ODSA MA/MSB-482, Farrell is authorized to make a minimum/maximum of 44/66 sailings per year on TR 10.

Farrell's application points out that it has been unable to make the minimum required sailings because of a shortage of necessary containerships. In Farrell's view, the operation of the AUSTRAL RAINBOW will allow for sufficient sailings necessary to approach the minimum number required. In addition, Farrell believes that the AUSTRAL RAINBOW will allow for expansion into a wider geographical area without jeopardizing its current biweekly service, the minimum necessary to remain competitive.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on June 12, 1986. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Subsidy Board.

Dated: May 23, 1986.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 86-12006 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 19-86]

Treasury Notes, Series Z-1988

Washington, May 22, 1986.

The Secretary announced on May 21, 1986, that the interest rate on the notes designated Series Z-1988, described in Department Circular—Public Debt Series—No. 19-86 dated May 15, 1986, will be 7⅛ percent. Interest on the notes will be payable at the rate of 7⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-12009 Filed 5-28-86; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; University Affiliations Program; Application Notice for Fiscal Year 1986, Special Competition: Teacher Exchange

Summary

The Bureau of Educational and Cultural Affairs of the United States Information Agency will support the promotion of mutual understanding and development of academic expertise through affiliations between U.S. and foreign postsecondary institutions under a new program, "The Teacher Exchange Special Competition." The goals of the program are (a) to strengthen the academic, professional, and cross-cultural expertise of participating teachers and (b) to enhance the curriculum and instructional programs of selected countries in Latin America, the Caribbean, and the U.S. Particular emphasis is placed on enhancing the competence of teachers in their subject fields by demonstrating sound materials, resources and approaches to their subjects, sharing of information and expertise with the host country's educational system, and the compilation of materials for classroom use.

The Teacher Exchange Special Competition is designed to strengthen the ties between the United States and selected countries in Latin America and the Caribbean by expanding teacher exchanges to countries heretofore not participating in USIA's Teacher Exchange Program. The Program will support affiliations between postsecondary institutions to focus on the enhancement of subject matter competencies of experienced teachers in the U.S. and selected countries of Latin America and the Caribbean. Specific countries eligible for the competition include Antigua, Argentina, Barbados, Colombia, Costa Rica, the Dominican Republic, Ecuador, Grenada, Jamaica, Panama, St. Lucia, and Trinidad and Tobago.

Applications for grants are invited from U.S. institutions of postsecondary education. Grants of up to $50,000 each are available to support each project for two to three years. The affiliations will involve Latin American and Caribbean

elementary, secondary and postsecondary institutions and U.S. elementary, secondary schools, and postsecondary institutions. The universities' role is to liaison with local education authorities; to identify goals for the exchange of teachers programs; to plan, administer, and facilitate the exchanges; and to apply resources and expertise in subject fields as well as in-service training of professionals. Such institutions, in conjunction with local U.S. school authorities, would form affiliations with Latin American and Caribbean postsecondary institutions. These foreign colleges would work, in turn, with local education authorities in their respective countries. The purpose of such affiliations is to exchange elementary, secondary, and, under certain conditions, postsecondary teachers. As a result of the exchanges which should contribute to improvement in precollegiate eduction, it is expected that knowledge of teachers of the host country will increase, that mastery of their subjects will be enhanced, and that there will be a direct application of this new information upon their return to their own country. A maximum of five grants will be awarded in fiscal year 1986.

Applications on behalf of the collaborating school authorities and/or institutions are to be submitted by the U.S. postsecondary institution partner. Participating institutions and school districts should be prepared to: assign U.S. citizens or national teachers, faculty, or staff to the partner institutions, maintain said person(s) on full salary and benefits, provide for salary sharing and/or supplements as necessary, and receive visiting teachers from the partner school district(s). USIA funds are to be used for participant travel costs, materials, and modest supplements for maintenance expenses, if necessary.

Authority for this program is contained in the Mutual Eductional and Cultural Exchange Act of 1961, Pub. L. 87–256 (Fulbright-Hays Act). The purpose of the Fulbright program is ". . . to enable the government of the United States to increase mutual understanding between the people of the United States and people of other countries." Information collection involved in this program has been cleared by OMB Approval Number 3116–0179, expiration date 1/31/87.

Guidelines for Application

The U.S. and foreign postsecondary institutions will serve in a collaborative role with school districts in designing the affiliation program. Program emphasis should be placed on increasing the exchange teachers' knowledge in their respective subject fields and of the partner country, rather than on teaching methodology. Toward this end, the universities will offer assistance (i.e. orientation, language training, country briefings, inservice teacher training, or other activities) to enhance the participating school districts' exchanges. The U.S. postsecondary institution should be the fiscal agent for the grant.

The primary goal of the affiliation is to exchange precollegiate level teachers. To this end, at least 60% of the exchanges supported by the Agency should occur between classroom teachers primarily at the high school level. While the remainder of the exchanges may involve school administrators and administrators and/or faculty from the U.S. and foreign institutions of higher education, the thrust of the affiliation should involve exchanges of a substantive rather than an administrative nature. The duration of exchanges can vary from stays of four weeks to one semester or an academic year. The length of an individual exchange should support both the purpose of that specific exchange and the overall goals of the affiliation.

USIA funds are to be used for participant travel costs, modest compensation supplements to offest maintenance costs, and the collection, development and/or purchase of teaching materials. Institutional overhead is not allowed. Cost-sharing among institutions is a necessary condition of the affiliation and should reflect contributions from all institutions involved in the exchange. Projects supported by USIA must last a minimum of two years and a maximum of three years; the total request to USIA should not exceed $50,000, covering eligible expenses of all institutions for the two to three-year period.

In FY 1986, up to five grants will be available for affiliations with institutions in Latin America and the Caribbean. Eligible countries include Antigua, Argentina, Barbados, Colombia, Costa Rica, the Dominican Republic, Ecuador, Grenada, Jamaica, Panama, St. Lucia, and Trinidad and Tobago.

Proposals will be accepted either for the establishment of new affiliations or for the enhancement of existing affiliations in specific new directions. Proposals for funding ad hoc research projects and feasibility studies to plan affiliations will not be considered in this program.

All proposals recommended for funding will be subject to Agency review for conformity to relevant OMB and legal considerations. Funding of any proposal is subject to the regular procedures, regulations, and requirements for Bureau of-Educational and Cultural Affairs grants, including review by the General Counsel's office.

Review Process

The review process is conducted in two stages—technical and substantive. Proposals that are technically ineligible (technical review criteria appear below) will not be forwarded to the substantive review committee for further consideration. Proposals must be received at USIA by *July 25, 1986.*

Project directors of ineligible proposals will be informed in writing by August 20, 1986. Technically eligible proposals will be forwarded for review to a committee of Agency officers representing appropriate area and academic expertise. Eligible proposals will be evaluated against specific criteria addressed to quality, feasibility, and area needs (see below).

Substantive Review Criteria

a. Focused academic goals, including the following elements:

Increasing the exchange participants' knowledge in their respective fields. Latin American and Caribbean teachers will have the opportunity to gain increased knowledge of subject matter, to improve their course content, and to gain first-hand knowlege of the U.S.;

U.S. teachers will also have the opportunity to expand their mastery of subject matter in their respective fields, such as applied linguistics for language teachers or area studies for social science teachers;

Institutions should plan to assist outgoing teachers in adapting their materials and expertise for most effective teaching in the receiving country;

b. A plan for demonstrating how the postsecondary institutions will implement the goals. Plans should include:

Evidence of close liaison with participating local school authorities and clearly stated mutual objectives for in-service training, exchange of teachers, and collection or creation of materials by exchange teachers for use in the classroom upon return to the host country;

Pre-departure programming with an area studies component covering political and social characteristics of the society, geographical influences, historical contexts, and cross-cultural relationships. Language proficiency is assumed, but specialized vocabulary or

reviews should be included in the pre-departure activities;

Field-study activities. The plan should include activities designed to expand the teachers' interactions to parts of the society other than the immediate school environment;

Involvement of exchange teachers in school activities beyond the traditional classroom role, serving for example as curriculum consultants or in other appropriate capacities;

Frequent and systematic review of the goals of the program, providing assistance to the participants in attaining their objectives, and modifications in exchange participants' assignments and activities as needed;

A plan for debriefing and academic activities for returning teachers. Debriefing activities should include an analysis of the impact of the exchange on the teachers. Academic activities should involve the teacher in presentations as well as activities to assess the utility of materials collected in the host country for classroom use;

c. Demonstration that the affiliation will enhance faculty and teacher development, curriculum revisions, and civic or community activities, including evidence of mutuality of benefits to the institutions and school systems involved in the exchanges;

d. Feasibility of program plan;

e. Academic experience of participants relevant to the goals of the proposed exchange plan (including linguistic proficiency, where required);

f. Evidence of strong mutual institutional commitment involving the schools and universities in the plans and governance of the affiliation through policy boards or committees on each side of the affiliation, including equal representation from all participating institutions within the country;

g. Description of a mechanism for bilateral communication and governance;

h. Demonstration that the partnership is likely to continue after the conclusion of the USIA grant;

i. Details of current teaching assignments of U.S. and foreign participants (may be included in bio-sketches);

j. Cost-effectiveness.

The USIA will also obtain overseas post assessments, in terms of need and feasibility;

Eligibility

Applications should be submitted by the U.S. postsecondary institutions on behalf of themselves, the cooperating U.S. school district(s), and the collaborating foreign school districts and institutions. Proposals will be accepted in all subject areas. (Institutions without departments of education may apply.) Institutions eligible to participate are:

1. Accredited, degree-granting public or private U.S. institutions of higher education;

2. Recognized institutions of higher education in the aforementioned countries of Latin America or the Caribbean, or consortia of such institutions;

3. U.S. elementary and secondary schools and/or school system;

4. Elementary and secondary schools and/or school system in the aforementioned countries of Latin America or the Caribbean.

Technical Review Criteria

Within the announced deadline, an original proposal and ten complete copies are to be submitted, including: abstract; narrative; budget; bio-sketches; required letters of agreement; and summary of international affiliations (see detailed requirements below under application procedures).

Application Procedures

Applicants must submit one original and ten (10) complete copies of their proposals to: Eugene C. Schaffer, Teacher Exchange Branch (E/ASX), United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

In order to be eligible for review, project planning must begin by September 15, 1986. The proposal *must* include:

1. *Abstract:* A typed, double-spaced abstract, summarizing the project, not to exceed two pages.

2. *Narrative:* total text not to exceed fifteen (15) typed, doubled-spaced pages, including:

a. A brief (two-page) description of the participating institutions and participating departments;

b. A detailed description of the proposed affiliation program, including but not limited to: the name and qualifications of the designated project director; the proposed roster of participants or representative sample of potential participants and their qualifications, including language skills; a statement of need; a detailed, specific description of proposed activities, including when and where they will occur; the number of trips, itinerary and duration of travel; the per diem costs daily rate and number of days; and the anticipated benefits of the program; first-year exchange participants should be identified, if possible;

c. A plan for institutional evaluation of the program.

3. A detailed, *five-column budget:* outline specific expenditures and source(s) from which funds are anticipated; the budget should include any in-kind and cash contributions to the program made by the U.S. and Latin American or Caribbean postsecondary institutions and the U.S. and foreign schools.

Required format for budget

All the proposed expenditures should be individually listed, using the following format:

	USIA	U.S. institute of higher education	U.S. Schools	Foreign institute of higher education	Foreign schools
Year 1 Travel	$X	$X	$X	$X	$X
Maintenance Costs	$X	$X	$X	$X	$X
Materials Cost	$X	$X	$X	$X	$X
Salary & Benefits	n/a	$X	$X	$X	$X
Overhead Costs	n/a	$X	$X	$X	$X
Year 2 Travel	$X	$X	$X	$X	$X
Maintenance Costs	$X	$X	$X	$X	$X
Materials Costs	$X	$X	$X	$X	$X
Salary & Benefits	n/a	$X	$X	$X	$X
Overhead Costs	n/a	$X	$X	$X	$X
Year 3 Travel	$X	$X	$X	$X	$X
Maintenance Costs	$X	$X	$X	$X	$X
Materials Costs	$X	$X	$X	$X	$X
Salary & Benefits	n/a	$X	$X	$X	$X
Overhead Costs	n/a	$X	$X	$X	$X
Totals	$X	$X	$X	$X	$X

4. *Appendices* should be kept to a minimum but must include:

a. Bio-sketches of professional accomplishments of the potential participants, *not to exceed two pages in length each,* clearly indicating the level of language skills, overseas experience, knowledge of the propsective partner country as demonstrated through courses taught, relevant scholarly and non-scholarly travel, publications, and research activities. (Bio-sketches of actual exchange participants must be provided to USIA for their approval prior to the exchange taking place.);

b. Documentation of institutional support for the proposed affiliation, *including a signed letter of endorsement from the U.S. institution's (or consortium members') president, vice-president, chancellor, provost, or other administrator with signing authority, as well as a signed letter of endorsement from the President (or equivalent) of the foreign institution or consortium.* Both letters must specifically refer to the Teacher Exchange Program. (A general letter of agreement between the two institutions without reference to this specific program will not fulfill this requirement.);

c. Documentation of institutional commitment for the proposed affiliation from the U.S. and foreign schools, including a signed letter from the superintendent of schools or school administrators with signing authority;

d. A brief summary of ongoing, active international affiliations at partner institutions.

(U.S. institutions are reminded that in certain countries, host government approval must be obtained before any exchange program of this type may be carried out.)

5. *Budget Items:*

The Only Eligible Budget Items Are

a. Round-trip airfare for participants to the exchange site;

b. Support (addition to salary and/or benefits) or per diem for such specific items as housing, food, and other maintenance items while on exchange. The maximum amount that may be requested for per diem support may not exceed the rates set by the U.S. Department of State for overseas locations and the General Services Administration (GSA) per diem allowances for U.S. localities. (USIA will supply these rates upon request. Call Eugene Schaffer at (202) 485–2555.);

c. Costs for materials and resources;

(U.S. institutions are reminded that in certain countries restrictions may be placed on the export of local currency by the national government.)

Ineligible Budget Items

a. Institutional overhead;

b. Administrative expenses incurred in connection with the affiliation including telephone or telex expenses;

c. Expenses for student exchanges;

d. Costs for dependents;

e. Conference or seminar costs;

f. Any costs for non-U.S. citizens or nationals from the U.S. institution or schools; or non-nationals of the overseas host country.

6. *Deadlines:*

Complete proposal packages must be received on or before *July 25, 1986.*

As a courtesy, proposals received by *July 3, 1986* will be reviewed for technical eligibility upon receipt. Should they be found to be ineligible, notification will be sent by *July 15, 1986* to the applicant specifying the reason for ineligibility, so that complete proposals may be submitted by the application deadline. All corrected or supplementary materials must be received by *July 25, 1986.*

Applicants are responsible for the submission of complete applications. *All* required items must be received at USIA by *July 25 1986;* corrected or supplementary materials received after this date cannot be considered by the Agency

7. *Notification:*

All applicants will be notified of the results of the review process on or about *September 15, 1986.* Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries

For questions concerning programming and budget, please contact: Engene C. Schaffer, Teacher Exchange Branch (E/ASX), United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–2555.

Dated: May 22, 1986.

Mark Blitz,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 86–12036 Filed 5–28–86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Career Development Committee; Charter Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the charter for the Career Development Committee has been renewed by the Administrator of Veterans Affairs for a two year period effective May 19, 1986 to May 19, 1988.

Dated: May 21, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–12076 Filed 5–28–86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 103
Thursday, May 29, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:00 a.m. on Tuesday, June 3, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance and for consent to exercise full trust powers:

Advisory Bank and Trust Company, an operating noninsured trust company, located in the IDS Tower, 80 South Eighth Street, Minneapolis, Minnesota.

Application for consent to purchase assets and assume liabilities:

The Third National Bank of Sandusky, Sandusky, Ohio, for consent to purchase certain assets of and assume the liability to pay deposits made in the Port Clinton Office of United Home Federal, Toledo, Ohio, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,518–L
Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico
Case No. 46, 522–SR (Amendment)
The Dayton Bank & Trust Company, Dayton, Tennessee
Case No. 46,523–SR (Amendment)
Sparta-Sanders State Bank, Sparta, Kentucky
Case No. 46,524–L
South Coast Bank, Costa Mesa, California
Case No. 46,526
The Bowery Savings Bank, New York City (Manhattan), New York

Memorandum and resolution re: Final amendments to Part 330 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," which eliminate the requirement that the deposit account records of an insured bank disclose the names of the settlor and trustee of the trust and contain an account signature card executed by the trustee.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
State Bank of Farmersville, Farmersville, Illinois (2492) (Memo dated May 9, 1986)
Summary Audit Report re:
Mineola State Bank, Mineola, Iowa (2489) (Memo dated April 14, 1986)
Summary Audit Report re:
State Bank of Herndon, Kansas, Herndon, Kansas (6600) (Memo dated May 13, 1986)
Summary Audit Report re:
Farmers State Bank of Round Lake, Round Lake, Minnesota (2486) (Memo dated April 16, 1986)
Summary Audit Report re:
Cardwell State Bank, Cardwell, Missouri (2493) (Memo dated May 1, 1986)
Summary Audit Report re:
Missouri Delta Bank, Hayti, Missouri (2494) (Memo dated May 1, 1986)
Summary Audit Report re:
Security Bank & Trust Company, Midwest City, Oklahoma (2490) (Memo dated May 7, 1986)
Summary Audit Report re:
The First National Bank of Darrouzett, Darrouzett, Texas, NR–586 (Memo dated April 14, 1986)
Summary Audit Report re:
Park West Bank, N.A., Farmers Branch, Texas (5601) (Memo dated May 13, 1986)
Summary Audit Report re:
Riverside National Bank of Houston, Houston, Texas (2491) (Memo dated April 18, 1986)
Summary Audit Report re:
Trend Analysis of Liquidation, Site Audit Results (Memo dated May 14, 1986)
Summary Audit Report re:
Real Estate Owned Assets, Minneapolis Consolidated Office (memo dated May 8, 1986)
Summary Audit Report re:
Texas Instrument In-House Computer System Puerto Rico Consolidated Office (Memo dated April 30, 1986)

Discussion Agenda:

Memorandum and resolution re: Delegation of authority to amend purchase and assumption agreements.

Memorandum and resolution re: Withdrawal of proposed amendments to Part 330 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," which would have implemented recordkeeping requirements for deposits placed by deposit brokers.

Memorandum and resolution regarding petitions to reconsider certain prohibitions governing securities subsidiaries and affiliates contained in Part 337 of the Corporation's rules and regulations, entitled "Unsafe or Unsound Bank Practices."

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: May 27, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 12133 Filed 5–29–86; 12:12 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. of Tuesday, June 3, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii),

(c)(9)(B), and (c)(10) of Title , United States, Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcment proceedings (cease-and-desist proceedings, determination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs, thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re:
Newport Harbor National Bank Newport Beach, California
Memorandum and Resolution re:
National Bank and Trust Company of Traverse City Traverse City, Michigan

Memorandum regarding the Corporation's assistance agreement with an insured bank.

Discussed Agenda:

Personnel actions regarding appointments, promotions, administrative pay increase, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunsine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: May 27, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 86–12134 Filed 5–29–86; 12:12 pm]

BILLING CODE 6714–01–M

3

FEDERAL ELECTION COMMISSION

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 22, 1986, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was cancelled.

* * * * *

DATE AND TIME: Tuesday, June 3, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, June 5, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Status of Regulation Revision Projects Report
Routine Administrative Matters

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Director, 202–376–3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 86–12150 Filed 5–27–86; 3:18 pm]

BILLING CODE 6715–01–M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, June 4, 1986, at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
5. Investigation TA–201–60 (Steel fork arms)—briefing and vote on injury.
6. Items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

May 21, 1986.

[FR Doc. 86–12064 Filed 5–27–86; 9:06 am]

BILLING CODE 7020–02–M

5

NATIONAL CREDIT UNION ADMINISTRATION

Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced closed meeting on May 21, 1986, include an additional item, which was closed to public observation: Mergers. Closed pursuant to exemptions (8) and (9)(A)(ii).

The Board unanimously voted to add this item to the closed agenda.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Actions under section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Actions under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Special Assistance under section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Board Briefings. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Communications System. Closed pursuant to exemption (2).
7. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 11:00 a.m., in the Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86–12143 Filed 5–27–86; 1:49 pm]

BILLING CODE 7535–01–M

6

POSTAL SERVICE

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 18992, May 23, 1986.

PREVIOUSLY ANNOUNCED DATE OF MEETING: June 3, 1986.

CHANGE: Add following agenda item: "Briefing on Five-Year Plan".

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 86–12093 Filed 5–27–86; 10:55 am]

BILLING CODE 7710–12–M

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 86–12093 Filed 5–27–86; 10:55 am]

BILLING CODE 7710–12–M

federal register

Thursday
May 29, 1986

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 750 et al.

General Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands; Permanent Regulatory Program—Use of Explosives: General Requirements; Programs for the Conduct of Surface Mining Operations Within Each State; Certification of Blasters in Federal Program States and on Indian Lands; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 750, 816, 817, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942, 947 and 955

General Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands; Permanent Regulatory Program—Use of Explosives: General Requirements; Programs for the Conduct of Surface Mining Operations Within Each State; Certification of Blasters in Federal Program States and on Indian Lands

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining REclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is amending its rules on the use of explosives, and adding a new rule on the certification of blasters in Federal program States and on Indian lands. OSM also is revising its rules on Federal programs for States and on the Indian lands program to reference the new rule on the certification of blasters.

This rule adds similar provisions to the existing OSM rules on the use of explosives in surface and underground coal mining operations. It requires any blaster responsible for conducting blasting operations at a blasting site to be familiar with certain information, and to give direction and on-the-job training to persons who are not certified and who are assigned to the basting crew or assist in the use of explosives. In addition, it deletes from the previous rule on underground mining the requirement that persons responsible for blasting operations at a blasting site be familiar with the blasting plan.

This rule also adds a new part governing the training, examination and certification of blasters in Federal program States and on Indian lands. It covers the issuance, renewal, reissuance, suspension and revocation of an OSM blaster certification, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority. In addition, references to this new rule are added to the Indian lands program and to each Federal program for a State.

EFFECTIVE DATE: June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur Anderson, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-1504 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule and Responses to Public Comments on Proposed Rule
III. Procedural Matters

I. Background

Requirement of 30 CFR Part 850

The OSM rules at 30 CFR Chapter VII, Subchapter M, govern the training, examination and certification of blasters. Part 850 of Subchapter M, 44 FR 9492 (March 4, 1983), establishes requirements and procedures applicable to the development of regulatory programs for these functions.

Section 850.12 of Part 850 provides that "[t]he regulatory authority is responsible for promulgating rules governing the training, examination, certification and enforcement of a blaster certification program for surface coal mining operations." Subsequent sections of Part 850 require that this blaster certification program include specified procedures.

As the regulatory authority in States with a Federal program for the regulation of surface coal mining operations, and on Indian lands, OSM is promulgating this final rule to comply with these requirements of Part 850 for Federal program States and Indian Lands.

History of Rule

The proposed rule was published on September 11, 1984. 49 FR 35714. A notice correcting the public comment period and hearing dates was published on September 25, 1984. 49 FR 37641. The public comment period was extended, a public meeting and a public hearing were announced, and several public hearings were cancelled by a notice published on November 19, 1984. 49 FR 45595.

The public comment period closed on November 29, 1984. OSM received comments on the proposed rule from 6 individuals and organizations. One request was received for a public meeting, and one for a public hearing, which were held on November 26 and 27, 1984, respectively, in Olympia, Washington. The public comments and a transcript of the public hearing are on file in the administrative record for this rule in the OSM Administrative Record Room, Room 5124, 1100 L Street, NW., Washington, DC.

II. Final Rule and Responses to Public Comments on Proposed Rule

The following text, which describes this final rule and responds to the public comments OSM received on the proposed rule, is organized by the part and section numbers of the affected provisions. Grammatical or stylistic changes that do not affect the substance of this final rule are not discussed.

In this final rule, proposed Part 855 has been moved from Subchapter M to Subchapter T and redesignated as Part 955. This was done to prevent misinterpretation of this part as establishing permanent program requirements that apply to State regulatory programs. Because proposed Part 855 was located in Subchapter M, which also includes existing Part 850, and because Part 850 Sets out permanent program requirements that apply to State regulatory programs, there existed the possibility that Part 855, through proximity with Part 850, might be misinterpreted as also establishing permanent program requirements applicable to State regulatory programs. OSM wishes to emphasize that Part 955 does not set standards for State regulatory programs, but applies only in Federal program States and on Indian lands.

This final rule includes a number of provisions that did not appear in the proposed rule. The new provisions affect Parts 750, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, which set out the programs governing surface coal mining and reclamation operation in Federal program States and Indian lands. The new provisions merely add to these Federal and Indian lands programs direct references to the blaster certification requirements of Part 955. These provisions are essentially technical, and within the purview of what was proposed.

Part 750—Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands

Section 750.19 Certification of blasters.

Existing § 750.19, which previously required compliance with the forthcoming "Federally-administered blaster certification programs" is revised to reference specifically the corresponding provisions of this final rule at 30 CFR Part 955.

Part 816—Permanent Program Performance Standards—Surface Mining Activities

Section 816.61 Use of Exlposives: General requirements.

Section 816.61(c)(4)

Section 816.61(c)(4) requires any blaster who is responsible for conducting blasting operations at a

blasting site to be familiar with the blasting plan and site-specific performance standards, and to give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use if explosives.

While proposed § 816.61(c)(4) was directed at any "person responsible for blasing operations at a blasting site," this final rule is directed at any "blaster who is responsible for conducting blasting operations." The revised wording reflects the fact, which was implicit in the proposed rule, that the person responsible for blasting operations at a blasting site is the blaster who is conducting blasting operations. The revised wording follows from the requirement of existing § 816.61(c)(1) that "all blasting operations . . . shall be conducted under the direction of a certified blaster," and of existing § 816.61(c)(3) that "[a] blaster . . . shall be present at the firing of a blast."

Proposed § 816.61(c)(ii) would have explicitly specified that the person responsible for blasting operations at a blasting site must have a current blaster certificate. This provision was deleleted from this final rule as redundant in view of the added reference to a blaster in the introductory language of the paragraph. Under § 850.5 of this chapter a blaster by definition must be "certified under this part," so the proposed language is unnecessary.

Preemption of State Law

Several commenters asked OSM to explain whether the Act or this rule preempts any State law or regulation that otherwise would apply to persons who store, transport or use explosives in surface coal mining operations. Under 30 730.11(a) this rule will preempt only that State law or regulation which is inconsistent with, or precludes implementation of, the requirements of the Act or 30 CFR Chapter VII, which includes this rule. In either case the Secretary must follow the procedures specified in § 730.11(a) and identify the specific law or regulation.

Given the variety of State laws and regulations that apply to the storage, transportation or use of explosives in surface coal mining operations, it is not possible to predict which of them the Act or this rule might preempt. In any event, no State law or regulation will be preempted until it formally is identified as such by the Secretary.

Section 816.61(c)(4)(ii)

Section 850.13(a)(2) of 30 CFR requires the regulatory authority to establish procedures to insure the persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster. The logical place to implement this requirement is in § 816.61, which contains general requirements governing the use of explosives.

Since the ultimate responsibility for providing on-the-job training necessarily lies with the blaster at the blasting site, this rule adds a new § 816.61(c)(4)(ii), which requires any blaster who is responsible for conducting blasting operations at a blasting site to give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

Part 817—Permanent Program Performance Standards—Underground Mining Activities

Section 817.61 Use of Explosives: General requirements.

Section 817.61(c)(4)

Section 817.61(c), which governs underground mining activities, contains provisions similar to those of § 816.61(c), which governs surface mining activities. This rule revises § 817.61(c)(4) in the same way and for the same reasons as discussed previously for § 816.61(c)(4).

In addition, this rule revises § 817.61(c)(4) by deleting the previous requirement that persons responsible for blasting operations at a blasting site be familiar with "the blasting plan." The reference to a blasting plan was included in § 817.61(c)(4) inadvertently when two similarly worded rules were promulgated concerning the use of explosives for surface and underground mining activities. 48 FR 9486 (March 4, 1983). However, as was explained in the preamble to the related final rule at 30 CFR 780.13(a), a blasting plan is not required for the underground mining activities governed by § 817.61. 48 FR 9789 (March 8, 1983). Therefore, this rule deletes from § 817.61(c)(4) the previous incorrect reference to a blasting plan.

Part 900—Introduction

Part 900 is an introduction to the State and Federal programs set out in subsequent parts of Subchapter T for the conduct of surface mining operations within each State. This final rule revises §§ 900.1, 900.11 and 900.13 of Part 900 to include references to new Part 955, which this final rule adds to Subchapter T. In addition, the previous wording of §§ 900.11 and 900.13 is revised somewhat to improve its clarity with no intended change in substance.

Part 910—Georgia

Part 910, which sets out the Federal program for the State of Georgia, is revised by adding a new § 910.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 912—Idaho

Part 912, which sets out the Federal program for the State of Idaho, is revised by adding a new § 912.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 921—Massachusetts

Part 921, which sets out the Federal program for the State of Massachusetts, is revised by adding a new § 921.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 921.850, which is superseded by § 921.955, is removed.

Part 922—Michigan

Part 922, which sets out the Federal program for the State of Michigan, is revised by adding a new § 922.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 933—North Carolina

Part 933, which sets out the Federal program for the State of North Carolina, is revised by adding a new § 933.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 933.850, which is superseded by § 933.955, is removed.

Part 937—Oregon

Part 937, which sets out the Federal program for the State of Oregon, is revised by adding a new § 937.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 939—Rhode Island

Part 939, which sets out the Federal program for the State of Rhode Island, is revised by adding a new § 939.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 939.850, which is superseded by § 939.955, is removed.

Part 941—South Dakota

Part 941, which sets out the Federal program for the State of South Dakota, is revised by adding a new § 941.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 942—Tennessee

Part 942, which sets out the Federal program for the State of Tennessee, is revised by adding a new § 942.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 942.855, which incorrectly references non-existent Part 855, is removed.

Part 947—Washington

Part 947, which sets out the Federal program for the State of Washington, is revised by adding a new § 947.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 947.850, which is superseded by § 947.955, is removed.

Part 955—Certification of Blasters in Federal Program States and on Indian Lands

As noted previously in the introduction to this portion of the preamble, proposed Part 855 was moved from Subchapter M to Subchapter T and redesignated as final Part 955. Thus, the comments OSM received on proposed Part 855 now apply to Part 955. To avoid the confusion that might result from repeated references to these two similar part numbers, the following discussion refers only to Part 955, with the understanding that it covers the correspondingly numbered sections of proposed Part 855.

Section 955.1 Scope.

Section 955.1 defines the scope of new Part 955, which establishes the program required by 30 CFR 850.12 for the training, examination and certification of blasters in Federal program States and on Indian lands. Part 955 governs the issuance, renewal, reissuance, suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority.

The purview of Part 955 is limited to Federal program States and Indian lands. Thus, for Federal lands in a State with a Federal program the training, examination and certification of blasters is governed by Part 955. However, for Federal lands in a State with a State regulatory program the training, examination and certification of blasters is governed by the State program, regardless of whether there is a Federal-State cooperative agreement. *See:* 30 CFR 740.11(a).

Relationship to State Law and Programs

Except as described under the heading *Preemption of State Law* in the preceding analysis of § 816.61(c)(4), this rule does not preempt any State law or regulation governing either the licensing or certification of blasters, or the storage, transportation or use of explosives in general. A State may require a blaster to comply with any State law or regulation that has not been identified by the Secretary as preempted by the Act or this rule.

Several commenters asked whether OSM plans to integrate the blaster certification program under Part 955 with similar State licensing or certification programs that already may exist in Federal program States. One suggested that OSM modify the rule to enable OSM and a State to issue jointly a single certificate. The commenter thought this would insure that a blaster becomes aware of any need to obtain authorization from both jurisdictions.

Another commenter suggested including in the rule a provision allowing OSM to enter into a cooperative agreement under which a qualified State agency would administer the OSM blaster certification program. This commenter thought that even though a State elected not to pursue primacy in the overall regulation of surface coal mining operations it might elect to administer the more limited blaster certification portion of the Federal program.

OSM currently has no plans to seek either joint Federal-State or independent State administration of the OSM blaster certification program established by this rule. Nor has OSM reached any conclusion on either the need for or the legality under the Act of a provision authorizing OSM to enter into a cooperative agreement for either joint or independent State administration of the program. Therefore, this final rule includes neither of the suggested provisions.

Another commenter was concerned about whether OSM would make the training and certification of blasters under Part 955 compatible with State procedures already in place. As discussed subsequent § 955.14(b), under the heading *Oral Examination*, this commenter thought the requirement for a written examination was incompatible with some existing State procedures.

OSM disagrees. While some requirements of Part 955 may be more stringent than those of some State procedures, they are not incompatible. OSM is aware of nothing in Part 955 that would prevent the holder of a State license or certificate from obtaining an OSM blaster certificate, or vice versa.

Section 955.2 Implementation.

In accordance with 30 CFR 750.19, 816.61(c) and 817.61(c), § 955.2 specifies that in Federal program States and on Indian lands the requirement that any person who is responsible for conducting blasting operations at a blasting site shall have a current blaster certificate is not effective until June 30, 1987. Before that date, §§ 750.19, 816.61(c) and 817.71(c) require that all blasting operations in Federal program States and on Indian lands be conducted by competent experienced persons who understand the hazards involved.

This is a new section added to the final rule to set out the specific date when the requirements of existing §§ 750.19, 816.61(c) and 817.61(c), as they relate to an OSM blaster certificate, will apply in Federal program States and on Indian lands. It does not change the date that otherwise would have applied under these existing sections. Nor does it affect the effective date of any other requirement of this part.

Under 30 CFR 816.61(c)(1) and 817.61(c)(1) the requirement that all blasting operations are to be conducted under the direction of a certified blaster does not become effective until 12 months after the implementation of a blaster certification program. The Indian Lands Program at 30 CFR 750.19 incorporates, §§ 816.61(c) and 817.71(c), and thus delays the effective date of the requirement for a blaster certificate on Indian lands for the same 12-month interval. This interval will give candidates for an OSM blaster certificate ample time to complete training, submit an application, pass the examination, and become certified before the requirement to have a certificate is implemented in Federal program States and on Indian lands.

Several commenters were concerned that delays in the availability of application forms, training materials, or the examination might minimize the value of this 12-month interval. OSM assures these commenters that the forms and other materials necessary to comply with Part 955 will be available on the effective date of this rule.

Notwithstanding the 12-month interval before the requirement for an OSM blaster certificate is implemented, OSM

advises everyone subject to this part to apply for a certificate as soon as is practicable after they meet the required qualifications. Anyone who submits an application at the last minute does so at his or her own risk. OSM neither will be responsible for nor will excuse any failure to meet the requrements of § 955.2, or of §§ 750.19, 816.61(c) or 817.61(c), due to the length of time involved in the certification process.

Section 955.5 Definitions.

Section 955.5, which did not appear in the proposed rule, defines a number of terms used in this part. It clarifies, but does not change, the substance of what was proposed.

Applicant is defined as a person who submits an application for an OSM blaster certificate. *Application* is defined as a request for an OSM blaster certificate submitted on the prescribed form, including the required fee and any applicable supporting evidence or other attachments. These definitions are added to this rule to supplant the inapt definitions of these same two terms in 30 CFR 701.5, which apply generally to Chapter 30 unless otherwise indicated.

Issue and *issuance* are defined as meaning to grant to an applicant his or her first OSM blaster certificate that is not granted through reciprocity. To qualify for the issuance of a certificate an applicant must meet certain qualifications, a number of which differ from those for the subsequent certificate renewal or reissuance, and all of which differ from those for a certificate through reciprocity. An applicant who previously had obtained a certificate through reciprocity, but no longer qualifies for or wishes to rely on reciprocity, must qualify for certificate issuance in the same manner as any other applicant. Hence, the terms *issue* and *issuance* do not apply to a first certificate that is granted through reciprocity.

Reciprocity is defined to mean the recognition by OSM of a blaster certificate issued by a State regulatory authority under an OSM-approved blaster certification program as qualifying an applicant for the grant of an OSM blaster certificate. For more information on reciprocity, see particularly the discussion of § 955.16.

Reissue and *reissuance* are defined as synonymous with the term *recertification* in 30 CFR 850.15(c), and as meaning to grant to an applicant who holds a renewed OSM blaster certificate, or who holds an OSM blaster certificate that expired more than 1 year prior to the date of his or her application, or who held an OSM blaster certificate that was revoked, a subsequent certificate that is not granted through reciprocity and for which additional training and examination are required.

As was noted in the proposed rule, Part 850, on which Part 955 is based, provides in § 850.15(c) for the "recertification" of blasters. In drafting Part 955 is was found that use of the term *recertification* would reduce the grammatical clarity of the rule. For this reason, the terms *reissue* and *reissuance* are substituted in its place. For more information on reissuance in relation to the renewal of a current or expired certificate, see the subsequent discussion of § 955.15(d), and for a revoked certificate see the subsequent discussion of § 955.17(e)(2).

Renew and *renewal* are defined as meaning to grant to an applicant who holds an issued or reissued OSM blaster certificate a subsequent certificate that is not granted through reciprocity and for which additional training and examination are not required.

Replace and *replacement* are defined as meaning to grant to an applicant a duplicate OSM blaster certificate as a substitute for one that was lost or destroyed.

Section 955.10 Information collection.

The information collection requirements in Part 955 are contained in §§ 955.12 (a)(2) and (b)(2), 955.13(a) and 955.15(g). Section 955.12 (a)(2) and (b)(2) require an applicant to obtain satisfactory evidence of having completed training in the use of explosives. Section 955.13(a) requires an applicant to provide on an OSM application form information pertinent to determining his or her qualifications for a blaster certificate, and ultimately to identifying him or her as the certificate holder. Section 955.15(g) requires a person who holds an OSM blaster certificate to notify OSM within 30 days of any change in his or her address. This information is needed by OSM to determine whether an applicant is qualified to obtain an OSM blaster certificate, and to administer the program once the certificate is issued.

Section 955.11 General requirements.

Section 955.11 lists the general requirements an applicant must meet to qualify for an OSM blaster certificate. It derives primarily from proposed § 955.11(a), with some changes. Proposed § 995.11(b) was deleted as redundant.

To qualify for an OSM blaster certificate under § 955.11, a person must:

(a) Be at least 20 years old prior to submitting an application, and at least 21 years old prior to the grant of a certificate;

(b) Have worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for either 1 or 2 of the 3 years preceding the submission of an application, the length of time depending on the applicant's current certification status;

(c) For certificate issuance or reissuance, have received on-the-job training, completed a training course, and obtained satisfactory evidence of having completed training, as provided in § 955.12;

(d) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(e) Submit an application as specified in § 955.13;

(f) For certificate issuance or reissuance, pass a written examination as specified in § 955.14;

(g) For a certificate through reciprocity, meet the requirements of § 955.16; and

(h) Not be subject to suspension, revocation or other action under § 955.17.

The differences between these requirements and those in the proposed rule for each paragraph of this section are discussed under the following headings.

Section 955.11(a) Minimum age.

Under § 955.11(a), the minimum age at which a person may apply for an OSM blaster certificate is 20 years, and the minimum at which a person may be granted a certificate is 21 years. The proposed rule would have set the minimum age for the granting of a certificate at 18 years, but did not specify any minimum for submitting an application. The minimum age of 21 years is similar to current State requirements.

Several commenters thought that the proposed minimum age of 18 years was too young because, together with the 2-out-of-3 year minimum experience requirement of this rule for certificate issuance, it might prompt persons who were only 15 or 16 years old to work in a hazardous occupation. Several commenters also noted that other Federal and State laws which regulate the use of explosives specify a minimum age of 21 years. For example, the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms rules on commerce in explosives at 27 CFR 55.49

specify that an applicant for a license or permit must be 21 years of age or older.

OSM agrees with these commenters that the proposed minimum age of 18 was too low, and that 21 years is the minimum age at which a person reasonably might be expected to have sufficient training, knowledge, experience and competence to accept responsibility for conducting blasting operations, and has revised this final rule accordingly.

Because of unavoidable delays that will result from the requirement for an examination and from administrative processing, a significant amount of time may elapse between the filing of an application and the grant of a certificate. To compensate for these delays, and enable an otherwise qualified applicant to obtain a certificate as soon as he or she reaches the age of 21, this final rule allows anyone over the age of 20 to submit an application. Once OSM determines that an underage applicant has met all of the other qualifications required by this part, it may grant a post-dated certificate to take effect on the applicant's 21st birthday.

Section 955.11(b) Experience.

Section 955.11(b), which corresponds with proposed § 955.11(a)(2), specifies both the kind and amount of experience an applicant must have to qualify for an OSM blaster certificate. It requires that an applicant either have been qualified and worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for a specified period of time.

The amount of experience an applicant must have depends on his or her certification status. For certificate issuance it is 2 years out of the 3 years preceding the submission of an application; for certificate renewal or reissuance it is 1 year out of the preceding 3. In each case the amount of experience is cumulative during the 3 years preceding the submission of an application. An applicant may aggregate experience gained as a blaster or the equivalent with that gained under the direction of a blaster or the equivalent. Likewise, an applicant may aggregate shorter periods of interrupted experience to reach the 1 or 2 year totals.

In determining whether the years of experience claimed by an applicant meet the time periods specified in the rule, OSM will consider not only the duration of the experience, but also the type of activity involved. Only that experience which otherwise meets the requirements of this rule will be counted toward satisfying the minimum time requirement.

Section 955.11(b) differs from the proposed rule in a number of ways. One, to improve the organization of the rule the on-the-job training requirement in proposed § 955.11(a)(2) was relocated to § 955.12(a) of this final rule, which includes a related requirement for the completion of a training course, and a reference to the on-the-job training requirement in § 955.12 was added to § 955.11(c).

Rule Recognizes Blaster or the Equivalent

Two, this section now enables a person to qualify for an OSM blaster certificate by working as or under the direction of either a blaster *or the equivalent.* The proposed rule did not recognize equivalent experience.

Several commenters maintained that proposed § 955.11(a)(2) was too strict because many persons with adequate qualifications for an OSM blaster certificate would not meet, or have worked under the direction of someone else who meets, the narrow definition of the term "blaster."

As defined by 30 CFR 850.5, "*Blaster* means a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part." Thus, the only experience recognized by proposed § 955.11(a)(2) was that obtained specifically in surface coal mining operations as, or under the direction of, the holder of an OSM or State blaster certificate issued under Part 850.

With respect to the proposal to recognize experience gained only in surface coal mining operations, these commenters suggested that OSM also recognize equivalent blasting experience gained in activities such as quarrying, construction, other mining, management, consulting, education and sales. OSM agrees, and the final rule now recognizes equivalent blasting experience gained in such activities. Later in this discussion, general criteria are given on what type of experience OSM may accept as equivalent.

With respect to the proposal to recognize experience gained only under an OSM or State blaster certificate, these commenters also suggested that OSM recognize equivalent experience gained under a State license not issued under Part 850.

OSM had proposed to do this in the transition period immediately following promulgation of this rule, when no one possibly could have sufficient experience under an OSM or State blaster certificate, by interpreting the word "blaster" in this provision to include any person licensed, certified or otherwise authorized by OSM or a State to conduct blasting operations. Thus, OSM agrees with these commenters and intends the words "or the equivalent" in this final rule to include experience gained under equivalent State licensing or certification procedures. This will obviate any special interpretation in the transition period, and will apply throughout the life of the rule.

Due to the many types of blasting experience which applicants for an OSM blaster certificate might proffer as equivalent, it is not possible for OMS to set precise criteria for assessing equivalance. Generally, however, OSM will accept as equivalent only that experience gained in activities which reasonably approximate the environment, procedures, shot size, and hazards of surface coal mining operations. This must include sufficient practical experience with blasting technique, equipment and personnel in an actual working environment. Mere abstract experience with the theory and practice of blasting will not suffice. Likewise, OSM will recognize as equivalent only a license, certificate or other authorization to conduct blasting operations which qualifies the holder to act in a capacity reasonably approximating that of a blaster.

Under this rule an applicant for an OSM blaster certificate will have the burden of demonstrating to the satisfaction of OSM that his or her experience is equivalent to that obtained as, or under the direction of, a blaster.

One commenter asked OSM to consider whether persons who are not responsible for blasting operations at a blasting site might need an OSM blaster certificate, and to modify the experience requirement of the rule accordingly. This commenter cited, for example, mine management personnel who are directly responsible for but are precluded by union rules from taking an active part in blasting operations, and consultants who develop blasting plans but do not participate in on-site blasting activities.

Under 30 CFR 816.61(c), the only person who must have an OSM blaster certificate is one conducting blasting operations at a blasting site. Management personnel and consultants away from the site are not required to have a certificate, regardless of any direct or indirect responsibility they may have for the operations. If such a person wanted to obtain an OSM blaster certificate, whether he or she could qualify would depend on whether the management or consulting experience was equivalent to that obtained as, or under the direction of, a blaster.

Minimum Amount of Experience

And three, this section now requires less experience for certificate renewal and reissuance than it does for certificate issuance. The proposed rule would have required 2 years of experience for all of these certificates.

Several commenters said that the requirement of this section for blasting experience in 2 out of the 3 years preceding submission of an application was excessive. One thought that considering the requirements for training and examination, 1 year of experience was sufficient. Another suggested that to prevent "severe hardships" OSM should reduce the requirement during the first year of the program to only 1 year, with at least 75% of that year worked directly as a blaster.

One commenter asked OSM to reconsider the minimum amount of experience required for reissuance of an OSM blaster certificate. This commenter suggested a requirement of 1 year of experience out of the preceding 3 to accommodate certificate holders who through uncontrollable circumstances did not actively engage in blasting for the entire 3-year certificate term.

To the extent these comments relate to certificate issuance, OSM disagrees. For certificate issuance this final rule retains the requirement for 2 years of experience out of the 3-year period preceding the submission of an application. Notwithstanding any inconvenience the requirement for 2 years of experience might impose on a candidate for certificate issuance, the safety and welfare of people and property at the blasting site are more important.

Blasting is a dangerous occupation, and among the numerous State and Federal government officials, consultants, manufacturers and other experts contacted by OSM in drafting the proposed rule there was a consensus that 2 years of experience was the minimum needed to qualify as a blaster. OSM agrees with this consensus, and concludes that a minimum of 2 years of recent experience is necessary to give most potential candidates for certification a sufficiently thorough understanding of explosives for them to assume responsibility for blasting operations.

This requirement for 2 years of experience should not put anyone out of work or otherwise impose a severe hardship for several reasons. First, it is unlikely that any significant number of persons who currently are working at a level of responsibility equivalent to that of a blaster would lack the required 2 years of experience. This is particularly true since the rule allows an applicant to aggregate experience gained as a blaster or the equivalent with that previously gained under the direction of a blaster or the equivalent.

Second, not everyone who handles explosives or works on a blasting crew must have a blaster certificate, only the blaster who is responsible for conducting blasting operations at a blasting site. Thus, a person who does not qualify for an OSM blaster certificate may continue to earn an income in the blasting profession while gaining the required experience.

Finally, as described previously for § 955.2, OSM will not implement the requirement for an OSM blaster certificate in Federal program States and on Indian lands until 12 months after the effective date of this rule. This interval will give potential applicants additional time to gain the required 2 years of experience.

To the extent these comments relate to certificate renewal and reissuance, however, OSM agrees that 1 year of experience out of the 3 years preceding the submission of an application is sufficient. The amount of expereince necessary to maintain proficiency as a blaster obviously is less than what is required to acquire such proficiency in the first place. Once an applicant has qualified for and obtained an OSM blaster certificate, 1 year of experience out of the preceding 3 is sufficient to maintain proficiency. Thus, the experience requirement for certificate renewal and reissuance has been reduced from 2 years to 1 year.

Section 955.11(c) Training.

Section 955.11(c) corresponds with proposed § 955.11(a)(4). In the proposed rule, this provision implied that every applicant was required to complete training in order to qualify for an OSM blaster certificate. However, training is required only for certificate issuance and reissuance. Applicants for other types of certificates need not complete additional training. To clarify this requirement, the phrase "For certificate issuance or reissuance" was added to § 955.11(c).

In addition, the term "blaster," which modified the term "training," was deleted as superfluous. And a reference to the requirements for on-the-job training and obtaining satisfactory evidence of training were added to correspond with changes in final § 955.12. For more information on these changes, and on the training requirement in general, see the discussion under subsequent heading *§ 955.12 Training.*

Section 955.11(d) Competence.

Section 955.11(d) is the same as proposed § 955.11(a)(3).

Section 955.11(e) Application.

Section 955.11(e) corresponds with proposed § 955.11(a)(5). The reference to a fee in this section was deleted as superfluous because this final rule now includes the fee in the definition of application.

Section 955.11(f) Examination.

Section 955.11(f) corresponds with proposed § 955.11(a)(6). The proposed rule did not explicitly state that the requirement for an examination applies only to certificate issuance and reissuance. Since applicants for other types of certificates need not pass an examination, the phrase "For certificate issuance or reissuance" was added to this section. For more information on the examination requirement, see the discussion under subsequent heading *§ 955.14 Examination.*

Section 955.11(g) Reciprocity.

This is a new paragraph which did not appear in the proposed rule. It merely cross-references § 955.16, which governs the grant of a certificate through reciprocity, to make the list of general requirements in this section more complete.

Section 955.11(h) Suspension and revocation.

Section 955.11(h) is the same as proposed § 955.11(a)(7).

Section 955.12 Training.

Section 955.12 requires an applicant for certificate issuance or reissuance to have completed a training course. An applicant for certificate issuance also must have completed on-the-job training. This section also requires OSM to ensure that courses are available to train potential applicants on the required topics.

Proposed § 955.12(b)(2) would have authorized OSM to modify the training required of an applicant for certificate reissuance to reflect previous training. This provision was deleted from this final rule as unnecessary because new § 955.12(b)(1) now contains a modified training requirement for certificate reissuance which inherently accounts for previous training. OSM does not intend to modify further the training required for certificate reissuance.

Section 955.12(a) On-the-job training.

Section 955.12(a) is a new provision derived from proposed § 955.11(a)(2). Paragraph (a)(1) requires each applicant

for the issuance of an OSM blaster certificate who does not qualify as a blaster or the equivalent to have received on-the-job training, including practical field experience in blasting operations, from a blaster or the equivalent for 2 out of 3 years preceding the submission of his or her application. The time period that applies to this requirement derives from proposed § 955.11(a)(2), and is adopted for the same reasons as discussed previously for the minimum experience requirement of § 955.11(b)(1).

Paragraph (a)(1) references a narrow exception to its requirements in § 955.14(c)(2), which for reexamination provides that any person who fails the examination and submits a new application within 2 years of completing training need not repeat training, or resubmit evidence of having completed training. For more information on this exception, see the subsequent discussion of the referenced § 955.14(c)(2).

Paragraph (a)(2) of this section requires the applicant to have obtained from either the blaster or the equivalent who provided the on-the-job training, the relevant employer at the time the training was received, or some other knowledgable source, satisfactory evidence of having received on-the-job training in accordance with paragraph (a)(1). Satisfactory evidence must include sufficient information to demonstrate that the training was received, and enable OSM to contact either the blaster or the equivalent who provided the training, the employer, or the other knowledgable source, to verify this fact.

The applicant is given several options as to the source of the evidence because in some situations either the blaster who provided training or the employer may no longer be available to provide it. To avoid the problem of having to obtain satisfactory evidence from a blaster or employer with whom the applicant no longer is associated, or finding another sufficiently knowledgable source, OSM encourages blaster-trainees to obtain the required evidence on a routine basis as part of their training.

Section 955.12(b) Training course.

Section 955.12(b) corresponds with proposed § 955.12(a). Paragraph (b)(1) requires an applicant for the issuance or reissuance of an OSM blaster certificate to have completed a training course in specified topics. It references the same narrow exception to this requirement that was noted in the preceding discussion of § 955.12(a)(1).

Under this paragraph an applicant must complete training within 2 years of submitting an application. Depending on whether the application is for certificate issuance or reissuance, two different levels of training are required. For certificate issuance the training must cover the technical aspects of blasting operations, and State and Federal laws governing the storage, transportation and use of explosives, including the topics specified in 30 CFR 850.13(b). For certificate reissuance the training must cover any significant changes that have occurred in the topics specified in 30 CFR 850.15(b) since the applicant last completed a training course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. If OSM determines that no significant changes have occurred, then OSM may waive this latter requirement.

Section 955.12(b)(2) requires an applicant to have obtained from his or her training provider satisfactory evidence that he or she completed training in accordance with paragraph (b)(1). At a minimum, such evidence will include the names and addresses of the applicant and the training provider, and the type, content and date(s) of the training.

The evidence need not follow any specific format, as long as it adequately documents that the applicant has completed the required training. In specifying the type of training, it should indicate the nature of the training provider and the form of instruction. It should specify the content of the training in sufficient detail for OSM to judge whether the topics specified in 30 CFR 850.13(b) were covered adequately. And it should specify the date the training was begun, or how long it lasted, and the date it was completed.

The applicant need not include evidence of any grade that may have been received in a course, and a passing grade will not be considered by OSM as a criterion in determining whether an applicant has completed adequate training. No grade is required because OSM considers its examination to be an adequate measure of what the applicant has learned. The applicant will have the burden of demonstrating to the satisfaction of OSM that he or she has completed adequate training.

Section 955.12(b) differs from the proposed rule in several ways. One, as was implicit in the proposed rule, this final rule explicitly states that the training requirement applies only to applicants for certificate issuance or reissuance. Applicants for the other types of certificates need not complete any additional training or submit a training voucher.

Two, the maximum time that may elapse between the dates when an applicant completes training and submits an application is reduced from 3 years to 2 years. OSM has concluded that a 3-year interval is too long to ensure that a training course is sufficiently up-to-date with respect to significant changes in the law and technology. OSM considered shortening the interval to 1 year, but concluded that this would unreasonably restrict not only the training option available to an applicant, but also the time available for an applicant to complete the remainder of the certification process.

Three, this final rule substitutes for the term "OSM or equivalent training" in the proposed rule the term "a training course." As discussed subsequently for § 955.12(b), OSM will not itself provide any of the training required by this part, and therefore the term "OSM or equivalent training" is inapt. Since proposed § 955.12(b)(1) would have required OSM to provide or otherwise ensure the availability of training courses, the requirement that an applicant for certificate issuance or reissuance have completed a training course was implicit in the proposed rule.

To meet the requirements of this section, a training course must be adequate to prepare the applicant to assume responsibility for conducting blasting operations at a blasting site. This may include a correspondence course in which the trainee receives interactive instruction and feedback, but does not include unsupervised self-study of either prepared matter materials or random information on the required subjects.

A commenter asked OSM to provide specific criteria on what would constitute acceptable training, including the amount of time involved. OSM has concluded that specific criteria might limit unduly the training options available to potential applicants, with few offsetting benefits. Therefore, this rule provides only general criteria. For more information on the training requirement in general, see the notice of final rulemaking for 30 CFR 850.13. 48 FR 9488–9489 (March 4, 1983).

And four, final § 955.12(a)(1) now requires different levels of training for certificate issuance and reissuance. Proposed § 955.12(a) would have required applicants for both types of certificates to complete the same level of training. Proposed § 955.12(b)(2), however, would have authorized OSM to modify the training required for reissuance to reflect previous training an applicant had received. In response to public comments, OSM has included a modified training requirement for certificate reissuance directly in

paragraph (b)(1), and has deleted the corresponding provision of proposed § 955.12(b)(2).

OSM received a number of comments on the provision for modification of the training requirement. One commenter asked whether OSM had developed any criteria for determining the training required for certificate reissuance. This commenter suggested that OSM should require additional training only when a blaster must use new procedures, and thought that any training given to certificate holders would only duplicate training already offered by the Mine Safety and Health Administration (MSHA).

Revised § 955.12(b)(1) now bases the training required for certificate reissuance on any significant changes that have occurred in the topics specified in 30 CFR 850.13(b) since the applicant last completed a training course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. A potential applicant for certificate reissuance will be able to meet this requirement in most instances by taking a short refresher course. When no significant changes have occurred, OSM may waive this requirement entirely. OSM will not require anyone to duplicate training that already had been provided by MSHA, or any other adequate course, within the applicable 2-year period.

Section 955.12(c) Availability.

Section 955.12(c) corresponds with proposed section 955.12(b)(1). It requires OSM to ensure that courses are available as provided in 30 CFR 850.13(b) to train persons who are subject to Part 955 and responsible for the use of explosives in surface coal mining operations. This implements the requirement of § 850.13(b) that "[t]he regulatory authority shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations."

Section 955.12(b) differs from the proposed rule in a number of ways. One, as discussed previously in the introduction to this section, proposed paragraph (b)(2) was deleted in view of the two different levels of training included in final paragraph (b)(1).

Two, the phrase "subject to this part" was added to clarify that OSM must ensure the availability of courses only to the extent it is the regulatory authority. Under 30 CFR 850.13(b), the regulatory authority need only ensure that courses are available to persons under its jurisdiction. With respect to such courses, the jurisdiction of OSM as regulatory authority is limited to those persons who are subject to this part in Federal program States and on Indian lands.

And three, the requirement in proposed paragraph (b)(1) for OSM to provide courses has been deleted. Although one commenter agreed with this requirement, OSM has concluded that there is no need for it to duplicate the courses that already are available, or may be offered in the future, to provide the training required by section 955.12(b).

This same commenter also recommended that OSM develop a self-study training program. OSM does not intend to do so. As discussed previously for section 955.12(b), OSM has concluded that while a correspondence course in which a trainee receives interactive instruction and feedback may meet the training requirement of this section, unsupervised self-study of either prepared materials or random information on the required subjects will not. OSM is not prepared to engage in the interactive training a correspondence course would require. However, OSM will attempt to make available to potential applicants a list of courses, including any taught by correspondence, that meet the requirements of section 955.12(b).

This commenter also asked whether course instructors would need to have an OSM blaster certificate. The answer is no. Many fully competent instructors may not have sufficient, recent, practical experience to qualify for a certificate. Furthermore, the requirement for a blaster certificate applies only to persons responsible for conducting blasting operations at a blasting site.

Another commenter suggested that OSM should add to section 955.12 a new paragraph that would enable a surface mining permittee to train potential applicants for an OSM blaster certificate. OSM has not adopted this suggestion because the additional provision is unnecessary. Nothing in section 955.12 would preclude a permittee from providing the required training.

Section 955.13 Application.

Section 955.13 governs the application process for an OSM blaster certificate. It specifies the required application procedures, including the payment of an application fee and the submission of evidence of any applicable training, and requires OSM to make available a prescribed form on which an application must be submitted.

Section 955.13(a) Submission procedures.

Section 955.13(a) requires any person seeking an OSM blaster certificate to: (1) Complete and submit to OSM an application on the prescribed form; (2) include as part of the application a specified nonrefundable fee; (3) for certificate issuance or reissuance, include as part of the application satisfactory evidence of having completed training as provided in section 955.12; and (4) submit the application and fee a specified number of days in advance of a specified reference date, the number of days and the reference date in each case depending upon whether the application is for certificate issuance, renewal, reissuance, or a certificate through reciprocity.

Section 955.13(a)(1) Prescribed form.

For a discussion of the prescribed application form, see the subsequent heading *§955.13(b) Application form.*

Section 955.13(a)(2) Application fee.

Section 955.13(a)(2) requires an applicant to include as part of his or her application a fee that ranges in amount from $28 to $122, depending on the type of certificate sought. The proposed rule would have required the applicant to submit a fee "with the application," while this final rule requires the applicant to include the fee "as part of the application" since the term "application" now is defined by section 955.5 to include the fee.

The specified application fees are adopted under the authority of section 9701 of Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701), which prior to editorial revision and recodification was section 501 (31 U.S.C. 483(a)) of the Independent Offices Appropriation Act (IOAA). Section 9701 authorizes an agency to prescribe regulations establishing a charge for a service or thing of value provided by the agency. The charge must be fair and based on costs to the government, the value of the thing or service to the recipient, the public policy or interest served, and other relevant facts.

The application fees in section 955.13(a)(2) were derived by calculating the direct and indirect costs OSM expects to incur in the certification process. For the issuance or reissuance of a certificate, the application fee includes the cost of clerical processing, technical review, and the cost of the examination. For reexamination, the fee includes only the cost of the examination.

For renewal or replacement of a certificate, or a certificate through reciprocity, the fee includes only the cost of processing the application and

certificate, since no examination is required. There is no fee for a temporary certificate, the cost of which is covered by the underlying application fee.

As shown by the following table, the application fee for the issuance or reissuance of an OSM blaster certificate is $122. This includes the costs OSM expects to incur in the clerical processing and technical review of the application; developing, administering, renting the facility for, and grading the examination; and processing the certificate. The application fee for reexamination of an applicant who has failed the examination on a previous attempt is $61, which covers the cost of the examination.

FEE CALCULATION FOR CERTIFICATE ISSUANCE AND REISSUANCE [1]

Activity	Time allotted (hours/appl.)	Hourly rate of pay		Cost/applicant (dollars)
		Clerical (GS-4)	Technical (GS-9)	
Application:				
Clerical processing	2	$7		$14
Technical review	3		$11	33
Examination:				
Develop	[2] 3		11	33
Administer	[3] 0.2		11	2
Facility				[4] 4
Grading	2		11	22
Certification: Process certificate	2	7		14
Total				$122

[1] Based on 1985 U.S. Government pay schedule.
[2] 300 hours/exam/year divided by 100 applicants/exam/year.
[3] 5 hours/exam divided by 25 applicants/exam.
[4] $100/exam divided by 25 applicants/exam.

The application fees for renewal and for a certificate through reciprocity are each $61. The fee calculation for these certificates is similar to that for issuance and reissuance, except that the cost of an examination is not included. For certificate replacement the application fee is $28, which includes only the cost of the clerical processing of the application and certificate.

One commenter said that a fee of $122 for certificate issuance and reissuance was "inflated and unjustifiable" because the number of hours OSM projected it would take to review and process an application, and to develop the examination, was excessive. The basis for this commenter's conclusions was his experience with administering a State blaster certification program.

OSM has reviewed the proposed fee schedule in light of this comment, but nevertheless has adopted the schedule as proposed. The hours projected for each activity in the fee calculation are reasonable estimates of the average amounts of time it will take OSM to issue or reissue a blaster certificate.

The amount of time allotted to each activity is an average for all certificates. While some certificates may take less time, others will take more. These allotted times cover both the development of the certification process, and its subsequent administration.

OSM does not intend merely to rubber-stamp an application, but to review thoroughly the applicant's training, experience, employment history, and other qualifications, and where there is any question, to verify the accuracy of the information provided.

The time allotted to developing, administering and grading the examination reflects the need to review and update the examination on a regular basis, and to insure that it fairly and accurately measures an applicant's qualifications. The time allotted to processing the certificate covers not only the actual issuance of the certificate itself, but also the maintenance of records, and any subsequent communications with certificate holders.

If experience shows that any application fee in this rule does not reasonably reflect OSM's costs, OSM will propose a new rule to adjust the fee accordingly.

Another commenter believed OSM should not charge a fee for a certificate through reciprocity. This commenter thought OSM was not justified in charging an applicant who already had paid a fee to a State for a similar service.

OSM disagrees. The fee for a certificate through reciprocity is an estimate of the actual costs OSM will incur in the certification process. As it is the applicant for a certificate through reciprocity who causes OSM to incur these costs, it is reasonable for the applicant to bear these costs through the payment of a fee.

Section 955.13(a)(3) Evidence of training.

This is a new paragraph that did not appear in the proposed rule. It requires an applicant for certificate issuance or reissuance to include as part of the application satisfactory evidence of having completed training as provided in section 955.12. As with the application fee described previously under section 955.13(a)(2), this evidence is defined by section 955.5 as part of the application. For more information on the requirement for evidence of training, see the preceding discussion of section 995.12.

Section 955.13(a)(4) Examination date.

This is a new paragraph that did not appear in the proposed rule. It was derived from proposed section 955.13(b), and requires an applicant for certificate issuance or reissuance to specify in the application the date when he or she desires to take a previously scheduled examination. While proposed section 955.13(b) explicitly required the application form to include provision for the applicant to specify the desired examination date, final section 955.13(b) now covers the application form only in general terms. To facilitate the interpretation of subsequent section 955.13(a)(5), which uses the date of examination as the benchmark for determining when an applicant for certificate issuance or reissuance must submit an application, the explicit requirement for the applicant to specify the examination date was retained in section 955.13(a)(4).

Section 955.13(a)(5) Submission deadlines.

Proposed section 955.13(a)(3) was renumbered as section 955.13(a)(5). It requires an applicant for certificate issuance, renewal or reissuance to submit his or her application not less than 60 days before certain specified dates. For certificate issuance the deadline is 60 days before the date on which the applicant desires to take a previously scheduled examination. For renewal it is 60 days before the expiration date of the applicant's current certificate. And for reissuance it is 60 days before the date on which the applicant desires to take a previously scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate.

The term "previously" was added to modify the term "scheduled examination" in this section to clarify the requirement that the applicant must conform with the current application

schedule published by OSM. OSM does not intend to adapt this schedule retroactively on the basis of requests it might receive from applicants for a particular examination date.

The deadline for submitting an application for certificate issuance or reissuance is keyed to the examination date in order to give OSM advance notice of how many people wish to attend, and thus enable OSM to schedule the necessary personnel and facilities. It is expected that OSM routinely will circulate an examination schedule for the information of prospective applicants.

These deadlines will give OSM the minimum amount of time it needs for processing the application, holding the examination, and the timely issuance, renewal or reissuance of any resulting certificate. Under this provision the applicant is responsible for submitting an application in time to obtain a certificate by a desired date, to gain admission to a particular examination, or to prevent the expiration of his or her certificate.

The direct consequence of a failure to meet any of these deadlines is limited to potential delay in the issuance, renewal or reissuance of a certificate beyond the date when one is needed or desired by the applicant. An indirect consequence may be the expiration of a certificate, and the resulting loss of authorization for the holder to work as a blaster.

Unless OSM issues a temporary certificate, a person whose certificate expires for any reason may not assume responsibility for blasting operations at a blasting site until the expired certificate is renewed or reissued.

Section 955.13(b) Application form.

Section 955.13(b) requires OSM to make available to any person seeking an OSM blaster certificate an application form and instructions for its completion. The form must include a statement in accordance with law that the information provided is true and accurate to the best knowledge and belief of the applicant, and require the signature of the applicant.

Proposed section 955.13(b) specified the contents of the application form in consideration detail. OSM has concluded that there is no need for so detailed a rule, and that the more general requirement of this final rule is sufficient. Notwithstanding this general requirement, the application form OSM will make available under this final rule will seek, and the applicant will be required to provide, essentially the same information as specified in the proposed rule.

OSM has adopted a prescribed form to simplify the application process from the standpoints of both the applicant and OSM. The form will assist the applicant in determining and providing the information required to qualify for each of the various types of certificates. It also will assist OSM by imposing on the application process a high degree of organization, uniformity and consistency.

One commenter suggested that OSM should require the applicant to have a notary attest to his or her signature on the application form. OSM did not adopt this suggestion because the required statement in accordance with law is sufficient to ensure the authenticity of the applicant's signature, as well as the accuracy of the information submitted in the application.

Section 955.14 Examination.

Section 955.14 governs the timing, completion, administration and content of the examination each applicant for the issuance or reissuance of an OSM blaster certificate is required to pass.

Section 955.14(a) Certificate issuance and reissuance.

Section 955.14(a) requires an applicant for the issuance or reissuance of an OSM blaster certificate to pass the written examination specified in paragraph (b) of this section, on the technical aspects of blasting and State and Federal laws governing the storage, transportation and use of explosives, as provided in 30 CFR 850.14. The applicant must pass the examination *after* submitting the application; passing a previous examination does not fulfill this requirement.

The requirement in proposed section 955.14(a) that an applicant pass a practical examination has been deleted; this final rule requires only a written examination. The reasons for this change are given in the following discussion of section 955.14(b).

OSM received numerous public comments concerning the examination requirement of section 955.14(a). Summaries of these comments, and OSM's responses, appear in the following discussion of sections 955.14 (b) through (e).

Section 955.14(b) Administration and content.

Section 955.14(b) requires OSM on a regular basis to schedule and hold a written examination on the technical aspects of blasting, and State and Federal laws governing the storage, transportation and use of explosives, as provided in 30 CFR 850.14. At a minimum the examination must cover the topics specified in 30 CFR 850.13(b), and include: (1) Objective questions; (2) blasting log problems; and (3) initiation system and delay sequence problems. The examination will be offered only in the English language.

Practical Examination Deleted

As discussed previously for paragraph (a), the requirement for a practical examination has been deleted from section 955.14(b)(1). OSM has concluded that a written examination is adequate to measure an applicant's grasp of blasting theory and practice, and that a hands-on practical examination would be difficult to administer and grade objectively. Together with the requirement of section 955.11(b) for practical field experience, the written problems contained in the examination will adequately measure an applicant's practical skills. For these reasons the proposed requirement for a practical examination was deleted from this rule.

Several commenters maintained that the examination should stress the practical aspects of blasting, as opposed to abstract theory. While OSM will not conduct a practical examination, it agrees with these commenters and will try to design the written examination in a way that measures as far as possible those aspects of blasting which are of practical significance to the conduct of safe and responsible blasting operations.

Oral Examination

Several commenters suggested that as an alternative to a written examination, the rule should provide for oral examination. They maintained that there are persons who otherwise may be qualified to hold an OSM blaster certificate, but lack the reading and writing skills necessary to pass a written examination. An oral examination, they concluded, would provide an alternative way to evaluate these persons.

These commenters identified two major categories of persons who may not be able to pass a written examination. One category includes persons with limited formal education who have learned blasting theory and technique primarily through practical experience. The other category includes persons who may be proficient in a language such as Spanish or Navajo, but could not pass a written examination in the English language.

One commenter described a miner-training program for a workforce consisting primarily of Navajo Indians, which is conducted in the Navajo language and includes oral examination.

This commenter noted that the regulations of the State of New Mexico authorize oral examination of Native Americans for blaster certification, and that the use of oral examination does not appear to have any negative effect on safety. This commenter suggested adding to this rule regulatory language similar to that of New Mexico, which would give OSM discretion to examine an applicant orally upon request in certain limited circumstances.

OSM appreciates the concerns of these commenters, but has not revised the rule to authorize oral examination. The existing rule at 30 CFR 850.14(a)(1) requires the regulatory authority to give candidates for blaster certification "a written examination." As here, a number of commenters on proposed section 850.14 requested that OSM also provide for oral examination. The reasons why OSM kept the requirement for a written examination are set out in the preamble to that final rule. 48 FR 9489–9490 (March 4, 1983). None of the comments on this current rule give OSM any reason to change that existing requirement.

The laws and regulations governing blasting are written in the English language. All of the information published by the Institute of Makers of Explosives on the safe storage, transportation and use of explosives is in the English language. In order to understand the technical specifications of explosives, prepare blast designs, submit the required records, interpret safety notices and other information, and give direction and on-the-job training to persons under his or her supervision, a blaster must be able to read and write the English language. The only effective way to measure adequately a candidate's ability to understand these materials and do these things is through a written examination in the English language.

Anyone who cannot pass the written examination required to qualify for certification nevertheless may work under the direction of a blaster on a blasting crew. Thus, the requirement to pass a written examination will not, by itself, prevent any miner from earning a living in the blasting profession.

Because this rule governs the certification of blasters on Indian lands, OSM is particularly sensitive to any effect the rule might have on Indians. OSM realizes that the requirement to pass a written examination in the English language may prevent some Indian miners from qualifying for an OSM blaster certificate, and that in some instances this may have an economic impact on some individuals. However, these impacts are offset by the need for OSM to consider the general need to assure the safety of fellow miners and other persons in the vicinity of the blasting site. To enhance protection of the health and safety of all who may be affected, this rule requires all applicants to pass a written examination in the English language.

Initiation System and Delay Sequence

Proposed section 955.14(b)(2)(iii) required the examination to include a "practical wiring simulation problem." Several commenters noted that this type of problem applies only to electrical initiation systems, but not to others, such as gas initiation, which a blaster might use. These commenters suggested that instead of a wiring simulation problem the examination should include a delay sequence simulation.

OSM agrees with these comments, and has revised section 955.14(b)(2)(iii) to eliminate the unintentional bias toward electrical systems. This section now requires the examination to include more general "[i]nitiation system and delay sequence problems," which will not be geared to any particular type of system.

Validation of Examination

Several commenters asked whether, and to what extent, OSM would validate the blaster certification examination, both from technical and equal employment opportunity standpoints.

From a technical standpoint, these commenters were concerned that a too hasty implementation of this rule might not give OSM sufficient time to design a technically valid examination. They noted that under section 955.14(c) an applicant who failed a poorly designed examination could repeat the examination only 1 time in the subsequent 12-month period. This, they believed, might prevent some applicants from meeting the requirement for an OSM blaster certificate within the required 12 months after the effective date of this rule.

OSM appreciates the concerns of these commenters, but it already has prepared what it considers to be a technically valid examination.

Nor should the limit of 2 examinations in a 12-month period under § 955.14(c) have a detrimental effect on any significant number of applicants. OSM is required by § 955.14(b)(1) to hold examinations on a regular basis. In view of the 12-month grace period provided by § 955.2, and even if much of this period is used to obtain the required training, most applicants will be able to take examination 2 times, if necessary, before they are required to have a certificate.

If OSM finds that any defect in the examination is causing a significant number of applicants to fail, it will consider steps to alleviate any resulting hardship. However, it seems most appropriate to make any revision to this regulation after actual experience has been obtained with the examination.

From an equal employment opportunity standpoint, OSM has determined that a validity study does not need to be conducted for the examination to be used as part of the process for determining whether individuals should be certified as blasters.

A validity study is required in certain circumstances by the Uniform Guidelines on Employee Selection Procedures of the Equal Employment Opportunity Commission (the EEOC guidelines, or the guidelines). 29 CFR Part 1607.

The EEOC guidelines apply to tests and other selection procedures used as a basis for employment decisions, including licensing and certification. Essentially, they require an agency to conduct a validity study of each examination for an applicable license or certificate.

In promulgating the existing rules at 30 CFR Subchapter M governing the certification of blasters, OSM interpreted the EEOC guidelines as applying to the examination for blaster certification. 44 FR 38321–38323 (1979), 45 FR 82086–82087 (1980), 47 FR 12781 (1982), and 48 FR 9488 (1983). Under this interpretation, OSM apparently would be required to conduct a validity study of the examination.

In light of the comments on the proposed rule, OSM has reexamined its previous interpretation of the EEOC guidelines to determine how they apply to the examination for blaster certification. OSM has concluded that its previous interpretation of the guidelines as applying to the blaster certification process was incorrect, and that a validity study of the examination is not required by law. Any decision by OSM to do a validity study is strictly a matter of agency policy.

By their own terms, the EEOC guidelines do not cover the blaster certification process. As the guidelines state, they "will be applied by . . . Federal agencies subject to section 717 of Title VII [of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972]." 29 CFR 1607.2A. However, the referenced section 717 of the Civil Rights Act applies only to "personnel actions affecting employees or applicants for

employment . . . in executive agencies." 42 U.S.C. 2000e–16(a).

Thus, the purview of the guidelines is limited to Federal personnel actions in executive agencies, and they apply to the blaster certification process only to the extent it affects such actions. But while blaster certification may be a prerequisite to employment as a blaster in the private sector, it is unrelated to any Federal personnel action. So neither section 717 nor the guidelines apply to the certification process.

Even if the EEOC guidelines could be construed as applying to the blaster certification process in general, the examination given to a candidate for certification is not a "selection procedure" as defined by the guidelines, and thus does not raise the need for a validity study.

The guidelines presume that any selection procedure which has an adverse impact on employment is discriminatory unless the procedure has been validated in accordance with the guidelines. 29 CFR 1607.3A. Selection procedures include tests which are used as a basis for any employment decision. "Employment decisions include . . . licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law." 29 CFR 1607.2B.

Under these provisions, an examination is not a selection procedure unless the underlying certification is covered by some Federal equal employment opportunity law. But the blaster certification process is not covered by section 717 of the Civil Rights Act, and OSM is aware of no other civil rights law which is applicable to the certification process. So the examination for blaster certification is not selection procedure covered by the guidelines.

Even where they are not mandatory, the EEOC guidelines may "be applied . . . by any . . . . Federal agency which adopts them." 29 CFR 1607.2A. However, OSM has decided as a matter of agency policy that applying the guidelines to the blaster certification process might raise irreconcilable conflicts with its overriding concern for protecting the public health and safety and the environment. OSM will make every effort to design an examination that is non-discriminatory, but considering the hazards inherent in blasting operations it will place primary emphasis on how well the examination will serve to minimize those hazards.

Modification of Examination

Proposed § 955.14(b)(3) would have authorized OSM to modify the examination given to an applicant for certificate reissuance to reflect a previous examination the applicant had passed. This provision was deleted from this final rule. OSM has concluded that an applicant for certificate reissuance should take and pass the same examination as an applicant for certificate issuance. Thus, there is no need for a provision authorizing OSM to modify the examination.

Additional Issues

One commenter noted that the proposed rule did not specify any locations where OSM would hold examinations, and recommended holding them near the mining operations affected by this rule.

OSM agrees that as far as practicable the examinations should be held in locations that are convenient to applicants. This rule does not specify any locations so that OSM will have maximum flexibility in selecting suitable examinations sites. The application submission deadlines in § 955.13(a)(5) will give OSM sufficient advance notice of the demand for an examination at a particular site, and enable it to relocate an examination to a more convenient site in appropriate circumstances.

One commenter asked whether OSM would make available to the public in advance of the examination a large number of questions from which it would select a smaller number for each version of the examination. While OSM does plan to prepare several different versions of the examination, to preserve the integrity of the examination OSM will not disclose any of the questions in advance. The list of topics in 30 CFR 850.13(b) and the general description of the examination in § 955.14(b)(2), in conjunction with the completion of adequate formal training, will give each candidate for an OSM blaster certificate adequate notice of what the examination questions will cover.

Several commenters suggested that OSM should divide the examination into sections, and require an applicant to retake only those sections which he or she fails to pass. The knowledge and skills required to conduct safe blasting operations are comprehensive in scope and not readily separable into discrete parts. A piecemeal approach to examination or reexamination would not accurately measure an applicant's overall qualifications. Furthermore, OSM believes that any benefits which a piecemeal approach to the examination might provide to applicants would not justify the resulting substantial increase in the administrative cost burdens which would be incurred by OSM. Therefore, this suggestion was not adopted in the final rule.

Several commenters recommended that OSM develop a different examination for each type of blast initiation system, and then restrict the resulting certificate to operations employing that system. They also suggested that a certificate might be restricted to operations in a particular State or region where that initiation system was in use. An applicant who wished to qualify for all types of systems or all jurisdictions would have to seek a comprehensive certificate.

This recommendation is evaluated in the subsequent discussion of § 955.15(b), under the heading *Restricted Certification.* OSM has determined that it will not be appropriate to issue restricted certificates, either on the basis of initiation system or of jurisdiction, hence, different examinations will not be required. The examination will cover blasting concepts of general application, will pertain equally to all systems, and will be the same for all Federal program States and Indian lands.

Section 955.14(c) Reexamination.

Section 955.14(c)(1)

Section 955.14(c)(1) allows an applicant who fails the examination to apply for reexamination by submitting a new application, including the prescribed fee. However, no person may take the examination more than 2 times in any 12-month period. Applicants are advised to keep a copy of each application for reference in preparing any subsequent applications.

Because a significant amount of time may elapse between failure and reexamination, with corresponding changes in the information provided by the applicant, a candidate for reexamination must submit an entire new application. Except where the applicant is not required to resubmit a training voucher, an application for reexamination does not differ from an initial application for the same type of certificate. Because the costs associated with processing the new application and conducting the reexamination are the same as for an original application, the applicant also is required to submit a new fee.

For determining how many times an applicant has taken the examination, the 12-month period is measured back in time from the date on which the applicant desires to repeat the examination. If more than 1 previous examination falls within that 12-month period OSM will not admit the applicant for reexamination on that date. OSM has adopted this limit to ensure that candidates for reexamination have

sufficient time to study and gain the additional experience needed to prevent repeated examination failures.

One commenter maintained that the proposed limit of 2 examinations in a 12-month period was unnecessarily restrictive. This commenter suggested a frequency of no more than 1 examination in any 60 day period, and if the examination were divided into sections no more than 1 examination in any 30 day period. This commenter also recommended increasing the allowed frequency of reexamination during the first year-and-a-half of the program.

This commenter recommended more frequent reexamination for three reasons: One, the proposed limit might put miners who failed the examination out of work in the early part of the program. Two, the limit on reexamination, in conjunction with retesting requirements, could impede miners from moving from State-to-State. And three, this commenter disagreed with the statement in the proposed rule that a limit on reexamination was needed to give applicants who failed the examination time to gain more practical experience.

OSM disagrees, and has adopted none of the suggested alternatives. Nothing in the proposed rule will put a qualified applicant for an OSM blaster certificate out of work. An applicant who fails the examination the first time can take it a second time as soon as a new application and fee are processed and a subsequent examination is held. Anyone who is reasonably diligent in submitting applications should be able to take and retake the examination if necessary in the 12-month period between the effective date of this rule and the date when the requirement for a certificate is implemented. And anyone who fails to pass the examination before the requirement for a certificate is implemented can continue to work as a member of a blasting crew.

Nor will the limit on reexamination impede the movement of blasters from State to State. An OSM blaster certificate is valid in all Federal program States and on all Indian lands. The holder of a certificate may work in any of these jurisdictions without restriction. Although a blaster who wants to work in a State with a State regulatory program must have a State blaster certificate, the limit on reexamination under this rule will not prevent an applicant for a State certificate from taking the State examination.

OSM continues to believe that an applicant who fails the examination 2 times in a 12-month period will benefit from gaining additional practical experience before reexamination. Although the examination is in written form, it measures not only blasting technique, but also the practical knowledge an applicant gains through on-the-job training and experience. This rule will increase the likelihood that an applicant who fails the examination repeatedly will gain the added theoretical and practical knowledge needed to pass it on a subsequent attempt.

One commenter suggested that OSM should limit reexamination to those topics an applicant failed to pass on the previous attempt. As discussed previously for § 955.14(b), OSM will not divide the examination into separate sections, either for initial examination or for reexamination.

One commenter concluded that an applicant who failed the examination at the start of a 12-month period, and again at the end of the period could not take the examination again for 1 full year. This interpretation of the rule is incorrect. On the anniversary of the first attempt the applicant would be eligible to take the examination a third time without exceeding the limit of 2 examinations in a 12-month period.

Section 955.14(c)(2)

Under § 955.14(c)(2), any person who fails the examination and submits a new application within 2 years of completing training as provided in § 955.12(a) need not repeat training or resubmit evidence of having completed training. This is a new provision that did not appear in the proposed rule. It was added to clarify that retraining is not necessarily required for reexamination, and to eliminate the unnecessary resubmission of evidence when OSM already has evidence of current training on file for the applicant. An applicant for reexamination who does not submit a new application within 2 years of completing training must repeat training and submit new evidence of having completed training. Any application for reexamination must otherwise meet the requirements for an original application.

Section 955.14(d) Failure to attend.

Except where the applicant shows and OSM finds good cause, § 955.14(d) authorizes OSM to reject the pending application of anyone who fails to take the examination after OSM has granted his or her request for admission. This section is essentially the same as proposed.

OSM will administer this section as follows:

Either before or after the examination is held, an applicant may show OSM that he or she has good cause for failing to take it. For example, medical, employment or other unforeseen circumstances may make it impracticable for an applicant to take the examination. By notifying OSM sufficiently in advance of the examination date, the applicant may learn whether OSM will reject his or her application, and adjust his or her plans accordingly.

To make the showing an applicant should send OSM a letter describing the cause of the failure, and indicating the new date, if any, when the applicant desires to take the examination. Within a reasonable time after receiving the letter, OSM will notify the applicant of its decision.

If OSM has not received such a letter from an applicant who fails to take the examination, OSM will notify the applicant that he or she has 30 days to show good cause and to request a subsequent examination date, after which OSM may reject his or her application.

OSM will have complete discretion in determining whether an applicant shows good cause for failing to take the examination, and its decision will be final and not subject to appeal. An applicant whose application is rejected under § 955.14(e) may reapply for an OSM blaster certificate by submitting a new application.

Section 955.15 Certification.

Section 955.15 governs: (a) The processing of an application for an OSM blaster certificate; (b) the grant of a certificate; (c) the term of a certificate; (d) the limits on certificate renewal; (e) the grant of a temporary certificate; (f) the conditions of certification; and (g) notice of a certificate holder's change of address.

Section 955.15(a) Processing of application.

Section 955.15(a) governs the processing of an application for an OSM blaster certificate. It establishes procedures for: (1) Notifying an applicant of the receipt of, and of any deficiency in, his or her application; (2) notifying an applicant that his or her request for admission to a scheduled examination either is granted or denied; and (3) rejecting an application.

This section differs from the proposed rule in two ways. One, unlike proposed paragraph (a), which required OSM to notify only an applicant for certificate issuance or reissuance of the status of his or her application, and of any deficiency, final paragraph (a)(1) requires OSM to provide this notice to every applicant. This change eliminates the inconsistent treatment the proposed

rule gave to applicants for different types of certificates.

And two, paragraph (a)(2) is added to require explicitly that when OSM determines that an applicant has failed to qualify for an OSM blaster certificate, OSM shall reject his or her application and notify him or her accordingly. The authority given to OSM by this section was implicit throughout the proposed rule, as was the requirement for notice to the affected applicant. This section merely defines that authority in concrete terms, as well as the criterion OSM is to apply in rejecting an application. In administering this section OSM will determine that an applicant has failed to qualify for an OSM blaster certificate only after the applicant has had a reasonable opportunity to comply with the procedures established by this part.

Section 955.15(b) Grant of certificate.

Section 955.15(b) requires OSM to:

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the applicable training, passes the examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the issued or reissued OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed;

(4) Grant an OSM blaster certificate through reciprocity as provided in § 955.16; or

(5) Reinstate a suspended, or reissue a revoked, OSM blaster certificate as provided in § 955.17(e).

The term "grant" did not appear in the proposed rule. To simplify the language of the rule, it is used to refer generally to certificate issuance, renewal, reissuance and replacement, and to certification through reciprocity. The term "qualified applicant" is included in this section to insure that all of the requirements of Part 955 are taken into consideration by OSM in deciding to grant or deny a certificate to a particular applicant.

Paragraph (b)(5) is a new provision that did not appear in the proposed rule. It does not impose any new requirement, but merely references subsequent § 955.17(e), which governs the reinstatement of a suspended certificate and the reisssuance of a revoked certificate.

Restricted Certification

Several commenters suggested that OSM should issue several classes of certificates, based on the different blast initiation systems currently in use. To be certified for all systems, a blaster would have to obtain a comprehensive certificate. OSM did not adopt this suggestion. A candidate who qualifies for an OSM blaster certificate through training and experience with one initiation system will be able to use any other system safely. The principles that enable a blaster to control ground vibration, airblast, and flyrock are uniform from system to system. OSM will neither require training in, nor base either the examination or certification on, any particular type of blast initiation system.

One commenter suggested that OSM should restrict an OSM blaster certificate to a specific State or region. OSM did not adopt this suggestion. An OSM blaster certificate will entitle the holder to work as a blaster in all Federal program States and on all Indian lands. The requirements of Part 955 will ensure that a blaster is qualified to conduct safe blasting operations, regardless of the State or region involved.

Also, as discussed previously for § 955.1, under the heading *Relationship to State Law and Programs*, in addition to complying with any Federal requirements a blaster must comply with applicable State law and regulations. To the extent the requirements for certification under Part 955 do not meet the needs of a particular State, the State may impose additional non-conflicting requirements. Thus, there is no reason to tailor an OSM blaster certificate to the requirements of any State or region.

One commenter wanted OSM to grant a certificate only to those persons who truly need it to work as a blaster in a Federal program State or on Indian lands, but deny a certificate to those who want one only for the status it might convey. Another commenter thought that any qualified candidate should be able to obtain a certificate.

OSM disagrees with the former commenter, and agrees with the latter. This rule does not authorize OSM to consider an applicant's need in evaluating his or her qualifications for an OSM blaster certificate. There is no way by which OSM objectively could measure the need for a certificate. Therefore, OSM will issue an OSM blaster certificate to any applicant who has the required qualifications, and will not attempt to assess the applicant's need or motive.

Section 955.15(c) Term of certificate.

Section 955.15(c) specifies the terms of the different types of OSM blaster certificates. Under this section, OSM will issue a certificate for a term to expire 3 years from the date of issuance.

A renewed or reissued certificate will expire 3 years from the expiration date of the applicant's current or expired certificate. This will provide continuity of certification without penalizing an applicant who applies in a timely manner. And it will preclude the possibility of extending the certificate term by submitting a late application. The term "expired" was added to paragraphs (c)(2) and (c)(3) to clarify the intent of the proposed rule, in which the term "current" was ambiguously used to refer to both in-force and expired certificates. Neither the term "current" nor the term "expired" applies to a temporary certificate, and the granting of a temporary certificate has no effect on the term of any subsequent certificate.

A replacement certificate will expire on the same date as the applicant's lost or destroyed certificate.

A certificate granted through reciprocity will expire 60 days after the expiration date of the corresponding State certificate. This 60 day extension will prevent a potential lapse of OSM certification in the period when OSM is processing a reciprocity application. Since an applicant may qualify for reciprocity only after the corresponding State certificate is granted, the OSM certification process necessarily will lag that of the State. If the State and OSM certificates expired on the same date it would not be possible for an applicant to requalify for reciprocity before the OSM certificate expired.

Section 955.15(d) Limits on renewal.

Section 955.15(d) prohibits OSM from renewing an OSM blaster certificate more than 1 time. It also prohibits OSM from renewing an OSM blaster certificate that expired more than 1 year prior to the date of an application for renewal. To extend a renewed certificate, or one that has been expired for more than 1 year, the certificate holder must apply to OSM for certificate reissuance.

The limitation to a single certificate renewal will ensure that each blaster is trained and examined at 6-year intervals, and thus ensure that he or she continues to have the competence, knowledge and experience necessary to accept responsibility for conducting blasting operations.

One commenter disagreed with the proposed limit on certificate renewal as unnecessary and counterproductive, while agreeing that a certificate holder should be required to demonstrate continuing proficiency. As an alternative

to renewal, this commenter suggested the concept of certificate continuance. To qualify for certificate continuance, an applicant merely would have to provide evidence of sufficient recent experience.

OSM did not adopt this suggestion. Certificate continuance would not give a blaster adequate incentive to maintain his or her initial proficiency, or to keep abreast of current developments. The lack of a requirement for periodic training and examination would deprive a blaster of the incentive to obtain necessary information and feedback on a regular basis in an organized training course. And it would severely reduce the ability of OSM to reevaluate a blaster's qualifications at regular intervals.

The prohibition in this rule against the renewal of a certificate that expired more than 1 year prior to the date of an application for renewal is a new provision that was suggested in the proposed rule. It fills a gap in the proposed rule regarding how OSM should treat an applicant who holds an expired certificate. OSM has concluded that since an applicant who holds such a certificate would not have worked as a blaster for at least 1 year, and possibly more, he or she would be likely to need the additional training, and should be required to pass the examination required for certificate reissuance.

The proposed rule solicited public comment on whether the final rule should set such a 1-year deadline. Only one comment was received on this issue. The commenter suggested that 90–120 days before the expiration date of an OSM blaster certificate, OSM should send to the holder a notice of expiration. The period of 90–120 days was suggested to give the holder time to meet the 60-day deadline for submitting an application, as required by § 955.13(a)(4). This commenter also suggested that OSM should notify any blaster whose certificate had expired, and then issue a temporary certificate if an application for renewal or reissuance was submitted within 30 days. If this notice were provided, the commenter thought the 1-year limit that was suggested in the proposed rule was neither necessary nor appropriate.

OSM disagrees with this comment regarding the 1-year limit on renewal of an expired certificate. As was explained previously, this limit is included in the final rule. There is, however, no time limit for submitting an application for the reissuance of an expired certificate.

OSM agrees with the comment, however, that a notice of certificate expiration would be useful to blasters, and although not required to do so by this rule OSM will provide such notice on a discretionary basis in administering the blaster certification program. Approximately 90 days before a certificate is due to expire, OSM will attempt to send the blaster written notice of the need for renewal or reissuance.

This advance notice will be entirely discretionary, and any failure of OSM to provide it will have no effect on any requirement of Part 955. Along with this notice OSM also may provide a copy of the application form, and updated information concerning training, the examination, or other requirements. As this advance notice should be sufficient to inform a blaster of the need to extend his or her certificate, OSM will not provide any additional notice once a certificate has expired.

Finally, OSM agrees with this commenter that the period during which an applicant may request a temporary certificate should not extend beyond 30 days after certificate expiration, and has revised this rule accordingly. For more information on the affected provision, see the following discussion of § 955.15(e).

Section 955.15(e) Temporary certificate.

Section 955.15(e) authorizes OSM, in its discretion, to issue a temporary OSM blaster certificate for a maximum term of 90 days to any applicant who demonstrates that his or her current certificate is about to expire, or expired within 30 days prior to the date of his or her application, for reasons beyond his or her control.

The proposed rule did not set a deadline by which an applicant must request a temporary certificate. However, as noted in the preceding discussion of § 955.15(d), a commenter suggested the 30-day limit adopted in this rule. OSM has concluded that this 30-day limit is necessary to ensure that a temporary certificate does not extend unreasonably beyond the date of the expired certificate, and that a temporary certificate is granted only to persons who are likely to meet the qualifications for the grant of a regular certificate.

Section 955.15(f) Conditions of certification.

Section 955.15(f) requires the holder of an OSM blaster certificate to comply with the conditions specified in 30 CFR 850.15 (d) and (e). These conditions concern protecting a certificate, exhibiting a certificate upon request, and prohibitions against the assignment or transfer of a certificate and the delegation of a blaster's responsibility.

Section § 955.15(g) Change of address.

Section 955.15(g) requires the holder of an OSM blaster certificate to notify OSM in writing within 30 days of any change in his or her address.

This new provision, which did not appear in the proposed rule, merely extends the proposed requirement for current address information in the application. It will enable OSM to maintain up-to-date records on where to send the notices required by § 955.15(a), as well as the discretionary notice of impending certificate expiration previously discussed under § 955.15(e).

Section § 955.16 Reciprocity.

Section 955.16 governs the grant of an initial or subsequent OSM blaster certificate through reciprocity. It applies only to persons who hold a current blaster certificate issued by a State regulatory authority, and only to the grant of a certificate by OSM. It does not apply when the holder of an OSM blaster certificate moves from one Federal program State to another, or to or from Indian lands. While a State may impose additional nonconflicting requirements, an OSM blaster certificate is valid in any Federal program State or on any Indian lands, and in these jurisdictions there is no need for a blaster to seek reciprocity from the State.

Proposed § 955.16(d) was deleted from this rule because replacement of a certificate granted through reciprocity is covered adequately by the general provision for certificate replacement in § 955.15(b)(3).

Section § 955.16(a) Grant of certificate.

Section 955.16(a) combines proposed paragraphs (a) and (b) to eliminate duplication. It requires OSM to grant an OSM blaster certificate through reciprocity to any qualified applicant who holds a current blaster certificate granted by a State regulatory authority under an OSM-approved State blaster certification program. The State must have an approved blaster certification program, and not merely an approved State program, since in some instances the latter might exist without the former.

This section now states that an applicant for a certificate through reciprocity need not otherwise demonstrate that he or she meets the age, experience, knowledge, competence, training and examination requirements of Part 955. This new provision was added to clarify the implicit intent of the proposed rule.

The proposed rule would have required that the OSM-approved State blaster certification program have "rules

no less effective than this part." This phrase was deleted from the final rule as superfluous because an OSM-approved State program necessarily must meet this standard.

The application, certification, suspension and revocation, and other applicable procedures for a certificate through reciprocity are specified elsewhere in Part 955.

OSM received several public comments that misinterpreted the scope of this section. One commenter used the term "State regulatory authority" as applying to any State agency with jurisdiction over the licensing or certification of persons for the storage, transportation or use of explosives. Under this rule, however, the term "State regulatory authority" applies only to a State agency administering the Act under a State regulatory program. For the definition of the term "regulatory authority," see 30 CFR 700.5.

Another commenter misinterpreted this rule as affecting the right of a State to grant or deny reciprocity to the holder of an OSM or out-of-State blaster certificate. This rule governs only the grant of a certificate through reciprocity by OSM. It does not require any State either to grant or to deny reciprocity to a blaster licensed or certified by either OSM or another State.

Section § 955.16(b) Subsequent certificate.

Section 955.16(b) governs the grant of a subsequent certificate to a person who holds an OSM blaster certificate granted through reciprocity. Paragraph (b)(1) authorizes the holder to obtain a subsequent certificate either through reciprocity, or by meeting directly the applicable requirements of Part 955 for certificate issuance, renewal or reissuance. Paragraph (b)(2) prohibits OSM from recognizing a certificate granted through reciprocity as qualifying an applicant for certificate issuance, renewal or reissuance.

This section will prevent an applicant from using reciprocity as the initial step toward obtaining full OSM certification. An applicant granted an OSM certificate through reciprocity must continue to rely on reciprocity unless he or she otherwise qualifies under the procedures of this part for the issuance, renewal or reissuance of a certificate.

One commenter noted that if OSM withdrew approval of a State blaster certification program there could be blasters whose OSM blaster certificates were based on reciprocity with that State program. This commenter was concerned that a blaster in this situation would no longer be able to rely on reciprocity to obtain a renewed or reissued OSM blaster certificate, but would have to meet the training and examination requirements of Part 955. This commenter concluded that in this situation a blaster who previously had qualified for a certificate through reciprocity should be exempt from meeting any additional training and examination requirements.

OSM disagrees. This rule provides for reciprocity to avoid duplicating the requirements of approved State blaster certification programs with rules no less effective than Part 955. If OSM withdrew the approval of a State blaster certification program any basis for reciprocity would cease to exist. Moreover, a State program for which approval is withdrawn may have included inadequate provision for training and examination. It would be inconsistent for OSM on the one hand to withdraw approval of a deficient State program, but on the other hand to exempt an applicant for an OSM blaster certificate from additional training and testing on the basis of that deficient program.

Due to the variety of situations that might arise, it is not possible to specify the effect of State program withdrawal on each OSM blaster certificate that is based on reciprocity. If OSM finds it necessary to withdraw the approval of a State blaster certification program, upon promulgating a Federal program for that State it will inform any affected blasters of what they must do to comply with Part 955.

Section 955.17 Suspension and revocation.

Section 955.17 governs the suspension and revocation of an OSM blaster certificate. It specifies: (a) The cause, nature and duration of a suspension or revocation: and procedures for (b) notice and hearing; (c) decision and appeal; (d) surrender of a certificate; (e) certificate reinstatement and reissuance; and (f) conformance with State action.

Section 955.17(a) Cause, nature and duration.

Section 955.17(a)(1) authorizes, or upon a finding of willful conduct of the blaster requires, OSM to suspend for a definite or indefinite period, revoke or take other necessary action on the certificate of an OSM-certified blaster for any of the reasons specified in 30 CFR 850.15(b). The term "OSM-certified" was added to modify the term "blaster" in this and other paragraphs of this section to clarify that this rule applies only to certificates issued under this part.

The reasons for suspension and revocation specified in 30 CFR 850.15(b) include noncompliance with any order of the regulatory authority; unlawful use in the workplace of, or current addiction to, alcohol, narcotics or other dangerous drugs; violation of any provision of State or Federal explosives laws or regulations; and providing false information or a misrepresentation to obtain certification.

Section 955.17(a)(2) requires OSM to suspend the certificate of the blaster as soon as is practicable where it has reliable information which demonstrates that the storage, transportation or use of explosives by an OSM-certified blaster is likely to threaten public safety or the environment.

Section 955.17(a)(3) requires OSM to make the nature and duration of a suspension, revocation or other action commensurate with the cause of the action and what the blaster does to correct it. The wording of this section is essentially the same as the last sentence of proposed paragraph (a)(1). It was relocated in a separate paragraph to clarify that this requirement applies not only to a suspension, revocation or other action under paragraph (a)(1), but also to a suspension under paragraph (a)(2).

Section 955.17(b) Notice and hearing.

Section 955.17(b) requires OSM, when practicable, to provide to the affected certificate holder written notice and an opportunity for an informal hearing prior to suspending, revoking or taking other action on an OSM blaster certificate. It requires OSM to limit any action taken without such notice and opportunity to a temporary suspension for a maximum term of 90 days pending a decision on final suspension, revocation or other action after such notice and opportunity have been provided.

This section differs from the proposed rule in several ways. The term "affected blaster" was changed to "certificate holder" because the former term would have been inapt in situations where OSM revoked a certificate before it provided the required notice, as the holder of a revoked certificate would not meet the definition of "blaster." This change does not affect the substance of the rule. Also, the period of a temporary suspension was limited to a maximum of 90 days. This will insure that a certificate holder subject to a termporary suspension is given a reasonably prompt opportunity for a hearing.

Section 955.17(c) Decision and appeal.

Section 955.17(c) requires OSM to notify the certificate holder of its final decision affecting his or her OSM blaster certificate, including the reason

for any suspension, revocation or other action, by certified mail within 30 days after written notice and an opportunity for an informal hearing. The term "certificate holder" was substituted for the term "affected blaster" for the same reason as previously discussed for § 955.17(b). If the certificate was issued through reciprocity, OSM also must notify the State regulatory authority of its action.

In addition, in any decision suspending, revoking or taking other action on an OSM blaster certificate, § 955.17(c) requires OSM to grant to the certificate holder the right of appeal to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 to 4.1286. The specific reference to the applicable appeal procedures, which did not appear in the proposed rule, was added for the information of potential appellants. OSM is required to grant the right of appeal in the decision itself because such a grant is a prerequisite to appeal under the referenced provisions.

Section 955.17(d) Surrender of certificate.

Section 955.17(d) requires a certificate holder, upon receiving written notice of a suspension, revocation or other action, immediately to surrender to OSM his or her OSM blaster certificate to OSM in the manner specified in the notice. Again, the term "certificate holder" was substituted for the proposed term "the blaster" for the reasons previously discussed for § 955.17(b). A requirement that the notice be in writing was added to eliminate ambiguity. And finally, the phrase "in the manner specified in the notice" was added to clarify how the blaster is to accomplish the surrender. This latter change, which requires OSM to inform the blaster of the applicable procedures, will make it easier for a blaster to comply with this section.

Section 955.17(e) Reinstatement and reissuance.

Section 955.17(e) governs the reinstatement or reissuance of a suspended or revoked OSM blaster certificate. Paragraph (e)(1) requires OSM to reinstate a suspended certificate when (i) the term of a definite suspension expires, or (ii) when the former certificate holder demonstrates and OSM finds that the cause of an indefinite suspension has been corrected. The term "former certificate holder" was substituted for the proposed term "blaster" for the reasons previously discussed for a similar change in § 955.17(b). Upon reinstatement, OSM must return the certificate to the blaster with written notice.

Paragraph (e)(2) requires OSM to reissue a certificate to an applicant whose certificate was revoked if his or her application demonstrates, and OSM finds, (i) that the cause of the revocation has been corrected, and (ii) that the applicant meets all other applicable requirements of Part 955. This section combines the overlapping requirements of proposed §§ 955.17(e) and 955.17(f) to eliminate unnecessary duplication and simplify the rule. It does not change the substance of what was proposed.

Section 955.17(f) Conformance with State action.

Section 955.17(f) corresponds with proposed § 955.17(g). It requires OSM to suspend, revoke or take other commensurate action on an OSM blaster certificate granted through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in this rule were submitted to the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0083. The information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

Executive Order 12291

The DOI has examined this rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The proposed changes will not have an adverse effect on the investment or productivity of United States coal operators. Employment in the coal industry will not be significantly affected since the rule will not affect coal production procedures. There also will be no effect on the ability of United States coal operators to compete with foreign coal operators in the domestic or export markets. While some costs may increase, they will be offset by corresponding increases in safety, which will benefit both coal operators and the public in general.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities because the cost to an operator or blaster for a certificate is minimal.

National Environmental Policy Act

To the extent this rule governs the certification of blasters in Federal Program States it is part of a Federal program, the promulgation of which is exempt under section 702(d) of the Act, 30 U.S.C. 1292(d), from compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C).

To the extent this rule governs the certification of blasters on Indian lands, OSM has prepared an environmental assessment (EA) and has made a finding that it would not significantly affect the quality of the human environment. The EA and finding of no significant impact are on file in the administrative record for this rule in the OSM Administrative Record Room at 1100 L Street, NW., Washington, DC.

Author

The author of this final rule is Arthur Anderson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1504 (Commercial or FTS).

Certification

An application form for an OSM blaster certificate may be obtained from any OSM office. Contact your nearest OSM office to determine the dates, locations and times of any certification examinations that may be scheduled for your vicinity. Your application for a certificate must be submitted to and approved by OSM before you may take the examination.

List of Subjects

30 CFR Part 750

Indian lands, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 900

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 910

Administrative practice and procedure, Environmental protection,

Intergovernmental relations, Penalties, Surety bonds, Surface mining, Underground mining.

30 CFR Part 912

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 921

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 922

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 933

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 937

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 939

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 941

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 947

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 955

Coal mining, Explosives, Indian lands, Intergovernmental relations, Safety, Surface mining, Training program, Underground mining.

For the reasons set out in the preamble, 30 CFR Parts 750, 816, 817, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 are amended, and 30 CFR Part 955 is added, as follows:

Dated: April 14, 1986.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

1. The authority citation for Part 750 continues to read as follows:

Authority: 30 U.S.C. 1201–1328; 5 U.S.C. 301.

2. Section 750.19 is revised to read as follows:

§ 750.19 Certification of blasters.

A person seeking to conduct blasting operations on Indian lands shall comply with the requirements of §§ 816.61(c) and 817.61(c) and Part 955 of this chapter.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

3. The authority citation for Part 816 reads as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

4. Paragraph (c)(4) of § 816.61 is revised to read as follows:

§ 816.61 Use of explosives: General requirements.

* * * * *

(c) * * *

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the blasting plan and site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

6. Paragraph (C)(4) of § 817.61 is revised to read as follows:

§ 817.61 Use of explosives: General requirements.

* * * * *

(c) * * *

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

* * * * *

PART 900—INTRODUCTION

7. The authority citation for Part 900 continues to read as follows:

Authority: Secs. 102, 201, 405, 503, 504, 505 and 523 of Pub. L. 95–87 (30 U.S.C. 1201, 1211, 1235, 1253, 1254, and 1273).

8. Section 900.1 is revised to read as follows:

§ 900.1 Scope.

This part sets forth the purpose and organization of Parts 901–955 of this subchapter.

9. Section 900.11 is revised to read as follows:

§ 900.11 Organization of this subchapter.

Parts 901 through 950 are reserved for each State alphabetically. The program applicable within each State is codified in the part for that State. In addition, Part 955 establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands.

10. Section 900.13 is revised to read as follows:

§ 900.13 Federal programs and Federal coal exploration programs.

The rules for each Federal program and Federal coal exploration program are codified below under the assigned part for the particular State. Rules governing the training, examination and certification of blasters for surface coal mining operations in States with Federal programs are codified in part 955, and referenced by each Federal program.

PART 910—GEORGIA

11. The authority citation for Part 910 continues to read as follows:

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

12. Section 910.955 is added to read as follows:

§ 910.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 912—IDAHO

13. The authority citation for Part 912 continues to read as follows:

Autority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat 445.

14. Section 912.955 is added to read as follows:

§ 912.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 921—MASSACHUSETTS

15. The authority citation for Part 921 continues to read as follows:

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

§ 921.850 [Removed]

16. Section 921.850 is removed.

17. Section 921.955 is added to read as follows:

§ 921.955 Certification of blasters.

Parts 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 922—MICHIGAN

18. The authority citation for Part 922 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

19. Section 922.955 is added to read as follows:

§ 922.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 933—NORTH CAROLINA

20. The authority citation for Part 933 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

§ 933.850 [Removed]

21. Section 933.850 is removed.

22. Section 933.955 is added to read as follows:

§ 933.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 937—OREGON

23. The authority citation for Part 937 continues to read as follows:

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

24. Section 937.955 is added to read as follows:

§ 937.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 939—RHODE ISLAND

25. The authority citation for Part 939 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 91 Stat. 445 *et seq.* (30 U.S.C. 1201 *et seq.*).

§ 939.850 [Removed]

26. Section 939.850 is removed.

27. Section 939.955 is added to read as follows:

§ 939.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 941—SOUTH DAKOTA

28. The authority citation for Part 941 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

29. Section 941.955 is added to read as follows:

§ 941.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 942—TENNESSEE

30. The authority citation for Part 942 continues to read as follows:

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

§ 942.855 [Removed]

31. Section 942.855 is removed.

32. Section 942.955 is added to read as follows:

§ 942.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 947—WASHINGTON

33. The authority citation for Part 947 continues to read as follows:

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

§ 947.850 [Removed]

34. Section 947.850 is removed.

35. Section 947.955 is added to read as follows:

§ 947.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

SUBCHAPTER T—PROGRAM FOR THE CONDUCT OF SURFACE MINING ACTIVITIES WITHIN EACH STATE

36. In Subchapter T, Part 955 is added to read as follows:

PART 955—CERTIFICATION OF BLASTERS IN FEDERAL PROGRAM STATES AND ON INDIAN LANDS

Sec.

955.1 Scope.
955.2 Implementation.
955.5 Definitions.
955.10 Information collection.
955.11 General requirements.
955.12 Training.
955.13 Application.
955.14 Examination.
955.15 Certification.
955.16 Reciprocity.
955.17 Suspension and revocation.

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*). Sec. 955.13 also issued under sec. 9701, Pub. L. 97–258 (31 U.S.C. 9701).

§ 955.1 Scope.

This part establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands. It governs the issuance, renewal,

reissuance, suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority.

§ 955.2 Implementation.

In accordance with §§ 750.19, 816.61(c) and 817.61(c) of this chapter, after June 30, 1987, in Federal program States and on Indian lands any person who is responsible for conducting blasting operations at a blasting site shall have a current OSM blaster certificate.

§ 955.5 Definitions.

As used in this part:

Applicant means a person who submits an application for an OSM blaster certificate.

Application means a request for an OSM blaster certificate submitted on the prescribed form, including the required fee and any applicable supporting evidence or other attachments.

Issue and *issuance* mean to grant to an applicant his or her first OSM blaster certificate that is not granted through reciprocity.

Reciprocity means the recognition by OSM of a blaster certificate issued by a State regulatory authority under an OSM-approved blaster certification program as qualifying an applicant for the grant of an OSM blaster certificate.

Reissue and *reissuance* are synonymous with the term *recertification* in § 850.15(c) of this chapter, and mean to grant to an applicant who holds a renewed OSM blaster certificate, or who holds an OSM blaster certificate that expired more than 1 year prior to the date of his or her application, or who held an OSM blaster certificate that was revoked, a subsequent certificate that is not granted through reciprocity and for which additional training and examination are required.

Renew and *renewal* mean to grant to an applicant who holds an issued or reissued OSM blaster certificate a subsequent certificate that is not granted through reciprocity and for which additional training and examination are not required.

Replace and *replacement* mean to grant to an applicant a duplicate OSM blaster certificate as a substitute for one that was lost or destroyed.

§ 955.10 Information collection.

The information collection requirements in this part were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0083. This information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

§ 955.11 General requirements.

To qualify for an OSM blaster certificate, a person shall:

(a) Be at least 20 years old prior to submitting an application, and at least 21 years old prior to the grant of a certificate;

(b) In the 3 years prior to submitting an application have been qualified and worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for the following cumulative length of time:

(1) Certificate issuance—2 years; or

(2) Certificate renewal or reissuance—1 year;

(c) For certificate issuance or reissuance, have received on-the-job training, completed a training course, and obtained satisfactory evidence of having completed training, as provided in § 955.12;

(d) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(e) Submit an application as provided in § 955.13;

(f) For certificate issuance or reissuance, pass a written examination as provided in § 955.14;

(g) For a certificate through reciprocity, meet the requirements of § 955.16; and

(h) Not be subject to suspension, revocation or other action under § 955.17.

§ 955.12 Training.

(a) *On-the-job training.* Except as provided in § 955.14(c) for reexamination, each applicant for the issuance of an OSM blaster certificate who does not qualify as a blaster or the equivalent shall:

(1) Have received on-the-job training, including practical field experience in blasting operations, from a blaster or the equivalent for 2 out of the 3 years preceding the submission of his or her application; and

(2) Have obtained from the blaster or the equivalent, the relevant employer, or other knowledgable source, satisfactory evidence of having received on-the-job training in accordance with paragraph(a)(1) of this section.

(b) *Training course.* Except as provided in § 955.14(c) for reexamination, each applicant for the issuance or reissuance of an OSM blaster certificate shall:

(1) Within 2 years prior to submitting an application, have completed a training course as follows:

(i) For certificate issuance the course shall cover the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, including the topics specified in § 850.13(b) of this chapter; or

(ii) For certificate reissuance the course shall cover any significant changes that have occurred in the topics specified in § 850.13(b) of this chapter since the applicant last completed a course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. If OSM determines that no siginficant changes have occurred, OSM may waive this requirement; and

(2) Have obtained from the training provider satisfactory evidence that he or she has completed training in accordance with paragraph(b)(1) of this section.

(c) *Availability.* OSM shall ensure that courses are available as provided in § 850.13(b) of this chapter to train persons subject to this part who are responsible for the use of explosives in surface coal mining operations.

§ 955.13 Application.

(a) *Submission procedures.* Any person seeking an OSM blaster certificate shall:

(1) Complete and submit to OSM an application on the form prescribed by paragraph (b) of this section;

(2) Include as part of the application a nonrefundable fee as follows:

(i) Issuance or reissuance	$122
(ii) Reexamination	$61
(iii) Renewal	$61
(iv) Replacement	$28
(v) Reciprocity	$61;

(3) For certificate issuance or reissuance, include as part of the application satisfactory evidence of having completed training as provided in § 955.12;

(4) For certificate issuance or reissuance, specify in the application the date when the applicant desires to take a previously scheduled examination; and

(5) Submit the application in advance of the date of examination, or of certificate expiration, as follows:

(i) For certificate issuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination;

(ii) For certificate renewal, not less than 60 days before the expiration date of the applicant's current certificate;

(iii) For certificate reissuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate; or

(iv) For a certificate through reciprocity, not less than 45 days before the expiration date of the applicant's current certificate.

(b) *Application form.* OSM shall make available to any person seeking an OSM blaster certificate an application form and instructions for its completion. The form shall include a statement in accordance with law that the information provided is true and accurate to the best knowledge and belief of the applicant, and shall require the signature of the applicant.

§ 955.14 Examination.

(a) *Certificate issuance or reissuance.* After submitting an application, each applicant for the issuance or reissuance of an OSM blaster certificate shall pass a written examination, as provided in paragraph (b) of this section.

(b) *Administration and content.* (1) On a regular basis OSM shall schedule and hold a written examination on the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, as provided in § 850.14 of this chapter.

(2) The examination at a minimum shall cover the topics specified in §850.13(b) of this chapter, and shall include:

(i) Objective questions;

(ii) Blasting log problems; and

(iii) Initiation system and delay sequence problems.

(c) *Reexamination.* (1) Any person who fails the examination may apply to OSM for reexamination by submitting a new application, including the prescribed fee, but no person may take the examination more than 2 times in any 12-month period.

(2) Any person who fails the examination and submits a new application within 2 years of completing training as provided in § 955.12(a) need not repeat, or resubmit evidence of having completed, training.

(d) *Failure to attend.* Except where the applicant shows and OSM finds good cause, OSM may reject the pending application of any applicant who fails to take the examination after OSM has granted his or her request for admission.

§ 955.15 Certification

(a) *Processing of application.* (1) Upon receiving an application for an OSM blaster certificate OSM shall:

(i) Notify the applicant of the receipt of, and of any deficiency in, the application.

(ii) Where applicable, notify the applicant that his or her request for admission to a scheduled examination either is granted or denied.

(2) When OSM determines that an applicant has failed to qualify for an OSM blaster certificate, OSM shall reject his or her application and notify him or her accordingly.

(b) *Grant of certificate.* OSM shall:

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the applicable training, passes the examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the issued or reissued OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed;

(4) Grant an OSM blaster certificate through reciprocity as provided in § 955.16; or

(5) Reinstate a suspended, or reissue a revoked OSM blaster certificate as provided in § 955.17(e).

(c) *Term of certificate.* OSM shall grant an OSM blaster certificate for a term to expire as follows:

(1) Issuance—3 years after issue date;

(2) Renewal—3 years after expiration date of applicant's current or expired certificate;

(3) Reissuance—3 years after expiration date of applicant's current or expired certificate;

(4) Replacement—same expiration date as replaced certificate; or

(5) Reciprocity—60 days after expiration date of corresponding State certificate.

(d) *Limits on renewal.* (1) OSM shall not renew an OSM blaster certificate more than 1 time. A blaster who seeks to extend a renewed certificate may apply to OSM for certificate reissuance.

(2) OSM shall not renew an OSM blaster certificate that expired more than 1 year prior to the date of an application for renewal. An applicant who desires to extend a certificate that expired more than 1 year prior to the date of his or her application may apply to OSM for certificate reissuance.

(e) *Temporary certificate.* Upon request of an applicant who demonstrates that his or her current OSM blaster certificate is about to expire, or expired within 30 days prior to the date of his or her application, for reasons beyond his or her control, OSM may issue a non-renewable temporary OSM blaster certificate for a maximum term of 90 days.

(f) *Conditions of certification.* Any person who holds an OSM blaster certificate shall comply with the conditions specified in §§ 850.15 (d) and (e) of this chapter.

(g) *Change of Address.* Any person who holds an OSM blaster certificate shall notify OSM in writing within 30 days of any change in his or her address.

§ 955.16 Reciprocity.

(a) *Grant of certificate.* OSM shall grant an OSM blaster certificate through reciprocity to any qualified applicant who demonstrates that he or she, and whom OSM finds, holds a current State blaster certificate granted by a State regulatory authority under an OSM-approved State blaster certification program. An applicant for a certificate through reciprocity need not otherwise demonstrate that he or she meets the age, experience, knowledge, competence, training or examination requirements of this part.

(b) *Subsequent certificate.* (1) Any person who holds an OSM blaster certificate granted through reciprocity may qualify for a subsequent certificate either through reciprocity or by meeting directly the applicable requirements of this part for certificate issuance, renewal or reissuance.

(2) OSM shall not recognize a certificate granted through reciprocity as qualifying an applicant for certificate issuance, renewal or reissuance.

§ 955.17 Suspension and revocation.

(a) *Cause, nature and duration.* (1) OSM may, and upon a finding of willful conduct of the blaster OSM shall, suspend for a definite or indefinite period, revoke or take other necessary action on the certificate of an OSM-certified blaster for any of the reasons specified in § 850.15(b) of this chapter.

(2) Where OSM has reliable information which demonstrates that the storage, transportation or use of explosives by an OSM-certified blaster is likely to threaten public safety or the environment, OSM shall suspend his or her certificate as soon as is practicable.

(3) OSM shall make the nature and duration of a suspension, revocation or other action under this section commensurate with the cause of the action and what the person whose

certificate is subjected to the action does to correct it.

(b) *Notice and hearing.* When practicable, OSM shall give a certificate holder written notice and an opportunity for an informal hearing prior to suspending, revoking or taking other action on his or her OSM blaster certificate. OSM shall limit any action taken without such notice and opportunity to a temporary suspension for a maximum term of 90 days pending a decision on a final suspension, revocation or other action after such notice and opportunity have been provided.

(c) *Decision and appeal.* By certified mail within 30 days after giving written notice and an opportunity for an informal hearing, OSM shall notify the certificate holder in writing of its final decision on his or her OSM blaster certificate, including the reasons for any suspension, revocation or other action. If the certificate was granted through reciprocity, OSM shall notify the State regulatory authority of its action. In any decision suspending, revoking or taking other action on an OSM blaster certificate, OSM shall grant to the certificate holder the right of appeal to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 to 4.1286.

(d) *Surrender of certificate.* Upon receiving written notice that his or her OSM blaster certificate was suspended, revoked or subjected to other action, a certificate was suspended, holder immediately shall surrender the certificate to OSM in the manner specified in the notice.

(e) *Reinstatement and reissuance.* (1) OSM shall reinstate a suspended OSM blaster certificate by returning the certificate to the former certificate holder with notice of reinstatement when:

(i) The term of a definite suspension expires; or

(ii) The former certificate holder demonstrates, and OSM finds, that the cause of an indefinite suspension has been corrected.

(2) OSM shall reissue an OSM blaster certificate to an applicant whose certificate was revoked if his or her application demonstrates, and OSM finds, that:

(i) The cause of the revocation has been corrected; and

(ii) The applicant meets all other applicable requirements of this part.

(f) *Conformance with State action.* OSM shall suspend, revoke or take other commensurate action on an OSM blaster certificate granted through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

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Thursday
May 29, 1986

Part III

Department of Health and Human Services

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Administration is revising the regulations in Subpart M of 20 CFR Part 404 to expand them and make them clearer and easier for the public to use and to reflect two legislative changes under the Social Security Amendments of 1983 (Pub. L. 98–21). These regulations contain the rules on providing Social Security coverage under title II of the Social Security Act for the services of employees of State and local governments and interstate instrumentalities. The existing regulations have been updated to state:

(1) How States and interstate instrumentalities may initiate an agreement with the Secretary of Health and Human Services, to provide Social Security coverage of services of their employees and employees of a State's political subdivisions;

(2) That these agreements, either in their entirety or for one or more coverage groups, may no longer be terminated;

(3) That groups whose coverage has been terminated in the past can again be included in their States' agreements;

(4) How States and interstate instrumentalities may appeal decisions affecting these agreements;

(5) The revised due dates for payment of contributions;

(6) Procedures for refunds or credits of contributions;

(7) Procedures for charging of interest; and

(8) Procedures for the Secretary's review of assessments and claims for credit or refund.

DATE: Comments must be received on or before September 26, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7519.

SUPPLEMENTARY INFORMATION:

Introduction

This proposal substantially revises the Social Security Administration's (SSA) rules on Social Security coverage of employees of State and local governments and interstate instrumentalities. These changes will improve the organization of, and clarify the current regulations. They also update the entire subpart to reflect policies and statutory amendments which are in effect but are not in current regulations.

Background

State and local government employees are exempt from mandatory coverage under Social Security. Section 218 of the Social Security Act (the Act) requires that the Secretary of Health and Human Services when requested by a State, shall enter into an agreement to provide retirement, survivor's, disability and hospital insurance coverage of the services of employees of a State or its political subdivisions. If an interstate instrumentality (which to the extent practicable is treated as a State) makes the request, the Secretary may enter into such an agreement. By this agreement Social Security protection is provided for the groups of employees the State brings under the agreement. State and local government employees covered under an agreement have the same benefit rights and responsibilities as other employees who have Social Security coverage. The amount of the payments made by the State for Social Security protection of State and local employees is the same as is paid by private sector employers and employees who are mandatorily covered by the Federal Insurance Contributions Act, 26 U.S.C. 3101 et seq. The State assumes full financial and reporting responsibility for the coverage provided under its agreement. The agreement may not be terminated in its entirety or with respect to any coverage group under that agreement.

All States, Puerto Rico, and the Virgin Islands have agreements with the Secretary. Currently these agreements provide coverage to approximately 13 million employees. About $22.4 billion in Social Security contributions was paid on the total of about $159 billion in covered wages for State and local employees reported for calendar year 1984.

Considerations in Preparing This Comprehensive Revision

Most of the current regulations governing the coverage of employees of State and local governments were written in the 1950's and early 1960's. Some of the current rules have not been changed since they were originally published in May 1955. In preparing this comprehensive revision, we not only looked at the structure of the subpart and the language used in the current sections, but also evaluated the policies and procedures not in the subpart. Most of the procedures describe how and when a State will make reports or pay contributions. We examined the reporting procedures with the purpose of simplifying the reports, reducing their number where possible, and establishing due dates to reduce bookkeeping requirements for the States. We looked at the periods when contributions are due following modification of an agreement or after an assessment for underpayment is made and brought those due dates in line with the time allowed for paying contributions (§ 404.1249). These latter changes will speed up the flow of contributions to the Social Security trust funds.

Delayed Effective Date

Section 7 of Pub. L. 94–202 (42 U.S.C. 405a) requires that any regulation or modification of a regulation which pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 218(e) of the Social Security Act not become effective until eighteen months after it is published as a final rule in the **Federal Register.** Section 404.1249 affects those due dates and is discussed under "Major Changes." However, only § 404.1249(b)(2)(ii) is subject to the 18 month delayed effective date. Most of the rules in the section are already in effect and the more frequent deposit of contributions is mandated by section 342 of Pub. L. 98–21 for calendar months beginning after December 1983.

Major Changes and New Material

Evidence

Section 404.1203 is a new section which describes in general terms our rules about requesting evidence from a State of wages paid to employees and contributions due on those wages. We discuss in this section what we do when we need evidence, the State's responsibility for supplying accurate wage information and any evidence

needed to verify the accuracy of reports related to those wages, and what happens if a State does not submit the requested evidence.

Initiating, modifying, and continuing agreements

Sections 404.1205 through 404.1219 are new. The agreement for coverage establishes the legal relationship between the Secretary and the State regarding Social Security coverage for the services of covered employees. These proposed new sections reflect longstanding policies on which groups of employees may be covered, what provisions must be in an agreement, and how an agreement may be modified.

In addition, §§ 404.1218 and 404.1219 reflect the provisions of section 103 of Pub. L. 98–21, enacted April 20, 1983. Section 103 provides that no agreement may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983. Section 103 applies without regard to whether a notice of intent to terminate was filed before Pub. L. 98–21 was enacted. Section 103 also repealed the prohibition formerly in section 218(g)(3) of the Act against resumption of coverage. Coverage previously terminated may be resumed by a modification to the State's ageement.

Onsite review

Sections 404.1230 through 404.1234 are new.

Under current § 404.1256(e) SSA, with the cooperation of the States, has been conducting onsite reviews of States' recordkeeping practices for employees whose services are covered under an agreement. These reviews are to determine whether a State is:

(1) Reporting the wages for services of employees covered by the agreement;

(2) Paying Social Security contributions on those wages; and

(3) Keeping proper records of the amounts paid to each covered employee and when they were paid.

After these reviews are completed, we furnish the State's Social Security Administrator a report of the results about the State's compliance with its section 218 agreement, including problems which need resolution and reporting errors which must be corrected. We may also recommend procedures the State may implement to improve its information gathering, recordkeeping, and reporting systems, and those of its political subdivisions. Our experience with various State Social Security systems has given us the opportunity to see how each State handles various problems. Thus, we are in a position to suggest procedures which have been beneficial to other States.

We now propose to issue under the Secretary's authority in sections 218(i) and 1102 of the Act, regulations which reflect many of the practices which have evolved between SSA and the States in this area. The primary points are:

(1) These proposed regulations provide for review, "on site," of all pertinent source records maintained by the State or its political subdivisions. This will enable us to evaluate the records from which wage reports and contribution returns were prepared and how those records were compiled, processed, and maintained. These reviews may include discussions with the employee(s) working with those records. They would be conducted in cooperation with the State Social Security Administrator.

(2) Section 205(d) gives the Secretary the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to a matter under review. Proposed § 404.1232(d) implements this statutory provision for onsite review.

Back pay to employees

We propose adding a section on "back pay" to employees. This section defines "back pay," describes two different types of "back pay," and tells how the State should allocate each when reporting. Section 404.1242.

Due date for contribution returns and wage reports

Section 404.1249(a)(2) reflects the provisions of section 342 of Pub. L. 98–21, enacted April 20, 1983. Effective for calendar months after Decembr 1983, section 342 provides that contribution payments for wages paid in the first 15 days of a calendar month are due on the last day of that month, and contribution payments for wages paid after the fifteenth day of a calendar month are due on the fifteenth day of the next month. (For convenience, we refer to the first 15 days of a calendar month as the first half of the month, and to the rest of that month as the second half.)

In § 404.1249(b)(2)(ii), we propose changing the due date for paying contributions and filing contribution returns to align it with the date of the notice that the agreement or modification has been signed. At present, a State or interstate instrumentality must, for the calendar quarter in which the Secretary signs the agreement or modification, or any of the following four calendar quarters, pay any contributions due and file the contribution returns for each of those calendar quarters on or before the last day of the second month of the next calendar quarter. We propose changing this due date so that within 90 days of the date of the notice that the Secretary has signed the ageement or modification, the State may submit a *single* contribution return and pay all contributions due for:

(1) The month in which the agreement or modification is signed;

(2) Any prior months in that year; and

(3) Any subsequent months before January 1984 (half-months after December 1983) whose contribution return and payment due date is within that 90-day period.

This proposal would eliminate the requirement that a State or interstate instrumentality file a contribution return for each calendar quarter in the year of execution.

We propose excepting from the "frequency of deposit" rules those periods whose normal contribution return and payment due date fall within the 90-day period. For example, if the Secretary signs a modification of an agreement on September 19, 1986, contributions for wages paid in September 1986 an any previous months would be due by December 18, 1986. However, the contributions and contribution returns for the first half of October which would be due by October 31, would, under the proposed rule, not be due until December 18 because October 31 would fall within the 90-day period. This would give the States a full 90 days to modify their internal procedures to take account of the modifications to their agreement before they must tally, report on, and pay the new amount of contributions due. This change would also simplify the State's reporting procedure by requiring a single contribution return for the affected months.

In accordance with section 7 of Pub. L 94–202 (42 U.S.C. 405a) proposed § 404.1249(b)(2)(ii), if adopted, would not be effective until 18 months after it is published as a final rule in the **Federal Register**.

Adding interest to contributions

Where a State does not pay its Social Security contributions by the due date, section 218(j) of the Act requires that we add interest to any unpaid contributions. However, section 218(h)(2) of the Act permits interest-free adjustments of underpayments of contributions in the manner and at the times prescribed by regulation. Section 404.1265 sets out when we add interest to the unpaid amount of a State's contributions. The

situations in which we propose to add interest are:

(1) When a State fails to pay its contributions when due under § 404.1249 (this is a continuation of the policy in current regulation § 404.1225); and

(2) When a State discovers, after it has filed the contribution returns or wage report under proposed § 404.1249(b)(2), that it omitted or incorrectly reported some wages and must file a corrective report for the additional wages resulting in an underpayment of contributions. (This is similar to the situation described in current regulation § 404.1261, except that the State would no longer be permitted to pay the underpaid amount interest-free.)

Where our audit shows that an underpayment of the State's contributions due on the wages it has reported for a calendar year is 5 percent or less of the total due, the State may request that the interest be waived provided the State deposited the underpaid amount within 30 days after our notification of the amount due. The request for waiver must also be made within 30 days after our notification of the amount due. (This rule would replace several different rules described in current regulation § 404.1261.)

On behalf of their political subdivisions, States enter into agreements to provide Social Security coverage of the services of the employees of those subdivisions. Thereafter the State relies on those subdivisions to submit timely reports of the wages paid those employees and to forward the correct amount of contributions. Frequently those subdivisions have manual accounting procedures or a minimal number of employees who do this work. Consequently they are not always able to compute and submit the correct amount of contribution payments to the State by the due date. Therefore, we propose a rule whereby if a State underpays the correct amount of contributions due by 5 percent or less and pays the underpaid amont within 30 days of our notification of the amount due it may request within that same 30-day period that it be permitted to pay the underpaid amount without interest. This provision would take into account the problems faced by the States in obtaining reports and contributions from small subdivisions having limited staff support. This proposal also recognizes that the States are in a unique and different situation from private employers who have the records of their employees' wages readily accessible. This process simplifies the bookkeeping procedures for verifying that the correct amount of contributions have been paid on the wages reported for a calendar year and generally allow us to finalize those figures at the end of each year. Each request will be evaluated on an individual basis. Due to the wide variance in the number of employees involved in each State we decided that automatically waiving interest based on a flat percentage rate would, in terms of dollars, penalize States which do not have large numbers of employees in covered positions while a flat dollar amount would, in terms of percent of total contributions, penalize States with large numbers of employees in covered positions. During the period July 1, 1980 through June 30, 1981, we found that of the 50 States, Puerto Rico and the Virgin Islands, 43 had underpaid their contributions by less than 5 percent. The amount of 5 percent, we feel, therefore reflects our experience with most States. This approach accommodates the States in limited circumstances while recognizing that virtually all contributions are deposited timely. We feel this is a reasonable approach to a situation encompassing the 50 States, Puerto Rico, the Virgin Islands and 63 interstate instrumentalities wherein the range of total contributions for the States for the same July 1980–June 1981 period was $29,000 to $2,000,000,000. We will not recalculate the 5 percent rule based upon correction reports submitted by the States after the year is closed out for audit purposes.

An exception to these situations is where the contributions are erroneously paid to the Internal Revenue Service (IRS). In that circumstance, under certain conditions, instead of our adding interest on the contributions erroneously paid to the IRS, a State must submit the IRS refund, including interest (if any) the IRS transmitted to the entity, in order to obtain credit for its payment. This exception is similar to that described in current regulation § 404.1261(b). The rationale for this is that these contributions paid to IRS had been allocated to the trust funds.

Manner of payment of contributions by State

Section 404.1262 discusses the manner in which a State shall pay its contributions.

We propose § 404.1262 to require that States pay their contributions through the use of electronic transfer of funds beginning 3 months after the effective date of these rules. About one-third of the States currently use the electronic transfer of funds method. In order to assure a smooth transition to the use of electronic transfer of funds, SSA may extend the time limitation by an additional 3 months. Any State using the electronic transfer of funds method will, under proposed § 404.1249(b)(4), have to release its funds in sufficient time to reach the Federal Reserve bank designated by SSA by the due date.

Current regulations, § 404.1223, require that a State pay its contributions in money to the Federal Reserve bank, or any of its branches, serving the district in which the State is located. Under this rule, a State can pay its contributions to a Federal Reserve bank or branch which is serving its district but which is geographically farthest from the State capital. By maintaining the collected contributions in an interest bearing checking account, a State can take advantage of the extra time it takes the distant bank to clear the check. At the same time it would have met the due date for paying its contributions to the Social Security trust funds, yet the amount may not be transferred to the trust funds for several additional days. This situation was not as apparent under the old quarterly reporting system but it became more apparent when State contribution payments were required monthly, and especially now that payments are required twice a month. Therefore, we propose requiring that States use the electronic transfer of funds method to pay their contributions to the Federal Reserve bank or branch which is designated by SSA rather than to any Federal Reserve bank or branch serving the district in which the State is located.

Reconsideration

We propose adding §§ 404.1291 through 404.1294. Section 218(s) of the Social Security Act provides that where the Secretary assesses a State for an amount due under its agreement, disallows a State's claim for a credit or refund of an overpayment, or allows a State a credit or refund of an overpayment, the Secretary shall review that decision if, within 90 days after the Secretary notifies the State of the assessment, disallowance, or allowance, the State requests that review. The Secretary has delegated this review function to the Commissioner of Social Security.

Currently, if a State disagrees with SSA's assessment, disallowance, or allowance, it must request a review by the Commissioner. Present procedures permit revision of a decision without a review by the Commissoner if a decision can be made which is favorable to the State. If a decision is revised, we send the State a reconsidered determination and give the State an additional 90-day period within which to request that the

Commissioner review the reconsidered determination. However, all affirmations of the initial decision must be reviewed by the Commissioner.

We propose to amend the regulations to allow an appropriate SSA official to issue a reconsidered determination in all section 218(s) review cases. The State would retain the right to request the Commissioner to review the reconsidered determination.

We also propose providing in § 404.1291 that in limited situations, the reconsideration process may be waived, e.g., where a major policy is at issue. This would expedite the presentation of significant issues to the Commissioner.

Proposed §§ 404.1290 through 404.1296 describe the procedures we will follow when a State requests review of an assessment of an amount due from a State under its agreement, an allowance to the State of a credit or refund of an overpayment, or a disallowance of a State's claim for a credit or refund of an overpayment.

Summary of Changes

Definitions

Section 404.1202

We have added a new section which contains definitions of terms which have special meanings as used throughout this subpart.

Evidence

Section 404.1203

This is a new section which is described under Major Changes.

Authorized State officials

Section 404.1204

This is a new section which requires that a State designate the official authorized to act on its behalf, and that it inform SSA of any change in officials or his or her authority.

What groups of employees may be covered

Sections 404.1205 through 404.1212

This is a new group of sections which discuss in general terms what groups of employees may be covered, other groupings of employees and the services which may or may not be covered. We have also included a description of the referendum procedures States must follow in providing coverage to certain groups of employees. These referendum procedures reflect the requirements in sections 218(d) (3) and (7) of the Act (42 U.S.C. 418(d) (3) and (7)).

There are a number of special provisions in the Act which relate to specific States. These provisions establish procedures for a State to provide coverage for employees in specified positions. For example, section 218(d)(6)(G) of the Act (42 U.S.C. 418(d)(6)(G)) gives several States the option of providing coverage for employees in positions under a retirement system where these States are paid from Federal grants for administering unemployment compensation. Since these various provisions have limited applicability and are rarely used, we have not included them in these regulations.

How coverage is obtained and continues

Sections 404.1214 through 404.1219

These are new sections which generally reflect the procedures for establishing and continuing coverage under an agreement.

In § 404.1214(d) we set out what provisions an agreement must include.

Section 404.1215(b) indicates that when an agreement is modified, the State may specify a controlling date for determining retroactive coverage for employees. That controlling date can be no earlier than the date the modification is mailed or otherwise delivered to the Secretary.

Section 404.1216 describes how an agreement may be modified to correct various errors.

Section 404.1217 explains that coverage under an agreement continues indefinitely.

Section 404.1218 explains how coverage which has been terminated may be resumed.

How to identify employees who are covered

Sections 404.1220 through 404.1223

These are similar to current §§ 404.1240 through 404.1243.

We have rewritten these sections in simpler language but have not changed the existing policies. We also deleted material which was procedural in nature and material which was in other sections.

Section 404.1220 describes how we assign identification numbers to the State and its political subdivisions, coverage groups, etc. covered by a State's agreement. Section 404.1221 requires that each employee have a Social Security number and tells when and how the employee can get that number. Section 404.1223 requires that the State show an employee's Social Security number on all reports, etc., concerning that employee.

What records of coverage must be kept

Sections 404.1225 and 404.1226

These are similar to current §§ 404.1256 and 404.1230, respectively.

Section 404.1225 describes what records of an employee's remuneration a State or its political subdivisions must keep, where they are to be maintained, and for how long. Section 404.1226 sets out when statements of earnings must be given to each employee.

Review of compliance by State with its agreement

Sections 404.1230 through 404.1234

These new sections involving onsite reviews are discussed under "Major Changes".

How to report wages and contributions

Section 404.1237 is a revision of current § 402.1250. The basic rule is that a State must report each year, by coverage group, the wages paid each covered employee during that year.

Section 404.1239 is a revision of current § 404.1250a. This section permits a State to combine the wages of an employee who performs covered services for more than one coverage group up to the annual wage limitation and pay Social Security contributions on that amount. Otherwise, the wages reported for an employee by all of the coverage groups might exceed the annual wage limitation. And the State, by paying Social Security contributions on the wages reported separately by each coverage group, would pay more than the maximum amount of Social Security contributions required each year.

Section 404.1242 is a proposed new section which describes "back pay" to an employee and how it must be reported. This section is discussed under "Major Changes".

Sections 404.1243 and 404.1247 are revisions of current §§ 404.1254 and 404.1251, respectively. Section 404.1243 describes what means a State may use to make reports, e.g., forms, magnetic tape, etc. Section 404.1247 requires that a State shall report wages for the calendar year in which they were paid.

Section 404.1249 is the current § 404.1255a. Paragraph (a)(2) of this section contains the twice a month "frequency of deposit" rule mandated by section 342 of Pub. L. 98–21, the Social Security Amendments of 1983. Paragraph (b)(2) contains the due dates for filing contribution returns and wage reports and also the "annual reporting" rules. Paragraph (b)(2)(i) and (b)(2)(iii) are virtually identical to current section 404.1255(c)(2)(i) and (iii). Paragraph

(b)(2)(ii) which is described in "Major Changes" as having been significantly changed is subject to the 18 month delay in its effective date to comply with section 7 of Pub. L. 94–202 (42 U.S.C. 405a). Paragraph (c) on payments by a third party on account of sickness or accident disability is virtually identical to current § 404.1255a(a)(2) which we published in the **Federal Register** as a final rule on September 30, 1983, at 48 FR 44771. We propose to delay the effective date of only paragraph (b)(2)(ii) for 18 months after it is published as a final rule in the **Federal Register**. This delay would in no way effect the current rules that are merely incorporated in the new section, since they are already in effect. The delay would also in no way delay the effect of the "frequency of deposit" requirement since it is mandated by statute.

What is a State's liability for contributions

Sections 404.1255 and 404.1256

These sections are a revision of current §§ 404.1222 and 404.1222a.

Section 404.1255 describes the amount of Social Security contributions a State is liable for and when that liability begins. Section 404.1256 describes the conditions under which a State's liability for contributions may be limited when an employee performs services in one or more coverage groups.

Figuring the amount of the State's contributions

Sections 404.1260 through 404.1263

These sections are a revision of current §§ 404.1221, 404.1223, and 404.1224.

These sections describe how a State's contributions are computed and when and how they must be paid. Section 404.1262 is discussed under "Major Changes".

It a State fails to make timely payments.

Sections 404.1265 through 404.1267

These sections are a revision of current §§ 404.1225 through 404.1227, and § 404.1261.

Section 404.1265 sets out that interest at the rate prescribed in section 218(j) of the Act is added if a State fails to pay timely its contributions when due under § 404.1249. This section is discussed under "Major Changes".

Section 404.1267, which accords with section 218(j) of the Act, authorizes the Secretary to offset the Social Security contributions a State has not paid against amounts due a State under another provision of the Social Security Act. To date, we have not used this provision.

How to adjust errors in reports and contributions.

Sections 404.1270 through 404.1276

These sections revise current §§ 404.1260 through 404.1263 and 404.1265 through 404.1266. Proposed § 404.1276 is new.

Sections 404.1271 and 404.1272 describe how we handle payments made by a State which exceed the amount of contributions for which it is liable.

If an employee performs covered services for a State and one or more political subdivisions, or for two or more political subdivisions, and more than the required amount of Social Security contributions is collected from the employee, § 404.1275 describes how the employee may claim a refund of those excess payments.

Proposed new § 404.1276 explains how we handle situations where employees' wages have been erroneously reported and Social Security contributions have been erroneously paid to the Internal Revenue Service.

How overpayments of contributions are credited or refunded

Sections 404.1280 through 404.1284

These sections revise §§ 404.1264, 404.1281(d), and 404.1285 through 404.1287.

When a State pays more than the required amount of Social Security contributions, the State may request that we credit or refund the overpaid amount.

Proposed § 404.1284 would highlight a provision which is in current § 404.1281(d). That provision allows the Secretary, in limited situations, to offset an underpayment of contributions against an overpayment. In proposed § 404.1284(b) we indicate the State will be given an opportunity to pay the contributions due before those amounts are offset against any credit which is due the State.

How assessments for underpayments of contributions are made

Sections 404.1285 through 404.1289

These sections revise current §§ 404.1280 through 404.1283.

Proposed § 404.1285 sets out that a State is liable for an amount due under an agreement until the Secretary is satisfied the State has paid that amount. If the Secretary is not satisfied that a State has paid the correct amount, the Secretary issues an assessment for the outstanding amount.

Section 404.1286 sets out the time limits within which the Secretary must issue an assessment for an amount due. Section 404.1287 sets out exceptions to the time limits within which the Secretary must issue an assessment.

Section 404.1289 points out when we may accept a wage report which a State submits after the time periods described in § 404.1286 expire.

Secretary's review of decisions on credits, refunds, or assessments

Sections 404.1290 through 404.1296

These sections revise current §§ 404.1270 through 404.1274 and also include proposed new sections to provide for reconsideration of appealed administrative decisions. The latter sections are discussed under "Major Changes". In rewriting these sections, we eliminated the requirement that a State must file its request for review in duplicate.

How a State may seek court review of Secretary's decision

Sections 404.1297 through 404.1299

These sections are a revision of current §§ 404.1275-404.1277.

Redesignation Table

To assist users of this document we are including a table which shows the section numbers as redesignated in the proposed regulations:

REDESIGNATION TABLE

Current Section	Proposed Section
404.1201	404.1200
404.1210	404.1201
404.1220	404.1260
404.1221	404.1260
404.1222	404.1255
404.1222a	404.1256
404.1223	404.1262
404.1224	404.1263
404.1225	404.1265
404.1226	None
404.1227	404.1267
404.1230	404.1226
404.1240	404.1220
404.1241	404.1221
404.1242	404.1221
404.1243	404.1223
404.1250	404.1237
404.1250a	404.1239
404.1250b	404.1239
404.1251	404.1247
404.1252	404.1251
404.1253	None
404.1254	404.1243
404.1255	404.1249
404.1255a	404.1249
404.1256	404.1225
404.1257	404.1237 and 404.1239
404.1260	404.1270
404.1261	404.1265
404.1262	404.1271
404.1263	404.1272
404.1264	404.1281
404.1265	404.1270
404.1266	404.1275
404.1270	404.1290
404.1271	404.1292

REDESIGNATION TABLE—Continued

Current Section	Proposed Section
404.1272	404.1293
404.1273	404.1291, 404.12912, 404.1294, and 404.1295
404.1274	404.1296
404.1275	404.1297
404.1276	404.1298
404.1277	404.1299
404.1280	404.1286
404.1281	404.1287
404.1282	404.1289
404.1283	None
404.1284	404.1285
404.1285	404.1282
404.1286	404.1283
404.1287	404.1280
404.1290	404.1202

Regulatory Procedures

Executive Order 12291—The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980—Sections 404.1204, 404.1205(c), 404.1214(d), 404.1215, 404.1216, 404.1219, 404.1220(b), (c), and (e), 404.1223, 404.1225, 404.1237, 404.1239, 404.1251, 404.1256(b), 404.1271, 404.1282, and 404.1292 of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS.

Regulatory Flexibility Act—The Secretary of the Department of Health and Human Services certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities, including small governmental jurisdictions. Under the terms of the agreement under section 218 of the Act, a State is responsible for paying the contributions and filing the reports necessary to provide Social Security coverage for the services of its employees or those employees of one or more of its political subdivisions.

Some of the proposed amendments describe the economic consequences when these responsibilities are not met. However, we expect those measures will impact on a limited number of small entities and will not have a significant economic impact on those entities. Any economic impact involved in the regulations reflecting sections 103 and 342 of Pub. L. 98–21 result directly from the statutory amendments, not from the regulations.

Therefore, we believe that initial and final regulatory analyses under the Regulatory Flexibility Act are not required.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.814, Social Security Programs.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance, Social Security Administration.

Dated: January 10, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: March 6, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

20 CFR Part 404, Subpart M is revised to read as follows:

Subpart M—Coverage of Employees of State and Local Governments

General

Sec.

404.1200 General effect of section 218 of this Act.
404.1201 Scope of this subpart.
404.1202 Definitions.
404.1203 Evidence.
404.1204 Designating officials to act on behalf of the State.

What Groups of Employees May be Covered

404.1205 Absolute coverage groups.
404.1206 Retirement system coverage groups.
404.1207 Divided retirement system coverage groups.
404.1208 Ineligible employees.
404.1209 Mandatorily excluded services.
404.1210 Optionally excluded services.
404.1211 Interstate instrumentalities.
404.1212 Policemen and firemen.

How Coverage Under Agreements Is Obtained and Continues

404.1214 Agreement for coverage.
404.1215 Modification of agreement.
404.1216 Modification of agreement to correct an error.
404.1217 Continuation of coverage.
404.1218 Resumption of coverage.
404.1219 Dissolution of political subdivision.

How To Identify Covered Employees

404.1220 Identification numbers.
404.1221 Employees's Social Security number.
Sec.
404.1223 Duties of State with respect to employee's Social Security number.

What Records of Coverage Must Be Kept

404.1225 Records.
404.1226 Statements to employees.

Review of Compliance by State With its Agreement

404.1230 Onsite review program.
404.1231 Scope of review.
404.1232 Conduct of review.
404.1234 Reports of review's findings.

How To Report Wages and Contributions

404.1237 Wage reports and contribution returns—general.
404.1239 Wage reports for employees performing services in more than one coverage group.
404.1242 Back pay.
404.1243 Use of reporting forms.
404.1247 When to report wages.
404.1249 When and where to make deposits of contributions and to file contribution returns and wage reports.
404.1251 Final reports.

What is a State's Liability for Contributions

404.1255 State's liability for contributions.
404.1256 Limitation on State's liability for contributions for multiple employment situations.

Figuring the Amount of the State's Contributions

404.1260 Amount of contributions.
404.1262 Manner of payment of contributions by State.
404.1263 When fractional part of a cent may be disregarded.

If a State Fails To Make Timely Payments

404.1265 Addition of interest to contributions.
404.1267 Failure to make timely payments.

How Errors in Reports and Contributions Are Adjusted

404.1270 Adjustments in general.
404.1271 Adjustment of overpayment of contributions.
404.1272 Refund or recomputation of overpayments which are not adjustable.
404.1275 Adjustment of employee contributions.
404.1276 Reports and payments erroneously made to Internal Revenue Service-transfer of funds.

How Overpayments of Contributions Are Credited or Refunded

404.1280 Allowances of credits or refunds.
404.1281 Credits or refunds for periods of time during which no liability exists.
404.1282 Time limitations on credits or refunds.
404.1283 Exceptions to the time limitations on credits or refunds.
404.1284 Offsetting underpayments against overpayments.

How Assessments for Underpayments of Contributions Are Made

404.1285 Assessments of amounts due.

Sec.
404.1286 Time limitations on assessments.
404.1287 Exceptions to the time limitations on assessments.
404.1289 Payment after expiration of time limitations for assessment.

Secretary's Review of Decisions on Credits, Refunds, or Assessments

404.1290 Review of decisions by the Secretary.
404.1291 Reconsideration.
404.1292 How to request reconsideration.
404.1293 Time for filing request for reconsideration.
404.1294 Notification to State after reconsideration.
404.1295 Commissioner's review.
404.1296 Commissioner's notification to the State.

How a State May Seek Court Review of Secretary's Decision

404.1297 Review by court.
404.1298 Time for filing civil action.
404.1299 Final judgments.

Subpart M—Coverage of Employees of State and Local Governments

Authority: (Secs. 205, 218, and 1102 of the Social Security Act, 53 Stat. 1368, 64 Stat. 514, 49 Stat. 647, section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 405, 418 and 1302.

General

§ 404.1200 General effect of section 218 of the Act.

Under section 218 of the Social Security Act (the Act) a State may ask the Secretary of Health and Human Services to enter into an agreement to extend Federal old-age, survivors, disability and hospital insurance coverage under title II of the Act to groups of employees of the State and its political subdivisions. The Secretary shall enter into such agreement. State and local government employees, after being covered under an agreement, have the same benefit rights and responsibilities as other employees who are mandatorily covered under title II. The State assumes full financial and reporting responsibility for all groups covered under its agreement. The agreement may not be terminated in its entirety or with respect to any coverage group under that agreement.

§ 404.1201 Scope of this subpart.

This subpart contains the rules of the Social Security Administration (SSA) about:

(a) How a State enters into and modifies an agreement;

(b) What groups of employees a State can cover by agreement;

(c) How a State must identify covered employees and what records it must keep on those employees;

(d) Periodic reviews of the source records kept on covered employees;

(e) How and when a State must report wages and pay contributions;

(f) What the State's liability for contributions is and how SSA figures the amount of those contributions;

(g) What happens if a State fails to pay its contributions timely;

(h) How errors in reports and contribution payments are corrected;

(i) How overpayments of contributions are credited or refunded;

(j) How assessments are made if contributions are underpaid; and

(k) How a State can obtain administrative or judicial review of a decision on a credit, refund, or assessment.

§ 404.1202 Definitions.

Terms which have special meaning in this subpart are described in this section. Where necessary, further explanation is included in the section where the term is used.

Agreement—The agreement between the Secretary of Health and Human Services and the State containing the conditions under which retirement, survivors, disability and hospital insurance coverage is provided for State and local government employees.

Allowance of a credit or refund—The written notice to a State of the determination by SSA of the amount owed to the State by SSA and the basis for the determination.

Assessment—The written notice to a State of the determination by SSA of the amount (contributions or accrued interest) owed to SSA by the State and the basis for the determination.

Contributions—Payments made under an agreement which the State deposits in a Federal Reserve bank. The amounts are based on the wages paid to employees whose services are covered under an agreement. These amounts are equal to the taxes imposed under the Internal Revenue Code on employers and employees in private employment.

Contribution return—Form used to identify and account for all contributions actions.

Coverage—The extension of Social Security protection under title II of the Act (retirement, survivors, disability, and hospital insurance) by agreement between the Secretary of Health and Human Services and a State to employees of the State and its political subdivisions or by agreement between the Secretary of Health and Human Services and an interstate instrumentality to employees of the interstate instrumentality.

Coverage group—The grouping by which employees are covered under an agreement.

Disallowance of a State's claim for credit or refund—The written notice of a State of the determination by SSA that the State's claim for credit or refund is denied and the basis for the determination.

Employee—An employee as defined in section 210(j) of the Act. Usually, the common-law control test is used in determining whether an employer-employee relationship exists. The term also includes an officer of a State or political subdivision.

Governmental function—The traditional functions of government: legislative, executive, and judicial.

Interstate instrumentality—An independent legal entity organized by two or more States to carry out one or more functions. For Social Security coverage purposes under section 218 of the Act, an interstate instrumentality is treated, to the extent practicable, as a "State."

Modification—A change to the agreement between the Secretary of Health and Human Services and a State which provides coverage of the services of employees not previously covered or which alters the agreement in some other respect.

Overpayment—A payment of more than the correct amount of contributions or interest.

Political subdivision—A separate legal entity of a State which usually has specific governmental functions. The term ordinarily includes a county, city, town, village, or school district, and in many States, a sanitation, utility, reclamation, drainage, flood control, or similar district. A political subdivision includes an instrumentality of a State, one or more political subdivisions of a State, or a State and one or more of its political subdivisions.

Proprietary function—A business engaged in by a State or political subdivision such as a public amusement park or public parking lot.

Retirement system—A pension, annuity, retirement, or similar fund or system established by a State or political subdivision.

Secretary—The Secretary of Health and Human Services or authorized delegate.

SSA—The Social Security Administration.

State—Includes the fifty States, Puerto Rico, and the Virgin Islands. It does not include the District of Columbia, Guam or American Samoa. "State" also refers to an interstate instrumentality where applicable.

Underpayment—A payment of less than the correct amount of contributions or interest.

Wage Reports—Forms used to identify employees who were paid wages for covered employment and the amounts of those wages paid. This includes corrective reports.

We—The Social Security Administration.

§ 404.1203 Evidence.

(a) *State's responsibility for submitting evidence.* The State, under the provisions of the agreement, is responsible for accurately reporting the wages paid employees for services covered by the agreement and for paying the correct amount of contributions due on those wages. This responsibility includes submitting evidence to verify the accuracy of the reports and payments.

(b) *Failure to submit requested evidence.* The State is required to submit information timely to SSA. If we request additional evidence to verify the accuracy of reports and payments, we specify when that evidence must be submitted. If we do not receive the evidence timely, and the State provides no satisfactory explanation for its failure to submit the evidence timely, we may proceed, if appropriate, on the basis of the information we have. Proceeding on the basis of the information we have permits us to credit the wage records of employees properly, where possible, while continuing to work with the State to resolve remaining discrepancies.

§ 404.1204 Designating officials to act on behalf of the State.

Each State which enters into an agreement shall designate the official or officials authorized to act on the State's behalf in administering the agreement. Each State shall inform SSA of the name, title, and address of the designated official(s) and the extent of each official's authority. For example, a State may indicate that the State official is authorized:

(a) To enter into an agreement and execute modifications to the agreement;

(b) To enter into agreements to extend or re-extend the time limit for assessment or credit;

(c) To make arrangements in connection with onsite reviews;

(d) To request administrative review of an assessment, an allowance of a credit or refund, or a disallowance of a credit or refund; or

(e) To carry out the ministerial duties necessary to administer the agreement.

Each State shall inform SSA timely of changes in designated officials or changed in their authority.

What Groups of Employees May Be Covered

§ 404.1295 Absolute coverage groups.

(a) *General.* An absolute coverage group is a permanent grouping of employees, e.g., all the employees of a city or town. It is a coverage group for coverage and reporting purposes. When used for coverage purposes, the term also refers to groups of employees whose positions are not under a retirement system. An absolute coverage group may include positions which were formerly under a retirement system and, at the State's option, employees who are in positions under a retirement system but who are ineligible (see § 404.1208) to become members of that system.

(b) *What an absolute coverage group consists of.* An absolute coverage group consists of one of the following employee groups:

(1) State employees performing services in connection with the State's governmental functions:

(2) State employees performing services in connection with a single proprietary function of the State;

(3) Employees of a State's political subdivision performing services in connection with that subdivision's governmental functions;

(4) Employees of a State's political subdivision performing services in connection with a single proprietary function of the subdivision;

(5) Civilian employees of a State's National Guard units; and

(6) Individuals employed under an agreement between a State and the U.S. Department of Agriculture as agricultural products inspectors.

(c) *Designated coverage groups.* A State may provide coverage for designated (i.e., selected) absolute coverage groups of the State or a political subdivision. When coverage is extended to these designated groups, the State must specifically identify each group as a designated absolute coverage group and furnish the effective date of coverage and any optional exclusion(s) for each group. Where a State has provided coverage to designated absolute coverage groups, the State may, by modifying its agreement, extend that coverage to any absolute coverage group in the state.

§ 404.1206 Retirement system coverage groups.

(a) *General.* Section 218(d) of the Act authorizes coverage of services of employees in positions under a retirement system. For purposes of obtaining coverage, a system may be considered a separate retirement system authorized by section 218(d)(6)(A) or (B) of the Act. Under this section of the Act a State may designate the positions of any one of the following groupings of employees as a separate retirement system:

(1) The entire system;

(2) The employees of the State under the system;

(3) The employees of each political subdivision in the State under the system;

(4) The employees of the State and the employees of any one or more of the State's political subdivisions;

(5) The employees of any combination of the State's political subdivisions;

(6) The employees of each institution of higher learning, including junior colleges and teachers colleges; or

(7) The employees of a hospital which is an integral part of a political subdivision.

If State law requires a State or political subdivision to have a retirement system, it is considered established even though no action has been taken to establish the system.

(b) *Retirement system coverage groups.* A retirement system coverage group is a grouping of employees in positions under a retirement system. Employees in positions under the system have voted for coverage for the system by referendum and a State has provided coverage by agreement or modification of its agreement. It is not a permanent grouping. It exists only for referendum and coverage purposes and is not a separate group for reporting purposes. Once coverage has been obtained, the retirement system coverage group becomes part of one of the absolute coverage groups described in § 404.1205(b).

(c) *What a retirement system coverage group consists of.* A retirement system coverage group consists of:

(1) Current employees—all employees whose services are not already covered by the agreement, who are in positions covered by the same retirement system on the date an agreement or modification of the agreement is made applicable to the system;

(2) Future employees—all employees in positions brought under the system after an agreement or modification of the agreement is signed; and

(3) Other employees—all employees in positions which had been under the retirement system but which were not under the retirement system when the group was covered (including ineligibles

who had been optionally excluded from coverage).

(d) *Referendum procedures.* Prior to signing the agreement or modification, the governor or an official of the State named by the governor (for an interstate instrumentality, its chief executive officer) must certify to the Secretary that:

(1) All eligible employees were given at least 90 days' notice of the referendum;

(2) All eligible employees were given an opportunity to vote in the referendum;

(3) Only eligible employees were permitted to vote in the referendum;

(4) Voting was by secret written ballot on the question of whether service in positions covered by the retirement system should be included under an agreement;

(5) The referendum was conducted under the supervision of the governor or agency or individual named by him; and

(6) A majority of the retirement system's eligible employees voted for coverage under an agreement.

The State has two years from the date of a favorable referendum to enter into an agreement or modification extending coverage to the retirement system coverage group. If the referendum is unfavorable, another referendum cannot be held until at least one year after that unfavorable referendum.

(e) *Who is covered.* If a majority of the eligible employees in a retirement system vote for coverage, all employees in positions in that retirement system become covered.

(f) *Coverage of employees in positions under more than one retirement system.*

(1) If an employee occupies two or more positions each of which is under a different retirement system, the employee's coverage in each position depends upon the coverage extended to each position under each system.

(2) If an employee is in a single position which is under more than one retirement system (because the employee's occupancy of that position permits her or him to become a member of more than one retirement system), the employee is covered when the retirement system coverage group including her or his position is covered under an agreement unless (A) he or she is not a member of the retirement system being covered and (B) he or she is a member of a retirement system which has not been covered. This rule also applies to the coverage of services in policemen's and firemen's positions in interstate instrumentalities and in those States named in § 404.1212(c)(1).

§ 404.1207 Divided retirement system coverage groups.

(a) *General.* Under section 218(d)(6)(C) of the Act certain States and under section 218(k)(2) of the Act all interstate instrumentalities may divide a retirement system based on whether the employees in positions under that system want coverage. The States having this authority are Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin.

(b) *Divided retirement system coverage group.* A divided retirement system coverage group is a grouping under a retirement system of positions of members of the system who voted for coverage and positions of individuals who become members of the system (the "yes" group), and positions of members of the system who did not elect coverage and ineligible employees (see § 404.1208) (the "no" group). For purposes of this section, the term "member" also includes individuals who have an option to become members of the retirement system but have not done so. The position of a member in the "no" group can be covered if, within two years after the agreement or modification extending coverage to the "yes" group is executed, the State provides an opportunity to transfer the position to the covered "yes" group and the individual occupying the position makes a written request for the transfer. The members of the "no" group can also be covered if, by referendum, a majority of them vote for coverage. If the majority votes for coverage, all positions of the members of the "no" group become covered. There is no further subdivision of the "no" group into those who voted for and those who voted against coverage. If the State requests, the ineligibles in the "no" group may become part of the "yes" group and have their services covered.

(c) *Referendum procedures.* To divide a retirement system, the State must conduct a referendum among the system's employees. If the system is to be divided, the governor or an individual named by him must certify to the Secretary that:

(1) The referendum was held by written ballot on the question of whether members of a retirement system wish coverage under an agreement;

(2) All members of the retirement system at the time the vote was held had the opportunity to vote;

(3) All members of the system on the date of the notice of the referendum was issued were given at least 90 days' notice regarding the referendum;

(4) The referendum was conducted under the supervision of the governor or agency or person designated by him; and

(5) The retirement system was divided into two parts, one composed of positions of members of the system who voted for coverage and the other composed of the remaining positions under the retirement system.

After the referendum the State may include those members who chose coverage under its agreement as a retirement system coverage group. The State has two years from the date of the referendum to enter into an agreement or modification extending coverage to that group.

§ 404.1208 Ineligible employees.

(a) *Definition.* An ineligible is an employee who, on first occupying a position under a retirement system, is not eligible for membership in that system because of a personal disqualification like age, physical condition, or length of service.

(b) *Coverage of ineligible employees.* A State may, in its agreement or any modification to the agreement, provide coverage for the services of ineligible employees in one of three ways:

(1) As part of or as an addition to an absolute coverage group;

(2) As part of a retirement system coverage group covering all positions under the retirement system; or

(3) As part of or as an addition to a retirement system coverage group composed of those members in positions in a retirement system who chose coverage.

§ 404.1209 Mandatorily excluded services.

Some services are mandatorily excluded from coverage under a State's agreement. They are:

(a) Services of employees who are hired to relieve them from unemployment;

(b) Services performed in an institution by a patient or inmate of the institution;

(c) Transportation service subject to the Federal Insurance Contributions Act;

(d) Certain emergency services in case of fire, storm, snow, volcano, earthquake, flood or other similar emergency; and

(e) Services other than agricultural labor or student services which would be excluded from coverage if performed for a private employer.

§ 404.1210 Optionally excluded services.

Certain services and positions may, if the State requests it, be excluded from coverage. These exclusions may be applied on a statewide basis or selectively by coverage groups. They are:

(a) Services in any class or classes of elective positions;

(b) Services in any class or classes of part-time positions;

(c) Services in any class or classes of positions where the pay is on a fee basis;

(d) Any agricultural labor or student services which would also be excluded if performed for a private employer; and

(e) Services performed by election officials or election workers if the payments for those services in a calendar year are less than $100.

§ 404.1211 Interstate instrumentalities.

For Social Security coverage purposes under section 218 of the Act, interstate instrumentalities are treated, to the extent practicable, as States, that is:

(a) They must be legally authorized to enter into an agreement with the Secretary;

(b) They are subject to the same rules that are applied to the States;

(c) They may divide retirement systems and cover only the positions of members who want coverage; and

(d) They may provide coverage for firemen and policemen in positions under a retirement system.

§ 404.1212 Policemen and firemen.

(a) *General.* For Social Security coverage purposes under section 218 of the Act, a policeman's or fireman's position is any position so classified under State statutes or court decisions. Generally, these positions are in the organized police and fire departments of incorporated cities, towns, and villages. In most States, a policeman is a member of the "police" which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms "policeman" and "fireman" do not include services in positions which, although connected with police and firefighting functions, are not policeman or fireman positions.

(b) *Providing coverage.* A State may provide coverage of:

(1) Policemen's and firemen's positions not under a retirement system as part of an absolute coverage group;

(2) Policemen's or firemen's positions, or both, as part of a retirement system coverge group for the States specified in paragraph (c) (1) of this section; or

(3) Firemen's positions only as a separate retirement system as set forth in paragrph (c) (2) of this section.

(c) *Policmen and firement in positions under a retirement system.* (1) Some States and all interstate instrumentalities may provide coverage for employees in policemen's or fireman's positions, or both, which are under a retirement system by following the majority vote referendum procedures in § 404.1206(d). The States are Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virigina, and Washington. Some States and all interstate instrumentalities may use the desire for coverage procedures in § 404.1207. The States are California, Florida, Georgia, Hawaii, New York, North Dakota, Tennessee, Texas, Vermont, and Washington.

(2) All States not listed in paragraph (c) (1) of this section may provide coverage for employees in firemen's positions which are under a retirement system by:

(i) Following the referendum procedures in § 404.1206(d); and

(ii) Submitting a certification by the governor, or an individual named by her or him, to the Secretary that extending coverage to this group of employees will improve their overall benefit protection.

How Coverage Under Agreements Is Obtained and Continues

§ 404.1214 Agreement for coverage.

(a) *General.* A State may enter into a written agreement with the Secretary to provide for Social Security coverage for its employees or the employees of one or more of its political subdivisions. An interstate instrumentality may enter into a similar agreement for its employees. These agreements cover employees in groups of positions or by types of services rather than the individual employees.

(b) *Procedures.* A State or interstate instrumentality may request coverage by submitting to SSA a proposed written agreement for the desired coverage.

(c) *Authority to enter into an agreement for coverage.*

(1) *Federal law.* Section 218(a) of the Act requires the Secretary to enter into an agreement, at the request of the State, to extend Social Security coverage to the State's employees or those of its political subdivisions. Section 218(k) authorizes the Secretary to enter an agreement, at the request of an interstate instrumentality, to extend Social Security coverage to the employees of the interstate instrumentality.

(2) *State law.* State law must authorize a State or an interstate instrumentality to enter into an agreement with the Secretary for Social Security coverage.

(d) *Provisions of the agreement.* The agreement must include:

(1) A description of the specific services to be covered and excluded;

(2) The State's promise to pay, to the Secretary of the Treasury, contributions equal to the sum of the taxes which would be required under the Federal Insurance Contributions Act from employers and employees if the employment were in the private sector;

(3) The State's promise to comply with the regulations the Secretary prescribes for carrying out the provisions of section 218 of the Act; and

(4) Identification of the political subdivisions, coverage groups, or services being covered and the services that are excluded.

The agreement must be signed by the authorized State or interstate instrumentality official and the Secretary or his or her designee.

(e) *Effective date.* The agreement must specify an effective date of coverage. However, the effective date cannot be earlier than the last day of the sixth calendar year preceding the year in which the agreement is agreed to by the Secretary and the State. The agreement is effective after the effective date.

(f) *Applicability of agreement.* The agreement establishes the continuing relationship between the Secretary and the State or interstate instrumentality except as it is modified (see §§ 404.1215–404.1217).

§ 404.1215 Modification of agreement.

(a) *General.* A State or interstate instrumentality may modify in writing its agreement, for example, to:

(1) Exclude, in limited situations, employee services or positions previously covered;

(2) Include additional coverage groups; or

(3) Include as covered services:

(i) Services of covered employees for additional retroactive periods of time; and

(ii) Services previously excluded from coverage.

(b) *Controlling date for retroactive coverage.* A State may specify in the modification a date to make all individuals in the coverage group who were in an employment relationship on that date eligible for retroactive coverage. This date is known as the controlling date for retroactive coverage. It can be no earlier than the date the modification is mailed or otherwise

delivered to the Secretary nor can it be later than the date the modification is signed by the Secretary. If the State does not designate a controlling date, the date the modification is signed by the Secretary is the controlling date.

(c) *Conditions for modification.* The provisions of section 218 of the Act which apply to the original agreement also apply to a modification to the agreement.

(d) *Effective date.* Generally, a modification must specify an effective date of coverage. However, the effective date cannot be earlier than the last day of the sixth calendar year preceding the year in which the modification is agreed to by the Secretary and the State. The modification is effective after the effective date.

§ 404.1216 Modification of agreement to correct an error.

(a) *General.* If an agreement or modification contains an error, the State may correct the error by a subsequent modification to the agreement. For example, the agreement or modification incorrectly lists a covered service as an optionally excluded service or shows an improper effective date of coverage. In correcting this type of error, which affects the extent of coverage, the State must submit a modification along with evidence to establish that the error occurred. However, a modification is not needed to correct minor typographical or clerical errors. For example, an agreement or modification incorrectly lists School District No. 12 as School District No. 13. This type of error can be corrected based on a written request from the appropriate official of the State or interstate instrumentality.

(b) *Correction of errors involving erroneous reporting to the IRS.* Where a State or political subdivision makes reports and payments to the Internal Revenue Service under the provisions of the Federal Insurance Contributions Act which apply to employees in private employment in the mistaken belief that this action would provide coverage for its employees, the State may provide the desired coverage for those same periods of time by a subsequent modification to its agreement. If State law permits, the State may make that coverage effective with the first day of the first period for which the erroneous reports and payments were made. (In this instance, the limitation on retroactive coverage described in § 404.1215(d) is not applicable). Where the State does not want to provide such retroactive coverage or is not permitted to do so by State law, the State may provide the coverage for the affected coverage group as of a specified date (§ 404.1215(b)). The coverage would then apply to the services performed by individuals as members of the coverage group (1) who were employees on that date, and (2) whose wages were erroneously reported to IRS, and (3) for whom a refund of FICA taxes has not been obtained at the time the Secretary executes the modification.

§ 404.1217 Continuation of coverage.

The coverage of State and local government employees continues as follows:

(a) *Absolute coverage group.* Generally, the services of an employee covered as a part of an absolute coverage group (see § 404.1205) continue to be covered indefinitely. A position covered as a part of an absolute coverage group continues to be covered even if the position later comes under a retirement system. This includes policemen's and firemen's positions which are covered with an absolute coverage group.

(b) *Retirement system coverage group.* Generally, the services of employees in positions covered as a part of a retirement system coverage group continue to be covered indefinitely. For a retirement system coverage group made up of members who chose coverage, a position continues to be covered until it is removed from the retirement system and is no longer occupied by a member who chose coverage or by a new member of the system. Coverage is not terminated because the positions are later covered under additional retirement systems or removed from coverage under a retirement system, or because the retirement system is abolished with respect to the positions. However, if the retirement system has been abolished, newly created or reclassified positions or positions in a newly created political subdivision cannot be covered as a part of the retirement system coverage group. If the retirement system is not abolished, a newly created or reclassified position is a part of the coverage group if the position would have been a part of the group had it existed earlier. If the retirement system coverage group is made up of members who chose coverage, the newly created or reclassified position is a part of the coverage group if it is occupied by a member who chose coverage or by a new member.

§ 404.1218 Resumption of coverage.

Before 1983, an agreement could be terminated in its entirety or with respect to one or more coverage groups designated by the State. Coverage of any coverage group which has been previously terminated may be resumed by a modification to the agreement.

§ 404.1219 Dissolution of political subdivision.

If a political subdivision whose employees are covered under the agreement is legally dissolved or otherwise ceases to exist, the State shall give us satisfactory evidence of its dissolution or nonexistence. The evidence must establish that the entity is not merely inactive or dormant, but that it will never again have employees. We will notify the State whether the evidence is satisfactory.

How to Identify Covered Employees

§ 404.1220 Identification numbers.

(a) *State and local government.* (1) When a State enters into an agreement with the Secretary under section 218 of the Act, SSA assigns one identification number to the State (if State employees are covered under the agreement) and one identification number to each political subdivision included under the agreement. Similarly, in the case of an agreement with an interstate instrumentality, SSA assigns one identification number to the instrumentality. SSA notifies the appropriate official of the State or instrumentality of the number assigned.

(2) If a State or political subdivision is paying wages for covered transportation service (as determined under section 210(k) of the Act) which are subject to the Federal Insurance Contributions Act, the appropriate IRS Service Center assigns an identification number to the State or political subdivision. The IRS Service Center procedures for issuing identification numbers to States or political subdivisions may be found in 26 CFR 31.6011(b)–1.

(b) *Coverage group number for coverage groups.* If a State's agreement provides coverage for a State or a political subdivision based on designated proprietary or governmental functions, the State shall furnish a list of those groups. The list shall identify each designated function and the title and business address of the official responsible for filing each designated group's wage report with the State. SSA assigns a coverage group number to each designated group based on the information furnished in the list.

(c) *Unit numbers for payroll record units.* SSA assigns, at a State's request, unit numbers to payroll record units within a State or political subdivision. When a State requests separate payroll record unit numbers, it must furnish the following:

(1) The name of each payroll record unit for the coverage group; and

(2) The title and business address of the official responsible for each payroll unit.

(d) *Unit numbers where contribution amounts are limited.* An agreement, or modification of an agreement, may provide for the computation of contributions as prescribed in § 404.1256 for some employees of a political subdivision. In this situation, SSA assigns special unit numbers to the political subdivision to identify those employees. SSA does not assign a special unit number to a political subdivision in which the contributions for all employees are computed as prescribed in § 404.1256.

(e) *Use.* The State shall show the appropriate SSA issued identifying number, including any coverage group or payroll record unit number, on records, reports, returns, and claims to report wages, adjustments, and contributions.

§ 404.1221 Employee's Social Security number.

Each employee subject to this subpart must have a Social Security number. To get a Social Security number, the employee must go to the nearest Social Security district or branch office. The employee must apply for the number within seven days after starting work. Section 422.107 of this title describes the information the employee must give when applying for a Social Security number. Section 422.110 of this title describes how an employee may change his or her name or other identifying information submitted in connection with an application for a Social Security number.

§ 404.1223 Duties of State with respect to employee's Social Security number.

The State shall enter the employee's name and Social Security number exactly as shown on the employee's Social Security number card on all records, returns, reports, and claims. If the employee does not have a Social Security number card and has not filed an application for one with SSA, the State shall inform the employee of the provisions in § 404.1221. The State shall request the employee to present the number card as soon as it is received.

What Records of Coverage Must Be Kept

§ 404.1225 Records.

(a) *Who keeps the records.* Every State which enters into an agreement shall keep, or require the political subdivisions whose employees are included under its agreement to keep, accurate records of all remuneration (whether in cash or in a medium other than cash) paid to employees performing services covered by that agreement. These records shall show for each employee:

(1) The employee's name, address, and Social Security number;

(2) The total amount of remuneration (including any amount withheld as contributions or for any other reason) and the date the remuneration was paid and the period of services covered by the payment;

(3) The amount of remuneration which constitutes wages (see § 404.1041 for wages and §§ 404.1047–404.1059 for exclusions from wages); and

(4) The amount of the employee's contribution, if any, withheld or collected, and if collected at a time other than the time such payment was made, the date collected. If the total remuneration (paragraph (a)(2) of this section) and the amount which is subject to contribution (paragraph (a)(3) of this section) are not equal, the reason shall be stated.

The State shall keep copies of all returns, reports, schedules, and statements required by this subpart, copies of claims for refund or credit, and copies of documents about each adjustment made under § 404.1265 or § 404.1271 as part of its records. These records may be maintained by the State or, for employees of a political subdivision, by the political subdivision. Each State shall use forms and systems of accounting as will enable the Secretary to determine whether the contributions for which the State is liable are correctly figured and paid.

(b) *Place and period of time for keeping records.* All records required by this section shall:

(1) Be kept at one or more convenient and safe locations accessible to reviewing personnel (see § 404.1232(a));

(2) Be available for inspection by reviewing personnel at any time; and

(3) Be maintained for at least four years from the date of the event recorded. (This four-year requirement applies regardless of whether, in the meantime, the employing entity has been legally dissolved or otherwise ceases to exist or, before 1983, the agreement was terminated in its entirety or in part.

§ 404.1226 Statements to employees.

Each State shall ensure that an IRS Form W–2 or similar written statement is provided to each individual performing services covered under its agreement. The Form W–2 or statement shall be furnished to the employee not later than January 31 of the year following the calendar year covered by the statement. If the employee leaves the employ of the State or political subdivision before the end of a calendar year, the Form W–2 or statement shall be furnished to the employee on the day on which the last payment of wages is made to the employee

Review of Compliance By State With Its Agreement

§ 404.1230 Onsite review program.

To ensure that the services of employees covered by a State's agreement are reported and that those employees receive Social Security credit for their covered earnings, we periodically review the source records upon which a State's contribution returns and wage reports are based. These reviews are designed:

(a) To measure the effectiveness of the State's systems for ensuring that all wages for those employees covered by its agreement are reported and Social Security contributions on those wages are paid;

(b) To detect any misunderstanding of coverage or reporting errors and to advise the State of the corrective action it must take; and

(c) To find ways to improve a State's recordkeeping and reporting operations for the mutual benefit of the State and SSA.

§ 404.1231 Scope of review.

The onsite review focuses on four areas:

(a) State's controls and recordkeeping—to assess a State's systems for assuring timely receipt, correctness, and completeness of wage reports and contribution returns;

(b) Instruction, education, and guidance a State provides local reporting officials—to assess a State's systems for assuring on a continuing basis that all reporting officials and their staffs have the necessary instructions, guidelines, and training to meet the State's coverage, reporting and recordkeeping requirements;

(c) Compliance by reporting officials—to assess a State's systems for assuring that the reporting officials in the State have adequate recordkeeping procedures, are properly applying the appropriate provisions of the State's agreement, and are complying with reporting requirements; and

(d) Quality control with prompt corrective action—to assess a State's systems for assuring that its reports and those of its political subdivisions are correct, for identifying the causes and extent of any deficiencies, and for promptly correcting these deficiencies.

§ 404.1232 Conduct of review.

(a) Generally, SSA staff personnel conduct the onsite review. Occasionally, members of the Office of the Inspector General, Department of Health and Human Services (HHS), may conduct or participate in the review.

(b) The review is done when considered necessary by SSA or HHS or, if practicable, in response to a State's specific request for a review.

(c) All pertinent source records prepared by the State or its political subdivisions are reviewed, on site, to verify the wage reports and contribution returns. We may review with the appropriate employees in a subdivision those source records and how the information is gathered, processed, and maintained. We notify the State's Social Security Administrator when we plan to make the review and request her or him to make the necessary arrangements.

(d) The review is a cooperative effort between SSA and the States to improve the methods for reporting and maintaining wage data to carry out the provisions of the agreement. If SSA considers it necessary to obtain certain information, we may subpoena employees to testify and to produce books, payment and other records, correspondence, papers, or documents which are relevant to any matter in question.

§404.1234 Reports of review's findings.

We provide the State Social Security Administrator with reports of the review's findings. These reports may contain coverage questions which need development and resolution and reporting errors or omissions for the State to correct promptly. These reports may also recommend actions the State can take to improve its information gathering, recordkeeping, and wage reporting systems, and those of its political subdivisions.

How to Report Wages and Contributions

§404.1237 Wage reports of contribution returns—general.

(a) *Wage reports.* Each State shall report each year the wages paid each covered employee during that year. With the wage report the State shall also identify, as prescribed by SSA, each political subdivision by its assigned identification number and, where appropriate, any coverage group or payroll record unit number assigned.

(b) *Wage reports of remuneration for agricultural labor.* A State may exclude from its agreement any services of employees the remuneration for which is not wages under section 209(h)(2) of the Act. Section 209(h)(2) excludes as wages the cash remuneration an employer pays employees for agricultural labor which is less than $150 in a calendar year, or, if the employee performs the agricultural labor for the employer on less than 20 days during a calendar year, the cash remuneration is computed on a time basis. If a State does exclude the services and the individual meets the cash-pay or 20-day test described in §404.1056, the State shall identify on the wage report and on any adjustment report each individual performing agricultural labor and the amount paid to her or him.

(c) *Contribution returns.* The State shall forward the contribution return as set out in §404.1249(b). It shall make contribution payments under §404.1262.

§404.1239 Wage reports for employees performing services in more than one coverage group.

(a) *Employee of State in more than one coverage group.* If a State employee is in more than one coverage group, the State shall report the employee's total wages, up to the annual wage limitations in §404.1047, as though the wages were paid by only one of the coverage groups.

(b) *Employee of political subdivision in more than one coverage group.* If an employee of a political subdivision is in more than one coverage group, the State shall report the employee's total wages, up to the annual wage limitations in §404.1047, as though the wages were paid by only one of the coverage groups.

(c) *Employee of State and one or more political subdivisions.* If an individual performs covered services as an employee of the State and an employee of one or more political subdivisions and the State agreement does not provide for limiting contributions under section 218(e)(2) of the Act, the State and each political subdivision shall report the amount of covered wages it paid the employee up to the annual wage limitations in §404.1047.

(d) *Employee of more than one political subdivision.* If an individual performs covered services as an employee of more than one political subdivision and the State agreement does not provide for limiting contributions under section 218(e)(2) of the Act, each political subdivision shall report the covered wages it paid the employee up to the annual wage limitations in § 404.1047.

(e) *Employee performing covered services for more than one political entity where section 218(e)(2) of the Act is applicable.* If an agreement provides for limiting contributions under section 218(e)(2) of the Act, the reporting officials compute the total amount of wages paid the employee by two or more political subdivisions of a State, or a State and one or more of its political subdivisions, which were subject to section 218(e)(2) of the Act. The State reports the amount of wages paid up to the annual wage limitations in § 404.1047. The employee is treated as having only one employer. If the employee also had wages not subject to section 218(e)(2) of the Act, the State shall report those wages separately.

§ 404.1242 Back pay.

(a) *"Back pay" defined.* Back pay is pay received in one period of time which would have been paid in a prior period of time except for a wrongful or improper action taken by an employer. It includes pay made under Federal or State laws intended to create an employment relationship (including situations where there is unlawful refusal to hire) or to protect an employee's right to wages.

(b) *Back pay under a statute.* Back pay under a statute is a payment by an employer following an award, determination or agreement approved or sanctioned by a court or administrative agency responsible for enforcing a Federal or State statute protecting an employee's right to employment or wages. Examples of these statutes are:

(1) National Labor Relations Act or a State labor relations act;

(2) Federal or State laws providing reemployment rights to veterans;

(3) State minimum wage laws; and

(4) Civil Rights Act of 1964.

Payments based on legislation comparable to and having a similar effect as those listed in this paragraph may also qualify as having been made under a statute. Back pay under a statute, excluding penalties, is wages if paid for covered employment. It is allocated to the periods of time in which it should have been paid if the employer had not violated the statute. A State must file a wage report and pay the contributions due for all periods involved in the back pay award under the rules applicable to those periods.

(c) *Back pay not under a statute.* Where the employer and the employee agree on the amount payable without any award, determination or agreement approved or sanctioned by a court or administrative agency, the payment is not made under a statute. This back pay cannot be allocated to prior periods of time but must be reported by the State for the period in which it is paid.

§ 404.1243 Use of reporting forms.

(a) *Submitting wage reports.* In the form and manner required by SSA, a State shall submit an annual report of

the covered wages the State and its political subdivisions paid their employees. Any supplemental, adjustment, or correctional wage report filed is considered a part of the State's wage report.

(b) *Correction of errors.* If a State fails to report or incorrectly reports an employee's wages on its wage report, the State shall submit a corrective report as required by SSA.

(c) *Reporting on magnetic tape or other media.* After approval by SSA, a State may substitute magnetic tape or other media for any form required for submitting a report or reporting information.

§ 404.1247 When to report wages.

A State shall report wages for the calendar year in which they were actually paid. If the wages were constructively paid in a prior calendar year, the wages shall be reported for the prior year (see § 404.1042(b) regarding constructive payment of wages).

§ 404.1249 When and where to make deposits of contributions and to file contribution returns and wage reports.

(a) *Deposits of contributions.* The State shall pay contributions in the manner required in § 404.1262. (For failure to make deposits when due see § 404.1265). The contribution payment is considered made when received by the appropriate Federal Reserve bank or branch (see § 404.1262). Except as provided in paragraphs (b)(2) and (3) and paragraph (c) of this section, contributions are due and payable as follows:

(1) *For wages paid before July 1, 1980.* Contribution payments for wages paid in a calendar quarter are due on the 15th day of the second month following the end of the calendar quarter during which the wages were paid.

(2) *For wages paid beginning July 1, 1980 and before January 1984.* Contribution payments for wages paid in a calendar month are due within the thirty day period following the last day of that month.

(3) *For wages paid after December 1983.* Contribution payments for wages paid in the first half of a calendar month are due on the last day of that month. Contribution payments for wages paid in the second half of that calendar month are due on the fifteenth day of the next month. (For purposes of this section, the first half of a calendar month is the first 15 days of that month and the second half is the remainder of that month.)

(b) *Contribution returns and wage reports.* (1) *Where to be filed.* The State shall file the original copies of all contribution returns, wages reports, and adjustment reports with the SSA.

(2) *When to be filed.* (i) *For years prior to execution of agreement or modification.* If an agreement or modification provides for the coverage of employees prior to the year of execution of the agreement or modification, the State shall pay contributions due and shall file the contribution returns and wage reports within 90 days after the date of the notice that the Secretary has signed the agreement or modification.

(ii) *For year of execution of agreement or modification.* If the agreement or modification provides for the coverage of employees for the year of execution of the agreement or modification, the State may, within 90 days after the date of the notice that the Secretary has signed the agreement or modification, submit a single contribution return and pay all contributions due for the following periods:

(A) The month in which the agreement or modification was signed;

(B) Any prior months in that year; and

(C) Any subsequent months before January 1984 (half-months after December 1983) whose contribution return and payment due date is within this 90 day period. The State shall file wage reports for that year by February 28 of the year following the date of execution or within 90 days of the date of the notice, whichever is later.

(iii) *For years after execution of agreement or modification.* Except as described in paragraph (b)(2)(ii) of this section, when the State pays its contributions under paragraph (a) of this section, it shall also file a contribution return. The State shall file the wage report for any calendar year after the year of execution of agreement or modification by February 28 of the following calendar year.

(iv) For good cause shown, and upon written request by a State, the Secretary may allow additional time for filing the reports and paying the related contributions described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(3) *Due date is on a weekend, legal holiday or Federal nonworkday.* If the last day for filing the wage report falls on a weekend, legal holiday or Federal nonworkday, the State may file the wage report on the next Federal workday. If the due date for paying contributions for the wages paid in a period (as specified in paragraph (a) of this section) falls on a weekend, legal holiday or Federal nonworkday, the State shall pay the contributions and shall file the contribution return no later than—

(i) The preceding Federal workday for wages paid in July 1980 through December 1983;

(ii) The next Federal workday for wages paid before July 1980 or after December 1983.

(4) *Submitting reports and payments.* When submitting the contribution returns or wage reports the State shall release them in time to reach SSA by the due date. When submitting contribution payments as described in § 404.1262, the State shall release the payments in time to reach the appropriate Federal Reserve bank or branch by the due date. In determining when to release any returns, reports, or payments the State shall provide sufficient time for them to timely reach their destination under the method of submission used, e.g., mail or electronic transfer of funds.

(c) *Payments by third party on accounts of sickness or accident disability.* Where a third party makes a payment to an employee on account of sickness or accident disability which constitutes wages for services covered under a State agreement, the wages will be considered, for purposes of the deposits required under this section, to have been paid to the employee on the date on which the employer receives notice from the third party of the amount of the payment. No interest will be assessed for failure to make a timely deposit of contributions due on such wages for which a deposit was made after December 1981 and before July 1982, to the extent that the failure to make the deposit timely is due to reasonable cause and not willful neglect.

§ 404.1251 Final reports.

If a political subdivision is legally dissolved or otherwise ceases to exist, the State shall file a final report on that entity. The report shall include each coverage group whose existence ceases with that of the entity. It shall:

(a) Be marked "final report";

(b) Cover the period during which final payment of wages subject to the agreement is made; and

(c) Indicate the last date wages were paid.

With the final report, the State shall submit a statement showing the title and business address of the State official responsible for keeping the State's records and of each State and local official responsible for keeping the records for each coverage group whose existence is ended. The State shall also identify, as prescribed by SSA, each political subdivision by its assigned number and, where applicable, any

coverage group or payroll record unit number assigned.

What is a State's Liability for Contributions

§ 404.1255 State's liability for contributions.

A State's liability for contributions equals the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954, if the services of the employees covered by the State's agreement were employment as defined in section 3121 of the Code. The State's liability begins when those covered services are performed, for which wages are actually or constructively paid to those individuals, including wages paid in a form other than cash (see § 404.1041(d)). If an agreement is effective retroactively, the State's liability for contributions on wages paid during the retroactive period begins with the date of execution of the agreement or applicable modification. Where coverage of a coverage group has been terminated, the State is liable for contributions on wages paid for covered services even if the wages are paid after the effective date of termination of coverage.

§ 404.1256 Limitation on State's liability for contributions for multiple employment situations.

(a) *Limitation due to multiple employment.*

Where:

(1) An individual in any calendar year performs covered services as an employee of a State and as an employee of one or more political subdivisions of the State, or as an employee of more than one political subdivision; and

(2) The State provides all the funds for payment of the amounts which are equivalent to the taxes imposed on the employer under FICA on that individual's remuneration for those services; and

(3) No political subdivision reimburses the State for paying those amounts, the State's agreement or modification of an agreement may provide that the State's liability for the contributions on that individual's remunerations shall be computed as though the individual had performed services in employment for only one political subdivision. The State then totals the individual's covered wages from all these governmental employers and computes the contributions based on that total subject to the wage limitations in § 404.1047.

(b) *Identification of employees in multiple employment.* An agreement or modification of an agreement providing for the computation of contributions as described in paragraph (a) of this section shall identify the class or classes of employees to whose wages this method of computing contributions applies. For example, the State may provide that such computation shall apply to the wages paid to all individuals for services performed in positions covered by a particular retirement system, or to the wages paid to all individuals who are members of any two or more coverage groups designated in an agreement or modification. The State shall promptly notify SSA if the conditions in paragraph (a) of this section are no longer met by any class or classes of employees identified in an agreement or modification. In its notification, the State shall identify each class of employees and the date on which the conditions ceased to be met.

(c) *Effective date.* In the agreement or modification, the State shall provide that the computation of contributions shall apply to wages paid after the effectifve date stated in the agreement or modification. That date may be the last day of any calendar year; however, it may be no earlier than January 1 of the year in which the agreement or modification is submitted to SSA.

Figuring the Amount of the State's Contributions

§ 404.1260 Amount of contributions.

The State's contributions are equal to the product of the applicable contribution rate (which is equivalent to both the tax rates imposed under sections 3101 and 3111 of the Internal Revenue Code) times the amount of wages actually or constructively paid for covered services each year (subject to the wage limitations in § 404.1047) to the employee by the employer.

§ 404.1262 Manner of payment of contributions by State.

Beginning 3 months after the effective date of these regulations, a State shall pay the contributions it is required under its agreement to pay to the Secretary of the Treasury using the electronic transfer of funds. (We may extend this time limitation by an additional three months.) When paying its contributions, the State shall deposit its payment at the specific Federal Reserve bank or branch designated by SSA.

§ 404.1263 When fractional part of a cent may be disregarded.

In paying contributions to a Federal Reserve bank or branch, a State may disregard a fractional part of a cent unless it amounts to one-half cent or more, in which case it shall be increased to one cent. Fractional parts of a cent shall be used in computing the total of contributions.

If a State Fails To Make Timely Payments

§ 404.1265 Addition of interest to contributions.

(a) *Contributions not paid timely.* (1) *General.* If a State fails to pay its contributions to the appropriate Federal Reserve bank or branch (see § 404.1262), when due under § 404.1249(a), we add interest on the unpaid amount of the contributions beginning with the date the payment was due, except as described in paragraphs (b) and (c) of this section. Interest, if charged, begins with the due date even if it is a weekend, legal holiday or Federal nonwork day. Interest is added at the rate prescribed in section 218(j) of the Act.

(2) *Corrective reports.* If, after submitting its wage report, a State files a corrective report of additional wages which results in an underpayment of contributions, we assess interest to the underpaid amount. We add the interest beginning with the date the contributions on those wages were initially due to the date the contributions are paid.

(b) *Verifying contributions paid against reported wages.* We check the computation of contributions to verify that a State has paid the correct amount of contributions on the wages it reports for a calendar year (see § 404.1249(b)(2)). If we determine that a State paid less than the amount of contributions due for that year, we add interest to the amount of the underpayment. We would add interest beginning with the date the unpaid contributions were initially due to the date those contributions are paid. However, if the total amount of the underpayment is 5 percent or less than the contributions due for a calendar year based upon the State's wage report and the State deposits the underpaid amount within 30 days after the date of our notification to the State of the amount due, the State may request that the interest on the underpaid amount be waived for good cause. This request must be made within 30 days of our notification of the State of the amount due. Such requests will be evaluated on an individual basis. The evaluation will include, but not be limited to, consideration of such factors as the circumstances causing the late payment, the State's past record of late payments and the amount involved.

Examples:

(1) The records of a political subdivision for the month of June are destroyed by fire. The State makes an estimated deposit of contributions for the month of June for that political subdivision and deposits contributions for the month of June for all other political subdivisions based on actual records. At the time SSA verifies contributions paid against reported wages, we discover that the State has paid only 97% of its total liability for the year. Within 30 days after we notify it of the amount due, the State asks that we waive the interest on the unpaid amount and the State deposits the unpaid amount. In this situation, we would waive the interest on the unpaid contributions.

(2) We would waive interest if:

(i) Some of the political subdivisions made small arithmetical errors in preparing their reports of wages,

(ii) After verification of the contributions paid against reported wages, SSA discovers that minimal additional contributions are due,

(iii) Within 30 days of our notice to the State regarding this underpayment the State, which usually makes its deposits timely, pays the amount due, and

(iv) Within that same 30 day period the State requests that we waive the interest due.

(3) We would not waive interest where a State frequently has problems despositing its contributions timely. Reasons given for the delays are, e.g., the computer was down, the 5 p.m. mail pickup was missed, one of the school district reports was misplaced. If requested we would not waive interest on this State's late payment of contributions based upon its past record of late payments and because of the circumstances cited.

(c) *Contributions erroneously paid to IRS.* If contributions are erroneously paid to the IRS: (1) On or before the due date for paying the contributions to SSA, and (2) a refund (including interest, if any) is issued by IRS, and (3) the State deposits an amount equal to the entire IRS refund at the appropriate Federal Reserve bank (see § 404.1262), and (4) the State makes the deposit within 30 days after IRS issued the refund, SSA will not add interest on the underpaid amount.

(d) *Due date is on a weekend, legal holiday or Federal nonworkday.* If the last day of the 30 day periods specified in paragraphs (b) and (c) of this section is on a weekend, legal holiday or Federal nonworkday, the State shall make the required deposit or request for waiver by the next Federal workday.

§ 404.1267 Failure to make timely payments.

If a State does not pay its contributions when due, the Secretary has the authority under section 218(j) of the Act to deduct the amounts of the unpaid contributions plus interest at the rate prescribed in section 218(j) of the Act from any amounts certified by her or him to the Secretary of the Treasury for payments to the State under any other provision of the Social Security Act. The Secretary notifies the Secretary of the Treasury of the amounts deducted and requests that the amount be credited to the Trust Funds. Amounts deducted are considered paid to the State under the other provision of the Social Security Act.

How Errors in Reports and Contributions Are Adjusted

§ 404.127 Adjustments in general.

States have the opportunity to adjust errors in the payment of contributions. A State but not its political subdivisions is authorized to adjust errors in the underpayment of contributions. Similarly, the State shall file all claims for credits or refunds and SSA makes the credits and refunds only to the State. Generally, we do not refund contributions in cash to a State unless the State is not expected to have future liability for contributions under section 218 of the Act.

§ 404.1271 Adjustment of overpayment of contributions.

(a) *General.* If a State pays more than the correct amount of contributions, the State shall adjust the overpayment with the next contribution return filed on which the amount owed equals or exceeds the amount of the overpayment.

(b) *Overpayment due to overreporting of wages.*—(1) *Report to file.* If the overpayment is due to the State's reporting more than the correct amount of wages paid to one or more employees during a reporting period and the overpayment is not adjusted under paragraph (a) of this section, the State shall file a report on the appropriate form showing:

(i) The corrrected wage data as prescribed by SSA; and

(ii) The reason why the original reporting was incorrect.

(2) *Refund or credit of overpayment where section 218(e)(2) of the Act not applicable.* If:

(i) The State collected contributions from employees in excess of the amount of taxes that would have been required under section 3101 of the Internal Revenue Code; and

(ii) The State paid to the Secretary of the Treasury those contributions plus a matching amount in excess of the taxes which would have been required from an employer under section 3111 of the Code; and

(iii) The service of the employees in question would have constituted employment under section 3121(b) of the Code; and

(iv) Section 218(e)(2) of the Act does not apply (see § 404.125(a)),

then the State shall adjust the overpaid contributions under paragraph (b)(1) of this section. With its adjustment the State, where appropriate, shall include on the prescribed form a statement that the employees from whom the excess contributions were collected have not received nor expect to receive a refund of excess contributions under section 6413(c) of the Internal Revenue Code of 1954 (see § 404.1275(b)). Generally, if the State does not include this statement with its adjustment request, we only refund or credit the State for up to one-half of the overpaid amount.

(c) *Refund or credit of overpayment where section 218(e)(2) of the Act applicable.*—(1) *General.* If—

(i) The overreporting of the amount of wages paid to one or more employees during a reporting period(s) is due to a computation of contributions under § 404.1256 for a year or years prior to the year in which the agreement or modification providing for the computation is entered into, or

(ii) The overreporting is due to a failure to compute contributions as required under § 404.1256,

the State shall adjust the overpayment under paragraph (b)(1) of this section. An overpayment due to overreported wages which does not result from the computation of contributions or a failure to compute contributions under § 404.1256 shall also be adjusted by the State under paragraph (b)(1) of this section. If the adjustment of the overpayment results in an underreporting of wages for any employee by the State or any political subdivision, the State shall include with the report adjusting the overpayment a report adjusting each underreporting. If the adjustment of the overpayment does not result in an underreporting of wages for any employee by the State or any political subdivision, the State shall include with the report adjusting the overpayment a statement that the adjustment of the overpayment does not result in any underreporting.

(2) *Amount of refund or credit.* If the State collects excess contributions from employees, the State's claim for refund or credit is limited to the overpaid amounts. (See § 404.1275 relating to

adjustment of employee contributions.) If—

(i) The State collected the correct amount of contributions from employees based on the amount of wages reported and the Forms W–2 issued to the employees show only the amount of contributions actually collected, but the amount of wages reported is being adjusted downward, or

(ii) The State collects excess contributions from employees but Forms W–2 have not been issued for an amount of wages which is being adjusted downward,

the State may claim a refund or credit for the overpaid amounts. Where the State's claim for refund or credit is for the total overpaid amount, the adjustment report shall include a statement that excess contributions have not been collected from employees, or, where excess contributions have been collected, that Forms W–2 have not been issued and that, when issued, they will show the correct amount of employee contributions.

§ 404.1272 Refund or recomputation of overpayments which are not adjustable.

(a) *General.* If a State pays more than the correct amount of contributions or interest to the appropriate Federal Reserve bank or branch (see § 404.1262), and no adjustment in the amount of reported wages is necessary, that State may file a claim for refund or recomputation of the overpayment.

(b) *Form of claim.* No special form is required to make a claim for a refund or recomputation. If a credit is taken under § 404.1271, a claim is not required.

(c) *Proof of representative capacity.* If a report or return is made by an authorized official of the State who ceases to act in an official capacity and a claim for a refund is made by a successor official, the successor official must submit with the claim written evidence showing that he or she has the authority to make a claim for and receive a refund of any contributions paid by the former official. The written evidence is not necessary if the successor official has previously filed one or more reports or returns which contain her or his signature and official title.

§ 404.1275 Adjustment of employee contributions.

(a) *General.* The amount of contributions a State deducts from an employee's remuneration for covered services, or any correction of that amount, is a matter between the employee and the State or political subdivision. The State shall show any correction of an employee's contribution on statements it furnishes the employee under § 404.1226. Where the State issues an employee a Form W–2 and then submits an overpayment adjustment but claims less than the total overpaid amount as a refund or credit, the State shall not correct the previously issued Form W–2 to reflect that adjustment.

(b) *Multiple employment involved.* If a State and one or more of its political subdivisions, or two or more political subdivisions, pay an employee wages during a calendar year but collect an amount of contributions which exceeds the amount of taxes which would have been imposed by section 3101 of the Internal Revenue Code, the employee may claim a credit or refund of the excess contributions by complying with sections 31(b) and 6413(c) of the Internal Revenue Code of 1954.

(c) *Credit or refund of self-employment tax.* An individual who properly reported self-employment income may, because of retroactive coverage under a State agreement of her or his services as an employee, pay more than the maximum amount of tax due for a year or years. If the individual wishes to claim a credit or refund of the overpayment of the tax on the self-employment income, the individual may file a claim under section 6511(d)(5) of the Internal Revenue Code.

§ 404.1276 Reports and payments erroneously made to Internal Revenue Service—transfer of funds.

(a) *General.* In some instances, State or local governmental entities not covered under an agreement make reports and pay contributions to IRS under the Federal Insurance Contributions Act (FICA) procedures applicable to private employers in the mistaken belief that this provides Social Security coverage under section 218 of the Act for their employees. In other instances, entities which are covered under an agreement erroneously report to IRS, or a State or local government employee reports other employees to IRS or reports to IRS as a self-employed individual. Where these reports and payments are erroneously made to IRS, the State may correct the error and obtain coverage under its agreement as described in paragraphs (b) through (f) of this section.

(b) *Political subdivision not included in the State agreement.* We notify the State that if it desires coverage, it may be provided by either a regular modification or an error modification, depending on the circumstances (§§ 404.1215 and 404.1216). In most cases, the State may obtain coverage by a regular modification. If a regular modification cannot be used (e.g., State law does not permit the retroactive effective date which would be desired), the State may use an error modification. The effective date of either modification depends on the facts of the situation being corrected.

(c) *Political subdivision included in the agreement.* If a political subdivision included in the agreement erroneously makes reports and payments under FICA procedures, the State must correct the reportings for periods not barred by the statute of limitations. If the covered entity reported both under the agreement and under FICA procedures, we notify IRS and make necessary corrections in the earnings records. We also advise the State that the entity which reported under FICA procedures should request a refund of payments erroneously made to IRS.

(d) *State and local government employees erroneously reported as employees of individual or as self-employed.*—(1) *Covered entity.* If employees of a covered entity are erroneously reported as employees of an individual or as self-employed, we advise the State that the individual who made the reports should request a refund from IRS for periods not barred by the statute of limitations. We require the State to file correctional reports and returns for any periods open under the State and local statute of limitations.

(2) *Noncovered entity.* We advise the State that the individual who made the reports should request a refund from IRS for the periods not barred by the statute of limitations. If the State wishes to provide coverage, it must submit a modification as discussed in paragraph (b) of this section. If the State does not wish to provide coverage, we void the reports. Amounts reported for periods barred by the statute of limitations remain on the earnings records.

(3) *Filing wage reports and paying contributions.* Generally, the entity or individual that makes the erroneous reports and payments requests the refund from IRS for periods not barred by the statute of limitations. The State files the necesary reports with SSA and pays any contributions due. The reports shall conform to the coverage provided by the agreement to the extent permitted by the statute of limitations. The due date for these reports depends on whether original reports or adjustment reports are involved. Reports and contribution returns for the entire retroactive period of coverage provided by a regular or error modification are due 90 days after the date of execution of the modification. The time limitations for issuing assessments and credits or refunds extend from this due date. Thus,

SSA may issue assessments or credits or refunds for periods barred to refund by IRS. The State may request that reports and payments for the IRS barred periods be considered made under the agreement as described in paragraph (f) of this section.

(f) *Use of transfer procedure.* In limited situations, the State may request that reports and payments the State or a political subdivision (but not an individual) erroneously made under FICA procedures and which have been posted to the employees' earnings record be considered made under the State's agreement. We use a tranfer procedure to do this. The transfer procedure may be used only where (1) the periods are open to assessment under the State and local statute of limitations; (2) the erroneous reports to be transferred are posted to SSA's records; (3) the periods are barred to refund under the IRS statute of limitations; and (4) a refund is not obtained from IRS by the reporting entity.

How Overpayments of Contributions Are Credited or Refunded

§ 404.1280 Allowance of credits or refunds.

If a State pays more than the amount of contributions due under an agreement, SSA may allow the State, subject to the time limitations in § 404.1282 and the exceptions to the time limitations in § 404.1283, a credit or refund of the overpayment.

§ 404.1281 Credits or refunds for periods of time during which no liability exists.

If a State pays contributions for any period of time for which contributions are not due, but the State is liable for contributions for another period, we credit the amount paid against the amount of contributions for which the State is liable. We refund any balance to the State.

§ 404.1282 Time limitations on credits or refunds.

(1) *General.* To get a credit or refund, a State must file a claim for a credit or refund of the overpaid amount with the Secretary before the applicable time limitation expires. The State's claim for credit or refund is considered filed with the Secretary when it is delivered or mailed to the Secretary. Where the time limitation ends on a weekend, legal holiday or Federal nonworkday, we consider a claim timely filed if it is filed on the next Federal workday.

(b) *Time limitation.* Subject to the exceptions in § 404.1283, a State must file a claim for credit ro refund of an overpayment before the end of the latest of the following time period:

(1) Three years, 3 months, and 15 days after the year in which the wages in question were paid or alleged to have been paid; or

(2) Three years after the due date of the payment which included the overpayment; or

(3) Two years after the overpayment was made to the Secretary of the Treasury.

§ 404.1283 Exceptions to the time limitations on credits or refunds.

(a) *Extension by agreement.* The Secretary may extend the applicable time period in § 404.1282 if the State and the Secretary agree in writing to the extension before that time period ends. The extension is effective when the Secretary signs the agreement. A claim for credit or refund filed by the State before the extended period ends is considered filed within the applicable time period in § 404.1282.

(b) *Revision of employee's earnings record.* If the Secretary, under section 205(c)(5)(A), (B), or (E) of the Act, revises a wage entry on an individual's earnings record, a claim for credit or refund of the overpayment resulting from the revision is considered filed within the applicable time limitations in § 404.1282 if (1) the state files the claim before the secretary's decision revising the earnings record becomes final or (2) the State files a claim regarding revision of the earnings record which is erroneous because of fraud.

§ 404.1284 Offsetting underpayments against overpayments.

(a) *State fails to make adjustment for allowance of credit.* If SSA notifies a State that a credit is due the State, and the State does not make the adjustment for the allowance of the credit, SSA offsets the credit against any contributions or interest due. Before making the offset, SSA will give the State an opportunity to make the adjustment.

(b) *State fails to make adjustment for underpayment of contributions or interest due.* If SSA notifies a State that contributions or interest are due, and the State does not pay the contributions or interest, SSA offsets the contributions or interest due against any credit due the State. Before making the offset, SSA will give the State an opportunity to pay the underpayment or interest due.

How Assessments for Underpayments of Contributions Are Made

§ 404.1285 Assessments of amounts due.

A State is liable for any amount due (which includes contributions or interest) under an agreement until the Secretary is satisfied that the amount has been paid to the Secretary of the Treasury. If the Secretary is not satisfied that a State has paid the amount due, the Secretary issues an assessment for the amount due subject to the time limitations in § 404.1286 and the exceptions to the time limitations in §§ 404.1287 and 404.1289. If detailed wage information is not available, the assessment is issued based on the following:

(1) The largest number of individuals whose services are known to be covered under the agreement is used for computation purposes;

(2) The individuals are assumed to have maximum creditable earnings each year;

(3) The earnings are considered wages for covered services; and

(4) The amount computed is increased by twenty percent to insure that all covered wages are included in the assessment.

If the State pays the amount assessed and the assessed amount is later determined to be more than the amount actually due, we issue a refund or credit to that State for the excess amount. When the assessment is issued within the applicable time limitation, there is no time limit on collecting the amount due. An assessment is issued on the date that it is mailed or otherwise delivered to the State.

§ 404.1286 Time limitations on assessments.

Subject to the exceptions to the time limitations in §§ 404.1287 and 404.1289, a State is not liable for an amount due under an agreement unless the Secretary makes an assessment for that amount before the later of the following periods ends:

(1) Three years, 3 months, and 15 days after the year in which the wages, upon which the amount is due, we paid; or

(2) Three years after the date the amount became due.

Where the time limitation ends on a weekend, legal holiday or Federal nonworkday, an assessment is considered timely if the Secretary makes the assessment on the next Federal workday.

§ 404.1287 Exceptions to the time limitations on assessments.

(a) *Extension by agreement.* The Secretary may extend the applicable time limitation in § 404.1286 if the State and the Secretary agree in writing to the extension before that time limitation ends. The extension is effective when the Secretary signs the agreement. If the

Secretary makes an assessment before the extended time limitation ends it is considered to have been made within the applicable time limitation in § 404.1286.

(b) *The 365-day period.* If a State files a report before the applicable time limitation in § 404.1286 (or any extension under paragraph (a) of this section) ends and makes no payment or pays less than the correct amount due, the Secretary may assess the State for the amount due after the applicable time limitation has ended. However, the Secretary must make the assessment no later than the 365th day after the day the State makes payment to the Secretary of the Treasury. The Secretary can only make this assessment on the wages paid to the reported individuals for the reported periods. The Secretary, in making this assessment, credits the amount paid by the State on these individuals' wages for those reported periods.

(c) *Revision of employee's earnings record.* If, under section 205(c)(5) (A) or (B) of the Act, the Secretary credits wages to an individual's earnings record, he or she may make an assessment for any amount due on those wages before the Secretary's decision on revising the individual's earnings record becomes final. (Sections 404.822(c) (1) and (2) describe the time limits for revising an earnings record where an individual has applied for monthly benefits or a lump-sum death payment or requested that we correct his earnings record.)

(d) *Overpayment of contributions on wages of employee having other wages in a period barred to assessment.* If the Secretary allows a State a credit or refund of an overpayment for wages paid or alleged to have been paid an individual in a calendar year but the facts upon which the allowance is based establish that contributions are due on additional other wages paid that individual in that year which are barred to assessment, we may make an assessment notwithstanding the periods of limitation in § 404.1286. The assessment, however, must be made before or at the time we notify the State of the allowance of the credit or refund. In this situation, the Secretary reduces the amount of the State's credit or refund by the assessed amount and notifies the State accordingly. For purposes of this paragraph, the assessment shall only include contributions and not interest as provided for in section 218(j) of the Act.

Example: The State files an adjustment report timely to correct an error in the amount reported as wages for an employee. The correction reduces the employee's wages for the year to less than the maximum amount creditable. The employee has other earnings in the same year which were not reported because of the previously reported maximum amounts. The applicable time limitation for assessing contributions on wages for the year has expired before the credit was allowed. The Secretary may assess for the underpaid contributions but no later than the date of the notice to the State that its claim for a credit had been allowed.

(e) *Evasion of payment.* The Secretary may make an assessment of an amount due at any time where the State's failure to pay the amount due results from the fraudulent attempt of an officer or employee of the State or political subdivision to defeat or evade payment of that amount.

§ 404.1289 Payment after expiration of time limitation for assessment.

The Secretary accepts wage reports filed by a State even though the applicable time limitation described in § 404.1286 (or as the time limitation is extended under § 404.1287) has expired, provided:

(a) The State pays to the Secretary of the Treasury the amount due on the wages paid to employees performing services in the coverage group in the calendar years for which the wage reports are being made; and

(b) The State agrees in writing with the Secretary to extend the time limitation for all employees in the coverage group in the calendar years for which the wage reports are being made.

In this situation, the time period for assessment is extended until the Secretary notifies the State that the wage reports are accepted. Where the State pays the amount due within the time period as extended under this section, the amount shall not include interest as provided for in section 218(j) of the Act.

Secretary's Review of Decisions on Credits, Refunds, or Assessments

§ 404.1290 Review of decisions by the Secretary.

(a) *Delegation of authority.* The Secretary, who has the authority under section 218(s) of the Act to review decisions on credits, refunds or assessments, has delegated this authority to the Commissioner of Social Security.

(b) *What decisions will be reviewed.* A State, under section 218(s) of the Act, may request review of an assessment of an amount due from a State, an allowance to the State of a credit or refund of an overpayment, or a disallowance of the State's claim for credit or refund of an overpayment. The Commissioner may review regardless of whether the amount assessed has been paid or whether the credit or refund has been accepted by the State. Prior to the Commissioner's review, however, an assessment, allowance or disallowance may be reconsidered under §§ 404.1291–404.1293.

§ 404.1291 Reconsideration.

After the State requests review of the assessment or allowance or disallowance of a credit or refund, and prior to the Commissioner's review, that decision will be reconsidered, and affirmed, modified, or reversed. We notify the State of the reconsidered determination and the basis for it. The State may request the Commissioner to review this reconsidered determination under § 404.1294(b). In limited situations, SSA and the State may agree that the reconsideration process should be waived, e.g., where a major policy is at issue.

§ 404.1292 How to request reconsideration.

(a) *Form of request.* No particular form of request is required. However, a request for reconsideration must:

(1) Identify the assessment, allowance or disallowance being questioned;

(2) Describe the specific issue on which the reconsideration is requested;

(3) Contain any additional information or argument relevant to that issue; and

(4) Be signed by an official authorized to request the reconsideration on behalf of the State.

(b) *Submitting additional material.* A State has 90 days from the date it requests reconsideration to submit additional evidence it wishes considered during the reconsideration process. The time limit for submitting additional evidence may be extended upon written request of the State and for good cause shown.

§ 404.1293 Time for filing request for reconsideration.

(a) *Time for filing.* The State must file its request for reconsideration within 90 days after the date of the notice of assessment, allowance, or disallowance. Usually, the date of the request for reconsideration is considered the filing date. Where the 90-day period ends on a weekend, legal holiday or Federal nonworkday, a request filed on the next Federal workday is considered as timely filed.

(b) *Extension of time.* For good cause shown, and upon written application by a State filed prior to the expiration of the time for filing a request for reconsideration, additional time for filing the request may be allowed.

§ 404.1294 Notification to State after reconsideration.

(a) The State will be notified in writing of the reconsidered determination on the assessment, allowance, or disallowance, and the basis for the determination.

(b) If the State does not agree with the reconsidered determination, it has 90 days from the date of notice of the reconsidered determination to request the Commissioner to review that determination. The rules on what the request should contain and the time for filing the request are the same as in §§ 404.1292 and 404.1293.

§ 404.1295 Commissioner's review.

Upon request by the State, the Commissioner will review the reconsidered determination (or the assessment, allowance or disallowance as initially issued if reconsideration is waived under § 404.1291). If necessary, the Commissioner may request the State to furnish additional evidence. Based upon the evidence considered in connection with the assessment, allowance or disallowance and any additional evidence submitted by the State or otherwise obtained by the Commissioner, the Commissioner affirms, modifies, or reverses the assessment, allowance or disallowance.

§ 404.1296 Commissioner's notification to the State.

The Commissioner notifies the State in writing of the decision on the assessment, allowance, or disallowance, and the basis for the decision.

How a State May Seek Court Review of Secretary's Decision

§404.1297 Review by court.

(a) *Who can file civil action in court.* A State may file a civil action under section 218(t) of the Act requesting a district court of the United States to review any decision the Commissioner makes for the Secretary under section 218(s) of the Act concerning the assessment of an amount due, the allowance of a credit or refund, or the disallowance of a claim for credit or refund.

(b) *Where the civil action must be filed.* A State must file the civil action in the district court of the United States for the judicial district in which the State's capital is located. If the civil action is brought by an interstate instrumentality, it must file the civil action in the district court of the United States for the judicial district in which the instrumentality's principal office is located. The district court's judgment is final except that it is subject to review in the same manner as judgments of the court in other civil actions.

(c) *No interest on credit or refund of overpayment.* SSA has no authority to pay interest to a State after final judgment of a court involving a credit or refund of an overpayment made under section 218 of the Act.

§404.1298 Time for filing civil action.

(a) *Time for filing.* The State must file the civil action for a redetermination of the correctness of the assessment, allowance or disallowance within 2 years from the date the Commissioner mails to the State the notice of the decision under §404.1296. Where the 2-year period ends on a Saturday, Sunday, legal holiday or Federal nonwork day, an action filed on the next Federal workday is considered timely filed.

(b) *Extension of time for filing.* The Commissioner, for good cause shown, may upon written application by a State filed prior to the end of the two-year period, extend the time for filing the civil action.

§404.129 Final judgments.

(a) *Overpayments.* Payment of amounts due to a State required as the result of a final judgment of the court shall be adjusted under §§404.1271 and 404.1272.

(b) *Underpayments.* Wage reports and contribution returns required as the result of a final judgment of the court shall be filed under §§404.1237 through 404.1251. We will assess interest under §404.1265 where, based upon a final judgment of the court, contributions are due from a State because the amount of contributions assessed was not paid by the State or the State had used an allowance of a credit or refund of an overpayment.

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Establishment of Airport Radar Service Areas; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-7 and 85-AWA-10]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Dallas Love Field, Dallas, TX, and Dulles International Airport, Washington, DC. Each location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATES: 0901 UTC, July 3, 1986, for Dallas Love Field, Dallas, TX, and 0901 UTC August 28, 1986, for Dulles International Airport, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103, and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103, and 105) to establish the general definition and operating rules for an ARSA (50 FR 9552), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 11 ARSA's as published in the **Federal Register** on November 1, 1985 (50 FR 45718), 11 ARSA's on December 9, 1985 (50 FR 50254), 12 ARSA's on February 7, 1986 (51 FR 4872), 11 ARSA's on March 10, 1986 (51 FR 8284), 6 ARSA's on April 7, 1986 (51 FR 11886), and 7 ARSA's on May 5, 1986 (51 FR 16610), in the implementation of this NAR recommendation.

On September 30, 1985, the FAA proposed to designate ARSA's at Dallas Love Field under Airspace Docket No. 85-AWA-7 (50 FR 39822) and at Dulles International Airport under Airspace Docket No. 85-AWA-10 (50 FR 39822). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposals to the FAA. Additionally, the FAA has held informal airspace meetings for each of the proposed airports. In response to public comments received the FAA has modified several of the proposals.

Related Rulemaking

In addition to the airports addressed here and those previously designated or delayed, the FAA published proposed ARSA designations for 2 additional airports on September 30, 1985 (50 FR 39822).

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designations. Additionally, several of the comments on individual designations are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposals at particular locations.

ARSA Program Comments

Comments received from the Aircraft Owners and Pilots Association (AOPA) and several others claimed that the notification for some of the informal airspace meetings held for some of the candidate airports was indadequate. The schedule of the meetings was published in the Notice of Proposed Rulemaking (NPRM) on September 30, 1985 (50 FR 39822). Additionally, the FAA sent announcements to individuals, fixed-base operators, aviation user organizations, and to the news media organizations in each airport's area. The ARSA program has received considerable coverage in newsletters and official publications of aviation organizations and the schedule of the meetings mailed to members. Furthermore, a 213-day comment period was provided for Airspace Docket No. 85-AWA-7, and a 137-day comment period was provided for Airspace Docket No. 86-AWA-10 in which the public could make comment to the public docket on the proposals. For the above reasons the FAA believes the opportunity was sufficient to permit full public comment on the proposals.

AOPA and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRSA participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase from the present levels to

100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additional manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRSA program is relatively low at some of the candidate locations. However, this is in large part due to the controllers' walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

AOPA claimed the staffing at one facility more than doubled in the year prior to implementation of their ARSA. The facility's authorized staffing of 28 controllers did not change. In the facility in question, on January 1, 1985, there were 27 controllers on board but in January 1986, there were the authorized 28 on board. The FAA finds the AOPA claim to be without merit.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all classes of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

The SSA claims the FAA is changing the criteria that an operating control tower is the only requirement for an airport to be eligible for an ARSA. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating control tower served by a level III, IV, or V Radar Approach Control Facility.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in VFR conditions rests with the pilot. While the FAA agrees that such is the case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that establish that level of responsibility.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designate locations.

Numerous commenters also objected to the proposals based upon their belief that air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that estimates of delays were quite preliminary, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case at the three locations where ARSA has been in effect for an appreciable period, and is the trend at those locations more recently designated.

AOPA discounted the FAA delay estimates claiming that they were based upon a standard ARSA. The FAA does not agree. FAA's preliminary delay estimates were based upon the ARSA proposed for the individual locations, whether standard or modified.

Several commenters questioned the validity of FAA's estimates of the time savings expected to be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. FAA wants to reemphasize that its estimates of expected savings in time and money which will result from the greater flexibility allowed air traffic controllers in handling traffic within an ARSA are quite preliminary. These estimated savings may or may not offset the delay anticipated at some sites after initial establishment of an ARSA, but are expected to provide overall time savings to all traffic, IFR as well as VFR, which will exceed delay as controllers gain experience with ARSA operating procedures.

Other commenters questioned the operating cost and passenger time values used to calculate delay costs and time savings. The values used are weighted averages of overall activity within an aircraft category for various aircraft types, and represent a typical mix of air passengers. FAA recognizes that for some specific operations actual operating cost and passenger time values will exceed the average values used, while in other cases, the actual values will be less. However, weighted averages represent the most appropriate and equitable measure to use when assessing *overall* impacts. Further, because the delay resulting from implementing ARSA procedures is expected to be transitory and efficiency improvements in the movement of traffic are ultimately expected to result, those operators whose variable cost and passenger time values exceed the averages used in the regulatory evaluation may in fact realize above average benefits.

AOPA claimed that at least half the number of nonradio equipped (NORDO) aircraft in the United States, or 20,900 aircraft, would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. This is well in excess of the number estimated by the FAA. The FAA does not agree with the AOPA conclusion because each airport receiving ARSA designation has an

airport traffic area requiring two-way radio communications at the primary airport at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

SSA claimed that some FAA field personnel had indicated that a transponder would be needed to enter an ARSA, and thus, the cost to implement the program was grossly underestimated. An operable two-way radio is the only avionics required for flight in an ARSA. A transponder is not required and the costing estimates are correct.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression of all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, SSA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested the VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

SSA claimed that the grouping of ARSA's such as that adopted in the Sacramento Valley area would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question, between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR § 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR § 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages participation which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

SSA, and other commenters, claimed that designation of these ARSA's may negatively impact cross-country glider flights operating out of airports 20 miles, or more, from these ARSA's. While some deviations may be required, the FAA does not agree that the minor deviations that may be required will result in negatively impacting cross-country glider operations.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an enviromental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and

TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, SSA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this group of candidates was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA. After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within that criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has circulated proposed criteria for future application. However, whatever the nature of any criteria eventually adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile description rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

AOPA, SSA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

AOPA and SSA objected to the ARSA's based upon a claim that an insufficient amount of pilot education had been accomplished by the agency. AOPA cited South Bend, IN, as an example where there were 19 days between the informal airspace meeting and the closing of the comment period, and SSA claimed that the comment period and a single informal airspace meeting were insufficient. The FAA does not agree. The example cited by AOPA and SSA referenced the comment period, not the total period to provide for pilot education. Pilot education will continue after the comment period has ended and beyond the effective data of the ARSA's. Further user meetings will be held for each designated location following implementation of the ARSA's.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

AOPA commented that FAA underestimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the **Federal Register** NPRM (50 FR 39822, 39824, September 30, 1985). AOPA's comments assumed that every active pilot would be notified at least once. However, FAA intends to mail

individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. The total one-time cost of distributing Letters to Airmen and the Advisory Circular was also prorated to reflect only those sites included in the notice, and both total and prorated cost estimates were provided in the notice. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime cost will be incurred by regional or headquarters personnel.

SSA faulted the FAA for using the aviation safety seminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

SSA, and other commenters questioned whether the FAA considered the impact of the proposed ARSA's on individuals in making its Regulatory Flexibility Determination, and whether the threshold for determining if a significant economic impact on a substantial number of small entities had been exceeded because some small entities might be impacted. The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. Individual citizens, as such, are not considered small entities under the terms of the RFA; however, an individual whose business is a sole proprietorship would be considered a small entity under the RFA. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, a substantial number of small entities, defined in FAA Order 2100.14, "Regulatory Flexibility Criteria and Guidance," as more than one-third (but not less than eleven) of the small entities subject to a proposed rule, clearly will not be impacted by this rulemaking. Therefore, adoption of this final rule will not result in a significant economic impact on a substantial number of small entities.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action if it should ever become a reality would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association (ALPA) concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association (ATA) endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Particular Locations

Dallas Love Field, Dallas, TX

AOPA claimed that numerous towers are located southeast of the Love Field inner core and nonparticipants will be unable to maintain obstacle clearance in this area. The vast majority of these towers are located in the inner core or surface area of the ARSA and within the existing airport traffic area. Participation in this surface area has been and will continue to be mandatory. For this reason, the FAA does not agree. Additionally, the general issue of obstacle clearance has been addressed above.

One commenter faulted the FAA notification for the informal airspace meeting. The notifications for the Dallas informal airspace meeting were mailed on February 3, 1986, which was 77 days in advance of the meeting. It is incumbent on all persons holding airmen certification to keep the FAA advised of current addresses in order for any mailings to be effective.

Other comments received criticized the ARSA program in general terms; these comments have been addressed earlier in this document under "ARSA Program Comments."

The local AOPA representative at the informal airspace meeting stated that he believed the Dallas ARSA proposal was sound and would be an improvement over the present TRSA.

The ATA representative expressed confidence that the ARSA for Dallas Love Field was a good idea and would enhance safety.

Dulles International Airport, Washington, DC

One commenter claimed that considerable additional costs would be incurred by NORDO aircraft being required to circumnavigate the ARSA. The FAA does not agree. Only minor altitude adjustments or horizontal deviations may be incurred from those presently required. Also, means exist to accommodate any deviations by NORDO aircraft through prior coordination with the facility.

AOPA and others claimed that NORDO aircraft based at Glascock Field would have to install two-way radios at considerable expense to operate in the ARSA. While it is true the aircraft owners may, of their own choosing, elect to install radios in their aircraft, the FAA does not find this to be necessary. As discussed above, means exist to coordinate NORDO operations with the controlling facility.

Several commenters claimed that traffic circumnavigating the ARSA to the east would be forced to navigate through a narrow corridor between the ARSA and the Washington, DC, TCA. The distance between the ARSA and TCA is approximately one mile narrower than that presently existing between the TCA and the Dulles TRSA. Additionally, the vertical dimension of the ARSA in this area is less than 1,500 feet, allowing pilots to avoid compression with minor altitude adjustments. For these reasons, the FAA does not agree that compression will occur. The issue of compression has also been addressed in general terms earlier in this document.

AOPA claimed the cutout in the vicinity of the Bull Run Mountains has an unidentifiable boundary and suggested this boundary be moved east and aligned parallel to a north-south road in this area. Although the FAA attempts to use existing landmarks as much as is practical, using this road as a boundary is not practical due to the excessive airspace that would be eliminated from the ARSA.

AOPA claimed the ARSA will either restrict or discourage instrument training at Dulles Airport. The FAA does not agree. Although some gains in traffic may be realized by Dulles Approach Control, the increase should not be so significant that it would adversely affect instrument traffic. All instrument training traffic is now required to contact approach control for an approach clearance and would continue to do so.

AOPA and others claimed that aircraft overflying the area would need to circumnavigate the Dulles ARSA incurring additional flying time and expense. The FAA does not agree. The figures used by AOPA are for both those aircraft participating in the present TRSA and those circumnavigating the terminal airspace. Although the TRSA was voluntary, the participation in TRSA by overflights was quite high. Additionally, the upper altitude limit of the ARSA will be significantly lower than that of the TRSA and aircraft could choose to overfly with little or no altitude adjustment. For these reasons, the FAA does not agree that additional flying time and expense will be incurred.

SSA claimed that although normal towing, training and practice areas for sailplanes would not be impacted, their cross-country routes may be negatively impacted by the ARSA. As stated above, the FAA will continue to monitor these operations and, if necessary, take action to lessen these impacts.

Other commenters spoke against the ARSA in general. These comments have been addressed above under general comments.

ALPA and ATA voiced support of the Dulles ARSA stating they believe it will enhance safety.

Other Comments

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments which adderssed information presented in the Regulatory Evaluations of the notices for the dockets included in this final rule have been discussed above. A detailed Regulatory Evaluation of this final rule has been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentialy transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM, and those comments which addressed it have been discussed above. For the reasons presented in the NPRM and clarified in the Discussion of Comments, FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Dallas Love Field, TX, and Dulles International Airport, Washington, DC. Each location designated is a public airport at which a

nonregulatory Terminal Radar Service Area is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

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; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 105(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

Dallas Love Field, TX [New]

The airspace extending upward from the surface to and including 4,500 feet MSL within a 5-mile radius of the Dallas Love Field (lat. 32°50'49"N., long. 96°51'05"W.) excluding that airspace within the Dallas-Forth Worth, TX, (DFW) Terminal Control Area (TCA), and excluding that airspace extending clockwise from a line bearing 340° from lat. 32°54'25"N., long. 96°51'20 W.", to a line bearing 136° from lat. 32°54'25"N., long. 96°51°20"W., and that airspace extending upward from 2,000 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the airport extending clockwise from the point where the 10-mile radius intersects the DFW TCA northwest of the Dallas Love Field to the 340° bearing from lat. 32°54'25"N., long. 96°51'20"W., and that airspace extending upward from 3,000 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the airport extending clockwise from a line bearing 340° from lat. 32°54'25"N., long. 96°51'20"W., to a line bearing 136° from lat. 32°54'25"N., long. 96°51'20"W., and that airspace extending upward from 2,000 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the airport clockwise from a line bearing 136° from lat. 32°54'25"N., long. 96°51'20"W. to a line bearing 135° from lat. 32°51'45"N., long. 96°54'30"W., excluding that airspace within the DFW TCA.

Dulles International Airport, Washington, DC [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Dulles International Airport (lat. 38°56'39"N., long 77°27'26"W.) and lying west of a line extending from the 048° bearing from the airport on the 5-mile arc to the 130° bearing from the airport on the 5-mile arc, and upward from the surface to 3,000 feet MSL east of that line, and that airspace extending upward from 1,700 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport from the 149° bearing from the airport clockwise to the 038° bearing from the airport, excluding the airspace beyond 8 miles between the 234° bearing from the airport clockwise to the 272° bearing from the airport, and that airspace extending upward from 1,700 feet MSL upward to and including 3,000 feet MSL within a 10-mile radius of the airport from the 038° bearing from the airport clockwise to the 149° bearing from the airport, excluding that airspace east of the west boundary of the Washington, DC, Terminal Control Area.

Issued in Washington, DC, on May 22, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-11991 Filed 5-28-86; 8:45 am]

BILLING CODE 4910-13-M.

Federal Register

Thursday
May 29, 1986

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 779, 780, 783, 784, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Fish and Wildlife Resources Information and Plan; Protection of Fish, Wildlife, and Related Environmental Values; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 779, 780, 783, 784, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Fish and Wildlife Resources Information; Fish and Wildlife Plan; Protection of Fish, Wildlife, and Related Environmental Values

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to amend its rules with respect to fish and wildlife resource information and planning requirements, and standards applied to the protection of fish and wildlife values. The purpose of this proposal is to comply with recent court decisions and to revise and clarify the rules. The revised rules would amend reinstated fish and wildlife permitting requirements and would provide added protection to endangered or threatened species.

DATES:

Written comments

OSM will accept written comments on the proposed rule until 5 p.m. eastern daylight time on August 7, 1986.

Public hearings

Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Knoxville, Tennessee, at 9:30 a.m. local time on July 31, 1986. Upon request, OSM also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m. eastern daylight time on July 7, 1986.

ADDRESSES:

Written comments

Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining, Administrative Record, Room 5315–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings

Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings

Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Charles H. Wolf, Office of Surface Mining, U.S. Department of the Interior, Ten Parkway Center, Pittsburgh, Pennsylvania 15220; telephone: 412–937–2896.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates, and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **ADDRESSES"**). The times, dates, and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Charles Wolf (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 5:00 p.m. eastern daylight time on July 10, 1986. If no one has contacted Mr. Wolf to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions for clarification of issues, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) sets forth general regulatory requirements governing surface coal mining operations and surface impacts of underground coal mining. Sections 515(b)(24) and 516(b)(11) of the Act, 30 U.S.C. 1265(b)(24) and 1266(b)(11), require that surface coal mining and reclamation operations shall:

> to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

In addition, Section 515(b)(2) of the Act, 30 U.S.C. 1265(b)(2), requires that the operator restore mined land to a condition capable of supporting the uses which it was capable of supporting prior to any mining or higher or better uses. Section 516(b)(10) imposes that same requirement on underground mines with such modifications as is necessary to accommodate distinct differences.

To implement the requirements of these provisions and the provisions of other statutes and regulations protecting fish and wildfife resources, OSM promulgated 30 CFR 779.20, 780.16, 783.20, 784.21, 816.97, and 817.97 on March 13, 1979 as a part of the permanent regulatory program (44 FR 15356, 15359, 15364, 15369, 15410, 15437).

Representatives of the coal industry, the States of Virginia and Illinois, and certain environmental groups challenged OSM's previous permitting rules as legally inconsistent with the Act, *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C., 1980). There, the plaintiffs argued that there was no statutory authorization in

Sections 507, 508, or 515(b)(24) of the Act to require fish and wildlife information in the permit application or the reclamation plan. Since sections 507 and 508 of the Act gave the regulatory authority power to decide on other necessary requirements, plaintiffs contended that the challenged rules usurped the role Congress had delegated to the States by creating a uniform system of permit-data requirements, which left no flexibility for consideration of State-specified conditions.

The district court, while sustaining the Secretary's general authority to promulgate additional requirements in response to the separate industry challenge, remanded 30 CFR 779.20 and 780.16, which provided permit requirements for fish and wildlife resources information on the basis that there was no statutory authority in this specific case. See *In re: Permanent Surface Mining Regulation Litigation* No. 79–1144, slip op. at 39 (D.D.C. February 26, 1980). OSM subsequently suspended the remanded rules (45 FR 51547, August 4, 1980).

The coal industry appealed the District Court decision sustaining the Secretary's authority to require additional information. The United States Court of Appeals for the District of Columbia Circuit, sitting *en banc*, sustained Judge Flannery's decision that such a specific statutory reference is not necessary. *In re: Permanent Surface Mining Regulation Litigation*, 653 F.2d 514, 527 (1981).

Because the Appeals Court opinion specifically noted that it did not address the district Court's decision remanding the fish and wildlife rules (653 F.2d at 517), OSM did not revise the fish and wildlife information requirements during regulatory reform efforts in 1983. Therefore, the suspension of the 1979 regulations remained in effect.

In his March 5, 1984 District Court brief, the Secretary asked the court to vacate its earlier judgement in light of the Appeals Court opinion so that fish and wildlife permit requirements could be promulgated. *In Re: Permanent Surface Mining Regulation II, Government Brief, p. 130, N. 78.*

The District Court on October 1, 1984, held that the effect of the Court of Appeals decision was to reinstate the suspended regulations and ordered that 30 CFR 779.20 and 780.16 be reinstated until a new rulemaking considered the permitting requirement for fish and wildlife. See *In re: Permanent Surface Mining Regulation Litigation* II, No. 79–1144 (D.D.C., 1984) slip op. at p. 58. On February 21, 1985, OSM reinstated 30 CFR 779.20, 780.16, 783.20, and 784.21 (50 FR 7274). This proposal would amend these reinstated rules.

On June 30, 1983, OSM revised §§ 816.97 and 817.97 (48 FR 3012) to minimize duplication between regulations and to ensure that they were well-reasoned. On October 1, 1984, portions of these rules were remanded to modify requirements pertaining to endangered or threatened species and the protection of wildlife from toxic ponds. *Id.* This proposal would amend these rules in response to the court's decision.

Existing §§ 779.20 and 783.20 require fish and wildlife resources information to be included in permit applications. They are essentially the same except § 779.20 refers to surface mining and § 783.20 to underground mining. Existing §§ 780.16 and 784.21 require a plan for the protection and enhancement of fish and wildlife values to be included in permit applications. They are essentially the same except that § 780.16 refers to surface mining and § 784.21 refers to undergound mining. Furthermore, existing §§ 816.97 and 817.97 provide performance standards for the protection of fish, wildlife, and related environmental values. They are essentially the same except that § 816.97 refers to surface mines and § 817.97 refers to underground mines. To simplify this preamble, OSM will discuss proposed changes to §§ 779.20, 780.16, and 816.97 with the understanding that the discussion will also apply to the corresponding proposed §§ 783.20, 784.21 and 817.97. Where proposed changes are not the same, differences will be noted. OSM solicits comments on whether or not there are distinct differences between surface and underground mining that would justify differences in these regulations.

III. Discussion of Proposed Rules

A. Fish and Wildlife Permitting Requirements

Existing § 779.20 requires pre-mining fish and wildlife resources information based on published data, written guidance from agencies, and a site-specific study. Existing § 780.16 requires that each permit application contain a fish and wildlife plan that details how fish and wildlife resources will be protected and enhanced. OSM suspended §§ 779.20 and 780.16 on August 4, 1980 [45 FR 51547] and reinstated these same requirements on February 21, 1985 [50 FR 7274]. During the period when the Federal rules were suspended State regulatory authorities could omit or, if desired, adopt special permitting rules pertaining to fish and wildlife. OSM specifically requests comments on whether the experiences and events of the past four and one-half years when the Federal rules were suspended justify Federal regulation in this subject area and, if so, whether it is necessary to require both premining resource information and protection and enhancement plans.

In this rulemaking OSM is proposing to amend the fish and wildlife permitting requirements that were reinstated on February 21, 1985. Proposed § 780.16 would revise and incorporate the requirements of the existing §§ 779.20 and 780.16. Proposed § 780.16(a) would replace the resource information requirements of existing § 779.20 and proposed § 780.16(b) would replace the planning requirements of existing § 780.16. Proposed § 780.16(a) would use the paragraph heading "Resource information" and proposed § 780.16(b) would use the paragraph heading "Protection and enhancement plan." Existing § 779.20 is proposed to be deleted.

OSM requests comments on whether fish and wildlife information and planning requirements can be effectively addressed under one section as proposed or should remain as separate and distinct sections as found in the existing rules under Parts 779 and 780.

Resource Information

Existing § 779.20(a) provides that each application shall include a study of fish and wildlife and their habitats within the proposed mine plan area and portions of the adjacent areas where effects on such resources may reasonably be expected to occur. Similarly, proposed § 780.16(a) would require fish and wildlife information to be included in each application for the permit area and adjacent areas. OSM has substituted the term permit area for mine plan area because mine plan area is no longer defined in § 701.5 (Definitions) and has been, with limited exceptions, deleted from the rules. Both permit area and adjacent area are defined in § 701.5.

Existing § 779.20(a) requires each application to include a study of fish and wildlife and their habitats whereas proposed § 780.16(a) would require each application to include fish and wildlife resource information. This change is proposed because the word "study" generally implies a need for site-specific information. However, even under the previous rule, the level of site-specific information required could vary considerably. In the preamble to the previous rule, the following comment response appeared:

The Office agrees that a minimum amount of site-specific information almost invariably is required to determine the applicability of secondary information to specific sites . . . However, the Office has concluded that the regulations as written provide adequate discretion for the regulatory authority to determine levels of detail for studies based on the adequacy of existing information. (44 FR 15039, March 13, 1979).

Upon further analysis, OSM now does not believe that site-specific information will always be needed. In many instances existing information is available to accurately and adequately describe fish and wildlife and an area in order to protect important species and design a fish and wildlife enhancement plan. This information is most often available from State or Federal fish and wildlife agencies. Many States have completed or are in the process of completing computer-based fish and wildlife baseline data systems with detailed inventory information on plant and animal species, habitat requirements, site locations, and life cycles. In many instances this information will be sufficient to provide species protection and to develop habitat restoration and enhancement plans. Many State fish and game agencies already have developed guidance on vegetation species, use of waters, optimal terrain, use of wooded and open areas, etc, for wildlife enhancement in general and for certain species. Site-specific information such as the number of white-footed mice per hectare or number of deer per hectare would not, under most circumstances, result in more definitive wildlife protection and enhancement measures than one based on existing data that includes habitat types and species occurrence in the area.

OSM recognizes that fish and wildlife agencies may not always have sufficient fish and wildlife resource information available to develop a protection and enhancement plan. Proposed § 780.16(a) provides the regulatory authority with the authority to require site-specific studies if sufficient information is not available on which to base protection and enhancement measures. The word "information" is used in the proposed rule to more accurately account for those situations where data for secondary sources is sufficient to satisfy the requirements of the regulatory authority and State and Federal agencies with statutory responsibilities for fish and wildlife. The authority for regulatory agencies to require site-specific studies has been retained in the proposed rule but the restriction that a study be the only means to achieve compliance would be removed.

Existing § 779.20(b) requires the applicant to contact the regulatory authority prior to initiating fish and wildlife studies to determine what fish and wildlife information will be required. The proposed rule would delete this provision because prior contact with the regulatory authority may not be necessary or desirable in every State. Such a procedure of case-by-case determinations may be workable in States where there is a small number of large mines, as in the Western United States. However, Eastern States with large numbers of small mines may find it more appropriate to set forth in either rules or guidance documents their requirements for fish and wildlife information. For example, the Kentucky Department of Fish and Wildlife Resources, in conjunction with the Kentucky Department of Surface Mining Reclamation and Enforcement has published guidelines to assist coal mine operators to prepare the fish and wildflife sections of permit applications (1982, Technical Reclamation Memorandum #3). These guidelines establish minimum information requirements and identify situations when contact with the regulatory authority and Department of Fish and Wildlife is recommended. Such flexibility is needed in the Federal rules to enable State to continue to develop regulatory programs that are administratively efficient and within budget and personnel constraints while still protecting important fish and wildlife values.

Existing § 779.20(c) requires the regulatory authority, in consultation with appropriate State and Federal fish and wildlife agencies and other agencies with similar responsibilities to determine the level of detail and the areas of such studies according to published data, written guidance from agencies, and site-specific information. Proposed § 780.16(a) continues to provide for the regulatory authority to make this determination; however, the decision would only have to be in accordance with any written guidance provided by State and Federal fish and wildlife agencies and would not necessarily be based upon site-specific studies. Written guidance may be provided by class of application (i.e. geographic location and land use) or by individual application. The rule recognizes the regulatory authorities' central role in making the decision and the expertise and statutory responsibilities of fish and wildlife agencies regarding the scope and level of information submitted in applications.

Upon receipt of an administratively complete application, written notification of the permit applicant's intention to mine would be provided by the regulatory authority to State and Federal fish and wildlife agencies in accordance with § 773.13(a)(3). Fish and Wildlife agencies could provide written comments to the State regulatory authority based on their knowledge of fish and wildlife resources in the area of the proposed operation. The Department of the Interior, Fish and Wildlife Service, has expressed concern that in a few States it is unable to provide meaningful comments because the permit application is on file in locations remote to the Service's Regional or Field Office and the notice required by § 773.13(a)(3) may not contain sufficient information. In response to this concern, OSM is proposing that paragraph (c) be included in § 780.16 which would require that, upon request, the regulatory authority shall provide the resource information and the protection and enhancement plan to the U.S. Department of the Interior, Fish and Wildlife Service's Regional or Field Office and that the information be provided within 10 days of receipt of the request. In most States, the location of the permit application is easily accessible to the Service's review and it would be unnecessary to provide this material. Mine operators would be expected to comply with the resource information requirements in State program rules and technical guidance documents, and all other requests for resource information from regulatory authority.

Proposed § 780.16(a) would go beyond the requirements of existing § 779.20 by setting specific minimum requirements for resource information that must be included in each application. It would establish a minimum standard in the event that no guidance has been established by fish and wildlife agencies. Proposed paragaph (a)(1) would require the reporting of any listed and proposed threatened, or endangered species of plants or animals and their critical habitats listed under Federal or State statutes. Proposed paragraph (a)(2) would require the reporting of species such as eagles, migatory birds, or other animals identified as requiring special protection under State and Federal law. Proposed paragraph (a)(3) would provide the same requirement for habitats of unusually high value for fish and wildlife. These habitats include such areas as important streams, wetlands, riparian areas, cliffs, migration routes, and areas offering special shelter or protection, and reproduction and wintering areas.

Information on other habitats and species would be required if the regulatory authority after consultation with appropriate State and Federal agencies with fish and wildlife responsibilities deemed it necessary. OSM's revision of the rule is intended to ensure the minimum reporting of resource information on species and habitats with special significance. Resource information on species and habitats of lesser importance could be required at the discretion of the regulatory authority or upon guidance from the State and Federal agencies with statutory responsibilities for fish and wildlife.

Protection and Enhancement Plan

Existing § 780.16 is titled "Fish and Wildlife Plan." To describe the same subject content in the proposed rule, OSM would adopt the paragraph heading "Protection and enhancement plan" because it more accurately conveys the purpose of the plan and logically fits under the proposed section heading "Fish and wildlife information."

Existing § 780.16(a)(1) requires a plan in each permit application that states how the applicant will minimize disturbances and adverse impacts on fish and wildlife and related environmental values and enhance those resources where practicable. Proposed § 780.16(b) would retain this requirement with the exception that there would be no specific provision in the rules similar to existing § 780.16(a)(2) that would provide the applicant an opportunity to state that enhancement of fish and wildlife resources can not be practicably achieved. OSM would delete this provision because it believes that enhancement of fish and wildlife values is practicable for almost all postmining land uses and that a regulatory authority can judge an applicant's response without a statement of reasons why enhancement is not practicable.

Existing § 780.16(a) and proposed § 780.16(b) both require the protection and enhancement measures to be consistent with performance standards for the protection of fish, wildlife, and related environmental values found in existing § 816.97. These performance standards address endangered and threatened species; bald and golden eagles; protection measures involving powerlines, roads, physical barriers, and wetlands; and the selection of plant species for wildlife enhancement.

Proposed § 780.16(b) does not include the language of the existing rule whereby the plan is required to include the mine plan area and portions of the adjacent area as determined by the regulatory authority. Such language was thought unnecessary since proposed § 780.16(a) requires resource information for the permit area and adjacent areas and that this same geographic area would also apply to protection and enhancement plans.

Existing § 780.16(b) requires a statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect and enhance threatened and endangered species and their critical habitats, species protected by State or Federal law and their habitats, species identified through consultation with fish and wildlife agencies, and habitats of unusually high value. Proposed § 780.16(b) has a similar requirement. Rather than repeat the species and habitats to be protected, paragraph (b) would include a cross-reference to paragraph (a). Proposed paragraph (b)(3)(i) would require a description of measures that will be used to protect species and habitats during the active mining phase of operation. Such measures may include the establishment of buffer zones; the selective location and special design of haul roads and powerlines; and the monitoring of surface water quality and quantity. Proposed paragraph (b)(3)(ii) would require a description of measures that will be used during the reclamation and postmining phase of operation to restore and enhance aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands; retention of ponds and impoundments; establishment of vegetation for wildlife food and cover; and the placement of perches and nest boxes. This proposed language is intended to provide more explicit guidance in interpreting the statutory requirement that is present in existing § 780.16.

The statutory authority for proposed § 780.16(b) is derived from § 515(b)(24) of the Act which does not limit the consideration of protection and enhancement plans to any category of fish and wildlife. Accordingly, in the proposed rule, plans are required even though there may not be any endangered or threatened species or habitat of unusually high value within the poposed permit area and adjacent areas. Plans must provide for minimizing disturbance and adverse impacts to the extent possible on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable. State and Federal fish and wildlife agencies will have an opportunity to comment on the adequacy of protection and enhancement plans under § 733.13(a)(3)(ii) which provides for the notification and request for comment when regulatory authorities determine that a permit application is administratively complete.

As noted above, in some States it is difficult for the U.S. Department of the Interior, Fish and Wildlife Service, to review the permit application because of its location. Therefore, proposed § 780.16(c) would provide that, upon request, the regulatory authority shall provide the resource information required under paragraph (a) and the protection and enhancement plan required under paragraph (b) to the Service's Regional or Field Office for review. Most Federal Fish and Wildife regional or field offices will have access to the permit application without having to be provided with the material.

The proposed rule also includes several minor word changes to improve the clarity of the existing rule. None of these changes are believed to be substantive in nature.

B. Performance Standards

OSM would amend § 816.97 to include three substantive changes that are in response to the District Court's decision of October 1, 1984. *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, slip op. at pp. 58–63 (D.D.C.). Two of these amendments pertain to endangered or threatened species while the third concerns the exclusion of wildlife from toxic ponds.

Proposed § 816.97(b) would prohibit surface mining activity that "is likely to" jeopardize the continued existence of endangered or threatened species listed by the Secretary or which "is likely to" result in the destruction or adverse modification of designated critical habitats of such species. It differs from existing § 816.97(b) because the existing rule only prohibits mining operations that would jeopardize endangered species and their critical habitat. This threshold of protection was found by the court to violate section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(a)(2)) which states that Federal agencies and the Secretary shall:

> insure that any action authorized, funded, or carried out by such agency . . . *is not likely to* jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of habitat of such species . . .

The second change relates to existing § 816.97 which requires operators to promptly report to the regulatory authority any endangered or threatened species within the permit area of which the operator becomes aware. This

provision is limited to Federally-listed endangered or threatened species. The limitation was challenged. OSM argued that endangered or threatened species listed by the State are not necessarily entitled to protection under Federal law. The court ruled that although this was correct, section 515(b)(24) of the Act is not so limited and requires that disturbances to fish, wildlife, and related environmental values be minimized. The deletion of any express reference to State-listed species from the previous rule was found by the Court to be contrary to section 515(b)(24). Accordingly, proposed § 816.97(b) would require operators to report State- or Federally-listed endangered or threatened species.

The final amendment to existing § 816.97 would reinstate a previous provision that required each operator to fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming material. Proposed § 816.97(e)(4) is the same as previous 30 CFR 816.97(d)(3) (1982). In deleting the provision from the previous rule, OSM maintained that there was little evidence of harm to wildlife as a result of unprotected toxic ponds on the site of any mining operation and that if such circumstances should arise the requirements of existing § 816.97(a) to minimize disturbances and adverse impacts on wildlife by utilizing the best technology currently available would be sufficient to require fencing and other protective measures. The court rejected these arguments because the absence of evidence of harm to wildlife also supported the retention of the fencing requirement and the court believed existing § 816.97(a) did not provide the regulatory authority with sufficient gudiance. The proposed addition of § 816.97(e)(4) would correct this omission.

Paragraphs (e)(2) and (e)(3) would be repromulgated solely to change punctuation to reflect the addition of paragraph (e)(4) and not to adopt substantive changes.

Effect In Federal Program States

The rules proposed today, if adopted, would be applicable through cross-referencing in those States with Federal programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

Reference Materials

Kentucky Department of Fish and Wildlife Resources, Kentucky Department for Surface Mining Reclamation and Enforcement. October 1982. Guide For Protection and Enhancement of Fish and Wildlife Values For Surface Coal Mine and Reclamation Operations. Technical Reclamation Memorandum #3. 21 pp.; appendixes.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted to the Office of Management and Budget under 44 U.S.C. 3507. The information is needed to meet the requirements of Section 515 (b)(24) of Pub. L. 95–87, and will be used by OSM to assess the impact of proposed mining operations on fish and wildlife resources and the adequacy of proposed protection and enhancement plans.

The obligation to respond is mandatory.

Burden estimates and potential duplication are important clearance issues. Therefore, we are requesting that respondents inform OSM during the public comment period on the proposed rule as to how long it takes to comply with the reporting requirements of the rule and the costs associated with the reporting. This will give OSM an opportunity to re-evaluate its burden estimates and revised estimates where necessary.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule will allow small coal operators increased flexibility in meeting permitting standards.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on the impacts on the human environment of this proposed rulemaking. This EA is on the final in the OSM Administrative Record at the address listed in the "Addresses" section of this preamble. An EA on file rule will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

List of Subjects

30 CFR Part 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 779, 780, 783, 784, 816 and 817 as follows:

Dated: September 24, 1985.

James E. Cason,

Deputy Assistant Secretary for Land and Minerals Management.

PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

1. The authority citation for Part 779 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 779.20 [Removed]

2. Section 779.20 is removed.

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for Part 780 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

4. Section 780.16 is revised to read as follows:

§ 780.16 Fish and wildlife information.

(a) *Resource information.* Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for such information shall be determined by the regulatory authority in accordance with any written guidance provided by State and Federal agencies with responsibilities for fish and wildlife and shall, at a minimum include the existence of any:

(1) Listed and proposed endangered or threatened species of plants or animals and their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and those species and habitats protected by similar State statutes;

(2) Eagles, migratory birds, and other species identified as requiring special protection under State or Federal law; and

(3) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, and reproduction and wintering areas.

(b) *Protection and enhancement plan.* Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall—

(1) Be consistent with the requirements of § 816.97 of this chapter;

(2) Apply, at a minimum, to species and habitats identified under paragraph (a) of this section; and

(3) Include—

(i) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity.

(ii) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the placement of perches and nest boxes.

(c) Upon request, the regulatory authority shall provide the resource information required under paragraph (a) of this section and the protection and enhancement plan required under paragraph (b) of this section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

PART 783—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

5. The authority citation for Part 783 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 783.20 [Removed]

6. Section 783.20 is removed.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

7. The authority citation for Part 784 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

8. Section 784.21 is revised to read as follows:

§ 784.21 Fish and wildlife information.

(a) *Resource information.* Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for such information shall be determined by the regulatory authority in accordance with any written guidance provided by State and Federal agencies with responsibilities for fish and wildlife and shall, at a minimum, include the existence of any:

(1) Listed and proposed endangered or threatened species of plants or animals and their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and those species and habitats protected by similar State statutes;

(2) Eagles, migratory birds, or other species identified as requiring special protection under State or Federal law; and

(3) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, and reproduction and wintering areas.

(b) *Protection and enhancement plan.* Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the endangered species act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable. This description shall—

(1) Be consistent with the requirements of § 817.97 of this chapter;

(2) Apply, at a minimum, to species and habitats identified under paragraph (a) of this section; and

(3) Include:

(i) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity.

(ii) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the placement of perches and nest boxes.

(c) Upon request, the regulatory authority shall provide the resource information required under paragraph (a) of this section and the protection and enhancement plan required under paragraph (b) of this section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

9. The authority citation for Part 816 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

10. In § 816.97 paragraphs (b), (e)(2), and (e)(3) are revised and paragraph (e)(4) is added to read as follows:

§ 816.97 Protection of fish, wildlife, and related environmental values.

* * * * *

(b) *Endangered or threatened species.* No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction of adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regualtory authority any State- or Federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

* * * * *

(e) * * *

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary; and

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

11. The authority citation for Part 817 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

In § 817.97 paragraphs (b), (e)(2), and (e)(3) are revised and paragraph (e)(4) is added to read as follows:

§ 817.97 Protection of fish, wildlife, and related environmental values.

* * * * *

(b) *Endangered or threatened species.* No surface coal mining operations shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction of adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regulatory authority any State- or Federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

* * * * *

(e) * * *

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary; and

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

* * * * *

[FR Doc. 86–11942 Filed 5–28–86; 8:45 am]
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federal register

Thursday
May 29, 1986

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation (FAR); Legislative Lobbying Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Legislative Lobbying Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.205–22(f), Legislative lobbying costs, to clarify its intent.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 28, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 86–27 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council have received complaints that contractors have denied Government auditors access to records regularly maintained, on the basis of the "25 percent" rule in FAR 31.205–22(f). Accordingly, the Councils are proposing to restructure and rewrite the paragraph to clarify its meaning. The proposed coverage does not constitute a change in policy.

B. Regulatory Flexibility Act

The proposed revision of FAR 31.205–22 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it only clarifies the intent of the present coverage and does not constitute a significant revision.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed revision to FAR 31.205–22 does not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 23, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.205–22 is amended by revising paragraph (f) to read as follows:

31.205–22 Legislation lobbying costs.

* * * * *

(f) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this subsection during any particular calendar month when: (1) the employee engages in lobbying (as defined in paragraphs (a) and (b) of this subsection) less than 25 percent of the employee's compensated hours of employment during that calendar month, and (2) the organization has not materially misstated any allowable or unallowable costs within the preceding five-year period. When conditions (1) and (2) of this paragraph are met, contractors are not required to establish records in addition to those already required and maintained to support the allowability of claimed costs. Also, when conditions (1) and (2) of this paragraph are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

* * * * *

[FR Doc. 86–12030 Filed 5–28–86; 8:45 am]

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federal register

Thursday
May 29, 1986

Part VII

Environmental Protection Agency

Dicofol; Intent To Cancel Registrations of Pesticide Products Containing Dicofol; Denial of Applications for Registration of Pesticide Products Containing Dicofol; Conclusion of Special Review; Notice of Final Determination

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/37c; FRL-3023-5]

Dicofol; Intent To Cancel Registrations of Pesticide Products Containing Dicofol; Denial of Applications For Registration of Pesticide Products Containing Dicofol; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination.

SUMMARY: EPA initiated a Special Review to consider whether the pesticide registrations for all registered uses of dicofol should be modified or cancelled. This was published in the **Federal Register** of March 21, 1984 (49 FR 10569). The Special Review was initiated because EPA believed that there were substantial risks to the environment associated with the presence of DDT and related impurities (DDTr) as contaminants of technical dicofol. EPA also expressed concern about the possible oncogenicity of dicofol. In the **Federal Register** of October 10, 1984 (49 FR 39820), EPA announced the availability of Position Document 2/3 (PD 2/3) and its proposed decision to cancel registrations of pesticide products containing dicofol. EPA issued in the **Federal Register** of August 15, 1985 (50 FR 33008), an amended notice proposing to allow the continuation of the registrations of pesticide products containing dicofol if a number of modifications to the registrations were implemented. This proposal was based upon new information received by EPA concerning the registrants' proposal to lower the DDTr contamination levels in their technical products and EPA's conclusion that there is limited evidence that dicofol poses an oncogenic risk to humans through dietary and worker exposure. This notice concludes the Special Review and announces EPA's final decision to cancel registrations and deny applications of all pesticide products containing dicofol unless certain modifications are made to the pesticide product registrations.

DATE: Requests for a hearing by a registrant, applicant, or other adversely affected person must be received by June 30, 1986 or, for a registrant or applicant, within 30 days from their receipt by mail of this notice, whichever date is the later applicable deadline.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Bruce Kapner, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 711, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-3262).

SUPPLEMENTARY INFORMATION: This notice is organized into six units. Unit I is the Introduction. Unit II describes the legal framework within which this notice is issued. Unit III sets forth EPA's assessment of the risks and benefits associated with the continued use of dicofol products. Unit IV sets forth the regulatory actions required by this notice. Unit V contains the comments of the Secretary of Agriculture, the Scientific Advisory Panel, and other public comments and EPA's response to those comments. Unit VI provides a brief discussion of the procedures which will be followed in implementing the regulatory actions which EPA is announcing in this notice.

I. Introduction

A. Notice of Special Review

Notice of the initiation of the Special Review (formerly called the Rebuttable Presumption Against Registration (RPAR) process) was published in the **Federal Register** of March 21, 1984 (49 FR 10569). That notice was based on the concern that dicofol is contaminated with DDT, DDE, and/or closely related compounds (collectively referred to as DDTr) that can cause significant adverse effects on nontarget wildlife. EPA had concluded that pesticide products containing dicofol met one of the risk criteria for intensive review of the risks and benefits to determine whether continued registration would cause unreasonable adverse effects on the environment. Accordingly, a Special Review was initiated for all registered pesticide products containing dicofol. The notice also noted that dicofol had induced liver tumors in a National Cancer Institute (NCI) bioassay in mice, but that EPA had not been able to validate the study at that time.

B. Preliminary Notices of Intent to Cancel

After reviewing comments received on the March 21, 1984 notice, EPA issued a preliminary notice of intent to cancel registrations of pesticide products containing dicofol which was published in the **Federal Register** of October 10, 1984 (49 FR 39820). In that notice, EPA proposed cancellation of all uses of dicofol based on the ecological risks posed by the DDTr contaminants in dicofol. EPA stated that cancellation was consistent with the recommendation contained in a Biological Opinion issued by the Office of Endangered Species which concluded that continued use of dicofol was likely to jeopardize the continued existence of the endangered peregrine falcon. EPA also expressed its concern that a study from the National Cancer Institute (NCI) suggested that dicofol produces tumors in test animals. However, EPA did not evaluate the oncogenic risk to humans because the NCI bioassay on dicofol still had not been validated.

In response to this notice, registrants of dicofol products informed EPA that they would be able to manufacture products containing substantially lower levels of DDTr. They indicated that approximately 2 years after EPA's final decision in the Special Review they could produce commercial quantities of technical dicofol that contained 0.1 percent or less DDTr contamination. They further indicated that they were currently producing, or would shortly be able to produce, technical dicofol with DDTr contamination levels substantially below those reported in their Confidential Statements of Formula on file with EPA.

EPA reviewed the registrants' proposal to lower the DDTr contamination of technical dicofol and, while it did not conclude that the lower levels of DDTr were free from risk, it concluded that such reductions would qualitatively reduce risks of adverse effects to nontarget organisms to a level where the benefits would exceed the risks.

The Scientific Advisory Panel (Panel) reviewed EPA's earlier notice of preliminary determination, the supporting Position Document 2/3, and the registrants' proposal to reduce the level of DDTr contaminants. The Panel concurred with EPA's conclusion that the risks would be less from the 0.1 percent DDTr contamination level than from the current DDTr levels in dicofol products.

In addition, after the October 10, 1984 notice, EPA received information regarding the validity of the NCI oncogenicity study. EPA originally considered the NCI study to be invalid due to reported decomposition of the test material during the test period. However, NCI informed EPA that subsequent chemical analysis of the archived test material showed that it was representative of technical dicofol, and that there was no evidence of decomposition. Based on this information, EPA concluded that the NCI bioassay was valid.

On August 15, 1985, EPA issued a notice that revised and expanded the October 10, 1984 notice and presented EPA's revised assessment of the risks, including for the first time a discussion of the possible oncogenic risk to humans, and benefits of using dicofol (50 FR 33008). Additionally, this notice set forth a new set of proposed regulatory actions. EPA concluded that implementation of the registrants' proposal to lower the DDTr contamination of technical dicofol would reduce the risks of adverse effects to nontarget organisms to a level where the benefits would exceed the risks.

The Panel reviewed that notice and concluded that the evidence that dicofol is a potential human carcinogen was weak and that a quantitative risk assessment could not be justified. The full text of the Panel's comments and EPA's response to those comments are found in Unit V.

C. Consultation with the Office of Endangered Species

As required by regulation, EPA initiated consultation with the Office of Endangered Species (OES) in March 1984, concerning the effects of dicofol on endangered species. OES responded in August 1984, that the use of dicofol is likely to jeopardize the continued existence of the two subspecies of peregrine falcon.

When EPA proposed to allow registrations of dicofol products to continue, provided that the level of DDTr contamination was significantly reduced, it reinitiated consultation with OES concerning the effects of this proposal on the endangered peregrine falcon. OES responded in November 1985, stating that use of dicofol contaminated with 0.1 percent or less DDTr would not be likely to jeopardize the endangered peregrine falcon, but that, based on available information, use of dicofol products with higher levels of DDTr still appeared likely to jeopardize the continued existence of the peregrine. Accordingly, OES recommended that EPA immediately prohibit further use of dicofol products, confiscate all existing stocks of dicofol products, and prohibit manufacture of dicofol containing more than 0.1 percent DDTr.

In December 1985, EPA requested OES to reconsider the November 1985 Biological Opinion in light of information concerning the amount of DDTr added to the environment from the use of dicofol during the period before the registrants were able to commence production of dicofol containing 0.1 percent or less DDTr.

In March 1986, OES issued a revised Biological Opinion which, consistent with earlier opinions, found that dicofol contaminated with DDTr at levels greater than 0.1 percent jeopardized the continued existence of the peregrine falcon, but that use of technical dicofol with levels of DDTr at 0.1 percent or less would not jeopardize the peregrine. OES further stated that reasonable and prudent alternatives existed to permit the use of dicofol products that would not jeopardize the peregrine. In all parts of the United States except California, OES indicated that jeopardy to the peregrine could be avoided by reducing the level of DDTr contamination in technical dicofol to 0.1 percent or less no later than December 31, 1988, after which only dicofol products containing 0.1 percent or less DDTr could be sold.

OES concluded that the situation in California warranted a different course of action. OES listed two reasonable and prudent alternatives: (1) the use and sale of all dicofol products containing greater than 0.1 percent DDTr should be banned immediately, or (2) to compensate for the negative effects of the use of dicofol during the period before all products containing more than 0.1 percent DDTr are prohibited in channels of trade, dicofol manufacturers should be required to fund a portion of the nest manipulation work of the Santa Cruz Predatory Bird Research Group (SCPBRG). The next manipulation work is a high priority of the U.S. Fish and Wildlife Service Recovery Plan for the Pacific States Population of the Peregrine Falcon, and scientific authorities agree that this work is vital to the continued existence of this population. Peregrine falcons in central coastal California experience complete reproductive failure because their eggs break before hatching due to thinned eggshells caused by DDE. To aid the recovery of the Pacific States Population, SCPBRG removes eggs laid in the wild, artificially incubates and hatches them, and releases the hatchlings back into nests of wild peregrines. The nest manipulation work of SCPBRG has been highly successful in supplementing population size but has not been operating at full capacity due to limited funding. Funds paid by dicofol manufacturers will be used to hatch artificially eggs from nests located in areas of California subjected to DDE residues from dicofol. Program personnel indicate that $25,000 for 1986 and $75,000 for each of the following 4 years would enable SCPBRG to manipulate enough nests to largely offset the reproductive failure in peregrines that is due to DDE. The need for funding for 5 years is not based on time to absolutely remove DDE residues in California, but upon estimates of time required to build up breeding numbers such that enough wild peregrines are reproducing at a level sufficient to sustain the Pacific population naturally. OES also indicated that the sale of dicofol products containing more than 0.1 percent DDTr contamination should be prohibited in California after December 31, 1988.

In addition to the threat to the population of peregrines in California, OES expressed concern for the peregrine falcon populations in New Mexico and Texas, the brown pelican, bald eagle, Everglade kite, wood stork, and Arctic peregrine falcon. While OES did not conclude that the survival of these other endangered species and populations is threatened by use of dicofol with greater than 0.1 percent DDTr contamination, OES did request an expedited phase-out because the rate of recovery for these species may be affected. The finding of no jeopardy but that use of dicofol with greater than 0.1 percent DDTr contamination may affect the recovery rate is partially based upon the generally improved reproductive success exhibited by these species and by the consideration of the amounts of DDTr that would be added to these species' environments during an expedited phase-out. Accordingly, OES recommended that EPA schedule the phase-out as expeditiously as possible to minimize the hazards to these other endangered species.

Following issuance of the March 1986 Biological Opinion, on March 28, 1986, EPA met with representatives of Rohm and Haas Company and Makhteshim-Agan, Inc., the two registrants currently producing technical or manufacturing-use dicofol products. Representatives from the National Audubon Society, National Wildlife Federation, and Natural Resources Defense Council also attended the meeting. The representatives of the producing companies agreed to provide funds for the nest manipulation program as described in the OES opinion.

Subsequent to the March 28, 1986 meeting, EPA received letters from the three environmental organizations present at the meeting. The letters all expressed opposition to, in essence, EPA's allowing a "penalty" to be paid by dicofol manufacturers in return for a "permit" to continue environmental contamination. The letters noted that endangered species other than the peregrine falcon will suffer from the use of dicofol and gain no benefit from funds paid to aid a population of a single endangered species. The environmental

groups opposed the continued use of dicofol containing any amount of DDTr, and noted that dicofol itself may pose environmental risk.

Neither EPA nor OES views the mitigation of jeopardy by payment to SCPBRG as a "permit" to contaminate the environment, but rather as an efficacious and responsible course to aid the peregrine falcon in California and hasten the removal from the environment of residues of DDTr from dicofol containing greater than 0.1 percent DDTr. With regard to other endangered species, EPA accepts OES's opinion that the expedited phase-out will not threaten the survival of the other species.

EPA makes no conclusion that dicofol containing 0.1 percent DDTr contamination is free from risk, but only that the environmental risk from the reduction to 0.1 percent DDTr or less by December 31, 1988, is offset by the benefits to the general population. Further, EPA shares the concerns that dicofol itself may pose an environmental hazard and is requiring that additional data on this concern be submitted on an expedited basis. However, EPA believes that the data available at this time on dicofol itself are inconclusive.

D. Special Review Docket and Public Comments

In addition to the comments from OES, USDA, and the Panel, public comments were also submitted on the August 1985 preliminary notice of intent to cancel and were carefully considered by EPA in the development of this final determination, and certain changes were made in this decision based on the comments. The comments received in response to the Position Document 2/3 and changes in the final decision are discussed in detail in Unit V.

Further, on several occasions EPA met with or corresponded with various interested parties. Summaries of these meetings and copies of this correspondence are contained in a docket maintained for this Special Review, as provided in EPA's Special Review regulations published in the **Federal Register** of November 27, 1985 (50 FR 49003).

The docket is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

It must be noted that portions of the docket are considered Confidential Business Information and are not available for public inspection.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment," under FIFRA sec. 3(c)(5). The term "unreasonable adverse effects on the environment" is defined under FIFRA sec. 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practice.

The burden of proving that a pesticide satisfies the standard for registration rests on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever it is determined that the pesticide appears to cause unreasonable adverse effects on the environment.

In determining whether the risks of a registered pesticide outweigh its benefits, EPA considers both possible changes to the terms and conditions of registration which can reduce risks as well as the impacts of such modifications on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that they be made.

Alternatively, EPA may determine that no change in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose unreasonable adverse effects. In that event, the Administrator may issue a notice of intent to cancel the registration or to hold a hearing to determine whether it should be cancelled under FIFRA sec. 6(b). In determining whether to issue such a notice, the Administrator must take into account the impact of the action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days before formally issuing such a notice, he must inform the Secretary of Agriculture in writing of the substance of the proposed actions and supply the Secretary with an analysis of the expected impact on the agricultural economy. At the same time, under FIFRA sec. 25(d), the Administrator is required to submit the proposal to the Panel for comment as to the impact on health and the environment of the action proposed in the cancellation notice. EPA is also required by law, where appropriate, to consult with the U.S. Department of the Interior's Office of Endangered Species to see if the proposed action may affect an endangered species.

EPA also follows a practice of informing the public of its proposals to issue cancellation notices so that registrants and other interested persons can also comment or provide relevant information before any final Notice of Intent to Cancel is issued. Registrants and other interested persons are invited to review the data upon which the proposal is based and to submit data and information to address whether EPA's initial determination of risk was in error. In addition to evidence relating to risk, comments may include evidence as to whether any economic, social and environmental benefits of use of the pesticide outweigh the risks of use.

If, after reviewing the comments received, EPA decides to issue a Notice of Intent to Cancel dicofol products, any adversely affected person may request a hearing to challenge the action. In the hearing, any party opposing cancellation would have an opportunity to present data, witness testimony, and other evidence to show that the registrations of the pesticide should be permitted to continue. Other interested parties could intervene to present evidence in favor of cancellation. At the end of the hearing EPA would decide on the basis of the evidence presented whether or not to cancel or restrict the registration of pesticide products. If no hearing is requested, each registration would be cancelled by operation of law 30 days after receipt by the registrant or publication in the **Federal Register** of the final notice, which ever occurs later.

III. Summary of Risk and Benefit Determinations

A. Risks of Adverse Effects on Wildlife

EPA's principal concern with the continued use of dicofol as currently manufactured is that nontarget wildlife, particularly endangered species, may be adversely affected by the DDTr in dicofol products, and that dicofol itself may affect avian reproduction.

1. *Composition of dicofol products.* All dicofol products contain as impurities a

group of chemically similar compounds including the o,p' and p,p' isomers of DDT, DDE, DDD, and of a chemcial referred to as extra-chlorine DDT (C1–DDT). In C1–DDT, a chlorine atom substitutes for the hydrogen atom on the ethane moiety of DDT or the hydroxy group on the ethane moiety of dicofol. These DDT-related substances are collectively referred to as DDTr. The total amount of DDTr in different producers' dicofol products varies and the proportions of the different impurities comprising the DDTr portion also vary. Because the specific amounts and proportions of the DDTr compounds in the producers' products are considered trade secret or confidential business information, they are not being presented here. In the analyses used as the basis of the October 1984 proposed cancellation notice, EPA assumed that DDTr impurities constituted 10 percent of technical grade dicofol, which was a reasonable approximation of the amount of DDTr found in their registered technical dicofol products at that time. Subsequently, some dicofol registrations have been amended to indicate that DDTr constitutes no more than 2.5 percent of the technical dicofol in the product.

2. *Avian toxicity of DDTr.* The conclusion that dietary exposures to DDTr at levels below 1 part per million (ppm) would have significant adverse effects on avian reproduction is supported by a substantial body of laboratory and field data. Although DDE interferes with many aspects of avian reproduction, the best characterized effect is eggshell thinning which causes the eggs to break prematurely, interferes with gaseous exchange, and in other ways reduces the number of chicks being hatched. While field monitoring studies lack controlled or precisely known exposure information, they provide important indications of the dietary concentrations of DDE that are toxic to birds. Bald eagles, for instance, in Maine during the 1960s and 1970s experienced eggshell thinning and significantly impaired reproduction. During this same time period, DDE residues in eels and fish, which comprise 90 percent of the bald eagle diet in Maine, were below 0.3 ppm. Other data suggest that eastern brown pelicans may be producing thinner eggshells from feeding on food possibly containing as little as 0.1 ppm DDE. In Australia, monitoring of peregrine falcons found an average of 0.11 ppm DDE in the prey species, and eggshells were 20.4 percent thinner than those from the years prior to use of DDT. Other information on California brown pelicans supports similar inferences.

Laboratory studies have demonstrated that dietary exposure of birds to DDE at low levels, often in the 0.6 ppm to 3.0 ppm range, will cause significant thinning of eggshells. Effects have been experimentally demonstrated in a wide variety of species: Mallard, black duck, ring dove, American kestrel, barn owl, and screech owl.

Taken collectively, EPA finds that this body of information supports a conclusion that dietary exposure to DDE at levels lower than 1.0 ppm will cause significant adverse effects on reproduction in some avian species. Moreover, there is considerable scientific uncertainty concerning "no-effect" levels and the continuing reproductive problems in some wild populations as a result of exposure to DDTr. A "no-effect" level for eggshell thinning has not yet been established.

3. *Fish toxicity of DDTr.* Exposure of fish to DDT or DDE-contaminated food or water can interfere with fish reproduction. Studies have shown a correlation between the reproductive failure of sea trout and DDT residues in menhaden, a fish species that is a major source of food for sea trout. Flounder eggs in seawater containing 2 parts per billion (ppb) DDT showed abnormal development, and 39 percent of the exposed larvae had vertebral deformities at hatching.

4. *Environmental levels of DDTr.* Nationwide, levels of DDT and related compounds have generally declined since the 1972 cancellation of pesticide registrations of DDT products. The most recent monitoring data suggest, however, that DDE residues in freshwater fish, currently about 0.4 ppm, may have stabilized or are declining more slowly. A similar trend may be emerging for DDE residues in starlings, which presently average about 0.15 ppm. Likewise, although DDE residues in the wings of mallards and black ducks have declined since 1969, none of those decreases after 1976 has been statistically significant. Furthermore, the residues of DDE in ducks from the Pacific Flyway States (California, Colorado, Oregon, Arizona, and New Mexico) actually increased.

In addition to examining national trends, EPA analyzed monitoring data from four States in which large amounts of dicofol are used: California, Arizona, Texas, and Florida. More than 70 percent of all dicofol used is applied in these States. The use of dicofol is further concentrated in certain regions of these States. In these regions, levels of DDE are generally higher than in the rest of the country and these residues may exceed levels known to cause adverse effects on avian and fish reproduction.

5. *Dicofol's contribution to ambient DDTr residues.* Using a variety of approaches, EPA has determined that use of dicofol products contaminated with DDTr at levels approximately equal to a tenth of the active ingredient content would contribute significantly to the overall burden of DDT and related compounds in the environment.

One approach calculated the amount of DDTr added to the environment based on the total amount of dicofol applied. Approximately 1 million pounds of dicofol active ingredient are applied annually in California, and assuming 10 percent contamination with DDTr, this is equivalent to 100,000 pounds or 50 tons of DDTr yearly. Making the same assumption, the estimated annual contributions of DDTr for Arizona, Texas, and Florida are 12,600 pounds, 15,400 pounds, and 85,700 pounds, respectively.

EPA recognizes that much of the DDE detected in the environment in recent years is the result of the gradual dissipation of DDT pesticides applied prior to their cancellation in 1972. To evaluate the relative contributions of pre-1972 use of DDT and past and current use of dicofol, EPA prepared a mass-balance analysis for Kings County in the San Joaquin Valley of California. Assuming that dicofol use will not increase and other assumptions detailed in PD 2/3, the analysis demonstrated that, by 1984, a reasonable estimate of the environmental loading of DDTr from pre-1972 use of DDT was about 850,000 pounds in comparison to 200,000 pounds attributed to the use of dicofol. By the year 2000, EPA's analysis predicts that total environmental loading of DDTr would be about 450,000 pounds with continued use of dicofol with contamination of 10 percent DDTr, versus only 220,000 pounds if the use of dicofol ceased in 1984. In short, if EPA were to permit the continued use of dicofol at 1984 contamination levels, the residues of DDTr in the environment in the year 2000 could be almost twice as high as if dicofol use were prohibited.

EPA has also used other models to estimate the ambient environmental concentrations of DDTr that would result solely from use of dicofol assuming an average of 10 percent DDTr in the technical dicofol. EPA used a mathematical model to estimate the concentration of DDTr from dicofol use in the water of the Arroyo Colorado River in southern Texas. This model predicts that residues in the river system could stabilize eventually (reach

equilibrium) at approximately 9 parts per trillion (ppt). This concentration in water would result in DDTr residues of about 9 ppm in fish, a level harmful both to the fish and to fish-eating birds.

In addition, based on physical and chemical principles, EPA estimated that use of dicofol on cotton and other crops in Kings County, California, might result in food chain contamination at levels that would be likely to affect avian species adversely. Specifically, EPA predicted that migrating waterfowl could feed on chironomid midge larvae contaminated with as much as 1.4 ppm DDTr. Neither model assumed any other source of DDTr; adding in background levels of DDTr from pre-1972 DDT use would increase the amount of DDTr expected in the food chain.

6. *Risks of dicofol and its metabolites.* In addition to the considerable information on the risks to the environment posed by the DDTr contaminants in dicofol, a small body of data suggests that dicofol, itself, may adversely affect avian reproduction. Although the mechanism is not clear, it appears either that dicofol may be metabolized by some avian species to DDE or that dicofol, itself, may cause eggshell thinning. If either mechanism exists, then environmental residues of dicofol may pose a risk to nontarget wildlife, in addition to the risk attributable to the DDTr contamination of dicofol products.

The available data on the metabolism of dicofol do not definitively resolve the issue of whether dicofol residues are converted to DDE in animals. Each of the studies supporting such a conclusion is also susceptible to other interpretations. For example, in studies performed by different laboratories, dicofol with a known level of DDT contamination was fed to bobwhite quail and mallard ducks. For both species, test animals had levels of DDE residues higher than could be explained by the levels of DDE contaminants present in the dicofol. The researchers speculated that some of the dicofol was converted to DDE by the test birds. One dicofol registrant has suggested, however, that the elevated levels of DDE resulted not from the metabolism of dicofol by the test animals, but rather from the conversion, during the chemical analysis of the test animals' tissues, of residues of C1-DDT to DDE. No experimental data are available to prove or disprove the registrant's hypothesis. In another study, rats were intubated with a corn oil solution reportedly containing "pure" dicofol. DDE was subsequently found in all tissues except the blood and brain. Because the purity of the dicofol was not reported and no samples of the test material are now available for analysis, it is now impossible to determine whether the DDE residues came from DDTr contamination or the "pure" dicofol.

On the other hand, a preliminary report on dicofol metabolism in chickens shows no increase in levels of DDE above what would be expected from the presence of DDTr in the test material. Based on the preliminary report, EPA has many questions about the methodology and results of this study. EPA also questions whether a metabolism study in chickens is useful in assessing the likely metabolic fate of dicofol in other avian species, since gallinaceous birds (e.g., chickens) are known to be relatively insensitive to the effects of DDT and DDE compared to nongallinaceous birds (e.g., peregrine falcons).

The concern that dicofol itself thins eggshells is based upon the structural similarity of the dicofol molecule to DDE and upon information from two studies currently underway. Because the studies have not been completed and their methodology and conclusions have not been subjected to external peer review, EPA believes that it would be premature to rely heavily on these studies as the basis for regulatory action.

The difficulty of assessing the environmental risks of dicofol, apart from its DDTr contaminants, is made even more difficult because of the relatively small amount of information available on the residue levels of dicofol in the environment. EPA will require avian reproduction and metabolism studies, conducted with sensitive species, to address the issue of the effects of dicofol and its metabolites on avian reproduction. Additionally, EPA will require widespread environmental residue monitoring to determine the exposure levels of dicofol and its metabolites. While EPA is seeking more information on the extent of this risk, the possibility that dicofol may be metabolized to DDE in animal species or that dicofol thins eggshells remain serious concerns.

7. *Distribution of sensitive species in areas with high levels of use of dicofol.* As the last element of its analysis of the environmental risks of using dicofol, EPA investigated whether species sensitive to the adverse effects of dicofol were found in areas where use of dicofol has been concentrated. This investigation revealed that one or more highly sensitive species is present in each of the major use areas for dicofol, and that several are officially designated as endangered species by the Federal Government. In particular, the March 1986 OES Biological Opinion discussed several populations of endangered species that may be affected adversely by continued use of dicofol.

Of paramount concern was the endangered peregrine falcon in California (see Unit I above), but OES also stated that use of dicofol with levels of DDTr in excess of 0.1 percent raised concerns about peregrines in the Guadalupe Mountains of southeastern New Mexico because this population was experiencing reproductive failure and could be exposed to DDTr by feeding on prey species that migrate though areas of heavy dicofol use. OES also raised concern about the impact of heavy dicofol use in south Texas on brown pelicans in the Laguna Madre. OES noted that the brown pelicans, bald eagles, Everglade kites, and wood storks could be adversely affected by dicofol use in Florida. Finally, Arctic peregrine falcons could be exposed to contaminated prey while migrating through California, Florida, and the Texas Gulf Coast.

8. *Risk conclusions.* DOT and DDE are highly persistent, bioaccumulative compounds which are toxic to birds and fish. Avian species have been adversely affected by dietary exposure to DDE at levels below 1.0 ppm. Fish have also been adversely affected at exposure levels as low as 2 ppb DDT. Because of the chemical similarities between DDT and DDE and the other constituents of DDTr, EPA believes that there is a reasonable basis for assuming that these other DDTr substances have similar properties.

Further, EPA has determined that dicofol use is concentrated in areas where levels of DDE (from all sources) are presently high enough to impair both avian and fish reproduction and that these areas are inhabited by a number of sensitive, endangered species whose continued existence could be adversely affected by exposure to current levels of DDE. EPA also believes that DDTr contamination of current dicofol products is sufficiently high to make significant contributions to the overall levels of DDE and DDT in the above major use areas. This contribution would likely result in a slowing of the decline of DDTr residues in areas of dicofol use and would likely result in a stabilization of DDTr residues at levels which would continue to cause adverse effects in wildlife. Although some data suggest dicofol itself may thin eggshells and/or may be converted to DDE in animals and thus add to the risks associated with DDTr contaminants,

EPA lacks sufficient information to evaluate this possible risk.

Consequently, EPA concludes that the continued use of dicofol as currently formulated would adversely affect nontarget wildlife. This conclusion is consistent with Biological Opinion recently issued by OES that continued use of dicofol products at current levels of DDTr contamination is likely to jeopardize the continued existence of the endangered peregrine falcon and may adversely affect other endangered species (see Unit I above).

9. *Additional data requirements.* As discussed previously, the structural similarity of dicofol to DDT, the results of several wildlife studies, and monitoring data from areas of high dicofol use suggest the possibility of metabolic conversion of dicofol to DDTr or DDE. EPA is further concerned that dicofol may directly impair wildlife reproduction. These possibilities cannot be evaluated until data are available on the metabolism and effects of dicofol *in vivo.*

Although the dicofol registration standard required reproduction studies with bobwhite quail and mallard ducks, life-cycle studies of warm and cold water fish, and aquatic organism accumulation tests, additional data are needed. The studies required by the Registration Standard provide much useful data concerning the effects of dicofol, but the tests are not sufficient to address potential metabolic conversion of dicofol to DDTr or DDE or direct effects of dicofol itself. Expansion of the fish and aquatic accumulation studies to include residue analysis will partially resolve the data gaps. In the case of avian testing, however, EPA has concerns for the special sensitivity and vulnerability of raptors and other predatory birds. Therefore, EPA is requiring a reproduction and *in vivo* metabolism/residue test employing a minimum of two representative carnivorous and/or insectivorous bird species. The two test species must include one Passeriformes species (i.e., shrike or blue jay), and one species from either the Falconiformes or Strigiformes orders (i.e., hawks, falcons (e.g., kestrels), vultures, and owls).

These new tests replace the reproduction studies on the bob white quail and mallard duck required in the Registration Standard. The new tests are required on an expedited schedule and, when received by EPA, will be used to determine if dicofol itself, or dicofol with 0.1 percent DDTr contamination, poses an environmental risk. EPA will conduct a new hazard assessment employing these data, and will determine if further regulatory action is needed to protect endangered species and other fish and wildlife species.

B. Risk of Oncogenic Effects in Humans

1. *Introduction.* An oncogenic risk assessment generally consists of a qualitative hazard assessment, a dose-response assessment, an exposure assessment, and an overall characterization of the risk. Specific guidance for conducting risk assessments for cancer is found in EPA's "Proposed Guidelines for Carcinogen Risk Assessment," published in the **Federal Register** of November 23, 1984 (49 FR 46294).

For oncogenicity, the hazard assessment includes an examination of the available scientific data (e.g., long-term animal bioassays, short-term mutagenicity studies and any human data) to evaluate the weight of the evidence regarding the chemical's human oncogenic potential. The dose-response assessment includes mathematical modeling of experimental data to estimate the chemical's potency for inducing an oncogenic response, assuming that the chemical is, in fact, a human oncogen. The exposure assessment estimates the extent to which human populations are exposed to the chemical. In the case of dicofol, this exposure is to the general public through dietary intake, to applicators during mixing and application of the pesticide, and to fieldworkers working in treated areas. Finally, in the risk characterization step, the exposure and dose-response assessments are generally combined to provide some quantitative estimate of the potential oncogenic risk to humans. This quantitative estimate is tempered, however, by the overall weight-of-the-evidence judgment on whether the chemical is likely to be a human oncogen. In cases where the qualitative evidence is not sufficient to support a quantitative oncogenic risk to humans, EPA must rely on its qualitative risk determination, including consideration of the uncertainties involved.

2. *Qualitative hazard assessment.* In this section, the results of long-term animal studies on dicofol are discussed, followed by a presentation and evaluation of the supporting data relating to the carcinogenicity of the compound. The section closes with an integrated discussion, leading to a weight-of-the-evidence conclusion on whether dicofol may be a human carcinogen.

a. *Long-term animal studies of dicofol.* In its January 1985 evaluation of the carcinogenicity of dicofol, DDT, DDE, and DDD, EPA reviewed the results of a 1978 NCI bioassay in which male B6C3F1 mice exposed to dicofol at two dose levels (264 ppm and 528 ppm in the diet) were reported to have non-metastasizing hepatocellular carcinomas at elevated levels in both dose levels when compared to controls. There were no other statistically significant increases in tumors reported in either sex of mice. A concurrent study did not show any statistically significant increase in tumors in either sex of Osborne-Mendel rats. EPA has concluded that the NCI mouse study is valid.

b. *Supporting data sources.* Other types of information which may be helpful in evaluating the carcinogenicity of dicofol are somewhat limited. There are no epidemiological studies which can be used to assess the direct response of humans to the chemical.

EPA's "Guidance Document for the Reregistration of Pesticide Products Containing Dicofol" indicated that EPA had no information on the mutagenicity of dicofol and directed that the full battery of tests be submitted by December 1986. EPA's review, therefore, did not include mutagenicity studies on dicofol, per se.

Dicofol is structurally similar to other DDT-related chemicals, for example, DDE, a carcinogenic metabolite of DDT. It is possible that dicofol may be metabolized or interconverted in animals to DDT metabolites, such as DDE (see Unit III.A.6). In order to assess fully the potential of dicofol to be metabolized or interconverted to oncogenic DDT metabolites, further study is required. Results from metabolism studies in rats, which were required as part of the reregistration process and are due in December 1986, and in avian species, which will be required through a Data Call-In notice, may shed additional light on this issue. Until additional studies are submitted and validated, the possible metabolic link between dicofol and DDT-related compounds remains tentative.

It is also possible that the mechanism of toxicity could be related to the physical structure of the compounds and not to a particular, common metabolite. EPA's report noted the structural similarity between dicofol, DDT, DDE and DDD. Based on this structural relationship, a determination that DDT is a "probable human carcinogen" (EPA's category B2), and the NCI test results for dicofol, EPA concluded that the weight-of-evidence also argued for a B2 classification for dicofol.

Subsequently, EPA received comments and supplementary information from a registrant, the Rohm and Haas Company, concerning the

carcinogenicity of dicofol, DDT, and DDE. These comments asserted that short-term and chronic data on dicofol do not indicate that the compound is carcinogenic. Specifically, Rohm and Haas argued that the observed mouse liver tumors are not adequate evidence for carcinogenicity and that the DOT carcinogenicity data should not be used to characterize the oncogenic potential of dicofol.

In order to resolve some of the issues raised about the dicofol long-term study, EPA requested a reevaluation of the pathology slides by scientific personnel at the National Toxicology Program. These results, together with the original readings, are shown in the following Table 1:

TABLE 1—DICOFOL MALE MOUSE LIVER TISSUE RESULTS

Tumor type	Control	Low	High
Hepatocellular carcinomas:			
1985 NTP Reviews	2/18 (11%)	12/48 (25%)	9/47 (19%)
1978 NCI Review	3/18 (17%)	22/50 (44%)	35/47 (74%)
Hepatocellular adenomas:			
1985 NTP Reviews	0/18 (0%)	13/48 (27%)	23/47 (49%)
1978 NCI Review	0/18 (0%)	1/50 (2%)	1/47 (2%)
Hepatocellular carcinomas or hepatocellular adenomas:			
1985 NTP Review	2/18 (11%)	25/48 (52%)	32/47 (68%)
1978 NCI Review	3/18 (17%)	23/50 (46%)	36/47 (77%)

While the vast majority of tumors in the original study were classified as carcinomas, the more recent slide evaluation reports a more significant proportion of benign tumors (adenomas). This difference may reflect changes which have evolved during the intervening years in conventions in the pathology community for classifying tumors. The combined incidence of benign and malignant tumors shows little change.

The EPA Proposed Guidelines for Carcinogenic Risk Assessment (49 FR 46294) state that "there are widely diverging scientific views" about the significance of certain mouse liver tumors for assessing risk to humans, and give specific guidance for the assessment of such tumors. The Guidelines take the position that the mouse-liver-only tumor response, when other conditions for a classification of "sufficient" evidence in animal studies are not met, should be considered as "sufficient" evidence of carcinogenicity with the understanding that this classification could be changed to "limited" if warranted when a number of factors such as the following are observed:

(1) The occurrence of tumors only in the highest dose group and/or only at the end of the study.

(2) No substantial dose-related increase in the proportion of tumors that are malignant.

(3) The occurrence of tumors that are predominately benign, showing no evidence of metastasis or invasion.

(4) No dose-related shortening of the time to the appearance of tumors.

(5) Negative or inconclusive results from a spectrum of short-term tests for mutagenic activity.

(6) The occurrence of excess tumors only in a single sex.

(7) Other data.

In the following paragraphs, each of these factors is discussed as it relates to the available information on dicofol.

(1) *The occurrence of tumors only in the highest dose group and/or only at the end of the study.* The data in Table 1 indicate that tumors were observed in both dicofol dose groups. Statistical analysis of the data in Table 1 shows that, for the combined tumors (adenomas and carcinomas), statistically significant increases were observed at both the low ($p=0.0035$) and the high dose ($p<0.001$). Therefore, on this basis, there is no reason to change the classification from "sufficient."

This criterion also speaks of the time in the study at which the tumors occurred. In the case of dicofol, the design of the experiment did not call for interim sacrifice; therefore, definitive evaluation of time-to-tumor-occurrence cannot be made. However, it can be noted that the mortality of the animals during the study was not remarkable. This at least suggests that the liver tumors were generally not life-shortening and possibly did not occur until the end of the study.

(2) *No substantial dose-related increase in the proportion of tumors that are malignant.* Examination of the 1985 NTP slide diagnoses (Table 1), reveals that there is no statistically significant dose-response relationship for the malignant tumors (carcinomas). Therefore, this would argue for reclassifying the dicofol data as "limited."

(3) *Then occurrence of tumors that are predominately benign, showing no evidence of metastasis or invasion.* The data in Table 1 for the 1985 NTP review indicate that the ratio of percentage adenomas to percentage carcinomas is 0, 1.0, and 2.6 for the control, low dose and high dose, respectively. This observation, which is consistent with the lack of a dose-related increase in malignant tumors noted in (2) above, supports a conclusion that benign tumors are the ones which are predominately related to the administered chemical. Further, the carcinomas in this case show no evidence of metastasis. Therefore, this information is supportive of a classification of "limited" for dicofol.

(4) *No dose-related shortening of the time to the appearance of tumors.* As indicated in (1) above, the design of the experiment was such that this information could not be obtained.

(5) *Negative or inconclusive results from a spectrum of short-term tests for mutagenic activity.* As noted above, EPA was unaware of data on the mutagenicity of dicofol and required the registrants to submit such data. However, in its response to the Special Review, Rohm and Haas indicated the existence of numerous studies. Reviews by their pathology panel led to the conclusion that dicofol is "clearly not a mutagen and appears to have little, if any, clastogenic potential." While EPA has not reviewed these data, on the basis of this information and a 1982 International Agency for Research on Cancer (IARC) evaluation of the mutagenicity of dicofol, there may be some support for reclassifying the dicofol data as "limited."

(6) *The occurrence of excess tumors only in a single sex.* This is the case for the dicofol mouse study. Therefore, this supports a "limited" classification for dicofol.

(7) *Other data.* The male mouse liver tumor incidence is not corroborated by a positive response in either sex of a comparably conducted Osborne-Mendel rat study. Therefore, this does not support the higher classification.

In addition, in the mouse study there was no other apparent response beyond that seen in the male mouse liver, a response whose relevance to humans has been questioned. This low response, without corroboration in other target organs, would tend toward reclassifying to "limited."

c. *Weight of the evidence classification.* Taken as a whole, this analysis supports the conclusion that

the evidence for the oncogenicity of dicofol should be reclassified as "limited" (as opposed to "sufficient") from studies in experimental animals. The only factor weighing in favor in maintaining the "sufficient" classification, the presence of tumors at two dose levels, is outweighed by the other factors.

In reaching a final hazard assessment position, consideration was also given to: (1) The plausible, but unversified, structure-activity relationship with the DDT series; (2) the possible connection between dicofol and the DDT related compounds via metabolism; and (3) the lack of human studies. Based on all of these considerations, EPA concludes that, at this time, there is limited qualitative evidence to support a conclusion that dicofol may be a human carcinogen. According to EPA's proposed Guidelines, dicofol would be classified in Group C: "This category is used for agents with limted evidence of carcinogenicity in animals in the absence of human data." EPA does recognize that there is some evidence which might suggest a different classification and has requested additional information through the Registration Standard and a subsequent Data Call-In notice to resolve the remaining issues.

3. *Dose-response assessment.* The second step in the risk assessment process calls for generation of a dose-response estimate. The EPA Proposed Guidelines discuss approaches to the mathematical extrapolation procedures used in this process. The Proposed Guidelines were followed by EPA in the generation of its January 1985 report.

However, as a result of the reassessment of dicofol discussed above which has transpired since the January report, EPA has concluded that the current dicofol data base provides limited evidence in support of the conclusion that dicofol is a potential human carcinogen. The confidence in the quantitative aspect of the risk estimate is limited by the nature of the qualitative hazard assessment on which it is based. Therefore, EPA has concluded that, in this instance, no quantitative risk assessment should be used for regulatory purposes for dicofol.

4. *Risk characterization.* The data base for dicofol consists primarily of two long-term animal studies (rat and mouse) in which the only statistically significant increase in tumors was observed in the male mouse liver. While the incidence of combined adenomas and carcinomas of this response was statistically significant at both the low and high dose, the malignant tumors did not appear in a dose-related manner, nor did they appear to be metastatic. The benign, rather than the malignant, tumors responded proportionately as the dose increased. Coupling these observations with a lack of corroborating evidence within the study (i.e., responses in other tissues and sex), from studies in another species, and from mutagenicity, metabolism and human studies, EPA finds that, at this time, no reliance can be placed on any quantitative risk estimates for dicofol.

Notwithstanding that there is only limited evidence at this time to support a conclusion that dicofol is a potential human carcinogen, it should not be overlooked that dicofol does cause tumors in the livers of male mice. While the significance of this response, particularly in light of the mitigating factors discussed above, is difficult to assess, it is of concern to EPA. The data clearly indicate that dicofol can interact in vivo to generate an oncogenic response, albeit one whose relevance to humans is also difficult to assess. Additional data are being collected through the Registration Standard and a subsequent Data Call-In notice which are expected to shed more light on the matter.

EPA's position on the potential oncogenic risks from dicofol is consistent with the conclusions of the Panel that the evidence that dicofol is a potential human carcinogen is weak and that a quantitative risk assessment is not justified.

C. Benefit Determinations

Available data indicate that approximately 60 percent of dicofol usage is on cotton and citrus, 10 percent on apples, and 10 percent on a combination of ornamentals and turf (commercial) plus home garden sites. The remaining 20 percent is used on a wide variety of sites including fruits, vegetables, and field crops. Dicofol, unlike most of the viable alternatives, is a selective miticide, not a broad spectrum pesticide (insecticide/miticide). Consequently, because it does not affect beneficial insects such as pollinators and most parasites and predators, its use is recommended in many integrated pest management (IPM) programs. In addition, dicofol is effective against more types of mite species than most other miticides and has both contact and residual activity. Further, dicofol has fewer phytotoxicity problems than other miticides.

EPA has evaluated the pesticidal properties of dicofol and, where data permitted, has compared its effectiveness to that of other pesticides registered for the control of mites on the same sites. In evaluating the suitability of using alternatives to dicofol, EPA considered a number of factors such as: The pre-harvest interval; the pre- or post-harvest restrictions; the number, timing, and frequency of permitted applications; reentry interval; required safety equipment or restricted applicator use; and the pests controlled on particular sites. Other important factors that were considered (compared) in determining whether a pesticide is an acceptable alternative to dicofol included: Production cost; comparative efficacy (degree of control and yield); compatability in mixtures with other pesticides; phytotoxicity; effect on nontarget organisms; impact on IPM programs; local resistance limitations; and variations of efficacy at different temperatures.

To assess alternatives to dicofol, each use site was evaluated separately because there may be an alternative to the use of dicofol on one crop in a group of related crops (e.g., citrus) but there may be no alternative to dicofol for other crops in the group (e.g., oranges versus kumquats). In other situations, alternatives are available but their use will involve an unknown economic cost because of localized resistance, lower efficacy, or the need to modify the applications. For a number of these sites, the available alternatives are currently being rotated with dicofol as needed or on a yearly or within season basis to slow the development of resistance among them.

EPA has estimated the economic impact of cancelling dicofol registrations on cotton, citrus, apples and other minor uses. These impacts are summarized below.

1. *Cotton.* The greatest portion of the economic impact resulting from the cancellation of all dicofol registrations would be felt by cotton producers in the San Joaquin Valley of California and to a lesser degree in Arizona. Unlike most other cotton-producing areas of the United States, the San Joaquin Valley frequently encounters severe, early-season spider mite infestations. Available information indicates that, unless dicofol is used, these infestations cannot be controlled effectively without either imposing significant financial loss on growers and/or increasing the development of pest resistance to propargite, the only selective miticide alternative to dicofol. This would occur because all of the selective pressure for resistance would be from the continuous use of propargite. Propargite is phytotoxic to young cotton plants; therefore, it is estimated that growers would lose 3 to 5 percent in yield because it cannot be used early enough

in the season. Another registered material, sulfur, is ineffective under climatic conditions existing early in the growing season for cotton in the San Joaquin Valley. The unavailability of dicofol for early-season infestations would result in yield losses and increased control costs, which taken together, would increase the average variable cost of production (per pound of seed cotton) by 5 to 7 percent. For all San Joaquin Valley cotton producers who are current users of dicofol, the total impact would range from $11.2 to $17.7 million annually.

Cancellation of the use of dicofol on cotton would have considerably smaller impacts in areas outside the San Joaquin Valley. In Arizona, cotton producers now using dicofol could switch to propargite at an additional cost estimated to be approximately $3.62 per acre-treatement, or approximately $200,000 in the aggregate (a 1 percent increase in variable production costs). Use of other broad spectrum pesticides at no incremental costs is also possible where IPM systems are not currently established. In the Southeast United States and the Mississippi Delta, dicofol users could switch to monocrotophos or other possible alternatives at no incremental costs, unless they have a pest management program that would require propargite or sulfur as an alternative.

2. *Citrus (grapefruit, lemons, oranges).* The economic impacts of cancelling the use of dicofol on citrus (primarily grapefruit, lemons, and oranges) are estimated to be between $3.1 and $10.4 million annually due to the higher cost of using alternatives. This is a 1 to 2 percent increase in the variable costs of production. Based on current information, EPA does not expect significant impacts on yield or quality when alternatives are used. The available alternatives vary by region due to labeling limitations, differences in mite species, mite resistance, and climatic conditions. The alternatives include chlorobenzilate plus oil, oxythioquinox, propargite, cyhexatin, fenbutatin-oxide, and ethion plus oil.

3. *Apples.* EPA estimates that apple growers, primarily in the Northeast and Northcentral regions, would incur annual, incremental treatment costs ranging from $4.1 to $6.4 million. This is a 2 to 3 percent increase in the variable costs of production (e.g., more costly alternatives). This estimate reflects a substantial increase in EPA's estimate of dicofol usage in comparison with that made in the PD 2/3 and is based on more complete data submitted in public comments and collated by EPA since the PD 2/3. Dicofol fits into established IPM programs on apples, which are aimed primarily at spider mite control. Moreover, the dicofol usage on apples is increasing concurrently with reports of mite resistance to alternatives.

As in the case for citrus, the alternatives identified are currently used in rotation with dicofol; therefore, it is anticipated that their increased usage would further hasten development of mite resistance to them.

4. *Other minor uses.* EPA has concluded that there are no suitable alternative pesticides or nonchemical controls to replace dicofol registered on the following sites and site groupings: Some ornamentals and turf (commerical), home gardens (some ornamentals, a number of food crops), cucurbits (cucumbers, melons, pumpkin and squash), peppers, Bermudagrass (seed crop), cyclamen mite on strawberries, areas east of the Rockies for dry beans, and spider mites on tomatoes.

The use sites for which alternatives have been identified and costs estimated include: Stone fruits (apricots, cherries, peaches/nectarines, plums/prunes); caneberries (blackberries, dewberries and raspberries); figs; alfalfa (seed crop); sugarbeets (seed crop); red clover (seed crop); pears; peanuts; grapes; pecans; mints (peppermint and spearmint); hops; eggplant; strawberries; tomatoes; dry beans west of the Rockies; and field corn (California only). In general, pest scouting and monitoring are an important IPM component utilized in pest control on these and the principal sites discussed earlier.

Although the additional costs involved are low, on dry beans (California), field corn (California), melons, cherries, alfalfa (seed crop), Bermudagrass (seed crop), and mints and hops, the percentage of acreage treated with dicofol represents a significant portion of the acrage grown. The same appears to be true of ornamentals and turf (commerical) and the homegarden sites, but precise, reliable data are lacking.

The total cost of cancelling dicofol for all minor sites is estimated as approximately $2.2 to $4.3 million.

5. *Mite resistance to pesticides.* EPA recognizes that for some uses of dicofol there are benefits which are not readily demonstrable or quantifiable in monetary terms but which, nonetheless, may be important. One of these benefits relates to the impact of dicofol's cancellation on mite resistance. It is well established that intensive use of a pesticide creates selective pressures that may lead to pest populations resistant to that pesticide. This is more likely to be true of mite and insect species that produce many generations annually. Data show that mite species in some areas and crops are resistant to various registered miticides, including dicofol. The number of selective miticides is limited, and if that number is reduced, pest resistance may intensify or appear more rapidly than it would otherwise. This is the case with dicofol, which is the last chlorinated hydrocarbon miticide. EPA expects this phenomenon to be more significant in crops where mite infestations recur annually (e.g., some cotton, citrus, and apple acreage) than in crops where the level of mite infestations (i.e., economic vs. noneconomic) fluctuate widely from year to year. Where alternatives are available, the most common method of reducing the development of resistance appears to be rotating mite pesticides. This frequently is combined with monitoring mite populations and timing pesticide applications to reduce the number of treatments per season.

6. *Summary.* The immediate quantifiable impacts from cancellation of dicofol products would range from about $21 to $39 million per year, with the bulk of such impacts (approximately 90 percent of the total) accruing to producers of cotton in the San Joaquin Valley, citrus (mainly in Florida), and apples (mainly in the Northeast and Northcentral States) who are among the major current users of dicofol. Established IPM programs are a part of the overall determinations for pest management particularly for apples and San Joaquin Valley cotton. Given the competitive nature of agriculture and that in most cases only a small percentage of the crops would be affected, it is unlikely that the affected growers would be in a position to pass these incremental costs on to consumers since their commodities would be unable to compete with lower priced commodities sold by unaffected producers.

It must be recognized, however, that the range of $21 to $39 million represents a partial estimate of the total impact from cancellation. EPA was unable to quantify monetary benefits from dicofol use on a number of sites. In view of the usage on these sites, and given the lack of selective miticide alternatives for some crops, the impact from cancellation is likely to be significant for the affected producers of those crops. Therefore, should all of the potential developments actually come to pass (e.g., resistance, phytotoxicity from alternatives, etc.), the total impact from

cancellation would exceed the $21 to $39 million range.

IV. Initiation of Regulatory Actions

A. Introduction

This unit has several sections. The first, this Introduction, discusses EPA's reasons for concluding that dicofol products, as currently registered, should be cancelled unless certain modifications are made in the terms and conditions of registration. This Introduction also contains definitions of a number of terms used in the rest of this unit. The second section of this unit specifies the modifications in the terms and conditions of registration for federally registered pesticide products that are required for the products to remain registered. Section C explains how these requirements apply to intrastate pesticide products. Section D completes this unit and establishes provisions concerning the sale, distribution, and use of existing stocks.

1. *Statutory determinations.* Based upon the determinations summarized in Unit III, EPA has concluded that the use of currently registered pesticide products containing dicofol causes unreasonable adverse effects on the environment. A number of factors lead EPA to conclude that the risks of using dicofol outweigh its benefits, and, therefore, that cancellation is appropriate unless modifications are made to the product registrations. Most important is the evidence that dicofol contaminated with an average of 10 percent DDTr causes significant adverse effects on the environment by harming both fish and avian species, including endangered species. EPA realizes that some dicofol products now have no more than 2.5 percent DDTr in the active ingredient. EPA believes that these products also make a significant contribution of DDTr to the environment, and that the environmental risks, while somewhat lower, are qualitatively comparable to the risk from using more highly contaminated dicofol. Both the OES and the Panel agreed with EPA that it should cancel the registration of dicofol products because of the magnitude of these environmental risks. In addition to the risks to the environment, dicofol may pose a carcinogenic risk to humans. Although the evidence of carcinogenicity is weak, this risk cannot be ignored.

The fact that the estimated benefits of using dicofol, while approaching $40 million a year, are confined to certain geographical areas and crops, was also an important factor in EPA's decision. EPA recognizes that cancellation would have sizeable impacts on cotton growers in California and citrus growers in Florida, and to a lesser extent on apple growers in some Northern States, but these impacts should not significantly affect consumer prices or the national supply of these commodities. Dicofol applied to cotton and citrus accounts for the largest proportion of its use; the other sites to which dicofol is applied are generally considered minor uses. Thus, the impact of cancellation of uses, other than possibly cotton, would not be significant for the national agricultural economy, although some local impacts could be severe.

EPA has also concluded that dicofol products can meet the statutory standard for continued registration under FIFRA if certain modifications of the terms and conditions of registration are made by the registrants. (EPA's conclusion that the benefits of using dicofol would outweigh risks if certain changes are made, takes into account that the adverse effects on the peregrine falcons resulting from continued use of dicofol in California will be significantly mitigated by the nest manipulation project partly funded by the major producers of dicofol.) EPA has concluded that two kinds of modifications are necessary. First, registrants must reduce the level of DDTr contamination in dicofol products. EPA believes the registrants' proposed reductions, initially to less than 2.5 percent DDTr and within 2 years to 0.1 percent DDTr or less, should substantially reduce the environmental risks of using dicofol. EPA desires that the production, sale, and use of dicofol with these lower levels of DDTr contamination begin as quickly as feasible. Accordingly, EPA has established a schedule by which registrants must produce dicofol products with specified limits for DDTr contamination.

The second condition under which EPA will permit continued registration of dicofol products is the addition to the product label of a requirement that mixers, loaders, and applicators are to wear gloves while handling dicofol. The reasons for these two conditions are discussed below.

The registrants' proposed reduction in the level of DDTr contaminants in their technical products would significantly lower the amount of DDTr released into the environment as the result of using dicofol. Assuming that use of dicofol products does not increase significantly in the future, use of products contaminated with DDTr at 0.1 percent or less, the level which registrants indicate they can begin producing by late 1987, would result in the introduction into the environment of approximately 20 to 50 times less DDTr than results from use of currently registered dicofol products. At this proposed level of DDTr contamination, using the mass balance analytical techniques described by EPA in PD 2/3, by the year 2000, the new contribution of DDTr to the environment from the new product would be 1 percent of that attributable to use of DDT prior to its cancellation in 1972 and the old, more highly contaminated dicofol products. While this incremental contribution would not be free from risks, it would represent a substantial reduction in the level of risk to the environment. EPA agrees with OES that the expeditious phase-out of dicofol products containing more than 0.1 percent DDTr would be adequate to prevent jeopardy to the endangered peregrine falcon in California in view of other efforts being made to support recovery of this species. The reduction in DDTr contamination level should not noticeably alter either the price or effectiveness of dicofol products. Thus, the required reduction in DDTr will not affect the benefits of dicofol.

This notice establishes a schedule for reducing the level of DDTr contamination in dicofol products. Because the major producers of technical dicofol have informed EPA that they are already capable of or are making the active ingredient with less than 2.5 percent DDTr contaminants, EPA is requiring an immediate amendment to dicofol registrations to certify an upper limit on DDTr contaminants equivalent to 2.5 percent (or less) of the technical grade material. Registrants have indicated that production of dicofol with 0.1 percent or less DDTr requires construction of new manufacturing facilities, and that the facilities would not be operational until late fall of 1987. Moreover, the initial production from the new facilities may be inadequate to meet demand for dicofol products during the 1988 growing season. Accordingly, EPA is allowing registrants to sell and distribute stocks of dicofol containing between 2.5 percent and 0.1 percent DDTr until December 31, 1988. These additional quantities of dicofol products should help meet the demand for use of dicofol products. At the same time, these unavoidable additions to the existing environmental residues of DDTr will be relatively limited.

This schedule is consistent with the timeframes recommended by OES in its March 1986 Biological Opinion on dicofol. After concluding that the

continued use of dicofol would jeopardize the continued existence of the endangered peregrine falcon, OES listed, as part of one reasonable and prudent alternative, the phase-out of dicofol products contaminated with more than 0.1 percent DDTr. OES indicated that in California the sale of dicofol products containing more than 0.1 percent DDTr should stop by December 31, 1988.

In addition, although EPA has concluded that the evidence that dicofol is a potential human carcinogen is weak, EPA finds it prudent to require the use of chemical resistant gloves while handling products containing dicofol. The chances for human contact with the pesticide are greatest during the mixing, loading and application processes, and use of chemical resistant gloves should diminish skin contact with dicofol and reduce whatever risks to humans may result from such exposure. Such a requirement would have virtually no impact on the benefits of using dicofol.

In summation, based on available information, EPA finds that the risks posed by the use of dicofol would be outweighed by the benefits if certain modifications are made to the registration of dicofol products. Accordingly, EPA is issuing a "conditional" cancellation notice. In other words, registrations will be allowed to continue provided that the registrants amend their registrations to make the required modifications as described in Unit IV.B below.

EPA notes that its evaluation of the risks and benefits of using dicofol is based on available data and that if EPA receives additional information which changes its conclusions concerning risks or benefits, it might initiate different regulatory actions. EPA is particularly concerned that dicofol, independent of the effect of its DDTr contaminants, may pose a risk to the environment. If this concern is confirmed or if new data strengthen the evidence of the carcinogenicity of dicofol, EPA will consider further regulatory action.

2. *Definitions.* The following terms are defined for the purposes of this unit.

a. The term "existing stocks" refers to any quantity of dicofol products which is in the United States on the date of the publication of this notice and which is formulated as either an end-use product or manufacturing-use product.

b. The term "basic manufacturer" refers to any registrant who sells or distributes a manufacturing-use product containing technical dicofol or an end-use product containing technical dicofol produced from an unpurchased and/or unregistered source (integrated formulation system).

c. The term "formulator" refers to any registrant (or supplemental distributor registrant) who is not a basic manufacturer and who sells or distributes an end-use product containing dicofol.

d. The term "sale or distribution" and grammatical variants such as "sell or distribute" refer to the distribution, sale, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver a pesticide product.

e. The term "released for sale or distribution" refers to any quantity of a pesticide product that has left the physical custody of the registrant.

f. The term "products containing more than 2.5 percent DDTr" refers to manufacturing-use products and/or end-use products that contain DDTr contaminants at a level greater than 2.5 percent of the amount of technical grade dicofol in the product.

g. The term "products containing between 2.5 percent and 0.1 percent DDTr" refers to the manufacturing-use products and/or end-use products that contain DDTr contaminants at any level equal to or less than 2.5 percent and more than 0.1 percent of the amount of technical grade dicofol in the product.

h. The term "products containing less than 0.1 percent DDTr" refers to manufacturing-use and/or end-use products that contain DDTr contaminants at any level equal to or less than 0.1 percent of the amount of technical grade dicofol in the product.

B. Requirements for Complying with This Notice—Federally Registered Products

The registrant of a product containing dicofol must submit an application for amended registration, as specified below, within 30 days of publication in the **Federal Register** or receipt by the registrant of this notice, whichever is later, in order to be allowed to continue to sell and distribute the product. Refer to Unit VI.A of this notice for directions on how to submit an application for amended registration. This unit sets out substantive requirements for the application for amended registration.

1. *New Confidential Statement of Formula.* Registrants of dicofol products must apply to amend their registrations to reflect the composition of their products on a new Confidential Statement of Formula. For each manufacturing-use product and each end-use product, the registrant must also establish an upper certified limit for DDTr equal to or less than 2.5 percent of the amount of technical grade dicofol in the product. The Confidential Statement of Formula must be accompanied by information showing that the registrant can produce his product with no more DDTr than the amount certified as the upper limit.

If the application is otherwise acceptable, the amendment will be approved conditionally. The amended registration will be conditioned on submission and approval before March 30, 1988, of an application for amended registration which revises the composition of the product to establish a new upper certified limit for DDTr equal to or less than 0.1 percent of the amount of technical grade dicofol in the product. As before, the application must be accompanied by information showing that the registrant can produce his product with no more DDTr than the amount certified as the upper limit.

The registrants have indicated their intention to reduce the level of DDTr contamination to 0.1 percent according to the schedule specified in this notice. EPA intends to monitor the registrants' progress closely to assure that this schedule is met and, if circumstances warrant, to take appropriate regulatory action under FIFRA.

2. *Revised labeling.* Registrants of dicofol products who apply for amended registration to certify an upper limit for DDTr between 2.5 percent and 0.1 percent of the technical dicofol must also apply to revise their labeling to including the following statements.

a. On the top of the front panel add the statement: Not to be sold, offered for sale, held for sale, shipped, delivered for shipment, offered for delivery, or received after December 31, 1988. Not to be used after March 31, 1989. Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, of the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

b. In the beginning of the directions for use add: Skin contact with this pesticide may be hazardous; wear chemical resistant gloves when mixing, loading, or applying this product.

Registrants of dicofol products who apply for amended registration of their products to certify an upper limit for DDTr equal to or less than 0.1 percent of the technical dicofol in the product must delete the statement in item a above.

The registrations of all dicofol products containing greater than 0.1 percent DDTr are cancelled on December 31, 1988. Selling, offering for sale, holding for sale, shipping, delivering for shipment, offering for delivery, or receiving of these products

after December 31, 1988 is a violation of this cancellation order.

C. Requirements for Complying with this Notice—Intrastate Products

The producer of an intrastate product is required to submit an acceptable application for Federal registration, or acceptably amend a pending application, within 30 days of receipt by the producer of this notice. (An intrastate product is a pesticide product that was initially registered by a State prior to 1972, that is distributed and sold solely within a single State, and that is in compliance with the requirements of 40 CFR 162.17.) To be acceptable, the application must comply with all of the requirements imposed on Federal registrations by Unit IV.B of this notice. Other requirements for an acceptable application are described in the Registration Standard for dicofol and pertinent EPA regulations in 40 CFR Part 162. Refer to Unit VI.B for directions on how to apply for Federal registration of an intrastate product.

D. Existing Stocks

The following paragraphs describe the conditions under which registrants and others may sell, distribute, and use existing stocks of dicofol products. The conditions depend on the level of DDTr contamination, the kind of product, and whether the registrant has released the products for sale or distribution. Existing stocks may not be sold, distributed, or used except as provided below.

1. *Existing stocks of dicofol already released by the registrant.* Any person, other than a basic manufacturer or formulator, may sell or distribute, or use in accordance with label instructions, any quantity of existing stocks of end-use products containing more than 0.1 percent DDTr until depletion, provided that such products were released for sale or distribution by the registrant before the date of publication of this notice.

2. *Existing stocks of products containing more than 2.5 percent DDTr not released for sale or distribution by the date of publication of this notice.* Any registrant may sell or distribute any quantity of existing stocks of dicofol products containing more than 2.5 percent DDTr provided that such stocks were released for sale or distribution by the registrant before June 30, 1986. Stocks released for sale or distribution after June 30, 1986 may be sold or distributed provided that the labeling includes the following statements:

On top of the front panel:

Not to be sold, offered for sale, held for sale, shipped, offered for delivery, delivered for shipment, or received and (having so received) delivered or offered for delivery after October 31, 1986.

Not to be used after June 30, 1987.

Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal Law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, of the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

In the direction for use section:

Skin contact with this pesticide may be hazardous; wear chemical resistant gloves when mixing, loading or applying this product.

The statement required on the front panel may be added by applying a sticker to the product container. The statements required in the use directions may be added in the form of supplemental labeling accompanying the product.

3. *Existing stocks of manufacturing-use and end-use products containing between 2.5 percent and 0.1 percent DDTr not released for sale or distribution by the date of publication of this notice.* Any registrant may sell or distribute any quantity of existing stocks of manufacturing-use or end-use products containing dicofol with between 2.5 percent and 0.1 percent DDTr provided that such stocks were released for sale or distribution by the registrant before August 27, 1986. Stocks released for sale or distribution after August 27, 1986 may be sold or distributed provided that two conditions are met: (1) Within 30 days of publication or receipt by the registrant of this notice, the registrant must submit a completed application for amended registration and submit five copies of draft labeling, amended to include the following statements:

On the top of the front panel add:

Not to be sold, offered for sale, held for sale, shipped, delivered for shipment, offered for delivery, or received after December 31, 1988. Not for use after March 31, 1989.

Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, of the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

In the beginning of the directions for use add:

Skin contact with this pesticide may be hazardous; wear chemical resistant gloves when mixing, loading or applying this product.

and (2) such existing stocks of dicofol products must bear the amended labeling when released for sale or distribution.

V. Comments of the Secretary of the United States Department of Agriculture, the Scientific Advisory Panel, and Other Public Comments

A. USDA's Response to the October 10, 1984 Federal Register Notice

The United States Department of Agriculture (USDA) responded to the October 10, 1984 **Federal Register** notice as well as the Position Document 2/3. Their comments are printed in full below:

Honorable Steven Schatzow,
Administrator [sic], U.S.
Environmental Protection Agency,
Washington, D.C. 20460

Dear Mr. Schatzow: This is the United States Department of Agriculture's (USDA) response to the U.S. Environmental Protection Agency's (EPA) Preliminary Notice of Determination Concluding the Special Review of Pesticide Products Containing Dicofol.

State extension and research personnel responsible for pest control technology and recommendations were contacted by USDA concerning the agricultural needs for dicofol. These experts expressed the view that dicofol is an effective miticide, is economical, has been extensively used for many years and has not been a serious object of mite resistance. The USDA concurs with their assessment and believes that the following comments should be considered by the ageny in developing the final regulatory decisions.

1. EPA proposes a standard for cancellation with differs from that in FIFRA. FIFRA sec. 6 provides for notice of intent to cancel a registration "[i]f it appears to the Administrator that a pesticide . . . generally causes unreasonable adverse effects on the environment. . . ." PD 2/3 changes the meaning require only that "the pesticide appears to cause unreasonable adverse effects on the environment."

2. EPA fails to explain exactly how the risks of using dicofol were weighed against its benefits, which are acknowleged. In several places the document concludes arbitrarily that "these risks outweigh the benefits," or similar language. However, nowhere is any objective methodology for weighing risks against benefits explained. In the absence of such methodology, which could be used by any neutral observer to reach an independent conclusion when supplied with the facts, we can only judge that EPA's conclusion is predetermined. That is, EPA appears to conclude that any risk is unacceptable, no matter what the benefits of continued use might be. Also, the concept of weighing risks of reduced levels of DDTr in dicofol does not have a chance of objective evaluation because there is no definition of what those levels might be.

3. USDA believes that EPA, when studying the idealized model representing

environmental loads resulting from applications with dicofol, has not given sufficient consideration to undefined or unidentified sources of DDTr. Nor has EPA adequately considered variable and transitory loads contributed by background environmental residues. EPA points out in the document that background levels are transitory. USDA believes however, that evaluation of residues in wildlife specimens as representative of dicofol use loads may well be in error. This would be especially true for the analysis of migratory wildlife that could easily range into other geographic areas, perhaps including those where DDTr occurrence is acceptable, for example, Mexico.

4. Much of the evidence cited in the text of EPA's PD 2/3 is the result of earlier wildlife studies dealing directly with DDT as well as DDTr. Some of the evidence is the result of direct feeding studies which although relevant in the broader sense may not accurately describe the present situation. Additionally, the narrative of the PD 2/3 often refers to both DDT and the DDT homologs in a manner that suggests that all are implicated in this special review. However, EPA identifies the eight DDT homologs as the subject of regulatory concern. A valid question might be whether DDT-induced biological responses would accurately typify the same metabolic reactions with the same magnitude as those induced by DDT homologs. It would be interesting as well to determine whether U.S. Fish and Wildlife scientists who have monitored wildlife residues concur with EPA's assessment of dicofol as an indisputable source of the DDTr residues that have been identified in wildlife.

5. In the draft PD 2/3, EPA discusses possible oncogenicity resulting from exposure to dicofol formulations and states that evidence in support of that allegation may be presented in the forthcoming PD 4 final decision, if corroborating information can be obtained. USDA views this action as an unusual means of attaining a rational and judgmental conclusion insofar as the PD 4 is expected to present a regulatory decision, and would not allow adequate opportunity for comment.

6. The Department and State scientists question that there are satisfactory alternatives for nearly all uses of dicofol. The USDA report of "Dicofol Use and Efficacy in Agriculture" shows that of 47 individual commodities or groups of commodities, only six were inconclusive about adverse effects that result from the loss of dicofol through regulatory action. These commodities were hops, mint, peas, onions, sugarbeets, and red clover seed. A seventh commodity group, ornamentals, reflected some lack of concern about the possible loss of dicofol, but that concern varied widely and inconsistently across geographical areas and plant varieties. The more important and major agricultural crops were presented as having significant dependence on dicofol.

7. Although EPA has assumed that regulatory removal of dicofol will have no adverse effect upon minor crops, USDA data indicated that the control of mites on certain crops would be difficult or impossible without dicofol. These were stated to be artichokes in California, Easter lily bulbs in Montana, figs in South Carolina, grapes in Michigan and California, ornamentals in Maine and New Jersey, beans in several states, homeowner uses in several states (house plants), lawns in Alabama, pecans in South Carolina, peppers in California, home grown plums in Illinois, and vegetables in several states. These examples do not include many instances where state specialists indicated that while registered alternatives might exist, they are not suitable due to various biological and/or economic reasons.

8. EPA expressed the view that overall, the removal of dicofol from the market and substitution with alternative miticides would result in no yield loss. USDA understands that the comments are intended to convey the idea that the same weight or volume of crop production would be achieved. Assuming this to be true in certain instances, USDA feels that yield is a single parameter in agricultural production that is meaningful only in the instance that time, energy, and costs of materials and equipment remain constant. USDA has shown in its report, that without dicofol one or more of those factors will necessarily increase. Thus, obtaining identical or similar yields with alternative miticides could have undesirable pest control and production consequences. In addition, State specialists have reported that some crops would be impossible to grow in certain production regions without the continued availability of dicofol.

9. EPA has described a potential initial economic impact of between 9.6 to 31.9 million dollars to cotton growers with the removal of dicofol, and projected a greater long term impact of 11.0 to 37.1 million dollars. The draft PD 2/3 indicates that this will primarily result in economic hardship to cotton growers in the San Joaquin Valley of California, many of whom would elect to grow less profitable crops. It was stated that the current national base acreage (in excess of 15 million acres) would enable U.S. cotton growers to fill the supply gap. USDA does not agree with this economic appraisal because of the following reasons.

(a) Even a 20 percent production loss as stated by EPA would be difficult to rationalize on grounds of production efficiency when it is considered that few geographic areas can compete on a per acreage production cost basis with the San Joaquin Valley. In the Valley, per acre yields of cotton are substantially higher than in any other State, except Arizona.

(b) EPA's Benefit Summary of PD 2/3 projected a reduction in budgetary outlay by the Federal Government to the San Joaquin Valley growers based on a 4.4 to 7.3 million dollar projected cotton production loss. However, this loss value is certainly too low. If cotton production were to be sharply reduced, USDA believes that an attempt also should be made to add in the costs to the growers and to the local agricultural community that would be incurred through the necessary disposal of machinery, equipment, and facilities now used for cotton, and the acquisition of other equipment needed for the production of replacement crops.

(c) The unique agricultural environment of arid California is such that growers of less profitable crops than cotton will themselves be subject to additional economic stress. Obviously additional acreages of the San Joaquin Valley competing in their specific crop market could result in severe economic consequences due to price competition and the availability of adequate markets. Secondly, as the USDA assessment report has shown, there will be serious economic impacts on other crops due to increased production costs in the event that dicofol uses are cancelled.

10. EPA indicates that economic impacts to citrus growers are expected to initially range from 3.5 to 4.0 million dollars. Additionally, it is stated that 73 percent of dicofol use on citrus is applied in Florida. EPA concluded that the resultant increases in production costs in Florida would not be excessive and that it would be expected that those costs would be passed on to the public. USDA is concerned that the Florida citrus industry has been affected very badly in recent years, first by successive killing frosts that have destroyed major portions of the producing groves as far north as the St. John River citrus region and southward to the middle of the state. There is also a current crisis among some of the larger citrus nurseries in Florida resulting from the citrus canker. Taken together, the present prospect for the Florida citrus industry is one of risk and hardship. Alternative miticides might introduce biological problems as well as economic hardship as described in the USDA assessment report. It is extremely important for Florida citrus growers to be able to avail themselves of all available tools during the lengthy rebuilding, nonproductive years required for new orchard establishment.

USDA believes that the information and the data provided by State and Federal scientists has established the critical need to retain dicofol uses for the agricultural community. We further believe that sufficiently low levels of DDTr in the product can be achieved and EPA is encouraged to work closely with the basic producers toward this end.

We are forwarding with this letter an updated copy of our report and copies of the information we received from the field. We are also providing copies of this material to the Rohm and Haas Company at their request.

USDA believes that the need and use of dicofol is important in pest control technology and recommends its continued registration. The Department appreciates the opportunity to have cooperated in this important agricultural decision.

Sincerely,

Charles L. Smith,

Coordinator, Pesticides and Pesticide Assessment.

Dated: December 11, 1984.

B. USDA's Response to the August 15, 1985 Federal Register Notice

The USDA responded to the August 15, 1985 amended **Federal Register**

notice. Their comments are printed in full below.

Mr. Steven Schatzow,
Director, Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460.

Dear Mr. Schatzow: This is in response to your letter of August 12 forwarding a revised PD 2/3 for the pesticide chemical dicofol. EPA is to be commended for its rational approach in this document.

We also appreciate your acceptance of many of the comments we gave you in December 1984. We anticipate that those comments will be published in the next Federal Register notice.

Sincerely,

Charles L. Smith,
Coordinator, Pesticide and Pesticide Assessment.

Dated: September 13, 1985.

C. EPA's Response to the Comments of the Secretary of the United States Department of Agriculture

EPA appreciates the cooperation of the USDA in providing comments on the proposed regulatory decision concerning dicofol. Following is a point-by-point response to USDA's December 11, 1984 comments. No response to the September 13, 1985 comments is considered necessary.

1. EPA believes that the standard applied in deciding whether to propose cancellation of the registrations of dicofol products, both in the PD 2/3 and in this final Notice of Intent to Cancel, is the standard prescribed by FIFRA sec. 6. FIFRA sec. 6(b) provides that, "If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act or when used in accordance with widespread and generally recognized practice, generally causes unreasonable adverse effects on the environment, . . ." the Administrator may issue a Notice of Intent to Cancel the registrations of the pesticide. Because of the definition of the term "unreasonable adverse effects," this standard directs EPA to balance the risks against the benefits of using a pesticide and, if risks generally outweigh the benefits, EPA may propose cancellation. As explained in Units II and IV, this is the analysis used by EPA.

2. EPA is unaware of any objective methodology for weighing risks against benefits that adequately takes into account all relevant factors. Therefore, EPA necessarily makes a policy judgment. Such decisions, however, are hardly arbitrary and predetermined, as evidenced by the regulatory changes that often take place from the PD 2/3 to the PD 4 stage of a Special Review. EPA disagrees with USDA's assertion that the weighing of risks of reduced levels of DDTr in dicofol does not have a chance of objective evaluation because there is no definition of what those levels might be. The levels of DDTr were estimated, the corresponding effect on exposure was evaluated, and a determination was made on whether the risks to the environment posed by such effects outweighed the benefits of use. Unit IV of this notice contains a more extensive discussion of EPA's analysis than appeared in PD 2/3.

3. The model used to predict residues of DDTr in the environment resulting from use of dicofol incorporated realistic assumptions into its calculations. The model assumed a zero background level of DDTr. To the extent that there would be background levels, they would only increase the exposure and hence the risk to wildlife. While it is true that migratory wildlife could be exposed to DDTr in other geographic areas where the use of DDT may be legal, EPA's models and calculations do not include such routes of exposure. Thus, the models did not intentionally overestimate exposure to DDTr from dicofol use as USDA implies.

4. Although USDA states that the use of laboratory studies to evaluate the effects of DDT on avian reproduction "may not accurately describe the present situation," USDA gives no reasons for this conclusion. EPA believes that laboratory studies of the toxicity of DDT to wild birds represent the best way of evaluating what levels of DDT will cause adverse effects on avian species. In evaluating the risks of DDTr, EPA examined the results of studies using both DDT and DDE, including the p,p' and o,p' isomers of each chemical. The data base on these four substances was extrapolated to the other components of DDTr, because the homologs have not been studied extensively and because these homologs may convert to DDE. Finally, EPA has never asserted that dicofol is an indisputable or sole source of DDTr residues found in wildlife.

5. USDA's concern that it may not have adequate opportunity to comment on the possible oncogenicity of dicofol before EPA issues its PD 4 final decision is now moot. EPA asked for comment from USDA on the revised PD 2/3 which extensively discussed the oncogenicity of dicofol. USDA had no comment.

6. The issue of availability of economically feasible alternatives has been addressed at length in the revised benefit analysis in Unit III.C of this notice. Specifically, the analysis points out that with the cancellation of dicofol there would be no selective alternative miticide available for use on cucurbits, Bermudagrass (as a seed crop), peppers, dry beans east of the Rockies, spider mite control on tomatoes, a number of ornamentals, and many homeowner crop and ornamental sites. A number of other sites have only a single selective miticide alternative. In general, there is no question that benefits are derived from the use of dicofol in the production of a number of crops. Indeed, the objective of the benefits analysis was to measure the magnitude of such benefits. In the revised benefits analysis, the aggregate impact of cancellation of the uses of dicofol was estimated, at a minimum, to range from roughly $20 to $40 million per year (measured as increased production costs to agricultural producers).

7. As stated above, the revised benefits analysis addresses the impacts of cancelling dicofol use on minor crops. While it is true that for minor sites there would not be a large economic impact when compared to agricultural income as a whole, EPA nevertheless recognizes that there will be significant impacts on some individuals and growers. It should be noted, however, that dicofol is not registered for artichokes as stated by USDA.

8. For those crops which EPA evaluated for alternative miticides, none appeared to have significant yield losses, with the exception of cotton in the San Joaquin Valley. In the latter case, in most years, alternatives would have to be applied too late in the season to prevent a percentage of the early-season spider mite damage. EPA did not evaluate other crop and ornamental sites in enough detail to quantify the impact of cancelling the use of dicofol. EPA recognizes, however, that the lack of dicofol would cause significant losses on certain crops and ornamentals, nationally or in areas where resistance or other local factors limit or restrict alternatives. On a number of sites where integrated pest management practices are used, few if any selective alternative miticides are available.

9. USDA disagrees with EPA's evaluation of the impacts of dicofol on cotton growers in California. This disagreement is based in part on a misunderstanding of EPA's benefits analysis. Contrary to USDA's comment, at no time did EPA project a 20 percent loss in production in the San Joaquin Valley as a result of cancelling dicofol. It must be kept in mind that the objective of a benefits analysis is to measure the economic impact resulting from the cancellation of a pesticide not only on production, but also on the agricultural economy in general,

consumers, and the overall society. The estimation of such impacts does not suggest that the end result will be optimal from the cotton producer's perspective. Given accurate information on both the risks and benefits of dicofol, one can hopefully make a risk/benefit decision which is optimal from society's viewpoint.

The revised cotton analysis concluded that few if any producers would be forced out of cotton production in the San Joaquin Valley. This revised estimate reflects the use of more detailed estimates of cotton production costs which show that, given expected cotton yields and prices (based on long term averages), San Joaquin Valley growers would sustain reduced profits, but would not be forced out of the cotton business.

10. USDA's concerns over the impact of dicofol's cancellation on citrus are valid and the benefits analysis has been revised accordingly.

D. Comments of the Scientific Advisory Panel

EPA transmitted the PD 2/3 to the Scientific Advisory Panel (Panel) for review. At that time, the Panel was asked to comment on the environmental concerns. On April 17, 1985 the Panel responded to EPA. EPA then sent to the Panel an amended notice in draft form concerning EPA's concerns with the oncogenicity of dicofol. On July 8, 1985, they responded to EPA. Because FIFRA requires that the Panel's comments be printed, comments from both meetings are reproduced in their entirety.

1. *Comments following the April 1985 meeting:* Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Scientific Advisory Panel.

Review of a Set of Scientific Issues Being Considered by EPA in Connection with the Special Review on Dicofol.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of a number of scientific issues associated with the Special Review of the pesticide dicofol. The review was conducted in an open meeting held in Arlington, Virginia, on April 17, 1985. All Panel members except Dr. Richard Griesemer and Dr. Rosmarie von Rumker were present for the review.

Public notice of the meeting was published in the **Federal Register** on Friday, March 29, 1985.

In consideration of all matters brought out during the meeting and careful review of the scientific issues in connection with the review of dicofol, the Panel unanimously submits the following report:

Report of SAP Recommendations

The Scientific Advisory Panel has reviewed the dicofol Position Document 2/3 and other materials prepared by EPA, as well as materials provided by the principal registrant, Rohm and Haas Company. On the basis of this review, and the testimony presented at the April 17 meeting, the SAP would like to make the following statements:

Clearly, there are many unresolved differences between the Agency position and that of the principal registrant, differences which, in many cases, cannot be easily resolved. Given the current high DDTr levels in the compound, the recommendation in the PD 2/3 document that dicofol registrations be cancelled might well be justified on environmental grounds, despite the fact that all factors going into the proposed decision are not necessarily well founded. However, if the proposed reduction of DDTr contamination levels to 0.1 percent is implemented, then dicofol use does not appear to the Panel to represent a threat to the environment, including endangered species.

The proposed contamination reduction program, from the present level of 5.75 percent down to 2.5 percent shortly, with 0.1 percent to be reached by the Spring of 1987, is adequate and appropriate, and the Panel recommends that the Agency use this as guidance in its regulatory activities relating to dicofol.

The Panel also urges that metabolism and field studies currently underway be carried to completion at an early date.

Finally, the SAP urges that all affected parties, including EPA, the registrants, and appropriate State officials, work together to ensure that an adequate monitoring system is put in place in order that future levels and trends of DDTr in the environment may be accurately known.

For the Chairman:

Certified as an accurate report of the findings:

Philip H. Gray, Jr.,

Executive Secretary, FIFRA Scientific Advisory Panel.

Dated: April 17, 1985.

2. *COMMENTS FROM THE JULY 1985 MEETING,* Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel.

Review of the Oncogenicity Issue Being Considered by EPA in Connection with the Special Review on Dicofol.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of the issue of oncogenicity being considered by the Agency in connection with the Special Review of the pesticide dicofol. The review was conducted in an open meeting held in Alexandria, Virginia, on July 7, 1985. All Panel members were present for the review except for Dr. Rosmarie von Rumker. Public notice of the meeting was published in the **Federal Register** on June 21, 1985. In consideration of all matters brought out during the meeting and careful review of the scientific issues in connection with the review of dicofol, the Panel unanimously submits the following report:

Report of SAP Recommendations

The Scientific Advisory Panel has reviewed the dicofol Position Document 2/3 and other materials prepared by EPA, as well as materials provided by the principal registrant, Rohm and Haas Company. In response to the four scientific questions posed to the SAP by the Agency, each question is listed below, together with the Panel's response:

Question

1. Examining the carcinogenicity data base of dicofol alone (i.e., the NCI study, the Maronpot re-reading of the slides, the short term results, etc.) and independent of consideration of structurally related compounds, how strong is the weight-of-evidence case that dicofol is a potential human carcinogen?

Response

The SAP believes that the evidence that dicofol is a potential human carcinogen is weak.

Question

2. Given what we know about the metabolism of dicofol and related compounds (e.g., DDT and DDE), to what degree should the Agency incorporate consideration of DDT and DDE data in reaching a weight of the evidence on the potential human carcinogenicity of dicofol?

Response

Consideration of structural relationships between different compounds can be a powerful tool for determining priorities for testing, but should not be used as a basis for regulatory action. Based on existing data, there is no evidence that dicofol is metabolized to DDT, DDE, or their metabolites. Therefore, EPA should not incorporate considerations of DDT and DDE data in reaching a weight-of-evidence judgment on the potential human carcinogenicity of dicofol.

Question

3. The Science Advisory Board has noted that on the spectrum of weight of the evidence for potential human carcinogenicity a point is reached at which use of the data for a quantitative risk assessment can no longer be justified. From this perspective, is a quantitative risk assessment for dicofol justified?

Response

The Panel believes that a quantitative risk assessment for dicofol as a carcinogen cannot be justified. The SAP further suggests that such a risk assessment be omitted from dicofol documents until there are sufficient data to justify such an assessment.

Question

4. Are the methods used for estimating human exposure to dicofol appropriate for the problems at hand? How should the results of those procedures be characterized: e.g. gross overstatements, gross understatements, or reasonable estimates?

Response

In the absence of sufficient information, the Panel is unable to characterize the dietary and applicator exposure estimates. The SAP

does believe however, that more realistic dietary exposure could be derived utilizing the new Tolerance Assessment System.

For the Chairman:

Certified as an accurate report of Findings:

Philip H. Gray, Jr.,

Executive Secretary, FIFRA Scientific Advisory Panel.

Date: July 29, 1985.

E. EPA Response to Comments of the Panel

The Panel commented concerning the registrants' proposal to lower the DDTr contamination level to 0.1 percent and the resulting enivronmental impacts. EPA generally agrees with this comment that this lower DDTr contamination level will not cause unreasonable adverse effects on most non-target species. EPA, however, agrees with the OES Biological Opinion concerning the impact of the continued use of dicofol on endangered species.

EPA agrees with the Panel concerning the need for metabolism and field studies to be completed at an early date. Poultry and rat metabolism studies are nearing completion and will be finalized by December 1986. Additionally, EPA will require reproduction and metabolism tests in sensitive avian species.

In regard to the Panel's comments urging that EPA, the registrants, and State officials work together to establish systems for the monitoring of DDTr levels in the environment, EPA is receiving and examining data that are collected through monitoring programs established by Federal and State agencies. For example, California, where use of dicofol accounts for as much as one-half of the dicofol applied in the U.S., monitors annually for DDTr compounds in their inland waterways, and the U.S. Fish and Wildlife Service conducts a national monitoring program every 2 to 3 years for DDT and other organochlorine compounds in birds and fish. Also, EPA has a compliance monitoring scheme to ensure that registrants comply with the requirements for particular levels of DDTr in their dicofol products. Finally, EPA will require the registrants to conduct long-term environmental residue monitoring for dicofol.

EPA agrees with the Panel's conclusion that the evidence for the carcinogenicity of dicofol is weak. Although EPA believes that the structural similarity between dicofol and DDT, DDE, and related chemicals is a pertinent consideration, it does not change this overall conclusion concerning the weight of the evidence.

EPA also agrees with the Panel regarding the inappropriateness of conducting a quantitative risk assessment in this case and therefore the quantitative risk assessment has been omitted in favor of the qualitative one previously discussed.

F. Public Comments Received in Response to the Amended Notice

Comments were received from four respondents concerning the substance of EPA's proposed decision to continue the registration of dicofol registrations. Of these four comments, two were from the National Audubon Society and one from the National Resources Defense Council (NRDC) objecting to the proposed decision, and one from the USDA and Ohio Department of Natural Resources supporting the proposed decision. The substantive comments address four main issues: DDT and DDE contamination of the environment; monitoring of both registrants producing dicofol and the users of the end-use formulations; the classification of dicofol as a category C carcinogen; and the role of dicofol in integrated pest management in cotton.

1. *DDT and DDE contamination of the environment.* Both Audubon and NRDC argued that EPA had given inadequate weight to the facts that dicofol is contaminated with DDTr leading to further unacceptable DDTr contamination of the environment, that dicofol may possibly be metabolized or interconverted to DDE in the physical environment, that dicofol might metabolize to DDE in organisms, and that dicofol, itself, may possibly cause adverse environmental effects due to its close structural similarity to DDT.

EPA responds that in its modeling it used an average contamination level of 10 percent DDTr to determine whether there would be adverse effects to the environment. If the newly required dicofol products containing only 0.1 percent DDTr were used, this hundredfold reduction would not be expected to add appreciable amounts of DDTr to the environment and would not be likely to cause adverse effects to the environment.

EPA shares Audubon's and NRDC's concern about the possibility that dicofol might metabolize or interconvert to DDE in the environment. The available data on the metabolism of dicofol do not definitively resolve the issue of whether dicofol residues are converted to DDE in animals. EPA has a number of studies which support the conclusion that dicofol does convert to DDE, although such studies are also susceptible to other interpretations. On the other hand, there are metabolism studies which fail to indicate that dicofol is metabolized to DDE but none of these studies proves unequivocally that such conversion does not occur (see Unit III.A.6 above).

EPA has required the registrants to develop data on the environmental fate of dicofol as well as on metabolism of dicofol in other avian species. If, after such data are submitted and evaluated by EPA, dicofol is shown to convert as speculated, EPA will then reconsider its current position that dicofol with reduced levels of DDTr does not cause unreasonable adverse effects on the environment.

NRDC also commented on a report recently released by the California Department of Food and Agriculture (CDFA), entitled "Agricultural Sources of DDT Residues in California's Environment," which concluded that the source of DDTr residues in California is the previous legal use of DDT products. NRDC argues that the contribution of dicofol is not adequately assessed in this report. Additionally, the possibility of chlorinated DDT conversion to DDE in the environment should be included in a thorough assessment.

EPA has also received this report from CDFA. The report provides evidence that DDTr residues are still occurring throughout California's environment, but states that, "Contamination of other pesticides (dicofol) by DDT cannot account for the residues. . . . [O]n analysis of historical and empirical evidence, CDFA concluded that residues from legal applications of DDT, before its use was banned, appear to be the source of this contamination." In EPA's own analysis, assuming that the rate of dicofol usage remains approximately the same, it is projected that by the year 2000 the DDTr concentration within Kings County California (a county receiving some of the highest current annual loadings of dicofol) will be only about 1 percent higher than it would be if all dicofol (with 0.1 percent DDTr contamination) use had ceased in 1985. This projection assumed no environmental loading of DDTr due to environmental conversion of dicofol to DDE. If EPA's reviews of the required environmental fate studies shows that dicofol metabolizes or converts to DDE or any other DDE precursor, a new exposure assessment will be made.

Concerning the NRDC comment that CDFA does not estimate whether or not DDTr residues are higher where dicofol has been used, there have been attempts by California and Florida to measure the increase in environmental DDTr residues resulting from normal application of dicofol products. Neither

study identified a significant increase in DDTr residues. A residue increase is certainly possible, but an environmental monitoring study would have to be unusually sensitive in order to detect it. EPA will require the registrants to conduct studies to monitor the contribution of dicofol to environmental loads of DDTr.

2. *Monitoring.* EPA agrees with Audubon that dicofol monitoring is necessary. EPA will monitor the production of dicofol as Audubon proposes. The U.S. Department of the Interior is already extensively monitoring for DDT in wildlife and has been providing that information to EPA. EPA agrees with Audubon that monitoring of organisms in the place of application of dicofol is also needed to help determine if residues of DDTr are persisting or decreasing. As noted above, EPA will require such monitoring.

3. *Oncogenicity of dicofol.* NRDC objects to EPA's reliance on its "Proposed Guidelines for Carcinogenic Risk Assessment" published in the **Federal Register** of November 23, 1984 (49 FR 46294) for the reclassification of dicofol as a category C carcinogen. NRDC notes that the Science Advisory Board (SAB) recommended the deletion of certain criteria used for reclassifying the oncogenic response of a substance from sufficient to limited and NRDC argues that if those criteria were not considered in evaluating the data on dicofol, the evidence might be considered sufficient to support a quantitative risk assessment. The SAB recommended deleting the criteria of the occurrence of excess tumors in a single sex and the occurrence of metastases or invasion. EPA has considered this recommendation and the final draft of the guidelines will reflect the deletion of the evidence of metastases criterion. The criterion concerning the occurrence of excess tumors in a single sex was retained. Even with this revision, EPA's classification of dicofol would remain the same.

EPA. has also requested additional data to help augment the basis for its reclassification. EPA required the registrants to submit mutagenicity data on dicofol.

4. *Role of dicofol in integrated pest management.* NRDC makes a number of comments concerning the use of dicofol in integrated pest management (IPM) programs. Relying on the arguments of Dr. Ted Wilson of the Entomology Department of the University of California at Davis, an expert in IPM on cotton, NRDC contends that it is an overstatement to claim that dicofol has no effect on natural predators. NRDC also quotes comments submitted to EPA by Dr. Wilson stating that, "there should be stringent restrictions on the continued use of dicofol—even with the lowered DDTr concentrations." NRDC also notes that in these comments Dr. Wilson recommended a reduced spraying schedule for dicofol.

EPA contacted Dr. Wilson about his recommendations and in general, Dr. Wilson feels that his comments were taken out of context by NRDC. Dr. Wilson indicated that dicofol will affect some predatory species, but both sulfur and propargite (possible alternatives to dicofol on cotton) would negatively impact predator populations more severely than dicofol. Specifically, Dr. Wilson indicated that one application of dicofol will reduce predatory thrips nymphs about 18 percent and have little or no effect on predatory bug populations. Predatory mites, which are generally only of significance in early spring, would also be reduced in numbers by dicofol used during that period.

Dr. Wilson also states that he did not mean to suggest that "stringent restrictions . . . on the continued use of dicofol—even with lowered DDTr concentations" were necessary or appropriate. Finally, Dr. Wilson indicated that no more than one application of dicofol is necessary on cotton in most instances, but this view is in agreement with current use practices and recommendations.

When Dr. Wilson's comments are put into context, they do not conflict with IPM decisions and goals analyzed and used in EPA's Special Review documents.

VI. Procedural Matters

This notice announces EPA's intent to cancel the registrations of products containing dicofol unless the terms and conditions of registration are modified. This unit of the notice explains how current registrants may apply to amend their registrations to comply with the terms and conditions set forth in Unit IV.

Under sections 6(b) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected persons are also entitled to respond to this notice by requesting a hearing on the actions that EPA is initiating. Unless a hearing is properly requested with regard to a particular registration or application, this action will become final by operation of law.

This unit of the notice explains how such persons may request a hearing on EPA's final cancellation and denial notice (and the consequences of requesting a hearing and failing to request a hearing in accordance with those procedures).

A. Procedure for Amending the Terms and Conditions of Registration to Avoid Cancellation or Denial of Application

Registrants affected by the cancellation actions set forth in this notice may avoid cancellation by filing an application for an amended registration which contains the label modifications detailed in Unit IV of this notice. This applicaion must be filed within 30 days of receipt of this notice, or within 30 days from the publication of this notice, whichever occurs later. Applicants for a registration subject to this notice must file an amended application for registration within the applicable 30-day period to avoid denial of their pending application.

Applications must be submitted to: By mail: Lawrence J. Schnaubelt, Product Manager 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (703-557-2386).

B. Intrastate Pesticide Products

This unit of the notice explains the procedures that must be followed to file an application, or amend a pending application, for Federal registration of an intrastate product. (On December 30, 1985, EPA sent all intrastate producers a letter requiring them to submit an application for Federal registraton by June 30, 1986.) It also explains the consequences of a failure to file a proper application in a timely manner.

1. *Procedure for filing for Federal registration of an intrastate product.* EPA will allow producers of intrastate products containing dicofol to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver their products if they file a timely, proper application for Federal registration or amended application for registration. In either case, the application must conform to the requirements in Unit IV.B. of this notice. This application must be filed within 30 days of receipt of this notice, or within 30 days of publication of this notice, whichever occurs later.

Applicaitons must be submitted to: Stuart C. MacArthur, Registration Support and Emergency Response, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 30460, (703-557-2227).

Intrastate products released for shipment by the producer after June 30, 1986, must comply with the requirements

in Unit IV. This date is consistent with the deadlines established by the December 30, 1985, letter to intrastate producers requiring submission of applications for Federal registration. Compliance with these requirements does not eliminate the requirement to maintain any other restrictions on the purchase, possession, supervision, use, or disposal on the current label of the product.

2. *Consequence of filing or failing to file a proper, timely application.* Producers of intrastate products are required to submit applications for Federal registration when so instructed by EPA (40 CFR 162.17). As long as a producer submits a timely application, he may continue to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver his products in intrastate commerce. If a producer fails to submit a timely application or amended application, EPA may take appropriate enforcement action against the producer for selling and distributing an unregistered pesticide under FIFRA sec. 12(a)(1)(A).

If the application submitted for Federal registration of an intrastate product containing dicofol does not comply with the provisions of this notice, EPA may deny the application. If EPA finally denies an application for Federal registration of an intrastate product, an distribution, sale, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver that product would be a violation of FIFRA and subject to possible enforcement actions.

C. Procedures for Requesting a Hearing

To contest the cancellation action set forth in this notice, Federal registrants may request a hearing within 30 days of receipt of this notice, or within 30 days from publication of this notice, whichever occurs later. Any other person adversely affected by the action described in this notice, may request a hearing within 30 days of publication of this notice in the **Federal Register.**

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific pesticide product(s) and the specific use(s) for which a hearing is requested, and that all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of each pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–101), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on the action initiated by this notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA sec. 6 (40 CFR Part 164), as modified below. The hearing will be limited to the specific uses and specific product registrations for which the hearing is requested.

If the event of a hearing, the specific use or uses of the specific registered product which is the subject of the hearing will not be cancelled except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the registration of a specific pesticide product subject to this notice is not requested by the end of the applicable 30-day period, registration of that product will be cancelled, unless the registrant files a request for an amended registrations within the statutory period provided herein (see Unit VI.A).

If the registration of a product covered by this notice is cancelled by operation of law, the sale, distribution, use, and disposal of existing stocks is governed by the provisions of Unit IV.D of this notice.

D. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation of presentation of the proceeding as an advocate or in any investigative or expert, capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing on this Notice of Intent to Cancel: the office of the Administrative Law Judge, the office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

Dated: May 22, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.J. Res. 234/Pub. L. 99–317

Designating the week of May 18, 1986, through May 24, 1986, as "National Food Bank Week." (May 23, 1986; 100 Stat. 472; 2 pages) Price: $1.00

S. 8/Pub. L. 99–318

To grant a Federal charter to the Vietnam Veterans of America, Inc. (May 23, 1986; 100 Stat. 474; 4 pages) Price: $1.00

S. 974/Pub. L. 99–319

Protection and Advocacy for Mentally Ill Individuals Act of 1986. (May 23, 1986; 100 Stat. 478; 13 pages) Price: $1.00

S. 2329/Pub. L. 99–320

To make technical corrections in the higher education title of the Consolidated Omnibus Budget Reconciliation Act of 1985. (May 23, 1986; 100 Stat. 491; 1 page) Price: $1.00

S.J. Res. 246/Pub. L. 99–321

To designate May 25, 1986 as "Hands Across America Day", for the purpose of helping people to help themselves, and commending United Support of Artists for Africa and all participants for their efforts toward combating domestic hunger with a four thousand mile human chain from coast to coast. (May 23, 1986; 100 Stat. 492; 2 pages)

S. 2416/Pub. L. 99–322

To revise further the limitation applicable to chapter 37 of title 38, United States Code, for fiscal year 1986, for the purpose of implementing any order issued by the President for such fiscal year under any law providing for the sequestration of new loan guarantee commitments, and for other purposes. (May 23, 1986; 100 Stat. 494; 1 page) Price: $1.00