

6-9-86
Vol. 51 No. 110
Pages 20793-20952

Monday
June 9, 1986

Federal Register

Briefings on How To Use the Federal Register—
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San Francisco, CA, see announcement on the inside cover
of this issue.



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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.

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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

Contents

Federal Register

Vol. 51, No. 110

Monday, June 9, 1986

Administrative Conference of United States

NOTICES

Meetings:

Plenary Session, 20861

Agency for International Development

NOTICES

Meetings:

International Food and Agricultural Development Board, 20897

Agriculture Department

See also Animal and Plant Health Inspection Service; Federal Grain Inspection Service; Food and Nutrition Service; Forest Service

NOTICES

Cooperative agreements:

Alabama A&M University, 20861
American Soybean Association et al., 20861

Air Force Department

NOTICES

Procurement:

Contracts—
Conversion determination, 20877

Animal and Plant Health Inspection Service

PROPOSED RULES

Exportation and importation of animals and animal products:

Federal animal quarantine stations; contracting with private firms
Correction, 20834

NOTICES

Environmental statements; availability, etc.:

Rangeland grasshopper cooperative management program, 20950

Antitrust Division

NOTICES

National cooperative research notifications:

Petroleum Environmental Research Forum, 20897

Army Department

NOTICES

Meetings:

Science Board, 20877

Superfund:

Rocky Mountain Arsenal containment cleanup, 20877

Centers for Disease Control

NOTICES

Mesothelioma production by asbestos substitutes evaluation, etc.; NIOSH meeting, 20893

Coast Guard

RULES

Inland waterways navigation regulations:

Lake Huron to Lake Erie, connecting waters
Correction, 20823

Navigation rules:

COLREGS and inland navigation; alternative compliance, 20820

Regattas and marine parades:

Empire State Regatta, 20821

PROPOSED RULES

Passenger and tank vessels, etc.:

Drydocking and tailshaft examination intervals
Correction, 20847

Ports and waterways safety:

Los Angeles Harbor, CA; safety zones, 20845

Regattas and marine parades:

River Spectacular on the Delaware, 20844

NOTICES

Committees; establishment, renewals, terminations, etc.:

National Boating Safety Advisory Council, 20917

Commerce Department

See International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

Indonesia, 20874

Taiwan, 20875

Commodity Futures Trading Commission

NOTICES

Meetings; Sunshine Act, 20920

Customs Service

RULES

Articles conditionally free, subject to a reduced rate, etc.:

Caribbean Basin Initiative and Generalized System of Preferences; documentation requirements and foreign government certification, 20810

Defense Department

See also Air Force Department; Army Department

PROPOSED RULES

Veterans:

Post-Vietnam era veterans educational assistance program; disenrollment refund, 20846

NOTICES

Committees; establishment, renewals, terminations, etc.:

Health Care Advisory Committee, 20876

Meetings:

Ada Board, 20876

Defense Policy Board Advisory Committee, 20876

U.S. Court of Military Appeals Code Committee, 20876

Wage Committee, 20876

Drug Enforcement Administration

NOTICES

Applications, hearings, determinations, etc.:

DiBella, Geoffrey A. W., M.D., et al., 20898

Economic Regulatory Administration

NOTICES

Natural gas exportation and importation applications:

Canterra Natural Gas Inc., 20882

Education Department**RULES**

Elementary and secondary education:

Asbestos detection and control; local and State educational agencies; CFR Parts removed
Correction, 20825

Intergovernmental review of agency programs and activities and direct grant programs, application procedures for continuation awards, 20823

NOTICES

Grants; availability, etc.:

Carl D. Perkins scholarship program, 20879
Graduate academic facilities program, 20878**Energy Department***See also* Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission**NOTICES**

Atomic energy agreements; subsequent arrangements:

Canada and Japan, 20880

European Atomic Energy Community and Canada, 20881
(2 documents)

European Atomic Energy Community and Japan, 20881

Japan, 20881

Norway and European Atomic Energy Community, 20881

Norway and Sweden, 20882

Naval Petroleum Reserve; crude oil sale provisions, 20882

Energy Research Office**NOTICES**

Meetings:

Energy Research Advisory Board, 20882

Environmental Protection Agency**RULES**

Water pollution; effluent guidelines for point source categories:

General pretreatment regulations for existing and new sources

Correction, 20828

NOTICES

Agency information collection activities under OMB review, 20892

Meetings:

Science Advisory Board, 20893

Pesticide, food, and feed additive petitions:

Moby Chemical Corp., 20893

Executive Office of the President*See* Management and Budget Office**Federal Aviation Administration****RULES**

Aircraft products and parts, certification:

American Aviation Industries, 20797

Transition areas, 20801, 20802

(3 documents)

PROPOSED RULES

Transition areas, 20834

NOTICES

Airport noise compatibility program:

Palm Beach International Airport, FL, 20917

Federal Energy Regulatory Commission**NOTICES**

Electric rate and corporate regulation filings:

Appalachian Power Co. et al., 20883

Small power production and cogeneration facilities; qualifying status:

Amoco Production Co. et al., 20885

Applications, hearings, determinations, etc.:

Algonquin Gas Transmission Co., 20885

ANR Pipeline Co., 20886

Colorado Interstate Gas Co., 20886

Columbia Gas Transmission Corp., 20886

Columbia Gulf Transmission Co., 20887

Equitable Gas Co., 20887

Gas Transport, Inc., 20887

Granite State Gas Transmission, Inc., 20888

Great Lakes Gas Transmission Co., 20888

Kentucky West Virginia Gas Co., 20888

Natural Gas Pipeline Co. of America, 20888

Northwest Pipeline Corp., 20889

Panhandle Eastern Pipe Line Co., 20889

South Georgia Natural Gas Co., 20889

Southern Natural Gas Co., 20890

Superior Offshore Pipeline Co., 20890

Tennessee Gas Pipeline Co., 20890

Texas Eastern Transmission Corp., 20890

Transcontinental Gas Pipe Line Corp., 20891

Trunkline Gas Co., 20892

Federal Grain Inspection Service**NOTICES**

Meetings:

Barley standards, 20862

Federal Highway Administration**RULES**

Engineering and traffic operations:

Truck size and weight—

Designated highway networks, 20817

PROPOSED RULES

Engineering and traffic operations:

Uniform Traffic Control Devices Manual; revision, 20840

Federal Trade Commission**RULES**

Motor vehicles, used; trade rule for sales:

Exemption in Wisconsin, 20936

Prohibited trade practices:

Schneider, Albert, 20803

Textile Fiber Product Identification Act:

Generic name; establishment requests (Celanese Corp.), 20803

Generic name; establishment requests (Phillips Fiber Corp.), 20807

PROPOSED RULES

Prohibited trade practices:

Independent Insurance Agents of America, Inc., et al., 20835

Financial Management Service*See* Fiscal Service**Fiscal Service****NOTICES**

Surety companies acceptable on Federal bonds:

American-European Reinsurance Corp., 20918

Hudson Insurance Co., 20918

IGF Insurance Co., 20918

Universal Security Insurance Co., 20918

Fish and Wildlife Service**NOTICES**

- Comprehensive conservation plan/environmental statements; availability, etc.:
Togiak National Wildlife Refuge, AK, 20896
- Endangered and threatened species permit applications, 20897

Food and Nutrition Service**RULES**

- Food stamp program:
Services in Social Security Administration offices (Food Security Act implementation), 20793

Forest Service**RULES**

- Minerals; operations in Misty Fjords and Admiralty Island National Monuments, AK, etc., 20825

NOTICES

- Environmental statements; availability, etc.:
Coronado National Forest, AZ, 20862

General Services Administration**RULES**

- Property management:
Motor vehicles procurement, 20828

Health and Human Services Department

See Centers for Disease Control

Housing and Urban Development Department**NOTICES**

- Agency information collection activities under OMB review, 20894

Immigration and Naturalization Service**RULES**

- Aliens:
Classification as immediate relative of U.S. citizen or as preference immigrant; occupational preference petitions filing
Correction, 20794

Interior Department

See also Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

NOTICES

- Meetings:
President's Commission on Americans Outdoors, 20895

International Development Cooperation Agency

See Agency for International Development

International Trade Administration**NOTICES**

- Antidumping and countervailing duties:
Administrative review requests; correction, 20864
- Antidumping, etc.:
Porcelain-on-steel cooking ware from—
Mexico, Taiwan, and China, 20862
- Countervailing duties:
Brass sheet and strip from—
Brazil, 20864
France, 20867
Ceramic tile from Mexico, 20871
- Export trade certificates of review, 20873
- Short supply determinations; inquiry:
Flat rolled products, 20863

Applications, hearings, determinations, etc.:

- Rutgers University, 20864
University of California, 20864
University of New Mexico; correction, 20874

Justice Department

See Antitrust Division; Drug Enforcement Administration; Immigration and Naturalization Service

Labor Department

See Pension and Welfare Benefits Administration

Land Management Bureau**NOTICES**

- Agency information collection activities under OMB review, 20895
- Alaska Native claims selection:
Sealaska Corp., 20895
- Realty actions; sales, leases, etc.:
Washington, 20896

Legal Services Corporation**NOTICES**

- Grants; availability, etc.:
Law school civil clinical programs, 20901

Management and Budget Office**NOTICES**

- Educational institutions, cost principles (Circular A-21), 20908

National Credit Union Administration**NOTICES**

- Meetings; Sunshine Act, 20920

National Institute for Occupational Safety and Health

See Centers for Disease Control

National Oceanic and Atmospheric Administration**RULES**

- Fishery conservation and management:
Gulf of Alaska groundfish, 20832

PROPOSED RULES

- Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 20847
Northeast multispecies, 20850

NOTICES

- Permits:
Marine mammals, 20874

Nuclear Regulatory Commission**NOTICES**

- Environmental statements; availability, etc.:
Commonwealth Edison Co., 20905
Florida Power & Light Co., 20906

Meetings:

- Reactor Safeguards Advisory Committee, 20906, 20907
(3 documents)

Regulatory guides:

- Issuance, availability, and withdrawal, 20907
- Applications, hearings, determinations, etc.:*
Niagara Mohawk Power Corp., 20902

Office of Management and Budget

See Management and Budget Office

Pension and Welfare Benefits Administration**NOTICES**

Employee benefit plans; prohibited transaction exemptions:
Annuity Trust Fund of Exxon Corp. et al., 20898

Personnel Management Office**PROPOSED RULES**

Freedom of Information Act; implementation, 20833

Public Health Service

See Centers for Disease Control

Railroad Retirement Board**NOTICES**

Agency information collection activities under OMB review,
20910, 20911
(2 documents)

Research and Special Programs Administration**NOTICES**

Hazardous materials:
Inconsistency rulings, etc.—
Wisconsin Electric Power Co., 20926

Securities and Exchange Commission**NOTICES**

Meetings; Sunshine Act, 20920
Self-regulatory organizations; proposed rule changes:
Pacific Clearing Corp., 20914
Pacific Stock Exchange, Inc., 20915
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 20914
Applications, hearings, determinations, etc.:
Co-operative Bank Investment Fund, 20911
Delaware Fund, Inc., et al., 20912
Hemisphere Fund, Inc., 20913

Small Business Administration**RULES**

Small business size standards:
Engineering, architectural and surveying services, 20795
Surety bond guarantee, 20922

NOTICES

Agency information collection activities under OMB review,
20916
Disaster loan areas:
Iowa, 20916
License surrenders:
Retail Capital Corp., 20916
Meetings; regional advisory councils:
Alabama, 20916

Surface Mining Reclamation and Enforcement Office**RULES**

Permanent program submission:
Ohio, 20818

PROPOSED RULES

Permanent program submission:
Alabama, 20841
New Mexico, 20843

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile
Agreements

Transportation Department

See also Coast Guard; Federal Aviation Administration;
Federal Highway Administration; Research and Special
Programs Administration

RULES

Organization, functions, and authority delegations:
Assistant Secretary for Policy and International Affairs et
al.; foreign airport security, etc., 20831

Treasury Department

See Customs Service; Fiscal Service

Veterans Administration**RULES**

Vocational rehabilitation and education:

Veterans education—

Emergency Veterans Job Training Act; limit on
reimbursement of wages, 20827

Nonmatriculated students; correction, 20827

PROPOSED RULES

Medical benefits:

Charges for care or medical services

Correction, 20846

Vocational rehabilitation and education:

Veterans education—

Post-Vietnam era veterans educational assistance
program; disenrollment refund, 20846

Separate Parts In This Issue**Part II**

Small Business Administration, 20922

Part III

Department of Transportation, Research and Special
Programs Administration, 20926

Part IV

Federal Trade Commission, 20936

Part V

Department of Agriculture, Animal and Plant Health
Inspection Service, 20950

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

| | | |
|------------------------|----------|-----------------|
| 5 CFR | 71..... | 20847 |
| Proposed Rules: | 91..... | 20847 |
| 294..... | 167..... | 20847 |
| | 169..... | 20847 |
| | 189..... | 20847 |
| 7 CFR | | |
| 272..... | | 20793 |
| 273..... | | 20793 |
| 8 CFR | | |
| 204..... | | 20794 |
| 9 CFR | | |
| Proposed Rules: | | |
| 92..... | | 20834 |
| 13 CFR | | |
| 115..... | | 20922 |
| 121..... | | 20795 |
| 14 CFR | | |
| 21..... | | 20797 |
| 71 (3 documents)..... | | 20801, 20802 |
| Proposed Rules: | | |
| 71..... | | 20834 |
| 16 CFR | | |
| 13..... | | 20803 |
| 303 (2 documents)..... | | 20803, 20807 |
| 455..... | | 20936 |
| Proposed Rules: | | |
| 13..... | | 20835 |
| 19 CFR | | |
| 10..... | | 20810 |
| 178..... | | 20810 |
| 23 CFR | | |
| 658..... | | 20817 |
| Proposed Rules: | | |
| 655..... | | 20840 |
| 30 CFR | | |
| 935..... | | 20818 |
| Proposed Rules: | | |
| 901..... | | 20841 |
| 931..... | | 20843 |
| 33 CFR | | |
| 81..... | | 20820 |
| 100..... | | 20821 |
| 162..... | | 20823 |
| Proposed Rules: | | |
| 100..... | | 20844 |
| 165..... | | 20845 |
| 34 CFR | | |
| 75..... | | 20823 |
| 79..... | | 20823 |
| 230..... | | 20825 |
| 231..... | | 20825 |
| 36 CFR | | |
| 228..... | | 20825 |
| 38 CFR | | |
| 21 (2 documents)..... | | 20827 |
| Proposed Rules: | | |
| 17..... | | 20846 |
| 21..... | | 20846 |
| 40 CFR | | |
| 122..... | | 20828 |
| 403..... | | 20828 |
| 41 CFR | | |
| 101-26..... | | 20828 |
| 46 CFR | | |
| Proposed Rules: | | |
| 31..... | | 20847 |
| 61..... | | 20847 |

THE PARTS OF THE BODY

The body is composed of many parts, each of which has its own special function. The head, neck, and chest are the upper part of the body, and the arms and hands are the upper limbs. The back, waist, and legs are the lower part of the body, and the feet are the lower limbs. The brain is the center of the body, and it controls all the other parts. The heart is the pump of the body, and it sends blood to all the other parts. The lungs are the organs of the body that take in oxygen and give out carbon dioxide. The stomach is the organ of the body that takes in food and turns it into energy. The intestines are the organs of the body that take in water and give out waste. The skin is the outer covering of the body, and it protects the other parts. The bones are the framework of the body, and they support the other parts. The muscles are the organs of the body that move the other parts. The nerves are the organs of the body that carry messages from the brain to the other parts. The sense organs are the organs of the body that take in information from the world around us. The eyes are the sense organs that see, the ears are the sense organs that hear, the nose is the sense organ that smells, and the tongue is the sense organ that tastes. The skin is also a sense organ that feels touch, heat, and cold. The body is a wonderful machine, and it is able to do many things that no other machine could do. It is able to think, feel, and move. It is able to live and grow. It is able to love and be loved. It is able to be happy and content. It is able to be a part of something bigger than itself. It is able to be a part of the world.

Rules and Regulations

Federal Register

Vol. 51, No. 110

Monday, June 9, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 275]

Food Stamp Program; Supplemental Security Income and Social Security Provisions of the Food Security Act of 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends Food Stamp Program regulations to implement a provision of the Food Security Act of 1985 which reinforces and strengthens current regulations in regard to Food Stamp Program services in Social Security Administration offices.

DATES: This action is effective October 1, 1986. Comments must be received on or before August 8, 1986, to be assured of consideration.

ADDRESSES: Comments should be submitted to Bruce Clutter, Chief, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: If there are any questions, please contact Judith M. Seymour, Supervisor, Certification Rulemaking Section, at the above address or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512-1

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521-1. The rule will not result in an annual economic impact of more than \$100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the rule has been classified as "nonmajor."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule and related Notice to 7 CFR Part 3015 Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Public Participation

This rule implements the portion of the Food Security Act of 1985 regarding the provision of Food Stamp Program information and simplified applications at Social Security Administration offices. These provisions are nondiscretionary in that the required action is specifically set forth in the statute and therefore cannot be affected by public comment. For this reason, the Department has determined in accordance with 5 U.S.C. 553(b) that notice and prior public comment are impracticable, unnecessary and contrary to public interest. Further, since this rulemaking merely recites the statutory provision, it constitutes an interpretative rule for which notice and public comment are not required under 5 U.S.C. 553. However, since the Department believes that an opportunity for public comment could result in improved and simplified administration of the rule and expose any errors or oversights in the rule, it is being published as an interim rule with a 60-day comment period.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the

Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this proposal does not have a significant economic impact on a substantial number of small entities. This rule implements a provision from the Food Security Act of 1985 which does not represent a major change in application processing or operational policy.

Paperwork Reduction Act

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Food Stamp Applications for SSI Applicant/Recipients

Current rules at § 273.2(k) allow State agencies to select from one of two options in processing food stamp applications of Supplemental Security Income (SSI) applicants and recipients through Social Security Administration (SSA) offices. Under the first option, SSA has the authority to accept food stamp applications and to conduct interviews at SSA offices for households consisting entirely of SSI applicants or recipients and which have neither applied for food stamps during the previous 30 days nor have an application pending. Although this is normally done when an initial application for SSI is taken or SSI eligibility is redetermined, food stamp applications are accepted from individuals who are eligible to file them at SSA offices at any time they request to do so. They are assisted in completing the application and interviewed at that time. Under this option, SSA employees inform SSI households of their right to apply for food stamps at the SSA office (or a food stamp office) and complete the application for the household, using much of the information already obtained during the SSI interview. SSA uses either the national food stamp application form or an FNS-approved State food stamp application and uses a transmittal form to facilitate forwarding and completing the food stamp application. These applications are forwarded to the food stamp office for determination of eligibility for the Food

Stamp Program within one working day after receipt of a signed application.

Under the second option, the State agency, with SSA concurrence, outstations at least one food stamp caseworker at the SSA office to accept food stamp applications and conduct interviews. The outstationed worker must accept applications and interview households which contain at least one applicant for or recipient of SSI. Households which do not have an applicant for or recipient of SSI, but which contain an applicant for or recipient of benefits under Title II of the Social Security Act (Old-Age, Survivors, and Disability Insurance (OASDI)), may have their applications filed and be interviewed by the outstationed eligibility worker if SSA and the State agency have an agreement to allow the processing of such households at SSA offices.

State agencies have the authority to choose between the above two options for any SSA office, subject to a negotiated agreement between the Departments of Agriculture and Health and Human Services (HHS). This agreement, originally signed on February 1, 1983, provides for reimbursement by the Secretary of Agriculture to the Secretary of HHS for services performed by HHS pursuant to the joint processing of food stamp applications under Part 273 of the food stamp regulations.

Food Security Act SSI/Social Security Provisions

The Food Stamp Act of 1977, as amended, (Section II(i)) provided that households in which all members are recipients of SSI shall be permitted to apply for participation in the Food Stamp Program by completing a simple application at the social security office and be certified using information contained in SSA files. Section 1531 of the Food Security Act of 1985, Pub. L. 99-198, changes this wording slightly to provide that households in which all members are applicants for or recipients of SSI must be informed of the availability of Food Stamp Program benefits and assisted in making a simple application to participate in the Program. Current regulations, as explained above, already offer services to applicant/recipients consistent with the Food Security Act language for SSI households; therefore, no regulatory change is necessary in this area.

The Food Security Act also stipulates that any individual who is an applicant/recipient of benefits under Title II of the Social Security Act must be informed of the availability of Food Stamp Program benefits and informed of the availability

of a simple application to participate in the Program at the social security office. However, there is not a requirement in the Food Security Act of 1985 for SSA employees to accept and complete these applications as there is for households composed solely of SSI applicants/recipients. As explained above, current regulations at § 273.2(k)(1)(ii) specify that if the State agency chooses to outstation eligibility workers at SSA offices, then households which contain an applicant for or recipient of social security benefits may apply for food stamps and be interviewed at the SSA office if the State agency and SSA have so agreed. This requirement is being retained. In accordance with the Food Security Act which specifies that all title II social security applicants/recipients shall be informed of the availability of benefits under the Food Stamp Program and informed of the availability of a simple application to participate in the Program at the social security office, we are adding regulatory language to that effect in a separate paragraph following § 273.2(k) which addresses SSI households.

The aforementioned agreement between the Department and HHS is being revised to reflect the above Food Security Act requirements.

Implementation

The effective date of this rule is October 1, 1986. This date is specified in the Food Security Act of 1985. There is no special implementation effort required by the State agencies to effectuate the changes in this rulemaking.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamp, Fraud, Grant programs, Social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 and are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011-2029).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1(g), a new paragraph (77) is added to read as follows:

§ 272.1 General terms and conditions.

(g) Implementation. ***

(77) *Amendment No. 275.* The program change in § 273.2(1) of Amendment No. 275 shall be effective October 1, 1986.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2, a new paragraph (1) is added to read as follows:

§ 273.2 Application processing.

(1) *Households applying for or receiving social security benefits.* An applicant for or recipient of social security benefits under Title II of the Social Security Act shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a Food Stamp Program application at the SSA office. The SSA office is not required to accept applications and conduct interviews for Title II applicants/recipients in the manner prescribed in § 273.2(k) for SSI applicants/recipients unless the State agency has chosen to outstation eligibility workers at the SSA office and has an agreement with SSA to allow the processing of such households at SSA offices. In these cases, processing shall be in accordance with § 273.2(k)(1)(ii).

Dated: June 2, 1986.

Robert E. Leard,
Administrator.

[FR Doc. 86-12632 Filed 6-6-86; 8:45 am]
BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Filing of Occupational Preference Petitions

Correction

In FR Doc. 11441, beginning on page 18568, in the issue of Wednesday, May 21, 1986, make the following corrections:

1. On page 18569, second column, first complete paragraph, fifth line, "their" should read "there".

§ 204.1 [Corrected]

2. On page 18571, first column, § 204.1(d)(2)(i), second line, "May 21, 1986," should read "June 20, 1986".

3. On the same page, second column, in § 204.1(d)(2)(i), first line, "and" should

read "an", and in the third line after "not" insert "refiled".

4. On the same page, § 204.1(d)(2)(ii), second column, second line, "May 21, 1986" should read "June 20, 1986", and in the eighth line the second "the" should be removed.

BILLING CODE 1505-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Definition of Small Business for Engineering, Architectural and Surveying Services

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA is amending its size standard regulations for engineering, architectural, and surveying services to \$2.5 million in annual receipts, averaged over the firm's most recent three completed fiscal years, as the appropriate size standard for all three services. This is a decrease from the current size standards of \$7.5 million for engineering services and \$3.5 for architectural services and surveying services.

This rule does not include the size standards applicable to engineering services for military and aerospace equipment and weapons, for marine engineering or for naval architecture. These services have separate size standards.

EFFECTIVE DATE: August 8, 1986.

FOR FURTHER INFORMATION CONTACT: Norman S. Salenger, Size Standards Staff, Small Business Administration, (202) 653-6373.

SUPPLEMENTARY INFORMATION: On September 16, 1985, SBA published in the Federal Register (50 FR 37539) a proposed rule to lower the size standards for engineering, architectural, and surveying services, allowing a 60-day comment period. The proposal was in response to the urging of a number of firms and several industry associations for the SBA to lower the size standards considerably. The proposal informed the public that SBA intended to reduce the size standard for these services to as low as \$1.5 million. Upon request, the comment period was extended by 30 days. The comments reflected that the proposed reduction to \$1.5 million was inappropriate. SBA received 153 comments from firms in the affected industries and an additional 164 comments from others in the private sector such as associations, firms in other industries, and employees of firms

in the industries affected. Comments were also received from federal agencies and several members of Congress. Sixty-two percent of the comments received from firms in the affected industries were in opposition to the proposed reduction to \$1.5 million. Federal agencies were split in their acceptance of a \$1.5 million size standard. A more modest reduction was suggested by a number of commenting firms as well as by several of the Federal agencies opposed to the \$1.5 million size standard.

Considering the arguments presented by those commenting as well as the industry structure, the SBA has decided that a more moderate reduction to \$2.5 million is appropriate.

Comments From the Public

On September 16, 1985, after continuous urging by a number of sources including the largest engineering services trade association, SBA published notification of its intent to lower the size standards for engineering, architectural, and surveying services. SBA proposed \$1.5 million as the new standard for these services. All three activities share the same Standard Industrial Classification. Including an extension, the comment period was 90 days.

SBA received 153 comments from firms in the subject industries, 57 were in favor of a reduction, 94 were opposed and 2 firms submitted vague comments. Among industry groups, 137 were from consulting engineering firms (81 opposed the proposal), 5 from architectural firms (4 opposed the proposal), and 11 from surveying firms (9 opposed the proposal). Overall, 62 percent of the commenting firms in the affected industries opposed a proposed reduction to \$1.5 million. In cases where a firm's comments failed to give sufficient reasons for that firm's position or where the size of the commenting firm could not be determined by SBA, that commentator was contacted, by letter, to obtain additional information; about half replied. The positions, by size of firm in these industries, are summarized in Table 1.

TABLE 1.—COMMENTS BY SIZE OF FIRMS TO THE PROPOSAL OF SEPTEMBER 1985 TO LOWER THE ENGINEERING, ARCHITECTURAL, AND SURVEYING SERVICES SIZE STANDARDS TO \$1.5 MILLION

| Annual receipts of firm commenting | For the proposal | Against the proposal | Vague |
|------------------------------------|------------------|----------------------|-------|
| Over \$7.5 million | 19 | 3 | 0 |
| \$3.5 to \$7.4 million | 2 | 29 | 1 |
| \$1.5 to \$3.4 million | 0 | 36 | 0 |

TABLE 1.—COMMENTS BY SIZE OF FIRMS TO THE PROPOSAL OF SEPTEMBER 1985 TO LOWER THE ENGINEERING, ARCHITECTURAL, AND SURVEYING SERVICES SIZE STANDARDS TO \$1.5 MILLION—Continued

| Annual receipts of firm commenting | For the proposal | Against the proposal | Vague |
|------------------------------------|------------------|----------------------|-------|
| Under \$1.5 million | 26 | 6 | 0 |
| Firm size unknown | 10 | 20 | 1 |
| Totals | 57 | 94 | 2 |

More important than a count of those comments for or against the proposal are the various points presented. Firms with annual receipts of under \$1.5 million had a strong tendency to support the proposal. These firms pointed out their difficulty in obtaining Federal contracts and attributed this to the preference of procuring agencies for firms above \$1.5 million in annual receipts. Firms with annual receipts between \$1.5 and \$7.5 million, basically, did not want to lose eligibility for set-asides and stressed their dependence upon this benefit.

However, this group often recommended a more moderate reduction than \$1.5 million. A number of firms reported their level of Federal contracts. A few of the larger firms now within the size standards received Federal contracts in the range of \$600,000 to over \$1 million per year. Those firms with receipts of under \$1.5 million usually reported receiving no, or very few Federal contracts per year.

Comments From Federal Agencies

The commenting agencies had mixed positions. Three agencies, including the Department of Defense, supported the proposed reduction to \$1.5 million. DoD accounts for 80 percent of all procurement to which the subject size standards apply. Five agencies, including the Veterans Administration, had no objection to the proposed \$1.5 million size standard. The Veterans Administration is the largest non-defense Federal procurer of these services. Eight agencies opposed the full reduction. However, half of these suggested a reduction of less magnitude.

Industry Structure

Engineering services include numerous separate activities, but approximately 84 percent of the receipts of engineering firms is for design services used in construction. The engineering services industry as a whole, however, is not highly sensitive to Federal procurement activity; less than 6 percent of its receipts come from

Federal contracts. Many engineering firms have in-house capability for architectural services and a lesser number for surveying services. However, most firms engaged primarily in architectural or surveying services specialize only in that discipline and are relatively much smaller in average size than engineering firms. Table II contains the latest available Census data on industry structure.

TABLE II.—ENGINEERING, ARCHITECTURAL AND SURVEYING SERVICES INDUSTRY STRUCTURE IN BRIEF—1982 CENSUS

| | Eng. firms | Arch. firms | Surv. firms |
|--|-------------|-------------|-------------|
| Number of Firms Operating Entire Year: | | | |
| With receipts under \$1 million..... | 18,231 | 11,119 | 5,937 |
| With receipts \$1 to 2.4 million..... | 1,493 | 687 | 107 |
| With receipts \$2.5 to 4.9 million..... | 550 | 185 | 26 |
| With receipts \$5.0 to 9.9 million..... | 282 | 119 | 9 |
| With receipts \$10 million or more..... | 258 | | |
| Totals..... | 20,814 | 12,110 | 6,079 |
| Average Firm Size in Receipts..... | \$1,282,728 | \$464,126 | \$175,222 |
| Percentage of 1982 Industry Receipts: | | | |
| Firms under \$1 million in receipts..... | 15.04 | 42.95 | 68.01 |
| Firms \$1.0 to 2.4 million in receipts..... | 8.62 | 18.09 | 14.30 |
| Firms \$2.5 to 4.9 million in receipts..... | 7.21 | 11.38 | 8.47 |
| Firms \$5.0 to 9.9 million in receipts..... | 7.34 | 27.58 | 9.22 |
| Firms with \$10 million or more in receipts..... | 61.79 | | |
| Total (percent)..... | 100.00 | 100.00 | 100.00 |

Source: U.S. Bureau of the Census, 1982 "Census of Service Industries, SC 82-1-1."

Federal Contracting in Recent Years

The unique feature of Federal purchasing of engineering services is that the Federal agencies rate proposals in order of merit. The price and other terms are then negotiated with the highest rated proposal. If agreement is not reached, negotiations are made for the next highest rated proposal. This process continues until the contract is placed.

The Department of Defense accounts for approximately 80 percent of the value of all construction related architectural and engineering services purchased by the Federal Government. Legislation to constrain the Department of Defense from setting aside architecture and engineering service contracts exceeding \$85,000 in total value went into effect starting in FY 1985. As a result, the percentage of

dollars set aside by DoD dropped from 54.1 percent in FY 1984 to 22.6 percent for FY 1985. However, the small business share of awards dropped only 7 percentage points from 74.1 percent in FY 1984 to 66.6 percent in FY 1985, indicating that small business was successful in obtaining a large share of awards without benefit of set-aside provisions. These data are shown in Table III.

Table III.—Department of Defense Construction Related Architecture and Engineering Awards FY 1984-85

[Dollars in millions]

| | FY 1984 | 1985 |
|--------------------------------|---------|-------|
| All awards..... | \$413 | \$456 |
| Awards to small business..... | \$306 | \$304 |
| Percent to small business..... | 74.1 | 66.6 |
| Value of set-asides..... | \$224 | \$103 |
| Set-aside percent— | | |
| of all procurement..... | 54.1 | 22.6 |
| of small business share..... | 73.0 | 33.9 |

Source: Department of Defense.

In non-defense agencies, slightly less than half the value of awards are through set-asides. Small firms receive about 90 percent of the awards of under \$100,000. Over 80 percent of all awards are under \$100,000 in value. The General Services Administration and the Veterans Administration are the leading procuring agencies for these services.

There are approximately 3,000 Federal awards per year in the subject industries. A relatively small percentage of firms receive more than one award in any year. Where more than one award was received in a year, the recipient usually had annual receipts in excess of \$3.5 million. The dollar value of Federal awards to specific contractors with over \$7.5 million in annual receipts was several times that to specific contractors with receipts of under \$7.5 million. These figures do not include 8(a) program contracts.

The Decision to Set the Size Standard at \$2.5 Million

The following factors were taken into consideration in setting the size standards for engineering, architectural, and surveying services at \$2.5 million:

1. Based on the 1982 Census of Service Industries, engineering firms with receipts of under \$1.0 million accounted for only 15.4 percent of the industry receipts. In general, SBA would prefer a higher level of coverage such as that associated with a size standard of \$2.5 million in order to maintain some comparability with the coverage occurring in other service industries.

2. From the comments, and particularly those from Federal agencies, there is the indication that too

few Federal contracts would be set-aside at a size standard of \$1.5 million. This is due to the perceived absence of firms with sufficient technical capabilities with receipts of \$1.5 million or less. At the \$2.5 million size standard level there should be a sufficient number of firms with the technical capability to meet Government contracting requirements.

3. The information developed from the comments indicates that the small business share is made up largely of contracts awarded to firms with receipts from \$2.5 to \$7.5 million. The Department of Defense data show that from FY 1984 to FY 1985, those firms within the size standard were capable of maintaining almost all their share of the architecture and engineering contracts even though the set-aside value dropped to less than half. This indicates that firms between \$2.5 and \$7.5 million in annual receipts are competitive in the unrestricted market. There would seem to be no reason to continue small business preference for these firms. Therefore, the Agency is setting the size standard to direct assistance to the smaller firms not currently receiving an adequate share of the set-aside contracts.

Compliance With Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

This final rule defines which firms are eligible to bid on Federal contracts set aside for small business for engineering, architectural, and surveying services where these services are not for military and aerospace equipment and weapons. SBA has determined that this regulation is a major rule as defined by Executive Order 12291 because it is likely to have an annual economic effect of \$100 million or more. In FY 1985, the Department of Defense (DoD) set aside \$103 million of engineering, architectural, and surveying services contracts and non-defense agencies are estimated to have set aside \$32 million of such contracts. Thus, the total amount of set-asides which are likely to be affected by this rule is approximately \$135 million, well above the \$100 million criterion for a major rule. SBA notes, however, that this rule does not qualify as a major rule under the other two criteria of the Executive Order: it would not be likely to result in a major increase in costs or prices, nor would it be likely to have a significant adverse effect on the United States economy.

SBA certifies that this regulation will not have a significant adverse impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601 *et seq.* It may, however, have some negative impact on a few firms which are currently considered small within SBA's size standards, but which are larger in size than the industry average. Therefore, in compliance with the Regulatory Flexibility Act and Executive Order 12291, SBA offers this regulatory flexibility and economic impact analysis.

There are many more firms in the industry than Federal contracts awarded in any year. Thus, most firms do not receive a single Federal contract in any year, but depend on the non-Federal marketplace for their business. Most firms that receive awards in any year receive only one award and that, most often, is less than \$100,000 in value. The few firms that receive more than one award in any year are not generally dependent upon Federal contracts for the bulk of their business. Furthermore, most contracts in these industries are not set aside for exclusive small business bidding and would not be affected by this rule. There is no evidence that any firm's loss of eligibility to bid on set-asides would result in its discontinuance in business.

The subject industries are comprised of 39,003 firms, according to the latest Census. Of these, 38,505 are currently eligible under SBA size standards. Under a size standard of \$2.5 million, 37,574 firms will retain eligibility and 931 firms will lose eligibility. Most losing eligibility are not in the Federal marketplace; thus, this rule affects only a minority of firms who use Federal contracts to supplement their sales. Firms losing eligibility to bid on contracts set aside for small business will still be able to bid on the bulk of Federal contracts which are not presently set aside. Those losing eligibility for set-asides are the larger of the now eligible firms and are generally in a stronger economic position than firms in the sector retaining eligibility.

This regulation is likely to have a favorable impact on small entities with receipts below the reduced size standard. Federal contracts set aside for small business should be directed to those firms with a greater need to participate in the Federal marketplace. Thus, those businesses which are truly small will benefit the most from this rule. The rule, by itself, imposes no costs on the Government, nor on firms seeking Government procurements.

Consequently, the smaller firms will enjoy the net benefits of the rule. These size standards will also be used to determine a firm's eligibility to receive an SBA business loan. Almost all SBA loans are made to the smallest

of firms, often those just starting in business or in the early stages of growth. Thus, this rule will have virtually no impact on engineering, architectural or surveying firms at a size level of \$2.5 million or more in annual receipts for purposes of financial assistance.

The rule defines the maximum size a firm may be to receive SBA assistance and to bid on contracts set aside by all Federal agencies for small firms for the subject services. The legal bases for this final rule are sections 3(a) and 5(b)(6) of the Small Business Act, (15 U.S.C. 632(a) and 634(b)(6)). There are no Federal rules which would duplicate, overlap or conflict with this final rule.

SBA certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant Programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small business.

PART 121—[AMENDED]

Accordingly, Part 121 of 13 CFR is amended as follows:

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 632(a) and 634(b)(6).

§ 121.2 [Amended]

2. The table in § 121.2(c)(2), for Major Group 89—Miscellaneous Services, item 8911, is revised to read as follows:

| SIC | Description | Size Standards in number of employees or millions of dollars |
|---------------------------------------|---|--|
| Major Group 89—Miscellaneous Services | | |
| 8911 | Engineering Services, Except Military and Aerospace Equipment, and Except for Military Weapons. | \$2.5 |
| 8911 | Engineering Services for Military and Aerospace Equipment and for Military Weapons (Except Marine Engineering). | 13.5 |
| 8911 | Marine Engineering and Naval Architecture | 9.0 |
| 8911 | Architectural Services (Except Naval) and Surveying Services | 2.5 |

Dated: June 3, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-12858 Filed 6-6-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-19; Special Conditions No. 25-ANM-10]

Special Conditions: American Aviation Industries Reengineered JetStar Model 1329 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101 of the Federal Aviation Regulations (FAR) to American Aviation Industries (AAI) for a Supplemental Type Certificate (STC) for the AAI reengineered JetStar

Model 1329 series airplane. The reengineered JetStar airplane will have novel or unusual design features associated with an automatic takeoff thrust control system (ATTCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. The ATTCS will allow the airplane to take off with less than maximum takeoff thrust approved for the airplane; and, if an engine fails, the system will automatically provide maximum takeoff thrust on the operating engine. These special conditions contain safety standards which the Administrator finds necessary to establish a level of safety equivalent to that provided by the regulations applicable to the AAI reengineered JetStar airplane because of the novel or unusual features.

EFFECTIVE DATE: July 9, 1986.

FOR FURTHER INFORMATION CONTACT: James Walker, Policy and Procedures Branch, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:**Background**

On March 8, 1984, American Aviation Industries (AAI), 1670 Roscoe Boulevard, Van Nuys, California 91406, made an application to the Federal Aviation Administration (FAA), Northwest Mountain Region, for an STC to reengine the JetStar Model 1329 series airplane with two General Electric Model CF34-1A turbofan engines. The JetStar Model 1329 series airplane currently has installed four Pratt and Whitney Model JT12A turboprop engines or four Garrett AiResearch Model TFE-731 turbine engines. The Model CF34-1A engine installation will include an ATTCS.

On March 9, 1984, Volpar, Inc. Van Nuys, California, dba American Aviation Industries, Inc., petitioned for an exemption from § 21.19(b)(1) of the Federal Aviation Regulations (FAR) to permit Volpar, Inc., dba American Aviation Industries, Inc., to apply for supplemental type certification of a design change from four engines to two engines on the Lockheed Model 1329 series JetStar airplane. Section 21.19(b)(1) requires a new application for type certificate if the proposed change to a product is a change in the number of engines or rotors. Exemption No. 4225 was granted on December 19, 1984. The exemption permitted the applicant to apply for an STC for a design change to the JetStar Model 1329 airplane from a four-engined to a two-engined airplane provided that compliance is shown with § 21.19(a) and with the applicable airworthiness regulations of Part 25 in effect on the date of application for the design change to all areas, systems, components, equipment, or appliances that are changed or significantly affected by the modification.

The AAI supplemental type certificated airplane, Model 1329 series, is a low wing, pressurized transport category airplane with certificated takeoff gross weights ranging from 40,921 pounds to 44,500 pounds. The airplane has a maximum permissible altitude of 43,000 feet and a total occupancy of 12 persons, including a crew of two. The modified airplane series will be equipped with two General Electric Model CF34-1A turbofan engines each rated at 8,650 pounds for normal takeoff thrust at sea level standard day and 9,140 pounds for maximum takeoff thrust at sea level standard day and will incorporate an ATTCS. The ATTCS is designed to automatically increase the thrust on the operating engine to the maximum installed thrust approved for the takeoff

ambient conditions, in the event an engine fails during the takeoff.

The ATTCS proposed for this installation is similar to the currently approved system on the Canadair Challenger Model 601 equipped with the same CF34 engine (48 FR 12334; March 24, 1983) and incorporates the manual thrust increase/decrease capability. The application of maximum takeoff thrust, whether set by the ATTCS or manually, will not result in the operating limits of the engine to be exceeded.

The supplemental type design of the JetStar Model 1329 airplane equipped with the ATTCS contains a number of novel and unusual design features for an airplane type certificated under the airworthiness requirements incorporated by reference in Type Certificate No. 2A15 or under the applicable airworthiness requirements in effect on the date of the STC application for change to that type certificate. In either case, the applicable airworthiness requirements do not contain adequate or appropriate safety standards. Special conditions are necessary to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate and the certification basis for the reengining STC, and to support a finding by the Administrator that no feature or characteristic of the airplane with the ATTCS installed makes it unsafe for the category in which certification is requested. These special conditions specify limits on the maximum power increment which may be applied to the operating engine by the ATTCS, prescribe system reliability and status monitoring requirements, require provisions for manual selection of the maximum takeoff thrust approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of maximum takeoff thrust would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide a clear warning to the crew.

Discussion of Comments

Notice of proposed special conditions No. SC-86-1-NM for the AAI Reengined JetStar Model 1329 series airplane was published in the Federal Register on March 25, 1986 [51 FR 10402]. No comments were received in response to this published notice.

Type Certification Basis

The supplemental type certification basis for the American Aviation Industries modified JetStar Model 1329

series airplanes equipped with two General Electric Model CF34-1A engines and an ATTCS is:

1. Part 4b of the Civil Air Regulations (CAR) [effective December 31, 1953], Amendments 4b-1 thru 4b-9 together with Special Civil Air Regulation SR-422B, SR-450A and the Special Conditions contained in FAA letter to Lockheed dated December 19, 1958, as revised by FAA letter to Lockheed dated January 10, 1961. Also the following sections of Part 25 of the Federal Aviation Regulations (FAR) through Amendment 25-56 in lieu of the sections of the CAR 4b shown in parenthesis are only for those items which have been established to be affected by the engine change as follows: Part 25 of the FAR, Subpart B, 25.21-25.237, 25.251,* 25.253, 25.255 (4b.100-4b.190 and SR-422B, 4T.110-4T.122), 25.361-25.363 (4b.216), 25.367-25.371 (4b.216), 25.571 (4b.270), 25.581, (for engine/nacelle), 25.601-25.629 (4b.300-4b.308) (for engine/nacelle support structure), 25.671 (4b.320), 25.672, 25.681-25.685 (4b.327-4b.329) (for rudder bias system), 25.863-25.867 (4b.385, 4b.490), 25.901 (4b.400), 25.903 (4b.401), 25.933 (4b.407), 25.934, 25.939-25.943 (4b.409), 25.951-25.953 (4b.410-4b.411), 25.955 (4b.413, 4b.414), 25.959 (4b.416), 25.961 (4b.417), 25.991-25.999 (4b.430-4b.436), 25.1011-25.1025 (4b.440-4b.445), 25.1041-25.1045 (4b.450-4b.457), 25.1091 (4b.460), 25.1093 (4b.461), 25.1103 (4b.463), 25.1107 (4b.466), 25.1121 (4b.467), 25.1123 (4b.467), 25.1141-25.1145 (4b.470-4b.472), 25.1155 (4b.474), 25.1163-25.1165 (4b.477-4b.478), 25.1181-25.1191 (4b.480-4b.486), 25.1193-25.1207 (4b.487-4b.490), 25.1301 (4b.600, 4b.601), 25.1305-25.1309 (4b.604-4b.606), 25.1322, 25.1337 (4b.613), 25.1351 (4b.621-4b.622), 25.1353 (4b.625), 25.1355 (4b.623), 25.1357 (4b.624), 25.1359 (4b.626), 25.1363, 25.1461, 25.1505 (4b.711-4b.712), 25.1513 (4b.717), 25.1519 (4b.719), 25.1521 (4b.718), 25.1527 (4b.722), 25.1529, 25.1533-25.1543 (4b.730, 4b.731), 25.1549 (4b.734), 25.1551 (4b.735), 25.1581-25.1587 (4b.740-4b.743 and SR-422B, 4T.123 and 4T.743).

—Part 36 of the FAR (Stage 2 noise level limits), Amendment current on the date of certification.

—Special Federal Aviation Regulations (SFAR) 27, Amendment current on the date of certification.

* Section 25.251, Amendment 22, with the Special Conditions contained in FAA letter to Lockheed dated December 19, 1958 [CAR Ref. 4b.190(b) and 4b.711(b)] "Operation V-N Envelope" and stipulation that the first paragraph of the Special Conditions must be interpreted to mean "A buffet onset boundary chart and investigation of inadvertent excursion beyond the boundaries of buffet onset."

- Equivalent safety findings: CAR 4b.160 and 4b.161.
- Special Conditions contained herein for installation of an "Automatic Takeoff Thrust Control System (ATTCS)."

2. With the concurrence of the FAA, American Aviation Industries has elected to voluntarily comply with the following requirements.

- CAR 4b.361: Ditching provisions.
- CAR 4b.640: Ice protection.
- Part 36 of the FAR, Appendix C, Section C36.5(a)(3) (Stage 3 noise level limits).

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(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, may be issued after public notice, in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to American Aviation Industries for the reengined JetStar Model 1329 series airplane equipped with an automatic takeoff thrust control system (ATTCS).

The authority citation for these special conditions is as follows:

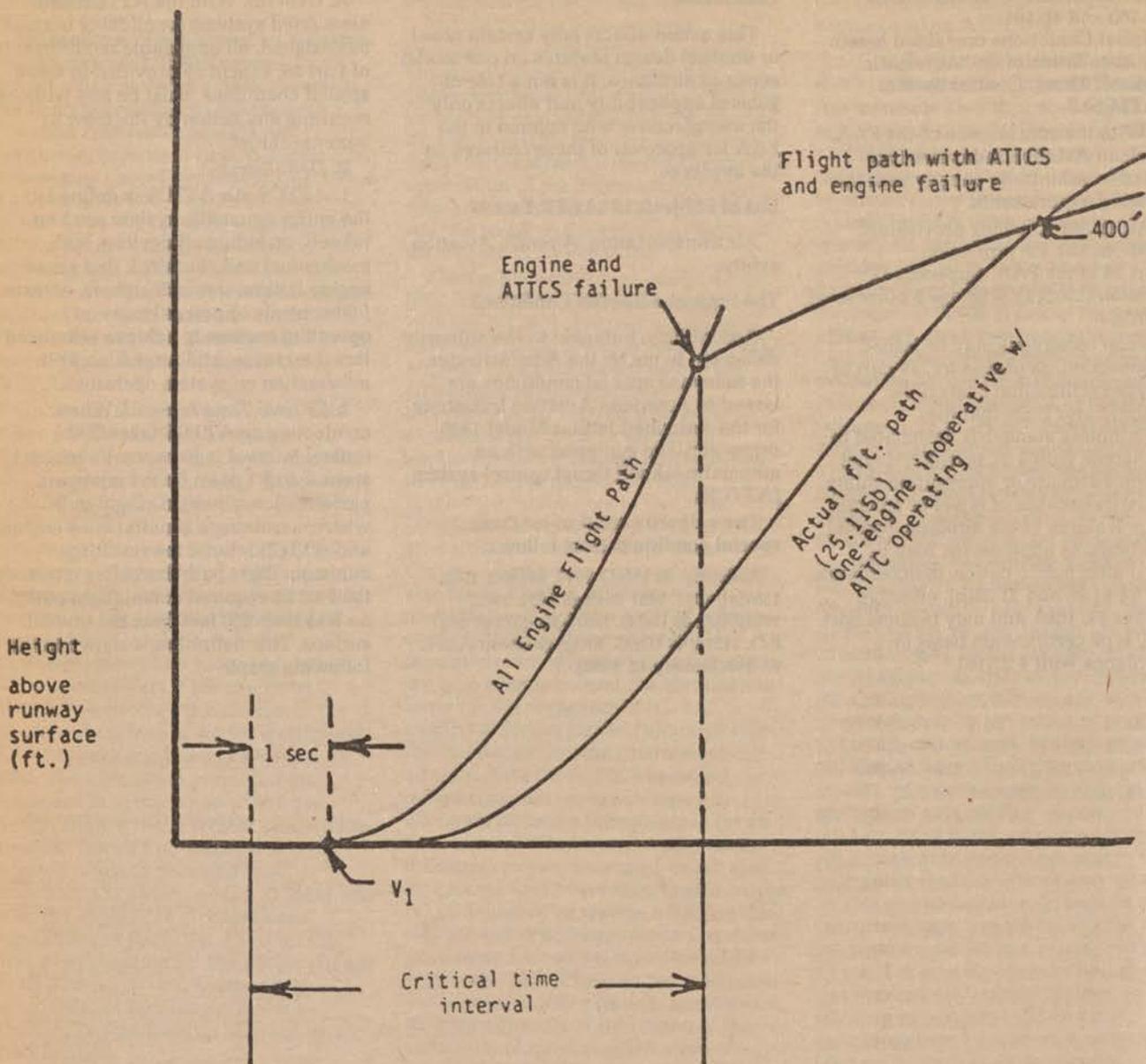
Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

A. General. With the ATTCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase thrust.

B. Definitions.

1. **ATTCS.** An ATTCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled thrust increase, and furnish cockpit information on system operation.

2. **Critical Time Interval.** When conducting an ATTCS takeoff, the critical interval is between V1 minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATTCS failure, the resulting minimum flight path thereafter intersects the Part 25 required actual flight path at no less than 400 feet from the takeoff surface. This definition is shown in the following graph:



3. *Takeoff Thrust.* Notwithstanding the definition of "takeoff thrust" in Part 1 of the Federal Aviation Regulations (FAR), "takeoff thrust" means each thrust obtained from each initial thrust setting approved for takeoff under these special conditions.

C. *Performance Requirements.* The applicant must comply with the performance and reliability requirements as follows:

1. An ATTC system failure during the critical time interval must be shown to be improbable.
2. The concurrent existence of an ATTC failure and engine failure during

the critical time interval must be shown to be extremely improbable.

3. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATTC system functioning.

D. *Thrust Setting.* The initial takeoff thrust set on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety (90) percent of the thrust level set by the ATTC (the maximum takeoff thrust approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power level position; or

3. That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust level to the maximum approved takeoff thrust.

E. *Powerplant Controls.*

1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTC, including associated systems, may cause the

failure of any powerplant function necessary for safety.

2. The ATTCS must be designed to:

a. Apply thrust on the operating engine, following an engine failure during takeoff, to achieve the maximum approved installed takeoff thrust without exceeding engine operating limits;

b. Permit manual decrease or increase in thrust up to the maximum installed takeoff thrust approved for the airplane under existing conditions through the use of the power lever, except that for aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of thrust controlled by the power levers in the event of an ATTCS failure, provided the means is located on or forward of the power levers, is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and meets the requirements of § 25.777, paragraphs (a), (b), and (c).

c. Provide a means to verify to the flightcrew prior to takeoff that the ATTCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. *Powerplant Instruments.* In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

Issued in Seattle, Washington, on May 29, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-12819 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASW-6]

Amendment of Transition Area: Shawnee, OK

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter

the transition area at Shawnee, OK. The intended effect of the amendment is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Prague Municipal Airport, Prague, OK. The Shawnee transition area is being amended because it extends to within 5 nautical miles southwest and 2 nautical miles south of the Prague Municipal Airport and already provides part of the necessary controlled airspace. This amendment is necessary since an SIAP is being developed using a new nonfederal nondirectional radio beacon (NDB) that the city of Prague, OK, is establishing to serve the Prague Municipal Airport. Coincident with this action the airport status will change from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT:
David J. Souder, Airspace and
Procedures Branch (ASW-535), Air
Traffic Division, Southwest Region,
Federal Aviation Administration, P.O.
Box 1689, Fort Worth, TX 76101,
telephone (817) 877-2622.

SUPPLEMENTARY INFORMATION:

History

On February 24, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Shawnee, OK, transition area (51 FR 7951).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Shawnee, OK, transition area, thereby establishing a 700-foot transition area encompassing the Prague Municipal Airport, Prague, OK. Coincident with this action the Prague Municipal Airport status will change from VFR to IFR.

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 71

Aviation safety, Control zones,
Transition areas

Adoption of the Amendment

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

Shawnee, OK—Amended

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

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

2. Section 71.181 is amended as follows:

The airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Shawnee Municipal Airport (latitude 35°21'16" N., longitude 96°56'33" W.); within 3.5 miles each side of the 007-degree bearing from the Shawnee NDB (latitude 35°20'51" N., longitude 96°56'48" W.) extending from the 8.5-mile radius area to 11.5 miles north of the NDB; within an 8.5-mile radius of Seminole Municipal Airport (latitude 35°16'15" N., longitude 96°40'30" W.); and within 3.5 miles each side of the 353-degree bearing from the Seminole NDB (latitude 35°16'08" N., longitude 96°40'30" W.) extending from the 8.5-mile radius area to 11.5 miles north of the NDB; within an 8.5-mile radius of Prague Municipal Airport (latitude 35°28'45" N., longitude 96°43'03" W.); and within 4 miles each side of the 360-degree bearing from the Prague NDB (latitude 35°31'00" N., longitude 96°43'06" W.) extending from the 8.5-mile radius area to 14 miles north of the NDB, excluding the portion which overlies the Chandler, OK, transition area.

Issued in Fort Worth, TX, on May 23, 1986.

Richard L. Failor,

Manager, Air Traffic Division, Southwest
Region.

[FR Doc. 86-12820 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASW-8]

**Designation of Transition Area:
Madisonville, TX****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This amendment will designate transition area at Madisonville, TX. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Madisonville, Municipal Airport. This amendment is necessary since there is a proposed VOR/DME SIAP to the Madisonville Municipal Airport utilizing the Leona VORTAC (LOA). This action will benefit aircraft conducting instrument flight rules (IFR) activity at Madisonville Municipal Airport. Coincident with this action the airport status is changed from visual flight rules (VFR) to IFR.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2622.

SUPPLEMENTARY INFORMATION:**History**

On February 13, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Madisonville, TX, transition area (51 FR 7082).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a transition area at the Madisonville Municipal Airport, Madisonville, TX. This action will ensure segregation of aircraft operating under IFR conditions and other aircraft operating under VFR. This amendment will also change the airport status from VFR to IFR.

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 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

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

Madisonville, TX—New

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

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

2. Section 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Madisonville Municipal Airport (latitude 30°54'40" N., longitude 95°57'05" W.).

Issued in Fort Worth, TX, on May 23, 1986.

Richard L. Failor,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-12821 Filed 6-8-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASO-8]

Alteration of Transition Area, New Bern, NC**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This amendment increases the size of the New Bern, North Carolina, transition area to accommodate a new instrument approach procedure which has been developed to serve Simmons-Nott Airport. This action will lower the base

of controlled airspace, southwest of the airport, from 1,200 to 700 feet above the surface. This additional controlled airspace is required for protection of Instrument Flight Rules (IFR) aeronautical activities.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

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

SUPPLEMENTARY INFORMATION:**History**

On Monday, March 31, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by altering the New Bern, North Carolina, transition area to designate additional controlled airspace southwest of Simmons-Nott Airport. This airspace is required to support IFR aeronautical activities in the New Bern area (51 FR 10881). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations increases the size of the New Bern, North Carolina, transition area to accommodate revised instrument approach procedures serving Simmons-Nott Airport.

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, Transition area.

Adoption of the Amendment

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

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 Public Law 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

New Bern, NC—[Amended]

By adding at the end of the present description the following words "... within 4.5 miles southeast and 6.5 miles northwest of the Simmons-Nott localizer southwest course, extending from the 6.5-mile radius area to 12.5 miles southwest of the outer marker ..."

Issued in East Point, Georgia, on May 20, 1986.

James L. Wright,

Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 86-12822 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3184]

Albert Schneider; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the President of Cellular Capital Corporation to cease making misrepresentations to induce consumers to purchase application preparation services for the cellular license lottery operated by the Federal Communications Commission. Additionally, respondent is required to make two affirmative disclosures to prospective applicants: (1) That the purchase of a cellular application is a high-risk investment, and (2) that an operating cellular system is unlikely to return any profits to its owners in the first three years of operation.

DATE: Complaint and Order issued May 23, 1986*.

FOR FURTHER INFORMATION CONTACT: David C. Fix, FTC/H-272, Washington, DC 20580. (202) 523-3814.

SUPPLEMENTARY INFORMATION: On Tuesday, March 11, 1986, there was published in the *Federal Register*, 51 FR 8335, a proposed consent agreement with analysis in the Matter of Albert Schneider, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.15 Business status, advantages, or connections; § 13.15-80 Government connection; § 13.70 Fictitious or misleading guaranties; § 13.85 Government approval, action, connection or standards; 13.135 Nature of product or service. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1425 Government connection.

List of Subjects in 16 CFR Part 13

Cellular lottery preparation services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-12847 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 303

Textile Fiber Products Identification Act; Request for Establishment of a Generic Name

AGENCY: Federal Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: On December 6, 1983, Celanese Corporation applied to the

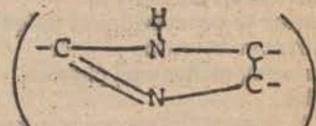
Federal Trade Commission ("the Commission") requesting the establishment of a new generic name for a fiber it manufactures. On May 29, 1985, the Commission published a Notice of Proposed Rulemaking (50 FR 21855) soliciting comments on whether Rule 7 should be amended to include a new generic definition covering Celanese's fiber. This document summarizes the comments received in response to the May 29, 1985, document and sets out the Commission's final action.

EFFECTIVE DATE: July 9, 1986.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney (202/376-8934), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On December 6, 1983, Celanese Corporation applied to the Federal Trade Commission ("the Commission") requesting the establishment of a new generic name for a fiber it manufactures. The application was filed pursuant to Rule 8¹ of the Rules and Regulations under the Textile Fiber Products Identification Act² and Subpart C of Part 1 of the Commission's Rules of Practice.³ In its application, Celanese declared that the generic names presently established by the Commission in Rule 7⁴ are inappropriate for its fiber because of the fiber's uniqueness. Celanese proposed that the new fiber be defined as:

A manufactured fiber in which the fiber-forming substance is a long chain aromatic polymer having reoccurring imidazole groups



as an integral part of the polymer chain.

Celanese included an alternative definition, which is as follows:

A manufactured fiber in which the fiber-forming substance is a long chain aromatic nitrogenous polymer, in which at least 65% by weight of the polymer is represented as consisting essentially of reoccurring units of the formula:

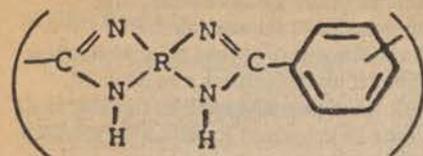
¹ 16 C.F.R. 303.8.

² 15 U.S.C. 70.

³ 16 C.F.R. 1.26.

⁴ 16 C.F.R. 303.7.

*Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th & Pa. Ave. NW, Washington, DC 20580.



wherein R is an aromatic nucleus symmetrically tetra substituted with nitrogen atoms forming the benzimidazole ring paired upon adjacent carbon atoms of the said aromatic nucleus.

Celanese also included several suggested names for the fiber as well as technical data and other information in support of the petition.

On May 29, 1985, the Commission published a Notice of Proposed Rulemaking⁵ soliciting comments on whether Rule 7 should be amended to include a new generic definition covering Celanese's fiber. The Notice also stated that a Certificate of No Effect under the Regulatory Flexibility Act had been forwarded to the Small Business Administration.

This Notice summarizes the comments received in response to the May 29 Notice and sets out the Commission's final action in this matter.

Section A. Background

Rule 6⁶ of the Rules and Regulations under the Textile Fiber Products Identification Act requires manufacturers to use the generic names of the fibers contained in their textile fibers products in making required disclosures of the fiber content of the products. Rule 7⁷ sets forth the generic names and definitions that the Commission has established for synthetic fibers. These generic synthetic fibers have been found by the Commission to be individually unique and distinctive by virtue of their chemical composition and physical properties.

Rule 8⁸ sets out the procedures for establishing new generic names. Upon receipt of an application for a new generic name, the Commission must, within 60 days, either deny the application or assign to the fiber a numerical or alphabetical symbol for temporary use during further consideration of the application. The Commission may then initiate rulemaking proceedings under Subpart C of Part 1 of its Rules of Practice⁹ to

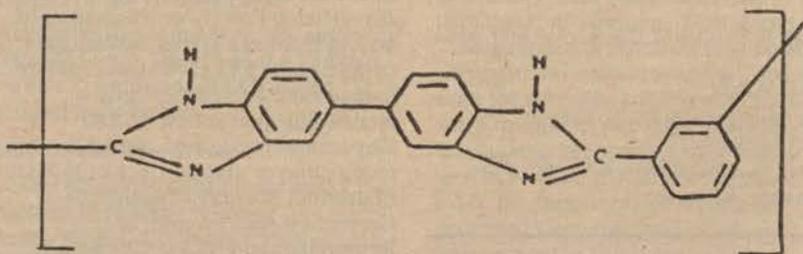
determine whether to establish a new generic name and definition or to designate the proper existing generic name for the fiber.

Celanese submitted its application in this matter in December of 1983. After an initial analysis, the Commission, on February 29, 1984, granted Celanese the designation "CE0001" for temporary use in identifying the fiber until the final determination could be made as to the merits of the application for a new generic name.

In its application, Celanese describes the fiber, its manufacture and possible uses as follows:

[T]he new fiber is a polybenzimidazole fiber The process for making the fiber involves the condensation reaction of tetraminobiophenyl and diphenyl isophthalate. In the first prepolymerization

step, equal mole proportions of the monomers are charged to a reactor, blanketed with an inert gas, and then heated and agitated at atmospheric pressure. A low molecular weight, glassy, friable foam forms during the initial heating period. The foam is broken up and reheated resulting in a brown amorphous polybenzimidazole polymer. An extrusion dope is prepared by dissolving the polybenzimidazole polymer in dimethyl acetamide containing minor amounts of lithium chloride at a temperature of about 235 ° C. and under an autogenous pressure of about 80 psi. The polymer is present in a concentration of approximately 24% by weight based upon total weight of the dope. The dope is cooled to 100 ° C. and filtered. Filaments are then dry down spun in a column having a down draft flow [of nitrogen], the temperature of the column being maintained within the range of from 200 ° C. to 300 ° C. The final fiber is characterized by reoccurring units of the following formula:



The fiber may then be subjected to various heat, shrink or thermal stabilization treatments such as sulfonation, which may account for up to 35% of the fiber weight.

In addition to the radical chemical differences between a polybenzimidazole fiber and any fiber for which a generic name and definition has been granted radically different performance characteristics are also found The exceptional stability of polybenzimidazole provides important properties that benefit consumers in apparel and household applications, including thermally protective clothing.

Apparel offering protection from high heat and direct flame must be nonflammable, have high thermal stability and low heat-shrinkage. Abrasion resistance, flexibility and comfort are also desirable in such apparel. These properties are inherent in polybenzimidazole. Fabrics of polybenzimidazole do not burn or melt and thermally stabilized polybenzimidazole fabrics have very low shrinkage when exposed to a flame. Even when charred, polybenzimidazole fabrics remain supple and intact. Polybenzimidazole's thermal and chemical properties combined with its flexibility and outstanding comfort give it possible applications in high-performance protective apparel.

In addition, properly designed fabrics of polybenzimidazole fiber have pleasant esthetics and are comfortable. One reason for their comfort is the fiber's high moisture regain. At 65% relative humidity and 68 ° F. (20 ° C.), polybenzimidazole fabric has a moisture regain of 15%. (The corresponding regain figure for cotton is 10%).

Celanese proposed in its petition that the new fiber be identified, in descending order of preference, as: (1) PBI, (2) arazole, (3) benzimid, (4) imidazole, and (5) benzimidazole.

In subsequent correspondence with Commission staff, Celanese withdrew the suggested names "PBI," "benzimid," "imidazole," and "benzimidazole" from consideration from their petition, and indicated a preference for "arazole."

In the May 29 Notice, the Commission solicited comment on all aspects of the appropriateness of Celanese's application, but especially comments on which alternative definition, if either, is more appropriate, and whether the application meets the following three criteria, which have been set out by the Commission as grounds upon which it

⁵ 50 FR 21855 (May 29, 1985) (the "Notice").

⁶ 16 CFR 303.6.

⁷ 16 CFR 303.7.

⁸ 16 C.F.R. 303.8.

⁹ 16 C.F.R. 1.26.

would grant petitions for new generic names.¹⁰

1. The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public.

2. The fiber must be in active commercial use or such use must be immediately foreseen.

3. The grant of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

Section B. Summary and Analysis of Comments

1. Summary

There were three comments submitted during the comment period in this proceeding.¹¹

Dr. Wayne St. John, of the Clothing and Textiles Programs of the Department of Vocational Educational Studies of the University of Southern Illinois¹² commented that Celanese's request for a new generic name should be granted. Dr. St. John noted that the chemical structure of Celanese's new fiber is radically different from the fibers currently listed in the Textile Rules. He posed a question as to whether the fiber is or will be in active commercial use, and noted that, if the fiber does not become active commercially, the granting of a new generic name would be important to the consuming public at large. Dr. John also expressed a preference to Celanese's proposed name "PBI" because that name is already well known to professionals in textiles. As a second choice, Dr. St. John selected "benzamid." He was not in favor of the Commission's adoption of Celanese's first choice, "arazole," because of possible confusion between that proposed name and the existing generic name "aramid."¹³ Finally, Dr. John noted that, while the first definition proposed by Celanese seems appropriate, the structure should have double bond between the two right hand carbon atoms.

A second comment was submitted by the Textile Fibers Department of the Industrial Fibers Division of the E.I. du Pont De Nemours & Co.¹⁴ Du Pont was also concerned about the possibility of confusion resulting from the similarity of "arazole" to "aramid."

Du Pont noted:

Aramid fiber products have participated in the thermal protective apparel industry since at least as early as 1967. The performance features and physical properties of garments made of aramid fibers as well known by the trade and by purchasers of such clothing. Similarly, the performance features and physical properties of products made of Celanese's PBI fiber are well known.

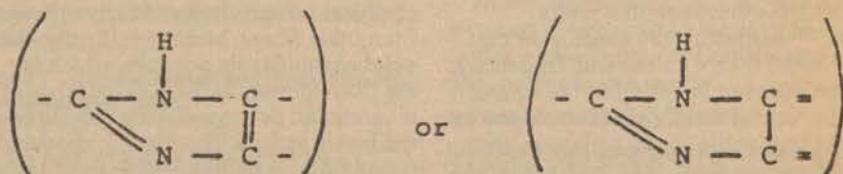
Thermal protective clothing and other textile products made of aramid fiber are recognized in the trade as separate and distinct from products made from PBI fiber. In apparel applications, this distinction assists purchasers in selecting a product that is economical and best meets a specific need.

Du Pont believes that the distinction between aramid and PBI fiber will be seriously jeopardized if the Commission approves Celanese's petition to designate the

term "Arazole" as a generic name for polybenzimidazole fiber. Such a term which employs a prefix similar to that used in the term aramid is likely to be mistaken as representing a product which features the same or similar physical properties, or which originates from the same chemical elements or process as aramid fiber products used in the thermal protective clothing market.

The third comment came from the petitioner, Celanese.¹⁵ In this comment, Celanese responded to the points raised by Dr. St. John and by Du Pont in their comments.

Celanese first addressed the point, made by Dr. St. John, that "the structure shown should have a double bond between the two right hand carbon atoms."¹⁶ Celanese agreed that a double bond or bonds should indeed be present on the two right hand carbons, but noted that the exact positioning of the bond or bonds depends upon that chemical moiety which is attached to the imidazole group. Thus, Celanese noted, either of the following structures could be correct:



Celanese stated that the term "imidazole group" is well recognized in the area and that the presence of a plurality of structural formulae would not improve the definition. Accordingly, Celanese proposed to amend the definition by deleting the structural formula and causing the definition to read as follows:

A manufactured fiber in which the fiber-forming substance is a long chain aromatic polymer having reoccurring imidazole groups as an integral part of the polymer chain.

Celanese noted that precedent exists in the definitions of manufactured fibers set forth in Rule 7 of the Textile Rules for a definition that is devoid of structural formula.

The remainder of Celanese's comment was devoted to a discussion of the appropriateness of Celanese's proposed name for the new fiber, "arazole," and the allegations in the comments from Dr. St. John and Du Pont that "arazole"

would be confused by the general public with the generic name "aramid."¹⁷ Celanese made three points in response to these allegations.

First, Celanese noted that the proposed name "arazole" is a registered trademark that was registered without opposition in the United States Patent and Trademark Office and that the registration was issued for the name as applied to polybenzimidazole fiber for various end use applications.

Second, in response to Du Pont's objections that the fact that polybenzimidazole fibers are frequently woven together with aramid fibers for use in thermally protective clothing would cause confusion, Celanese pointed out that commercially acceptable fabrics containing polybenzimidazole are not limited to blends containing polybenzimidazole and aramid, and that polybenzimidazole fibers are bonded with fire resistant

¹⁰ 38 FR 34112, 34114 (December 11, 1973).

¹¹ The comments have been placed on the public record in this proceeding under category 18 of Public Record Docket 206. They are designated 18-2 through 18-4. References to the comments will be made by means of the name of the commenter, the number of the comment and, where appropriate, the page of the comment.

¹² 18-2. Dr. St. John notes that he has a Ph.D in organic chemistry.

¹³ 16 CFR 303.7(s).

¹⁴ 18-4 ("Du Pont").

¹⁵ 18-3.

¹⁶ St. John, 18-2.

¹⁷ 16 CFR 303.7(s).

cotton, wool and rayon, and glass and modacrylic fibers. Celanese concluded that questions concerning possible confusion in fiber identification of thermally protective clothing should not be limited, therefore, to a comparison between the proposed name "arazole" and the established generic term "aramid", but should be concerned with all conceivable fiber blends containing polybenzimidazole.

Third, Celanese addressed the question of the similarity between the words themselves. Specifically, Celanese took issue with Du Pont's position that a new generic name that employs the prefix "ara" would cause confusion in the trade when used to identify a fiber use in the same thermally protective clothing as the existing fiber "aramid," which has the identical prefix "ara." Celanese pointed out that there are two pairs of fiber definitions under the rules that share common prefixes—"nytril"¹⁸ and "nylon"¹⁹ and "vinal"²⁰ and "vinyon."²¹ Celanese further noted that there are many registered and pending trademarks that share the prefix "ara,"²² suggesting the conclusion that the United States Patent and Trademark Office does not believe that the common prefix "ara" in itself causes confusion in marketing textile goods. Celanese also noted, on this point, that, with respect to the proposed name "arazole" and the existing generic name "aramid," the suffixes "zole" and "mid" are radically different, a point that Celanese suggests is important, in view of the four pairs of generic names under Rule 7 of the Textile Rules that share common suffixes:

| | |
|--------------------------|----------------------|
| acrylic ²³ | azlon ²⁴ |
| modacrylic ²⁵ | nylon ²⁶ |
| acetate ²⁷ | rayon ²⁸ |
| triacetate ²⁹ | vinyon ³⁰ |

Celanese then concluded by citing a "well recognized rule of law in trademark proceedings" that "Marks must be compared in their entirety and not dissected into their component parts

in determining likelihood of confusion."³¹

At the end of its comment, Celanese re-elected, as a second choice for a proposed name, the name "PBI", in the interest of "advancing the processing of the instant Petition and Application . . ." Celanese noted that "PBI is a registered trademark of Celanese Corporation for polybenzimidazole fiber for various end use applications . . ." but pointed out that the registration is for a stylized mark, the acronym "PBI" having been dedicated to the public.³²

2. Analysis

The Commission has considered all the information available to it in this matter and has concluded that Celanese's application meets the three aforementioned criteria for granting a new generic name and definition for its fiber.

Distinct Chemical Composition

The Commission believes, after studying Celanese's application and consulting with experts knowledgeable in the area, that Celanese's fiber has a chemical composition radically different from other fibers. More specifically, the polybenzimidazole polymer, which is the fiber-forming substance, consists of an aromatic polymer having reoccurring imidazole groups. This type of chemical constitution is unique with respect to the current definitions of manufactured fibers listed in Rule 7.

The Commission believes that the distinctive chemical composition of Celanese's fiber results in distinctive physical properties of significance to the general public. It is already recognized in the literature and general knowledge in this area that polybenzimidazole, because of its extreme flame resistance and low smoke emission when exposed to heat, is ideal for heat resistant apparel for fire fighters, astronauts, fuel handlers, race car drivers, welders and foundry workers, and hospital and operating room personnel. It is also ideal for upholstery, curtains, draperies and carpets in commercial aircraft, hospitals and submarines.

Active Commercial Use

According to Celanese, polybenzimidazole fiber is presently manufactured by Celanese in a plant having an annual capacity of approximately one million pounds. In addition to the applications mentioned above, Celanese is beginning to produce polybenzimidazole fabrics that are designed specifically for children's sleepwear.

Importance to the Consuming Public at Large

The applications discussed above for polybenzimidazole are certainly of significance to the consuming public at large, rather than to a small group of knowledgeable professionals. Thermally protective wearing apparel, as well as flame resistant interior furnishings are certainly important to the consuming public. It is important for the public to be able to recognize the flame-resistant characteristics of this fiber, and the Commission believes that granting it a new generic name and definition will help further the public's ability to do so.

The Commission will grant, therefore, Celanese's application for a new fiber name and definition. The Commission must determine, however, which name to assign to polybenzimidazole and must decide on a definition, since several have been proposed in this matter.

The Generic Name

As noted earlier in the discussion of comments submitted in this matter, two of the three commenters, Dr. St. John and Du Pont, opposed adoption of Celanese's proposed choice for a generic name—"arazole." These commenters believed that, because of the similarity between "arazole" and the existing generic definition "aramid," the granting of "arazole" would result in consumer and industry confusion between the two names. The Commission agrees with this position.

The third commenter, Celanese, argued against this position in a well-presented comment. Celanese noted that "arazole" had been registered as a trademark without opposition, that polybenzimidazole is combined with fibers other than aramid to produce textile products, and that there are similar sounding definitions already in Rule 7, such as "nylon" and "nytril," "acrylic" and "modacrylic," and others. The Commission, while recognizing the persuasiveness of these arguments, remains concerned that there would be confusion between these two similar sounding names—"arazole," proposed by Celanese, and "aramid," already a definition under Rule 7. Therefore, in order to avoid adding to the admittedly somewhat confusing names in Rule 7, the Commission selects Celanese's second choice, "PBI." This acronym is already recognized in the industry as identifying polybenzimidazole. In addition, petitioner Celanese has registered the stylized mark "PBI" with the U.S. Patent and Trademark Office without opposition to either the stylized mark or the acronym itself. Since the

¹⁸ 16 CFR 303.7(h).

¹⁹ 16 CFR 303.7(i).

²⁰ 16 CFR 303.7(j).

²¹ 16 CFR 303.7(n).

²² Celanese attached a compilation (Exhibit A) of such names to its comment.

²³ 16 CFR 303.7(a).

²⁴ 16 CFR 303.7(g).

²⁵ 16 CFR 303.7(b).

²⁶ 16 CFR 303.7(i).

²⁷ 16 CFR 303.7(e).

²⁸ 16 CFR 303.7(d).

²⁹ *Id.*

³⁰ 16 CFR 303.7(n).

³¹ Citing *Shearing Corporation v. Alza Corporation* (PO TM TApp Bd) 207 USPQ 504.

³² 16-3/7.

acronym "PBI" has been dedicated to the public, there is no impediment to its being used as a generic name.

The Generic Definition

The Commission agrees with the comments submitted by Dr. St. John and by Celanese with respect to the modifications of the originally proposed definition for polybenzimidazole. Consequently, the Commission is adopting the definitions proposed by Celanese in its comment. This definition deletes the structural formula, for which there is precedent in Rule 7, and the Commission has adopted, without change, Celanese's final proposed definition.

The designation "CE0001", previously assigned petitioner's fiber for temporary use, is hereby revoked as of the effective date of this amendment.

Section C. Regulatory Flexibility Act

In publishing the proposed amendments, the Commission determined that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis, 5 U.S.C. 603, 604, were not applicable because it was believed the amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities. In considering the economic impact of the proposed amendment on manufacturers and retailers, the Commission noted that the amendment would impose no obligations, penalties or costs. In light of this, it was certified under the provisions of section 5 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this aspect of the rulemaking during the comment period.

On the basis of all the information before it, the Commission has determined the final regulations will not have a significant economic impact on a substantial number of small entities. Consequently, the Commission concludes that a final regulatory flexibility analysis is not required and has filed a Certificate of No Effect under the Regulatory Flexibility Act with the Small Business Administration to that effect.

Section D. Paperwork Reduction Act

This amendment contains no provisions that constitute information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, and the implementing regulation, 5 CFR 1320.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade Practices.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

Accordingly, after consideration of the views, arguments and data submitted pursuant to the May 29 Notice in this matter, and in consideration of other pertinent information and material available to the Commission, the Commission has determined to amend 16 CFR Part 303, Rules and Regulations under the Textile Fiber Products Identification Act, in the manner set forth below:

1. The authority citation for Part 303 continues to read as follows:

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act, 15 U.S.C. 7(c); Sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Section 303.7, Generic Names and Definitions for Manufactured Fibers, of 16 CFR Part 303 is hereby amended by adding a new paragraph (u) to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

(u) *PBI*. A manufactured fiber in which the fiber-forming substance is a long chain aromatic polymer having reoccurring imidazole groups as an integral part of the polymer chain.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-12736 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 303

Textile Fiber Products Identification Act; Request for Establishment of a Generic Name

AGENCY: Federal Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: In February of 1983, The Phillips Fibers Corporation applied to the Federal Trade Commission ("the Commission") requesting the establishment of a new generic name for a fiber it manufactures. The application was filed pursuant to Rule 8¹ of the Rules and Regulations under the Textile Fiber Products Identification Act,² and

¹ 16 CFR 303.8.

² 15 U.S.C. 70.

Subpart C of Part 1 of the Commission's Rules of Practice.³ In its application, Phillips declared that the generic names presently established by the Commission in Rule 7⁴ are inappropriate for its fiber because of the fiber's uniqueness. Phillips proposed that the new fiber be defined as:

"A manufactured fiber in which the fiber-forming substance is a long chain synthetic polysulfide in which at least 85% of the sulfide (—S—) linkages are attached directly to two (2) aromatic rings."

Phillips also included several suggested names for the fiber as well as technical data and other information in support of the petition.

On May 29, 1985, the Commission published a Notice of Proposed Rulemaking⁵ soliciting comments on whether Rule 7 should be amended to include a new generic definition covering Phillips' fiber. The Notice also stated that a Certificate of No Effect under the Regulatory Flexibility Act had been forwarded to the Small Business Administration.

This Notice summarizes the comments received in response to the May 29 Notice and sets out the Commission's final action in this matter.

EFFECTIVE DATE: July 9, 1986.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney (202/376-8934), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

Rule 6⁶ of the Rules and Regulations under the Textile Fiber Products Identification Act requires manufacturers to use the generic names of the fibers contained in their textile fiber products in making required disclosures of the fiber content of the products. Rule 7⁷ sets forth the generic names and definitions that the Commission has established for synthetic fibers. These generic synthetic fibers have been found by the Commission to be individually unique and distinctive by virtue of their chemical composition and physical properties.

Rule 8⁸ sets out the procedures for establishing new generic names. Upon

³ 16 CFR 1.26.

⁴ 16 CFR 303.7.

⁵ 50 FR 21854 (May 29, 1985) (the "Notice").

⁶ 16 CFR 303.6.

⁷ 16 CFR 303.7.

⁸ 16 CFR 303.8.

receipt of an application for a new generic name, the Commission must, within 60 days, either deny the application or assign to the fiber a numerical or alphabetical symbol for temporary use during further consideration of the application. The Commission may then initiate rulemaking proceedings under Subpart C of Part 1 of its Rules of Practice,⁹ to determine whether to establish a new generic name and definition or to designate the proper existing generic name for the fiber.

Phillips submitted its application in this matter in February of 1983. After an initial analysis, the Commission granted Phillips the designation "PF0001" for temporary use in identifying the fiber until a final determination could be made as to the merits of the application.

In its application, Phillips describes the fiber, its manufacture and possible uses as follows:

The fiber is composed predominately of poly (phenylene sulfide), a sulfide-linked aromatic polymer, which can be prepared by a process proprietary to Phillips Petroleum Company and covered by various issues and pending patents in the United States and elsewhere.

Typical Properties of Poly (Phenylene Sulfide) Fiber

1. Flammability:

| | |
|------------------------------------|----|
| Self-extinguishing..... | |
| Limiting Oxygen Index Percent..... | 35 |

2. Physical Properties:

| | |
|---------------------------------------|-----------|
| Tenacity, GPD..... | 3.0-3.5 |
| Elongation, Percent..... | 25-35 |
| Modulus 10 Percent Extension..... | 16 |
| Elastic Recovery, Percent: | |
| 2 Percent Extension..... | 100 |
| 5 Percent Extension..... | 96 |
| 10 Percent Extension..... | 86 |
| Boiling Water Shrinkage, Percent..... | 10-15 |
| Moisture Regain, Percent..... | 0.6 |
| Specific Gravity..... | 1.37 |
| Melting Point, °F (°C)..... | 545 (285) |

3. Resistance to Chemicals:

Not soluble in any known solvent below 392 °F (200 °C).

Limited solubility in a few solvents above 392 °F.

Highly resistant to acids and alkalis:

| Acid alkali | Strength loss, percent ¹ |
|---|-------------------------------------|
| Acetic acid..... | None. |
| Conc. HCl..... | None |
| Conc. H ₂ PO ₄ | 0 to 5. |
| 48 percent H ₂ SO ₄ | None. |
| 30 percent NaOH..... | None 7 ¹ days at 200 °F. |

¹ Degraded by strong oxidizing acids such as conc. nitric, sulfuric and chromic.

⁹ 16 CFR 1.26.

4. Electric Properties:

Dielectric Constant:

| | |
|----------|---------|
| KHz..... | 3.1-3.3 |
| MHz..... | 3.1-3.3 |

Dissipation Factor:

| | |
|------------|---------------|
| 1 KHz..... | 0.0003-0.0005 |
| 1 MHz..... | 0.0005-0.0009 |

| | |
|-----------------------------|----------------------------|
| Volume Resistivity, ohm-cm. | 2.2-4.2 × 10 ¹⁶ |
|-----------------------------|----------------------------|

Phillips also submitted the following information relating to its fiber:

Granting of a new generic classification for Ryton polyphenylene sulfide fiber will be important to a large body of industrial buyers who need to be able to identify Ryton PPS fiber as distinct from all other fibers. Ryton PPS fibers offer a combination of properties and performance benefits which are unique and cannot be found in other fibers. Commercial and industrial buyers of fabrics for filtration of flue gas from coal fired boilers, as well as filters for liquid and gas industrial processes, need to be able to identify this new fiber development. Other diverse markets in which Ryton fiber has applications are papermaker felts, electrolysis membranes, high performance composites, gasket packing, rubber reinforcement, and electrical insulation.

The public at large will benefit from the performance features of Ryton; for example, through improved air quality resulting from filtration of emission from coal fired industrial boilers. One example of this is the use of Ryton filtration bags at Coors Brewery in Golden, Colorado, which was nationally advertised in [a] television commercial.

Phillips proposed in its petition that the new fiber be identified, in descending order of preference, as: (1) "arofide," (2) "sulfar," and (3) "arosul."

In the May 29 Notice, the Commission solicited comment on all aspects of the appropriateness of Phillips' application, but especially comments on whether the application meets the following three criteria, which have been set out by the Commission as grounds upon which it would grant petitions for new generic names:¹⁰

1. The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public.

2. The fiber must be in active commercial use or such use must be immediately foreseen.

3. The grant of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

Section B. Summary and Analysis of Comments

1. Summary

There were three comments submitted during the comment period in this proceeding.¹¹

Dr. Wayne St. John, of the Clothing and Textiles Programs of the Department of Vocational Education Studies of the University of Southern Illinois,¹² commented that Phillips' request for a new generic name should be granted. Dr. St. John noted that the chemical structure of Phillips' new fiber is radically different from the fibers currently listed in the Textile Rules. He posed a question as to whether the fiber is or will be in active commercial use, and noted that, if the fiber does become active commercially, the granting of a new generic name would be important to the consuming public at large. Dr. St. John also expressed a preference for Phillips' proposed name "sulfar" over the other two choices—"arofide" and "arosul"—because of the latter's similarity to the existing generic definition "aramid".¹³ Dr. St. John stated that he was sure that students in his textiles classes would be confused by the similarity between "aramid" and the other proposed fiber names.

A second comment was submitted by the Textile Fibers Department of the Industrial Fibers Division of the E.I. du Pont de Nemours & Co.¹⁴ Du Pont was also concerned about possible confusion stemming from the similarity of "arofide" and "arosul" to "aramid".

Du Pont noted:

Aramid fiber products have participated in the hot gas filtration industry since at least as early as 1967. The performance features and physical properties of filters made of aramid fibers are well known by the trade and by purchasers of such products. Similarly, the performance features and performance properties of products made of Phillips' polyphenylene sulfide fiber are well known.

Hot gas filters made of aramid fiber and those made of Phillip's PPS fiber are now recognized in the trade as separate, distinct and unrelated products. This distinction assists purchasers in selecting the product that best meets a specific need.

Du Pont believes that the distinction between aramid and PPS fiber will be seriously jeopardized if the Commission

¹¹ The comments have been placed on the public record in this proceeding under category 20 of Public Record Docket 206. They are designated 20-2 through 20-4. References to the comments will be made by means of the name of the commenters the number of the comment, and, where appropriate, the page of the comment.

¹² 20-2. Dr. St. John notes that he has a Ph.D. in organic chemistry.

¹³ 16 CFR 303.7(s)

¹⁴ 20-4. "Du Pont."

¹⁰ 38 FR 34112, 34114 (December 11, 1973).

approves Phillips' petition to designate either the term "Arofide" or "Arosul" as a generic name for polyphenylene sulfide fiber.¹⁶

The third comment was submitted by the petitioner, Phillips Fibers Corporation.¹⁶ Phillips desired to avoid potential confusion between its own third choice for a generic name "arosul" and a request for a new generic fiber name and definition filed by the Celanese Corporation, currently under consideration by the Commission. Celanese has proposed, as its first choice for a name for its new fiber, the name "arazole."¹⁷ In order to avoid potential confusion between these new fibers, Phillips withdrew, therefore, its submission of "arosul" as a possible choice for the name of its new generic fiber, if granted. This leaves the Phillips application with two proposed names in the following order of preference: (1) "Arofide" (2) "sulfar."

2. Analysis

The Commission has considered all the information available in this matter and has concluded that Phillips has provided sufficient information to meet the three aforementioned criteria for granting a new generic name for its manufactured fiber.

Distinct Chemical Composition

The Commission, after studying Phillips' application and consulting with experts knowledgeable in the field, believes that the chemical composition of Phillips' fiber is radically different from the chemical composition of any of the fibers encompassed by the present definitions under Rule 7. More specifically, the poly (phenylene sulfide) polymer, which is the fiber-forming substance, consists of aromatic rings that are attached together by sulfide (—S—) linkages. This type of linkage is unique with respect to the current definitions under Rule 7.

The Commission believes that, because of this unique chemical composition, Phillips' fiber has properties that will be significant to the general public. One of the primary characteristics of this fiber is its suitability for filtration of emissions from coal-fired industrial boilers. The resulting improved air quality will benefit the public in general.

Commercial Use

In order to substantiate the fact that

its fiber is in active commercial use and that such commercial use will continue, Phillips submitted to the Commission sales figures for 1983, for January through August of 1984 and projected sales for 1985. The Commission is convinced, on the basis of these figures, that Phillips' fiber is indeed in active production and that such production will continue.

Importance to the Consuming Public at Large

As noted in the discussion of the first criterion, above, the performance properties of Phillips' fiber in industrial applications for coal-fired boiler flue gas filtration will be important to the public at large. More importantly, commercial and industrial buyers of flue filtration fabrics all over the country will be able to identify this fiber by its generic name.

It only remains, then, for the Commission to determine the best name for Phillips' fiber. Since Phillips has withdrawn one of its choices, "arosul," only two choices remain. In order to avoid any possibility of confusion between the proposed name "arofide" and the existing generic name "aramid," the Commission, therefore, has chosen the name "sulfar."

The designation "PF0001" previously assigned petitioner's fiber for temporary use is hereby revoked as of the effective date of this amendment.

Section C. Regulatory Flexibility Act

In publishing the proposed amendment, the Commission determined that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis, 5 U.S.C. 603 and 604, were not applicable because it was believed the amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities. In considering the economic impact of the proposed amendment on manufacturers and retailers, the Commission noted that the amendment would impose no obligations, penalties or costs. In light of this, it was certified, under the provisions of section 5 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this aspect of the rulemaking during the comment period.

On the basis of all the information before it, the Commission has determined that the final regulations

will not have a significant economic impact on a substantial number of small entities. Consequently, the Commission concludes that a final regulatory flexibility analysis is not required and has filed a Certificate of No Effect under the Regulatory Flexibility Act with the Small Business Administration to that effect.

Section D. Paperwork Reduction Act

This amendment contains no provisions that constitute information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, and the implementing regulation, 5 CFR 1320.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade Practices.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTION IDENTIFICATION ACT

Accordingly, after consideration of the views, arguments and data submitted pursuant to the Notice of Proposed Rulemaking in this matter, and in consideration of other pertinent information and material available to the Commission, the Commission has determined to amend 16 CFR Part 303, Rules and Regulations under the Textile Fiber Products Identification Act, in the manner set forth below:

1. The authority citation for Part 303 continues to read as follows:

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act, 15 U.S.C. 7(c); Sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

§ 303.7 [Amended]

2. Section 303.7, Generic Names and Definitions for Manufactured Fibers, of 16 CFR Part 303 is hereby amended by adding a new paragraph (t) to read as follows:

(t) *Sulfar*. A manufactured fiber in which the fiber-forming substance is a long chain synthetic polysulfide in which at least 85% of the sulfide (—S—) linkages are attached directly to two (2) aromatic rings.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-12737 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

¹⁶ 20-4/4.

¹⁷ 20-3.

¹⁸ See 50 FR 21855 (May 29, 1985).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 178

[T.D. 86-107]

**Customs Regulations Amendments
Relating to Caribbean Basin Initiative
and Generalized System of
Preferences**

AGENCY: U.S. Customs Service,
Treasury.

ACTION: Final rule.

SUMMARY: The Caribbean Basin Economic Recovery Act ("CBERA") implements an economic recovery program for nations of the Caribbean and Central America. The Act provides for the waiver of duties until September 1995 on most products imported from Caribbean and Central American countries designated as beneficiary countries.

Title V of the Trade Act of 1974 authorized the President to establish a Generalized System of Preferences ("GSP") which permits the duty-free entry of eligible merchandise arriving directly from designated "beneficiary developing countries."

On January 5, 1984, interim Customs Regulations were published as T.D. 84-14 in the *Federal Register* (49 FR 852) to implement the CBERA. A final rule was published as T.D. 84-237 in the *Federal Register* on December 7, 1984 (49 FR 47986). However, based upon public comments received in response to the solicitation of comments provision of the January 5, 1984, interim regulations, the documentation requirements of the rules were modified by T.D. 84-238 which was published in the *Federal Register* on December 7, 1984 (49 FR 47995), as interim regulations. In addition, to ensure that the documentary requirements of the Caribbean Basin Initiative ("CBI") and the GSP did not detract from one another and to avoid unnecessary confusion among parties using these programs, the GSP documentary requirements were modified by that document to conform them to the CBI documentary requirements, except for the requirement of foreign government certification of the GSP Certificate of Origin Form A. A notice of proposed rulemaking was published in the *Federal Register* on December 7, 1984 (49 FR 48003), which proposed to modify the requirement of foreign government certification.

This document contains the final rule with respect to the documentation requirements and eliminates mandatory

foreign government certification except for those beneficiary countries with which the U.S. Customs Service has a bilateral enforcement agreement.

DATE: This rule is effective on July 9, 1986.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: William L. Marchi,
Duty Assessment Division (202-535-4134);

Legal Aspects: Myles B. Harmon,
Classification and Value Division
(202-566-2938); U.S. Customs Service,
1301 Constitution Avenue, NW.,
Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade Act of 1974 authorized the President to establish a Generalized System of Preferences ("GSP") which permits the duty-free entry of eligible merchandise arriving directly from designated "beneficiary countries." To implement the provisions of the GSP, on December 31, 1975, Customs published regulations as T.D. 76-2 in the *Federal Register* (40 FR 60047).

Subtitle A, Title II, Pub. L. 96-67, the Caribbean Basin Economic Recovery Act (the "Act"), commonly referred to as the Caribbean Basin Initiative ("CBI"), implements an economic recovery program for nations of the Caribbean and Central America announced by the President on February 24, 1982, in an address to the Organization of American States.

The Act provides for the waiver of duties until September 30, 1985, on most products imported from Caribbean and Central American countries designated as beneficiary countries. Beneficiary countries must meet several criteria before the President is authorized to designate them as eligible under the CBI. Further, certain products cannot be declared duty-free. Under other provisions of law, duty-free treatment can be withdrawn for articles imported in such quantities as to cause injury to a competing U.S. industry. A rule of origin specifies under what conditions articles will be considered products of a beneficiary country, and, therefore, entitled to duty-free entry.

Pursuant to Presidential Proclamation 5133, dated November 30, 1983 (48 FR 54453), the President designated the countries and territories or successor political entities set forth in the Annex to the Proclamation as "beneficiary countries", thus conferring duty-free treatment for all eligible articles from those beneficiary countries. This action, was effective with respect to all articles that were entered, or withdrawn from warehouse consumption, on or after

January 1, 1984, and on or before September 30, 1985. Presidential Proclamation 5142 of December 29, 1983 (49 FR 341), and Presidential Proclamation 5308 of March 14, 1985 (50 FR 10927), amended Presidential Proclamation 5133 and the Annex to the Proclamation to extend the benefits of the Act to certain additional Caribbean and Central American nations.

To implement the duty-free aspects of the CBI, Customs published interim regulations as T.D. 84-14 in the *Federal Register* on January 5, 1984 (49 FR 852). The interim regulations provided for a 60-day public comment period which was subsequently extended by a notice published in the *Federal Register* on March 8, 1984 (49 FR 8600), to May 4, 1984. A final rule was published as T.D. 84-237 in the *Federal Register* on December 7, 1984 (49 FR 47986).

Numerous commenters on the interim rule submitted observations and proposals for amendments to the interim CBI regulations. A particularly large number of comments were received on § 10.198 of the interim Customs Regulations amendments (19 CFR 10.198), which concerned the documentary evidence of country of origin and required the submission of a declaration of the manufacturer or exporter together with an endorsement thereof by the importer or consignee. In light of the comments received, it was apparent that some changes should be made in this regard. However, after consideration of the comments and proposals submitted, Customs was of the opinion that none of the commenters had presented a proposal which would represent a proper solution to the documentary evidence issue. Since both the GSP regulations and the CBI interim regulations contain documentary requirements which assist in the determination of eligibility of merchandise for the two programs, it was decided to modify the documentary requirements of the interim CBI regulations and submit the modification, which differed from both the initial interim CBI regulatory provision and the various proposals put forth by the commenters, for further public comment. Further, to ensure that the documentary requirements of the CBI and GSP did not detract from one another and to avoid unnecessary confusion among parties using these programs, the GSP documentary requirements, except for the requirement for foreign government certification of the GSP Certificate of Origin Form A, were modified to conform them to the CBI documentary requirements. That document was published as T.D. 84-238 in the *Federal*

Register on December 7, 1984 (49 FR 47995).

The proposal to change the requirement for foreign government certification of the GSP Certificate of Origin Form A was published in the Federal Register on December 7, 1984 (49 FR 48003). A discussion of the comments received on this notice and the other documentary requirements is set forth below.

Discussion of Comments

Documentation Requirements

Three commenters responded to the interim CBI and GSP regulations setting forth the new requirements for country of origin documentation. Some comments related only to the CBI texts, some concerned only the GSP texts, and others were directed to both the CBI and GSP texts.

With regard to the comments directed solely to the CBI texts, none of the commenters disagreed with the interim decision to use the Certificate of Origin Form A in place of the declaration/endorsement as evidence of country of origin. However, two commenters were of the opinion that the regulation should require certification of the CBI Form A by a designated beneficiary country government official as in the case of the GSP. The reason given for this proposal was that the beneficiary country government officials are in a better position to determine the relevant facts than are foreign manufacturers or exporters.

As concerns the comments directed only toward the GSP provisions, one commenter suggested that the GSP regulations should not be aligned on the CBI provisions since the GSP has worked well in the past and the Congress did not indicate a need for any changes when consideration was given to the extension of the GSP program. This commenter further argued that the requirements to maintain records in the exporting country for 5 years and to submit more documentation (*i.e.*, the declaration), if requested, are both burdensome and not in line with the original intent of the GSP program. Another commenter argued that the GSP provision should be amended to allow the manufacturer, rather than the exporter, to prepare the supporting declaration if the exporter has inadequate knowledge of the operations of, and no financial ownership in, the manufacturer. Under this proposal the manufacturer would prepare the declaration and provide it to the exporter who would submit it to Customs.

Two commenters submitted comments regarding both the CBI and GSP interim regulatory provisions. One recommended that a statement be required on the Form A indicating whether the CBI or GSP origin criteria were used, so that the exporter would thereby acknowledge that there are differences in the origin rules under the two programs. Another commenter stated that the prior recordkeeping requirements were sufficient to protect the revenue and that it is burdensome and unfair to penalize U.S. importers (*i.e.*, by making the imported merchandise dutiable) because of the failure of the foreign firm to supply the requested information since the importer has little, if any, control over the diligence of the foreign producer or exporter in adhering to Customs recordkeeping requirements. One commenter argued that the CBI/GSP requirement for submission of the supporting declaration should be deleted based on the following considerations: (1) The 5-year record retention requirement is extreme, (2) the failure of the exporter to comply with Customs belated request for the declaration creates an uncontrollable exposure for the importer since, once the exporter receives payment for the goods, the importer loses control over the exporter who would not be likely to supply the declaration unless there is significant continuing business with the importer, and (3) requesting the declaration from the exporter, but without any involvement on the part of the importer, will cause problems since Customs does not have a foreign language capability to communicate with small exporters and the assistance of the importer may be necessary as regards technical manufacturing processes. This commenter further recommended that, if the declaration requirement is retained, the regulations should be amended (1) to provide for centralization at Customs Headquarters of the decisions as to whether to request submission of the declaration, with the request then going to the importer who would pass it on to this supplier, and (2) to allow the district director some discretion by providing that failure to submit the declaration in a timely fashion "may" (rather than "will") result in a denial of duty-free treatment. Finally, as regards the provision relating to further verification of the submitted evidence of country of origin, one commenter argued that whereas the foreign government can make such further verification, the U.S. Government cannot do this (due to protocol and sovereignty problems) and the importer

cannot control a denial of access on the part of the foreign government or exporter. This commenter recommended that the decision on whether further verification is necessary should be made in each case at Customs Headquarters, and the importer should be allowed an alternate means of satisfying Customs (*e.g.*, by verification performed by an in-country public accounting firm) if Customs is prevented from obtaining the necessary further verification.

As regards the comment directed solely to the CBI interim texts, Customs does not agree that the regulation should require certification of the CBI Form A by a designated beneficiary country government official as has been the case in GSP. The reason for this proposal does not appear to be valid since a beneficiary country government official is not involved in the manufacturing operation and thus is not privy to the facts relating thereto. Since the certifying official must obtain the relevant facts from the manufacturer or exporter, such second-hand government certification of the Form A, which has no binding legal effect on Customs, represents merely another bureaucratic or administrative step in the export/import process. Customs remains of the opinion that the CBI program will operate more efficiently, from both a legal and operational standpoint, without government certification of the Form A.

For essentially the same reasons, Customs disagrees with the suggestion that the GSP regulations should not be aligned on the CBI provisions. The initial CBI requirement for submission of the declaration/endorsement as documentary evidence of country of origin, as well as the new interim CBI requirement for submission of the declaration to support the Form A, were based on Customs experience under the GSP which has been found to have not always worked as well as this commenter appears to believe. The fact that the Congress did not indicate a need for any such changes in the GSP is largely irrelevant since this issue was never raised in connection with the amendments of the GSP affected by the Trade and Tariff Act of 1984. Customs is also of the opinion that the 5-year record retention period should be retained since it is consistent with the normal Customs recordkeeping requirements which must be followed by importers. The requirement should benefit importers who will be better assured that the backup records necessary to support the importer's claim will be available. Moreover, there is no merit to the argument that the record retention

and supporting declaration requirements should be deleted for the reason that these requirements are burdensome and not in line with the original intent of the GSP program. The record retention and documentary requirements set forth in the interim GSP regulation are intended to assist Customs in administering the origin rules contained in the GSP statute and are consistent with the regulatory authority conferred on the Secretary of the Treasury by that statute. Acceptance of this commenter's argument would serve to minimize the importance which the Congress placed on the GSP rules of origin and would deny the fact that taking advantage of the GSP program implicitly imposes a certain burden of proof in this regard.

With regard to the comments directed toward both the CBI and the GSP interim provisions, Customs does not agree with the suggestion that a statement be included on the Form A to indicate whether the CBI or GSP origin criteria were used. The present regulations adequately cover this point. Submission of the entry summary with the "A" designation, coupled with submission of the "Generalized System of Preferences" Form A, will make it clear that a GSP transaction is involved. Submission of the entry summary with the "C" designation, coupled with the submission of a Form A containing instead the required words "Caribbean Basin Initiative", will indicate that the CBI transaction is involved. It would be inappropriate to conclude that a conscious decision to use one program rather than the other was made without any perception as to the differences in the origin rules under the two programs.

Customs does not agree that the prior recordkeeping requirements were sufficient to protect the revenue. As was clearly stated when the interim 5-year record retention and supporting declaration requirements were included in the CBI and GSP regulations, past experience under the GSP has shown that problems have arisen from the fact that in many cases exporters were not fully aware either of the need for maintaining information to support the Form A or of the type of information needed. The CBI and GSP provisions do not set forth new substantive requirements as such but rather merely serve to clarify what has always been necessary in order to establish compliance with the origin criteria.

Customs also does not agree that the supporting declaration requirement should be deleted based on the alleged uncontrollable exposure faced by the importer due to his inability to control the actions of the exporter regarding the

retention of records and the submission of the declaration. Since the importer of record is legally liable for the payment of duty on imported merchandise, the importer's ability to avail himself of duty-free treatment under the GSP or CBI will of necessity depend on his being supplied with merchandise which meets the GSP or CBI origin requirements. To the extent that the importer cannot control his foreign supplier as regards the record retention and declaration requirements, he would be equally unable to control his supplier as regards the actual production of the merchandise which is the basis upon which GSP or CBI duty-free status is determined. It would be inconsistent with commercial and legal reality to conclude that an importer neither assumes a risk nor bears any responsibility when he engages in a GSP or CBI transaction. It is incumbent on the importer to select a reliable foreign supplier so as to ensure the availability of the GSP or CBI benefits, and the mere fact that an importer is unable or unwilling to do so is not a sufficient basis for doing away with regulatory requirements which are specifically intended to ensure that Customs will be able to determine whether there is compliance with the statutory rules of origin.

It was with the above considerations in mind that Customs prepared the GSP and CBI regulations to provide that failure to submit the supporting declaration in a timely fashion "will" result in a denial of duty-free treatment. Since a request for the declaration will normally only be made based on a specific determination that there appears to be an insufficient basis for granting GSP or CBI duty-free treatment, any failure to submit the requested declaration so as to support the claim must result in a dutiable entry. Customs' statutory responsibility for ensuring that there is compliance with the GSP and CBI requirements, consistent with the Congressional intent behind the rules of origin, precludes the exercise of any discretion in this regard so as to give the importer the benefit of the doubt. Therefore, the regulations are not being amended to provide that the imported merchandise "may" be treated as dutiable in such a case.

In view of Customs decision to delete the original CBI declaration/endorsement approach because such an approach would cause the foreign manufacturer to disclose confidential business information to the importer, it would not be appropriate to require the involvement of the importer when a request for the declaration is made.

While there is nothing which would prevent a foreign manufacturer from requesting assistance from the importer, the decision to involve the importer should be left to the manufacturer.

Customs believes that it would be inappropriate to provide in the regulations for centralization at Customs Headquarters of all decisions to request the supporting declaration or to seek further verification of the submitted evidence of country of origin. Such a requirement would unnecessarily delay the entry/liquidation process. Further, the Customs field office is in the best position to decide what is necessary in an individual case. Finally, Customs does not believe that it would be appropriate to specify in the regulations the manner in which further verification should be obtained. Since protocol and sovereignty considerations and other factors may vary from country to country and from case to case, it is preferable to leave it to the discretion of the district director to use all reasonable means at his disposal to obtain such further verification. Although verification by the foreign government or by an in-country public accounting firm would not be precluded, the decision whether to accept such verification should also be left to the discretion of the district director.

Based on the above, Customs has determined that the interim CBI regulations regarding CBI documentary evidence of country of origin contained in § 10.198 and the interim GSP provisions concerning the supporting declaration contained in § 10.173(c) should be adopted as final rules. However, Customs agrees with the suggestion that the GSP regulations should be amended to allow a party other than the exporter to prepare the supporting declaration in a case where the exporter has insufficient knowledge of the manufacturer's operations, as, for example, where the exporter is an independent selling or buying agent. Since the same considerations would apply in the case of the CBI, Customs believes that the final CBI regulations should contain a similar provision. Accordingly, appropriate modification have been made to §§ 10.173 and 10.198.

Elimination of Foreign Government Certification of GSP Form A

A total of 15 comments were received on the proposal to do away with mandatory certification of the Form A by the designated beneficiary developing country (BDC) governmental authority. Seven commenters were in favor of the proposal, six were opposed, and two were neither in favor of nor

against the proposal as such but rather proposed alternate approaches.

As concerns the arguments in favor of the proposal, commenters suggested that removal of the certification requirement would alleviate procedural difficulties encountered in obtaining a certified Form A from a foreign government under circumstances where the merchandise nevertheless meets the GSP origin requirements. Some commenters pointed out that these difficulties were encountered in particular where duplicate or retroactive Form A's were needed, as, for example, where the foreign manufacturer is controlled by the U.S. importer (who maintains the books and records) and the cost data to be reflected on the Form A can be determined only at the end of the company fiscal year. Even though the cost data can be made available to Customs from the domestic corporate headquarters, mandatory certification requires that the Form A be obtained from the foreign government. One commenter stated that the untimely issuance of the Form A by the foreign government adds to the importer's cost due to the need to post a bond for the missing document. Another commenter argued that the proposal would reduce the paperwork burden on brokers and Customs and would allow entries to move without being held up for missing documents since the exporter can usually supply the Form A at the time of exportation. One commenter suggested that mandatory certification is a shield which prevents Customs from verifying the information on the Form A and that the verification procedure is cumbersome since Customs must go through the Department of State in order to obtain such verification from the BDC government. As concerns the legal effect of BDC government certification, one commenter pointed out that Customs, and not the foreign government, inevitably must be satisfied as to the GSP eligibility of the imported merchandise. Another commenter pointed out that under the Customs laws the importer is still legally liable for supplying the proof as to GSP eligibility. One commenter argued that government certification of the Form A is procedural and thus can be dispensed with under the regulatory authority conferred on the Secretary of the Treasury, and that deletion of the certification requirement would not be inconsistent with any United Nations Conference on Trade and Development (UNCTAD) agreements since it has been recognized that the requirements and procedures under the GSP should be those which are imposed by the preference-giving

country. One commenter suggested that the provision for submission of a detailed declaration to support the statements made on the Form A would overcome any drawback arising from deletion of the certification requirement. Finally, commenters argued that deletion of the certification requirement would align the GSP and CBI requirements and thus avoid confusion between the two programs.

Commenters in favor of deletion of the mandatory certification requirement also proposed an alternate approach in the event that the certification procedure is retained. Under this proposal, a provision would be made for not requiring government certification of the Form A if the importer has a controlling interest in the exporter. In favor of this alternate approach, it was argued that the importer would have automatic access to the necessary books and records and thus could readily make them available to Customs. One of these commenters suggested that the importer should be allowed to file a written statement with the district director advising of the importer's control over the exporter and requesting a waiver of the certification requirement.

With regard to the arguments against the proposal to do away with mandatory government certification of the Form A, commenters argued that the foreign government officials are in a better position than foreign manufacturers or exporters to determine the relevant facts, and in many cases the exporter does not have access to the manufacturer's confidential business records. Commenters further argued that the GSP certification procedure has worked well and thus should not be changed, and in this regard it was alleged that: (1) BDC governments have often refused to certify inaccurate Form A's, (2) the proposal will allow unscrupulous manufacturers and exporters to make false claims, particularly since the deterrent value of a penalty imposed by the BDC for a false claim will be lost, and (3) there will be delays in clearing shipments because Customs will have no authority to verify the facts in the source country. Commenters argued that adoption of the proposal would make it difficult or impossible for a BDC government to monitor GSP exports and exporters. Moreover, commenters stated that the proposal would shift the burden of verification from the BDC government to Customs, and that Customs may have difficulty in locating the exporter due to insufficient manpower.

Two commenters were of the opinion that the proposal would both increase the burden on exporters and adversely affect importers. With regard to the adverse effects on importers it was argued that: (1) Since the importer has little control over the diligence of the foreign manufacturer or exporter in adhering to Customs recordkeeping requirements, it would be burdensome and unfair to penalize an importer (by making the imported merchandise dutiable) because of a failure of a foreign firm to supply the requested documentation, and (2) whereas BDC government certification acts as a buffer for the importer and a letter of credit is normally contingent on the existence of a certified Form A, the proposed deletion of the certification requirement would put the importer at the mercy of his supplier and would thus increase the importer's exposure to fraud and to the assessment of duties and penalties. Two commenters were of the opinion that the proposal would further complicate an already complicated system. With regard to Customs' view that the GSP and CBI requirements should be the same, commenters argued that such conformity is not necessary since the GSP and the CBI are separate and distinct but that, if conformity is deemed necessary, the CBI should follow the GSP rather than vice versa.

It was also argued that the proposal would harm both BDC's and the GSP program as a whole in that: (1) The present documentary requirements for verification of GSP claims will be even more important under the recently amended GSP statute since any evidence of malpractice or fraud will weigh heavily in any future study made to determine whether the most competitive BDC's should continue to benefit under the program, (2) the proposal will disrupt the trade of those BDC's which are heavily dependent on exports and which produce goods identical to those made elsewhere, and (3) the absence of certification will give rise to greater opposition to the GSP on the part of U.S. producers. One commenter also suggested that in the event that certification of the Form A were made voluntary, but the BDC government nevertheless were to continue to require it, acceptance of an uncertified Form A by Customs would constitute acquiescence in a violation of the BDC law. Two commenters further argued that the proposal would be inconsistent with both the UNCTAD suggestions for documentary requirements and the requirements of GSP programs administered by other developed nations. As regards the

proposed change to § 10.175(c)(4), Customs Regulations, which concerns merchandise shipped through a free trade zone in a BDC, one commenter was of the opinion that the regulation should not be amended. Finally, a BDC government opposed to the proposal suggested that if mandatory certification were not to be retained, the U.S. authorities should specifically designate that BDC government as being responsible for the Form A's covering merchandise imported from that BDC.

One commenter pointed out that as a result of the proposal an exporter who purchases goods from an independent BDC manufacturer in an arms-length transaction would be placed in an impossible position since he would no longer be able to rely on the BDC government certification as regards the GSP eligibility of the goods. This commenter therefore suggested that the regulation provide that the manufacturer, rather than the exporter, be responsible for completing and signing the Form A if the exporter has inadequate knowledge of the operations of, and no financial ownership in, the manufacturer. Under this proposal Customs would still look to the exporter to supply the Form A. Another commenter merely suggested that the regulation refer to the Form A signed by the exporter of the merchandise "and by the representative of the Chamber of Commerce or the Chamber of Industries" in the country from which it is directly imported.

Based on the comments submitted, and its own experience with the value of the beneficiary-government certification as a guarantee of compliance with GSP legal requirements, Customs believes that the arguments in favor of the proposal to do away with mandatory government certification of the GSP Form A outweigh the arguments made in favor of its retention.

The arguments in favor of deletion of the mandatory certification requirement, which were submitted mainly by private domestic parties, clearly demonstrate that mandatory government certification has led to problems both as concerns the issuance of retroactive or duplicate Form A's and as concerns the need to post a bond if issuance of the Form A is untimely. Customs is of the opinion that in the absence of a significant law enforcement benefit attributable to beneficiary or government certifications, those problems should not be allowed to continue, particularly to the extent that they are not attributable to a party directly involved in the commercial transaction. The GSP regulations should further the program, consistent with the

need to ensure compliance with the legal requirements thereunder, rather than hinder it. Customs agrees that deletion of the mandatory certification requirement will reduce the paperwork burden on all concerned parties and will allow GSP entries to move more quickly and efficiently.

Customs is also of the opinion that deletion of the mandatory certification requirement would remove any confusion as to the legal effect of BDC government certification and would facilitate verification of the statements made on the Form A. As concerns the legal effect of government certification, Customs agrees that certification has no binding legal effect on the duty-free eligibility of imported merchandise since it is Customs, and not the BDC government, which is charged with the responsibility under U.S. law to determine the proper tariff status of imported merchandise. Moreover, notwithstanding what occurs in this regard in the exporting country, it is the importer who is legally responsible for establishing to Customs that there is compliance with the GSP requirements. With regard to verification of the statements made on the Form A, Customs also agrees that mandatory government certification has necessitated the use of a cumbersome and often ineffective procedure to obtain such verification. Use of an uncertified Form A will avoid a situation in which a request for further verification implicitly draws into question the veracity of a governmental certifying official and allow the verification procedure to be completed in a more timely and efficient manner.

Customs also agrees that deletion of the mandatory certification requirement is permissible under the regulatory authority conferred on the Secretary of the Treasury and is not inconsistent with any UNCTAD agreements. Whereas the GSP statute does not even require the use of a Form A in connection with GSP importations, that statute does confer upon the Secretary the authority to promulgate regulations to carry out its provisions. Since foreign government certification is not a proper legal basis for determining whether there is compliance with the statutory standards, deletion of the mandatory requirement would not be in conflict with the intended purpose of those regulations. With regard to the UNCTAD, Customs agrees that it was recognized that the applicable requirements and procedures in each case would be those imposed by the preference-giving country. Moreover, Customs is unaware of any binding

international agreement which requires that the U.S. use the UNCTAD Form A incorporating government certification. Customs understands that general use of the Form A came about as a result of a non-binding UNCTAD recommendation.

For the reasons stated in connection with the discussion of the comments on the CBI interim regulations, Customs does not agree that foreign government officials are in a better position than foreign manufacturers or exporters to determine the relevant facts. Therefore, this argument is insufficient to support retention of mandatory government certification. Moreover, the discussion of the comments on the CBI and GSP interim provisions adequately disposes of those arguments in favor of the status quo which are based on the alleged adverse effect which deletion of mandatory certification would have on importers due to an importer's inability to control his foreign supplier so as to reduce his exposure to the assessment of duties and penalties. For essentially the same reasons, Customs does not agree that mandatory government certification should be retained because the deletion thereof would shift the burden of verification from the BDC government to Customs which allegedly has insufficient manpower for this purpose. As has already been pointed out, ultimate responsibility for verification has, as a legal matter, always rested with Customs, and the argument regarding alleged manpower limitations incorrectly suggests that Customs has the discretion to cede to others its statutory responsibility for the enforcement of the law.

Nor does Customs agree that mandatory certification should be retained based on the argument that the GSP certification procedure has worked well. While a great many proper GSP claims have been made, and although Customs would not deny that BDC governments have in some instances refused to certify, or imposed penalties for, inaccurate Form A's, it is equally true that over the years a significant number of GSP claims have been found by Customs not to be valid in spite of the government certification. The practical (as opposed to legal) value of the BDC government certification is directly dependent on the extent to which actual verification takes place in the BDC at the time of certification. Although Customs recognizes that government certification could be of value, Customs' actual experience under the GSP has demonstrated that government certification does not necessarily ensure that an unscrupulous

exporter will not make a false statement on the Form A.

With regard to the arguments that removal of mandatory government certification would have an adverse effect on BDC's, Customs does not necessarily agree that the proposal would make it difficult or impossible for a BDC government to monitor GSP exports and exporters. A BDC government in principle would still retain the authority under its own laws to impose necessary export controls, including mandatory government certification of the Form A. Moreover, even if a BDC government were to require certification, acceptance of an uncertified Form A for purposes of the GSP program would not represent acquiescence in a violation of the BDC law since such "acquiescence" implies a responsibility on the part of the U.S. government (i.e., to enforce the BDC law) which does not exist. Nor does Customs believe that the proposal would harm BDC's or the GSP program as a whole either on the ground that certification has become more important vis-a-vis the retention of GSP benefits by most competitive BDC's or on the ground that the absence of certification will give rise to greater opposition to the GSP on the part of U.S. producers. As regards the first point, the provisions in the GSP statute, as amended by the Trade and Tariff Act of 1984, regarding most competitive BDC's concern the withdrawal of GSP benefits based on economic performance and do not refer in any way to BDC government certification. As regards the second point, Customs is firmly of the view that opposition to the GSP both within domestic industry and within the Congress would be significantly greater if it were to appear that Customs was giving legal effect to BDC government certification so as to not look beyond the Form A to verify GSP compliance. Finally, given the fact that government certification has no legal effect on the question of GSP eligibility, there does not appear to be any basis for the argument that deletion of mandatory certification will disrupt the trade of those BDC's which are heavily dependent on exports and which produce goods identical to those made elsewhere.

Based on our analysis of the comments and further review of the matter, Customs has determined that the proposal to make BDC government certification permissive, rather than mandatory, should be adopted as a final rule. Accordingly, the proposed change to § 10.175(c)(4) concerning merchandise shipped through a BDC free trade zone

should also be adopted since government certification would also not be required in such a case. However, Customs recognizes the possibility, suggested by one commentator, that verification procedures can be implemented by a beneficiary government in such a manner as to warrant a requirement for government certification. In such cases, Customs believes that it may be appropriate to enter into agreements on verification procedures providing for government certification. The proposal to also provide for signature on the Form A by the representative of the Chamber of Commerce or the Chamber of Industries should not be adopted since this would complicate the procedures and could lead to inconsistency in the requirements as regards BDC's not having such organizations. However, for the reasons stated in connection with the discussion of the GSP and CBI supporting declaration, Customs agrees with the suggestion that the GSP regulations should provide for preparation of the Form A by another party if the exporter has no knowledge of the relevant facts. A similar change should be included in the corresponding CBI provisions since the same consideration would apply.

Amendments to the GSP and CBI Regulations

In view of our determination, the GSP and CBI texts are amended by this document to provide for preparation of the Certificate of Origin Form A by the exporter or other appropriate party having knowledge of the relevant facts (see §§ 10.173(a)(1), 10.198(a)(1)). In addition, the GSP and CBI regulations have been amended to provide similar flexibility as regards the preparation of the supporting declaration, subject to the requirement that the parties preparing the Certificate of Origin and the declaration must be the same so that Customs will be able to contact the appropriate party to request the declaration based on the information appearing on the Certificate of Origin (see §§ 10.173(c)(1) and (2), 10.198(c)(1) and (2)). Since the exporter will not always be the party preparing the GSP and CBI declarations, the titles of the declarations have been amended to read "GSP Declaration" and "CBI Declaration" rather than "Declaration of Exporter" (see §§ 10.173(c)(1), 10.198(c)(1)).

Section 206 of Pub. L. 98-573, the Trade and Tariff Act of 1984, amended section 498(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1498(a)(1)), by increasing the informal entry limit from \$250 to \$1250. However, it exempted all

articles valued in excess of \$250 classified in Schedule 3, parts of Schedule 7, and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated or any other article for which formal entry is required without regard to value. Under 19 U.S.C. 1498(a)(1), the Secretary of the Treasury may specify the exact amount of the informal entry limit. The limit may vary for different classes or kinds of merchandise or different classes of transactions. After thorough consideration, it was determined that, with the exception of the specific statutory exclusions, the informal limit for all articles should be set initially at \$1,000, with the option to increase it to \$1250 in the future. Accordingly, on July 23, 1985, a document was published in the *Federal Register* as T.D. 85-123 (50 FR 29949) which amended various sections of the Customs Regulations, including § 10.173 of the GSP regulations, to establish the new informal entry monetary limit. While the GSP regulations have always included the dollar amount of the informal entry monetary limit, the CBI regulations simply refer to "formal" and "informal" entries. Upon reflection it is believed that the approach taken in the CBI regulations is the better approach since it will not be necessary to amend numerous sections of the regulations when the monetary limit is changed. Accordingly, § 10.173 (a), (b) and (c)(1) of the GSP regulations have been amended to replace the dollar figures with references to "formal" and "informal" entries. These amendments will align the GSP and CBI regulations.

Executive Order 12291

These amendments do not constitute a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

It is certified that 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 document because the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96-511. Accordingly, applicable sections have been cleared by the Office of Management and Budget and assigned control number 1515-0112. On March 26, 1985, Customs published in the *Federal Register* (50 FR 11849) a

document as T.D. 85-38 which amended the Customs Regulations by setting forth in a new Part 178 (19 U.S.C. Part 178) a list of information collections contained in the regulations and the OMB assigned control numbers. An amendment to Part 178, relating to approval of information collection requirements has been made which includes the OMB control number granting approval for the information collection requirements of § 10.173 in the numerical listing of approval provisions.

Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 10 and 178

Caribbean Basin Initiative, Customs duties and inspection, Generalized System of Preferences, Imports.

Amendments to the Regulations

Parts 10 and 178, Customs Regulations (19 CFR Parts 10, 178), are amended as set forth below.

William von Raab,
Commissioner of Customs.

Approved: May 13, 1986.

Francis A. Keating II,
Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. Sections 10.171-10.178 also issued under 19 U.S.C. 2461 *et seq.* Sections 10.191-10.198 also issued under 19 U.S.C. 2701 *et seq.*

2. Section 10.173(a) as amended by T.D. 85-123 published in the *Federal Register* on July 23, 1985 (50 FR 29949) is amended by removing the words "\$1,000 (except for articles valued in excess of \$250 classified in Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated)" in the first sentence of paragraph (a)(1) and inserting in their place the words "covered by a formal entry".

3. Section 10.173(a)(1) is further amended by revising the last sentence to read as follows:

§ 10.173 Evidence of the country of origin.

(a) *Shipments covered by a formal entry.*—(1) *Certificate of Origin.*

* * * The Form A shall be properly completed and signed by the exporter of the merchandise, or other appropriate party having knowledge of the relevant facts. The Form A need not be certified by the designated governmental authority in that country unless that country has a verification agreement with the U.S. Customs Service.

4. Section 10.173(a)(2) is amended by removing the words "appropriate governmental body" in the first sentence of the paragraph and inserting in their place the word "party".

5. Section 10.173(b) is amended by removing the words "valued at \$250 or less" in the heading of paragraph (b) and the text of the paragraph and in each instance inserting in their place the words "covered by an informal entry".

6. Section 10.173(c) is revised to read as follows:

§ 10.173 Evidence of the country of origin.

(c) *Merchandise not wholly the growth, product, or manufacture of a*

beneficiary developing country.—(1) *Declaration.* In a case involving merchandise covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the party which prepared and signed the Certificate of Origin shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the merchandise, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

GSP Declaration

I, _____ (name), hereby declare that the articles described below were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:

| Number and date of invoices | Description of articles and quantity | Processing operations performed on articles | | Materials produced in a beneficiary developing country or members of the same association | |
|-----------------------------|--------------------------------------|--|---------------------------------------|---|---------------------------|
| | | Description of processing operations and country of processing | Direct costs of processing operations | Description of material, production process, and country of production | Cost of value of material |
| | | | | | |

Date _____
Address _____
Signature _____
Title _____

(2) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party which prepared and signed the Certificate of Origin for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director

deems necessary. In the event that the district director is prevented from obtaining the necessary verification, he may treat the entry as dutiable.

7. Section 10.175(c)(3) is amended by removing the words "issued by" in the first sentence and inserting, in their place, the words "prepared and signed in".

8. Section 10.175(c)(4) is revised to read as follows:

§ 10.175 Imported directly defined.

(c) * * *
(4) The person responsible for the articles in the free trade zone, or any person having knowledge of the facts, shall prepare and sign an additional Certificate of Origin, Form A, declaring what operations, if any, were performed on the articles within the free trade zone. The additional Certificate of

Origin shall be provided to the U.S. importer or consignee who shall present it to the district director along with the Certificate of Origin required by § 10.173 (a)(1). The provisions of § 10.173(a)(2), (a)(3), (a)(4) and (a)(5) are applicable to this paragraph.

§ 10.198 [Amended]

9. Section 10.198 is amended by adding the words ", or other appropriate party having knowledge of the relevant facts," after the word "merchandise" in the second sentence of the paragraph.

10. The heading of § 10.198(c)(1) is amended by removing the words "of the exporter".

11. Section 10.198(c)(1) is further amended by removing the word "exporter" in the first sentence and inserting in its place the words "party which prepared and signed the Certificate of Origin".

12. The title to the declaration in § 10.198(c)(1) is amended by removing the words "Declaration of Exporter" and inserting in their place the words "CBI Declaration".

13. Section 10.198(c)(2) is amended by removing the words "exporter files" in the first sentence of the paragraph and inserting, in their place, the words, "files of the party which prepared and signed the Certificate of Origin".

14. Section 10.198(c)(2) is further amended by removing the word "exporter" in the second sentence of the paragraph and inserting, in its place, the words "appropriate party".

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 44 U.S.C. 3501 *et. seq.*

2. Section 178.2 is amended by including § 10.173 in the proper numerical sequence of the listing of OMB approval control numbers as set forth below:

§ 178.2 Listing of OMB Control Numbers.

| 19 CFR section | Description | OMB control No. |
|----------------|---|-----------------|
| § 10.173... | Claim for duty-free entry of eligible articles under the Generalized System of Preferences. | 1515-0112. |

| 19 CFR section | Description | OMB control No. |
|----------------|-------------|-----------------|
| . | . | . |

[FR Doc. 86-12896 Filed 6-8-86; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

Deletion of Non-Primary Route From the National Network for Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is modifying six sections of the non-primary system that were inadvertently placed on the National Network on June 5, 1984, in the State of North Carolina, as identified on April 1, 1985, in an Advance Notice of Proposed Rulemaking (ANPRM) (50 FR 12825).

EFFECTIVE DATE: February 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 426-0233 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426-0625, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097 (STAA) mandated that the full Interstate System be available for the operation of commercial vehicles of the dimensions authorized. In addition, the Secretary was requested to designate qualifying Federal-Aid Primary System highways on which the larger vehicles could operate. The authority to designate the National Network on which these vehicles could operate was delegated to FHWA. The National Network as identified in the Federal Register at 49 FR 23302, June 5, 1984, included some sections of non-primary highways that were inadvertently included in some States.

In the April 1, 1985, ANPRM, FHWA declared its intention to identify and delete from the Network routes not on the primary system that were inadvertently placed on the National Network in the June 5, 1984, regulation. The FHWA reviewed these non-primary

sections where the authority of the U.S. Secretary of Transportation was the basis for the June 5, 1984, route designation. It did not review those States that had made available non-primary sections under State statute. In States where authority exists under State law for the designation of non-primary sections, actions were not necessary.

On November 8, 1985, FHWA published a final rule (50 FR 46425) removing non-primary routes from the National Network in five States.

In one of these States, North Carolina, FHWA deferred action on six segments not on the primary system to provide the State the opportunity to take action to allow the STAA vehicles on these segments. The State has reviewed the route segments in question and with FHWA approval has placed the following five highway sections on the Federal-aid primary system:

| Route | From | To |
|---------------------------|--|----------------------|
| SR 1409 (Truck Rt.) | US 76 | US 17. |
| SR 1959-2028 | US 70 Bethesda. | I-40. |
| I-85 Connector (SR 1007). | I-85 Salisbury | US 29-601 Salisbury. |
| US 76 | Junction US 17/ 74 West of Wilmington. | SR 1409. |
| US 158 | I-40 Winston-Salem. | US 29 Reidsville. |

In addition, the State has requested that the following section be removed from the National Network:

| Route | From | To |
|-------|-----------------------|-------|
| NC 18 | US 64 near Morganton. | I-40. |

The State also requested that the network in this area be corrected by replacing the above section with US 64 from NC 18 to I-40 which is a 1.88-mile primary section consisting of four 12-foot lanes. The remaining section of NC 18 from US 64 to US 321 near Lenoir is on the primary system.

Consequently, with the above actions, non-primary sections no longer remain on the National Network in North Carolina.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under regulatory policies and procedures of the Department of Transportation. Since the amendment in this document merely brings the Appendix into full compliance with the statutory language mandated by the STAA of 1982, public comment is unnecessary. Therefore, FHWA finds good cause to make the amendment

final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. It is anticipated that the economic impact of this rulemaking action will be minimal, since such economic impact that occurs is mandated by the cited statutory provisions themselves, and not by the rulemaking action. Accordingly, a full regulatory evaluation is not required. For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on: June 2, 1986.

R.D. Morgan,

Executive Director, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of North Carolina to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Sections 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix—[Amended]

2. The Appendix to Part 658 is amended for the State of North Carolina by removing the Posted Route Number entry:

| Route | From | To |
|------------|----------------------|---------------------|
| NC 18..... | I-40 near Morganton. | US 321 near Lenoir. |

and inserting in its place the following:

| Route | From | To |
|------------|---------------------|--------|
| NC 18..... | US 321 near Lenoir. | US 64. |
| US 64..... | NC 18..... | I-40. |

[FR Doc. 86-12936 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of Permanent Program Amendments for the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of certain amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted by letters dated November 15, 1985, and March 4, 1986, consist of proposed changes to the Ohio statute concerning establishment of a reclamation penalty fund, a reclamation fee fund, and the defaulted areas fund, clarification of the applicability of performance standards to prime farmland reclamation and excess spoil. Also included in the proposed amendments are provisions to increase the permit renewal fee, procedures for using the defaulted areas fund, procedures for transferring monies into the defaulted areas fund for reclamation on sites where bond has been forfeited, and many minor editorial changes. This amendment package includes amendments enacted by the Ohio legislature as House Bills 201 and 238.

On September 16, 1985, the Ohio Department of Natural Resources (ODNR) submitted House Bill 238 to OSMRE to satisfy the last remaining condition on the program. A notice announcing the receipt of the amendment and soliciting public comments was published in the *Federal Register* on October 30, 1985 (50 FR 45120). The action taken in this final rule on the proposed amendment House Bill 238 does not affect OSMRE's decision concerning the condition on Ohio's program. The condition concerns the adequacy of Ohio's alternative bonding program and will be addressed in a separate rulemaking action.

OSMRE published a notice in the *Federal Register* on April 4, 1986, inviting public comment on the adequacy of the proposed amendments (51 FR 11589). The public comment period closed on May 5, 1986. No comments were received.

After providing an opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSMRE has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendments. The Federal rules at 30 CFR 935.15, which codify decisions on the Ohio program, are being amended to implement these actions.

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

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT:

Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 *Federal Register* (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 *Federal Register*. Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

II. Discussion of Amendments

By letters dated November 15, 1985, and March 4, 1986, Ohio submitted three proposed program amendment packages numbered 19, 20, and 24 to OSMRE. Amendments were proposed to Ohio Revised Code (ORC) sections 1513.02, 1513.03, 1513.07, 1513.08, 1513.10, 1513.16, 1513.18, 1513.20, 1513.25, 1513.27, 1513.28, 1513.29, 1513.30, 1513.32, 1513.33, 1513.37, 1513.181, 5749.02 and 5749.021.

The changes proposed in ORC 1513.07, 1513.08, 1513.18, 1513.181, 5749.02, and 5749.021 were announced in the October 30, 1985 *Federal Register* (50 FR 45120). The amendments include a fee increase for permit applications and renewals of permit applications with the requirement to divide the revenues

received between the various reclamation funds. The amendments also divide forfeited permit sites into two separate categories known as Phase I and Phase II forfeitures. Phase I forfeitures are those on lands affected under permits issued after April 10, 1972, and before September 1, 1981, on which an operator has defaulted. Phase II forfeitures are those affecting permits issued on or after September 1, 1981, on which an operator has defaulted. The proposed amendments also specify the State fund to be used and amount of funding available to reclaim these two types of forfeitures.

These amendments were submitted to OSMRE to address Condition (h) of the Secretary's approval of the Ohio regulatory program. Condition (h) requires ODNR to demonstrate the adequacy of its alternative bonding program. The proposed amendments establish the mechanism for funding the reclamation of forfeited sites under Ohio's alternative bonding system. The Director is continuing to study the adequacy of the Ohio alternative bonding program. The adequacy of the proposed changes in relationship to removal of Condition (h) will be addressed in a separate rulemaking action.

Proposed changes to ORC 1513.07, 1513.33 and 1513.37 concerning payment of a filing fee for permit applications filed with county recorders, provisions for removal of permit applications after public review is completed and clarification of certain procedures in the filing and discharging of Abandoned Mine Lands liens were approved by OSMRE in the April 9, 1986 Federal Register (51 FR 12141). This final rule contains some additional amendments to these same ORC sections. Section 1513.07 increases the fee for a permit application or permit renewal from \$50 to \$75, section 1513.33 contains an editorial change, and section 1513.37 creates the Abandoned Mine Reclamation Fund in the State treasury.

Other amendments create several funds in the State treasury which are to be used to reclaim mine lands on which an operator has defaulted and there is insufficient bond to complete reclamation. The amendments also clarify that all performance standards apply to prime farmland reclamation and excess spoil. The other amendments are primarily editorial and include changing the names of the funds to be consistent throughout ORC Chapter 1513.

Ohio also proposed an amendment to ORC 1513.03. The amendment states that inspectors of coal mining operations serve at the pleasure of the Chief of the

Division of Reclamation. OSMRE did not propose this amendment for public comment because the application of State civil service protection is outside OSMRE's authority regarding State programs.

On April 4, 1986, OSMRE published an announcement of the receipt of the amendments and invited public comment on the adequacy of the proposals (51 FR 11589). The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing one was not held. The comment period closed on May 5, 1986. No comments were received.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on November 15, 1985, and March 4, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed in the findings below.

Ohio Revised Code—Chapter 1513 Ohio Coal Mining and Reclamation Law

1. ORC 1513.02 creates the reclamation penalty fund and places it in the custody of the State treasurer but not as a part of the State treasury. This fund serves as an escrow account for holding the proposed penalty amount through administrative or judicial review of the penalty. Section 1513.02 also contains several minor editorial changes. This statutory section is in accordance with SMCRA and the same or similar to 30 CFR 845.19.

2. ORC 1513.03 provided that inspectors of coal mining operations serve at the pleasure of the Chief of the Division of Reclamation. The Director finds that the application of the State's civil service protection is outside OSMRE's authority regarding State programs. Therefore, no action will be taken on this amendment.

3. ORC 1513.07 in addition to correcting references, increases the permit application fee from fifty dollars per acre to seventy-five dollars per acre and applies the fees to permit renewals. This section is in accordance with SMCRA and no less effective than 30 CFR 777.17.

4. ORC 1513.08 places the reclamation supplemental forfeiture fund in the State treasury. This fund is established to reclaim sites operating with permits issued on or after September 1, 1981, that the operators failed to reclaim. This section allows the Director of Budget and Management to transfer money from the unreclaimed lands fund to the reclamation supplemental forfeiture fund at the request of the Chief of the

Division of Reclamation to maintain the fund level at \$2 million. However, the section provides that \$1 million is the maximum that may be moved in any fiscal year. The final amendment to this section is the correction of a reference. The regulation is in accordance with requirements in section 509(c) of SMCRA and the Director finds that it is no less effective than the Federal rules.

5. ORC 1513.10 places the reclamation fee fund in the State treasury. The fund had previously been housed in the State special revenue fund. In this section and throughout these rules, the term "special account" has been replaced by "fund". While neither SMCRA nor the Federal regulations contain a similar provision, ORC 1513.10 is not inconsistent with Federal requirements.

6. ORC 1513.16 clarifies that all performance standards apply to prime farmland reclamation and to excess spoil. It deletes the phrase ". . . and is available for use by the Chief, who shall proceed as under section 1513.18 of the Revised Code. Section 1513.16 now requires the Chief to certify the amount of the forfeited bond to the Attorney General instead of seeking certification from the State auditors. This section contains several editorial changes, largely correcting typographical and grammatical errors. In this section and throughout these amendments "assure" has been changed to "ensure" and "Chapter 1513 of the Revised Code" has been changed to "this Chapter". These amendments are no less effective than 30 CFR 800.50 and 30 CFR Parts 816, 817, and 823.

7. ORC 1513.18 creates two separate funds for the reclamation of coal mining sites on which bond has been forfeited. The reclamation forfeiture fund receives money forfeited under section 1513.16 (A) to (G) and is used to reclaim land affected by coal mining under permits issued on or after September 1, 1981, on which the operator has defaulted. All money forfeited under section 1513.16(H) is deposited in the State treasury to the credit of the defaulted areas fund. This fund is used to reclaim land affected by coal mining under permits issued after April 10, 1972, but before September 1, 1981 on which the operator has defaulted. The Federal Act and regulations do not contain additional requirements for interim program bonds. Ohio's rules on bonding interim sites are not inconsistent with any requirements in SMCRA or its regulations. This section also allows for the expenditure of additional funds if those in the defaulted areas fund are insufficient to accomplish the necessary reclamation. The section also provides

for recovering the additional expenditures from the operator through legal action. This amendment is not inconsistent with sections 501 and 505 of SMCRA, dealing with interim program bonds and is no less effective than 30 CFR 800.50 for permanent program bonds.

8. ORC 1513.20, 1513.25, 1513.27, 1513.28, 1513.29, 1513.30, 1513.32, 1513.33 and 1513.37 have all been amended so that the language referring to Ohio's various reclamation funds are consistent. "Special account" has been changed to "fund", "disbursements" has been changed to "expenditures", and other editorial and grammatical changes have been made to these sections. This action does not conflict with any requirements of SMCRA or the Federal regulations.

9. ORC 1513.181 sets forth the procedures used to transfer money from the coal mining administration and enforcement reserve fund to the defaulted areas fund as allowed in 1513.18. This money would be used to reclaim sites mined under permits issued after April 10, 1972 but before September 1, 1981, on which the operator has forfeited bond. While there is no direct counterpart to this section either SMCRA or the Federal regulations, it is in accordance with section 509(c) of SMCRA.

10. ORC 5749.02 and 5749.021 have been amended to be consistent with the other amendments in ORC 1513. "Special account" has been changed to "fund". This action does not conflict with any requirements of SMCRA or the Federal regulations.

IV. Public Comments

No public comments were received on the proposed amendments.

V. Director's Decision

The Director, based on the above findings, is approving the November 15, 1985 and March 4, 1986 amendments. The Director is amending Part 935 of 30 CFR Chapter VII to reflect approval of the State program amendments.

VI. Procedural Matters

(1) Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

(2) Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of

Management and Budget (OMB) granted OSMRE and exemption from section 3, 4, 7, and 8 of the Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

(3) Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 935

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

Dated: June 2, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 935—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 935 continues to read as follows:

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

2. 30 CFR 935.15 is amended by adding a new paragraph (u) as follows:

§ 935.15 Approval of regulatory program amendments.

(u) The following amendments submitted to OSMRE on November 15, 1985 and reconciled on March 4, 1986, are approved effective June 9, 1986. Ohio Revised Code 1513.02, 1513.07, 1513.08, 1513.10, 1513.16, 1513.18, 1513.20, 1513.25, 1513.27, 1513.28, 1513.29, 1513.30, 1513.32, 1513.33, 1513.37, 1513.181, 5749.02, and 5749.021.

[FR Doc. 86-12915 Filed 6-6-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 81

[CGD 86-019]

Alternative Compliance, Inland and International Navigation Rules

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination of exemption period.

SUMMARY: Rule 38 of both the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and the Inland Navigation Rules exempts vessels which were built before the rules became effective from certain technical provisions concerning the position of lights. Certain temporary exemptions terminate nine years after the effective date. The nine year exemption periods expire July 15, 1986 on COLREGS waters, December 24, 1990 on Inland waters and March 1, 1992 on the Great Lakes. Vessels which have been operating under the temporary exemption of Rule 38 are expected to be in full compliance by these dates; however, vessels of special construction or special purpose, especially those 20 to 50 meters in length with the pilothouse located forward of a single mast and the sidelights forward of the masthead light, may be entitled to Alternative Compliance Certificates, which will allow them to continue to operate with their existing lights.

Those owners or operators who believe an exception should be made on the basis of the special construction or purpose of the vessel should follow the procedures described below to obtain a Certificate of Alternative Compliance from the technical requirements for positioning lights.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles K. Bell, Chief, Navigation Rules and Information Branch, U.S. Coast Guard Headquarters, Office of Navigation (G-NSR), Washington, DC 20593, telephone number (202) 426-1950 for Rule interpretations or Lieutenant Commander Bruce Pickard, U.S. Coast Guard Headquarters, Compliance and Enforcement Branch (G-MVI-1), Washington, DC 20593, telephone number (202) 426-1464 for inspection or enforcement questions.

Background Information:

The drafters of the 72 COLREGS recognized that complete and immediate compliance with the technical requirements for lights by existing

vessels and vessels then under construction would be unreasonable. Rule 38 of the 72 COLREGS (found following 33 U.S.C. 1602) provides that vessels under construction prior to the effective date of the 72 COLREGS (July 15, 1977) are exempt from complying with specific technical provisions for nine years.

The drafters were also aware that some vessels were designed to serve such a specialized purpose that some flexibility in permanent application of the technical requirements would be needed on a case-by-case basis. Under 72 COLREGS, Rule 1(e), this flexibility is to be administered by the government under whose jurisdiction the vessel is operated, with the proviso that the government, before authorizing alternative compliance, will require that the vessel be in the "closest possible compliance" with the Rules.

To implement the 72 COLREGS, THE Coast Guard promulgated regulations for issuing Alternative Compliance Certificates in 1982. These procedures are described in 33 CFR, Part 81. Notice is published in the *Federal Register* listing those vessels which have been issued such certificates.

Similar provisions apply under the Inland Navigational Rules.

Discussion

Sidelight and Masthead Light Placement (Annex I, Section 3(b)): Vessels of twenty or more meters in length built prior to July 15, 1977 operating at any time on COLREGS waters must comply by July 15, 1986 with the following requirements for the placement of sidelights: "On a power-driven vessel of 20 meters or more in length the sidelights shall not be placed in front of the forward masthead lights. They shall be placed at or near the side of the vessel" (the Inland ANNEX is identical to the International ANNEX on this point.) The forward masthead light refers to the light located "forward" as required by Rule 23(a), and, therefore, the requirement that sidelights not be forward of this light applies whether or not a vessel less than 50 meters carries the optional second masthead light aft. Vessels built after July 15, 1977 should have been constructed to fully comply with the COLREGS.

Vessels may qualify for Certificates of Alternative Compliance with respect to the above requirements. This may be of particular interest for a vessel which:

- (1) Is between 20 and 50 meters in length; and
- (2) Is a single masted vessel with a pilothouse in the forward or midship part of the vessel, and with sidelights located forward of the single mast.

Vessels of this type frequently have their sidelights mounted on the pilothouse well inboard of the sides of the vessel.

A vessel qualifies for a Certificate of Alternative Compliance if:

(1) The vessel is of special construction or purpose due to its trade or employment (these vessels are typically involved in towing or fishing); and

(2) Relocation of the forward masthead light or sidelights would interfere with its special function.

Examples of interference are that the repositioning of the lights to conform with the ANNEX would cause glare in the eyes of the vessel operator and, therefore, would affect the ability of the operator to maintain a proper lookout; or the repositioning of the sidelights or masthead light may cause the lights to be less visible due to deck working lights or rigging.

Owners or operators of vessels who believe they are entitled to an Alternative Compliance Certificate for the placement of sidelights and masthead light are urged to apply, following the procedures in 33 CFR 81, by June 15 or as soon as possible. The Coast Guard anticipates a large number of applications, and may be unable to respond to all applications by July 15.

Applications should include information as to why the applicant believes the present or proposed installation constitutes the closest possible compliance with the Rules.

Owners, operators or agents may submit an application identifying a class in which several vessels have the same relevant characteristics. This single application should include a blueprint or drawing of a representative of the class, and should identify each vessel in the class by name and official number. Where the application is approved, the Coast Guard District Commander (m) will issue a "class" certificate containing a list of the approved vessels.

Vessels operated only on waters to which Inland Navigational Rules apply which were built before December 24, 1980 are exempted until December 24, 1990 for inland waters and March 1, 1992 for the Great Lakes. Owners and operators of such vessels are requested to defer any application concerning exempted installations until after December 31, 1986.

Compliance Action

Compliance with the COLREG provisions by July 15, 1986 is the responsibility of the vessel owner/operator. Vessels of special construction or purpose that are not in compliance should carry a Certificate of Alternative

Compliance on board in accordance with 33 CFR 81.

In taking any enforcement action against vessels not in compliance, the Coast Guard will take into account the scheduling of vessel modifications, any pending application for a Certificate of Alternative Compliance, and related matters. However, such considerations may not affect civil liability in case of collision.

Dated: June 4, 1986.

J. W. Kime,

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

[FR Doc. 86-12907 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD3 86-07]

Special Local Regulations; Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Empire State Regatta which is sponsored by the Empire State Regatta Fund, Inc. of New Scotland, New York. This marine event, involving approximately 250 crew racing shells, will be held from 13 to 16 June 1986 on the Hudson River at Albany, New York. These regulations are needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATES: This regulation is effective from 6:00 a.m. on June 13, 1986 through 6:00 a.m. on June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. L.A. Dlhopsky, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On April 28, 1986, the Coast Guard published a Notice of Proposed Rule Making in the *Federal Register* for these regulations (51 FR 15795-15796). Interested persons were requested to submit comments, and one commentor responded. These regulations are being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Mr. L.A. Dlhopsky, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn ARISMAN, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

This is the second consecutive year that the Empire State Regatta will be held in the same location on the Hudson River on the second weekend in June. The sponsor plans to hold this three day event annually on the first or second weekend in June. In preparation for the event, floats used to mark the race course are connected to anchors that were installed in the rock river bottom in 1985. In order to make use of these permanently set anchors, the event must be held in the same location each year. Because of the annual nature of this event, the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. Each year the Coast Guard will provide the public full and adequate notice of the annual crew race event by publication in the Third District Local Notice to Mariners and in a **Federal Register** notice. The Empire State Regatta is sponsored by the Empire State Regatta Fund, Inc. of New Scotland, New York on behalf of the United States Rowing Association. This crew racing event serves as the annual Northeast Regional Championships. The races are held on a 2000 meter course on the Hudson River adjacent to Albany, New York. Approximately 250 crew shells, ranging in size from 26 to 68 feet in length race in heats throughout the day from as early as 7:30 a.m. to 6:00 p.m. on June 14 and 15, 1986. The race course consists of six lanes marked by seven rows of buoys anchored to the bottom of the river. Small styrofoam buoys marked with retroreflective tape will be set in the river on June 13, 1986 and will be removed overnight on June 15 into early June 16, 1986. The sponsor shall arrange for several vessels which will assist the Coast Guard Patrol Commander in providing for the safety of the event and spectator craft. The Coast Guard intends to restrict vessel movement within this section of the Hudson River during this event to provide for the safety of the participants and spectators on navigable waters. Vessels less than 20 meters in length will be allowed to transit the regulated area at no-wake speeds at specified intervals (approximately every two hours) throughout each race day as directed by the Coast Guard Patrol Commander. Larger vessels will not be allowed to pass through the regulated area at any time during the effective period unless in an emergency and authorized by the Coast Guard Patrol Commander. The Coast Guard Captain

of the Port of New York will again, as last year, contact the numerous commercial facilities along the Hudson River north of the regulated area to ask their cooperation in scheduling any vessel transits so as not to interfere with this event. Mariners are urged to use extreme caution when transiting the regulated area. The Coast Guard will issue a safety voice broadcast and this regulation will be published in the Local Notice to Mariners to advise the general public and commercial users on the Hudson River of the event.

Discussion of Comments

Four comments were received from the sponsor. The sponsor's name has been changed to The Empire State Regatta Fund, Inc. This change has been made wherever the old name (Capital Rowing Club, Inc.) appeared in the Notice of Proposed Rulemaking. The sponsor pointed out that the races could begin as early as 7:30 a.m. on the 14th and 15th of June. These Special Local Regulations are in effect from 6:00 a.m. on June 13, 1986 when work begins to install the race course grid. Transiting vessel movement is at the discretion of the Coast Guard Patrol Commander from that point until 6:00 a.m. on June 16, 1986. Race starts at 7:30 a.m. instead of 9:00 a.m. on June 14 and 15, as stated in the Proposed Rule, would therefore create little additional impediment to transiting vessels. The sponsor remarked that only recreational vessels less than 20 meters were allowed to transit the race course last year. This was neither the case nor the intent of the regulation. Any vessel, commercial or recreational, within the 20 meter length limit may transit the regulated area at the discretion of, and using the route prescribed by, the Coast Guard Patrol Commander. The sponsor remarked that vessels docked within the regulated area may get under way only with the permission of the Coast Guard Patrol Commander. This point is already covered in these regulations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large spectator crowd along the shores of the Hudson River which should

compensate certain area merchants for the inconvenience of having navigation restricted. Smaller craft will be allowed to transit the regulated area at designated times during each race day and after the conclusion of each day's racing. In 1985 a survey of river traffic users indicated that any inconvenience to waterway transportation would be minimal. In fact most commercial marine interests successfully adjusted their schedules to avoid transiting this area last year during the effective period of the regulation which was from 6:00 a.m. on June 7 through 6:00 a.m. on June 10, 1985.

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

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

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

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

2. Part 100 is amended by adding § 100.308 to read as follows:

§ 100.308 Empire State Regatta, Albany, New York.

(a) *Regulated Area:* That section of the Hudson River between the I-90 Interchange Bridge on the north and the northern end of Culver Dike on the south.

(b) *Effective Period:* This regulation is effective from 6:00 a.m. on June 13, 1986 through 6:00 a.m. on June 16, 1986 and thereafter annually on the first or second weekend (Friday, Saturday, Sunday into early Monday) in June as published in the Third District Local Notice to Mariners and in a **Federal Register** notice.

(c) *Special Local Regulations:* (1) The regulated area shall be intermittently closed to all vessel traffic from 6:00 a.m. on Friday to 6:00 a.m. on Monday except as specified below or as directed by the Coast Guard Patrol Commander.

(2) Vessels greater than 20 meters in length shall not transit the regulated area at any time during the effective period unless allowed to do so by the Coast Guard Patrol Commander.

(3) Vessels less than 20 meters in length may transit the regulated area only if escorted by an official patrol vessel. From 7:30 a.m. through 6:00 p.m. on Saturday and Sunday, official patrol vessels will escort transiting vessels less than 20 meters at specified intervals (approximately every two hours) as directed by the Coast Guard Patrol Commander. At all other times, the regatta sponsor shall provide a sufficient number of escort vessels to ensure timely transits for vessels less than 20 meters.

(4) Unless otherwise directed by the Coast Guard Patrol Commander, transiting vessels shall: proceed at no-wake speeds, remain clear of the race course area as marked by the sponsor-provided buoys, not interfere with races or any shells in the area, make no stops and keep to the eastern edge of the Hudson River.

(5) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels, New York State and local police boats and other vessels so designated by the regatta sponsor or Coast Guard Patrol Commander.

(6) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

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

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

- (i) \$500 for any person in charge of the navigation of a vessel.
- (ii) \$500 for the other owner of a vessel actually on board.
- (iii) \$250 for any other person.
- (iv) Suspension or revocation of a license for a licensed officer.

Dated: May 30, 1986.

J.C. Uithol,

Captain, U.S. Coast Guard Acting
Commander, Third Coast Guard District.
[FR Doc. 86-12909 Filed 6-8-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 162

[CGD 85-060]

Inland Waterways Navigation Regulation; Connecting Waters From Lake Huron To Lake Erie

Correction

In FR Doc. 86-10371 beginning on page 17013 in the issue of Thursday, May 8, 1986, make the following correction:

§ 162.132 [Corrected]

On page 17016, second column, in § 162.132(e), in Table I, in the second column, ninth line, insert "Dock" between "Salt" and "Light".

BILLING CODE 1505-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 79

Direct Grant Programs and Intergovernmental Review of Department of Education Programs and Activities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Intergovernmental Review of Department of Education Programs and Activities. These regulations are amended to comply with the OMB guidance memorandum entitled Procedural Changes in Agency Implementation of E.O. 12372, issued by OMB on March 14, 1985 to improve the implementation of the Executive Order. The regulations governing direct grant programs are also amended to improve the Department's procedures for soliciting applications for continuation awards.

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

FOR FURTHER INFORMATION CONTACT: F. LeRoy Walsler, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs, Room 2083, FOB-6, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 447-7501.

SUPPLEMENTARY INFORMATION: The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for

coordination and review of proposed Federal financial assistance and direct development. The Executive Order, which revoked OMB Circular A-95—

(1) Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance; and

(2) Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why these views will not be accommodated.

On July 31, 1985, a notice of proposed rulemaking (NPRM) was published in the *Federal Register* (50 FR 30959) proposing to amend the regulations for 34 CFR Part 79 (48 FR 29158-29168) published on June 24, 1983, implementing Executive Order 12372, Intergovernmental Review of Federal Programs.

All comments received supported the proposed amendments and commended the Department of Education for amending the regulations.

Procedural Changes

The Secretary amends Parts 75 and 79 of Title 34 of the Code of Federal Regulations to accommodate the following procedural changes:

1. In § 79.3, the amendments to the regulations substitute OMB criteria entitled "Determining Program Coverage" issued on March 14, 1985 for criteria found at Appendix A—General Criteria Used by Federal Agencies in Identifying the Scope of Executive Order 12372, published at 48 FR 29169-29170 on June 24, 1983.

An effect of this change is that State and municipal colleges and universities, as well as other non-governmental entities (other than federally recognized Indian tribal governments), are now covered under E.O. 12372.

2. In § 79.8, paragraph (a) is revised, paragraphs (b) and (c) have been redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) has been added to clarify how the Secretary establishes deadlines for the receipt of comments resulting from the State review process.

The current regulations are silent on the issue of how deadline dates are handled. However, the Education Department General Administrative Regulations (EDGAR) require that deadline dates for the receipt of applications by the Department be included in application notices published in the *Federal Register*. In the absence of clarifying regulations in 34 CFR Part 79, the Department has developed a practice of publishing in the

Federal Register deadline dates for the receipt of comments resulting from the State review process. The new paragraph (b) clarifies that for applications for new grants the Secretary will continue to publish in the Federal Register deadline dates for receipt of comments resulting from the State review process. However, for applications for continuation awards, the Secretary will provide notice directly to the grantees and the State Single Points of Contacts (SPOCS). These changes will simplify administration of programs subject to E.O. 12372 and should also lower the costs of administering these programs.

3. In § 79.9, the amendments to the regulations provide that State process recommendations be clearly identified.

4. The Secretary has also decided to amend Part 75 of EDGAR through this final rulemaking document to improve the procedures for soliciting continuation award applications. Publication of an application notice in the Federal Register regarding the availability of continuation awards is unnecessary because the applicants are all existing grantees known to the Department. Further, the closing dates set in application notices for continuation awards are stated as targets, not as requirements. Thus, the Secretary will provide all the information and forms necessary for filing a continuation application, including the information formerly included in the application notice, in the application package mailed to each eligible grantee. However, the Secretary would continue to have discretion to provide notice through a publication in the Federal Register. A related amendment to 34 CFR Part 79 will ensure that the Secretary informs grantees of the target deadline for the receipt of comments resulting from the State review process as well.

Executive Order 12291

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

Waiver of Rulemaking.

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the only change made by this document that was not previously published for public comment

involves a change in the Department's procedures for soliciting continuation award applications establishing target deadline dates for comments resulting from the State review process. These notifications will be made to each affected grantee and SPOC, rather than through a notice published in the Federal Register and are procedural in nature. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(A) that proposed rulemaking on the changes is not required.

Assessment of Educational Impact

In the NPRM, published on July 31, 1985, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Education Department, Grant programs—education, and Grants administration.

34 CFR Part 79

Education Department, Grant programs—education, Grants administration, Intergovernmental relations, and State administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

Dated: June 3, 1986.

William J. Bennett,
Secretary of Education.

The Secretary amends Parts 75 and 79 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), unless otherwise noted.

2. In § 75.100, paragraph (a) is revised, paragraph (b)(2) is removed, paragraph (b)(3) is redesignated as paragraph (b)(2), and a new paragraph (c) is added to read as follows:

§ 75.100 Publication of an application notice; content of the notice.

(a) Each fiscal year the Secretary publishes application notices in the Federal Register that explain what kind of assistance is available for new grants under the programs that the Secretary administers.

(c)(1) Each fiscal year the Secretary informs grantees that are eligible for continuation awards under § 75.253 about the procedures used to apply for those awards.

(2) The Secretary informs the grantees by individual notice or by publication in the Federal Register.

(20 U.S.C. 1221e-3(a)(1))

§ 75.101 [Amended]

3. In § 75.101, paragraphs (a) (7) through (9) inclusive are removed, and paragraphs (a) (10) and (11) are redesignated as paragraphs (a) (7) and (8), respectively.

§ 75.102 [Amended]

4. In § 75.102, paragraph (c) is removed and reserved.

5. In § 75.153, paragraph (a) is revised to read as follows:

§ 75.153 Deadlines for State approval.

(a)(1) The Secretary may publish in the Federal Register a notice that establishes a deadline date for receipt of State approvals of new grant applications under a program covered by § 75.150.

(2) The Secretary may establish a deadline date for the receipt of State approvals of continuation award applications under a program covered by § 75.150 by—

- (i) Notifying each State of the deadline for its approval; or
- (ii) Publishing a notice of the deadline in the Federal Register.

PART—79 INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

6. The authority citation for Part 79 is revised to read as follows:

Authority: 31 U.S.C. 6506; 42 U.S.C. 3334; and E.O. 12372, unless otherwise noted.

7. In § 79.3, paragraphs (a) and (b) are revised and new paragraphs (c) and (d) are added to read as follows:

§ 79.3 What programs and activities of the Department are subject to these regulations?

(a) The Secretary publishes in the Federal Register a list of the

Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

(b) If a program or activity of the Department that provides Federal financial assistance does not have implementing regulations, the regulations in this part apply to that program or activity.

(c) The following programs and activities are excluded from coverage under this part:

- (1) Proposed legislation.
- (2) Regulation and budget formulation.
- (3) National security matters.
- (4) Procurement.
- (5) Direct payments to individuals.
- (6) Financial transfers for which the

Department has no funding discretion or direct authority to approve specific sites or projects (e.g., block grants under Chapter 2 of the Education Consolidation and Improvement Act of 1981).

(7) Research and development national in scope.

(8) Assistance to federally recognized Indian tribes.

(d) In addition to the programs and activities excluded in paragraph (c) of this section, the Secretary may only exclude a Federal financial assistance program or activity from coverage under this part if the program or activity does not directly affect State or local governments.

(E.O. 12372)

8. In § 79.8 paragraph (a) is revised, a new paragraph (b) is added, and the current paragraphs (b) and (c) are redesignated as (c) and (d) respectively, to read as follows:

§ 79.8 How does the Secretary provide States an opportunity to comment on proposed Federal financial assistance?

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities—

(1) At least 30 days to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days to comment on proposed Federal financial assistance other than noncompeting continuation awards.

(b) The Secretary establishes a date for mailing or hand-delivering comments under paragraph (a) of this section using one of the following two procedures:

(1) If the comments relate to continuation award applications, the

Secretary notifies each applicant and each State Single Point of Contact (SPOC) of the date by which SPOC comments should be submitted.

(2) If the comments relate to applications for new grants, the Secretary establishes the date in a notice published in the Federal Register.

* * * * *

9. In § 79.9, paragraph (a)(2) is revised to read as follows:

§ 79.9 How does the Secretary receive and respond to comments?

- (a) * * *
- (2) That office or official transmits a State process recommendation, and identifies it as such, for a program selected under § 79.6.

* * * * *

[FR Doc. 86-12753 Filed 6-6-86; 8:45 am]
BILLING CODE 4000-01-M

34 CFR Parts 230 and 231

Asbestos Detection and Control; Local and State Educational Agencies; Removal of Obsolete Provisions

Correction

In FR Doc. 11793 beginning on page 19173 in the issue of Wednesday, May 28, 1986, the name of the signing official was omitted and should be inserted on page 19173 in the third column, above the third line from the bottom, as follows:

William J. Bennett,
Secretary of Education.

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

Miscellaneous Minerals Provisions; Operations Within Misty Fjords and Admiralty Island National Monuments, Alaska

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: Misty Fjords and Admiralty Island National Monuments were established by the Alaska National Interest Lands Conservation Act on December 2, 1980, for the purpose of protecting objects of ecological, cultural, geological, historical, prehistorical, and scientific interest. Section 503(f)(2)(A) of the Act provides that the holders of valid mining claims on public lands within the Monuments may conduct mineral activities in accordance with regulations promulgated by the

Secretary of Agriculture to ensure that the mineral activities are compatible, to the maximum extent feasible, with the purpose of which the Monuments were established. The final rule establishes the procedures the Forest Service will use in meeting the standard of section 503(f)(2)(A) of the Act.

EFFECTIVE DATE: July 9, 1986.

FOR FURTHER INFORMATION CONTACT: Harry G. Stumpf, Minerals and Geology Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013 ((703) 235-8011).

SUPPLEMENTARY INFORMATION: The lands within the Misty Fjords and Admiralty Island National Monuments were withdrawn from mineral entry on December 1, 1978, by Presidential Proclamations 4611 and 4623 and on December 2, 1980, by the Alaska National Interest Lands Conservation Act (section 503(f)(1)) (94 Stat. 2400). However, the Act provided for the continued evaluation and development of valid mining claims on public lands within the Monuments. To meet the standards of section 503(f)(2)(A) of the Act, the final rule requires an identification of the resources that the Monuments were established to protect. In addition, the final rule establishes guidelines to assist Forest officers in determining whether final mineral activities are compatible with the protection of the identified Monument resources. The final rule also provides guidance to Forest officers in determining whether mitigating measures are feasible, that is, whether the measures will successfully prevent or reduce adverse environmental impacts of mineral activities on the identified resources without jeopardizing the economic viability of the overall project. The intent of this rule is to provide environmental safeguards under which development can continue, not to prevent the evaluation and development of valid mining claims.

Analysis of Public Comment

A proposed rule was published in the Federal Register on September 11, 1985 (50 FR 37005), with a comment period of 60 days. Six public comments were received. Two comments were submitted by mining companies, one by an environmental group, one by a miners' association, and two by Alaska State organizations. The general reaction to the proposed rule was favorable, with some suggestions and comments for clarifying specific points.

Two respondents wanted clarification that this rule does not apply to patented

claims. As stated in section 503(f)(2)(A) of the Act, this regulation is limited to valid mining claims on public lands in the Monuments. Once a patent is issued, the land is removed from public ownership; therefore, this regulation would not apply to patented lands.

One respondent questioned why neither an environmental assessment nor an environmental impact statement was prepared for the proposed rule. In conducting the environmental analysis and based on past experience with similar actions, it was determined that this rule will have no significant effects on the human environment. Therefore, this final rule has been categorically excluded from documentation as provided by recently revised Forest Service Procedures (50 FR 26078) for implementing the National Environmental Policy Act.

One respondent stated that the Act does not require the validity test within the technical meaning of the term. We disagree; Sections 504(a), (b), (c), and (e) of the Act repeatedly define validity "within the meaning of the mining laws of the United States." We interpret that to mean that a discovery of a valuable mineral deposit within the boundaries of a properly located and maintained claim must be demonstrated before operations may be approved.

Three respondents suggested that consideration be given to the cost-effectiveness of mitigating measures and to the effects of such measures on the short-term as well as on the long-term economic viability of mining operations in the Monuments. We agree and have included short-term considerations, since Congress made no distinction between short- and long-term economic feasibility. We have also revised the rule to expand the factors to be considered in determining the feasibility of mitigating measures.

One respondent asserted that economics should not be considered in assessing feasibility. This comment ignores the clear language of the statute and the Act's legislative history to the effect that any environmental safeguards contained in the regulations are not to be used to prevent further evaluation and development of valid mining claims in the Monuments. The respondent also misinterpreted the preamble to the proposed rule in suggesting that it authorized deletion of any mitigating measures when they affect the short-term costs of a mining project. Mitigating measures may be imposed as deemed necessary by the authorized officer as long as further evaluation and development of the claims are not clearly prevented by such

measures. A statement was added in the final rule to clarify our intent.

One respondent argued that the rule should address section 505(b) of the Act. We do not believe that section 505(b) is relevant since it applies specifically to the Quartz Hill project and is quite detailed and self-implementing, and it does not require any regulations to be promulgated. Compliance with section 505(b) standards will be enforced through the process already established in 36 CFR 228 Subpart A for the approval of plans of operations in the National Forest System.

We have supplemented the provisions of Subpart A for modifications to the original plan of operations should unforeseen changes in circumstances affect the determinations of compatibility and feasibility. Although the procedures for modifications are incorporated by reference, we felt that it was useful to repeat the specific requirements of the Act as additional conditions.

One respondent argued that section 503(f)(2)(A) of the Act requires the promulgation of site-specific environmental standards for mining operations in the Monuments. We find no support for this argument in the statutory language or the legislative history. The incorporation by reference of 36 CFR 228 Subpart A should adequately incorporate compliance with Federal, State, and local environmental statutes and regulations. Development of site-specific standards for the conduct of mining should await the site-specific evaluation of each plan of operations. Any attempt at uniform standards would ignore the potential differences in requirements associated with the particular terrain, location, and nature of operations involved in each case.

It was suggested the wilderness be included as a Monument resource in this rule. This suggestion was rejected because parts of each National Forest Monument, particularly where the major mining operations are located, were deliberately not designated as wilderness by Congress. Additionally, wilderness is not listed in section 502 of the Act as a purpose for which the Monuments were established. Wilderness is therefore not a Monument resource to be protected by regulations mandated by section 503(f)(2)(A). Wilderness Act protections (as modified by the Alaska National Interest Lands Conservation Act) apply separately to mining operations in the Monuments under 36 CFR 228 Subpart A and other applicable law and regulation, as do many other legal requirements. It is not necessary to reincorporate all of the

requirements of existing mining and access regulations in this rule.

Several respondents suggested publication of any changes as another proposed rule to allow for additional comment prior to publication as a final rule. We do not believe that another opportunity to comment would result in more constructive points being raised.

Regulatory Impact

The final rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined that this regulation is not a major rule. The regulation will not have an effect on the economy of \$100 million or more and, in and of itself, will not increase major costs to consumers, geographic regions, industry, or Federal, State, and local agencies. The regulation is essentially procedural, and, therefore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Controlling Paperwork Burdens on the Public

The final rule contains no information collection requirements not already required by regulations (36 CFR 228 Subpart A) for approval of locatable mineral activities in the National Forest System. Those requirements were approved by the Office of Management and Budget through September 30, 1986, and assigned Clearance Number 0596-0022.

Small Entity Impact

In accordance with the Regulatory Flexibility Act of 1981 (5 U.S.C. 601 et seq.), the Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this action will not have a significant economic impact on a substantial number of small entities. It imposes no new paperwork or recordkeeping requirements on small entities. The information collection and reporting requirements to which a small entity will be subject under the final rule have not been increased and have been kept to the minimum necessary for the protection of the surface resources of the Misty Fjords and Admiralty Island National Monuments. These requirements are well within the capability of small entities involved in extracting minerals; therefore, the final rule will not affect the competitive position of small entities in relation to large entities, nor will it affect their cash flow, liquidity, or ability to remain in the market.

Environmental Impact Statement

Based on environmental analysis and past experience with similar actions, the Forest Service has determined that this final rule will have no significant effects on the human environment. Therefore, this final rule has been categorically excluded from documentation (FSM 1952.2).

List of Subjects in Part 228

Administrative practice and procedure, Environmental protection, Mineral resources, Mines, National forests, National monuments, Surety bonds.

For reasons set out in the preamble, Chapter II of Title 36 of the Code of Federal Regulations is amended as follows:

PART 228—[AMENDED]**Subpart D—[Amended]**

1. Revise the authority citation for Part 228 to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551), and 94 Stat. 2400, unless otherwise noted.

2. In Subpart D, add a new § 228.80, *Operations Within Misty Fjords and Admiralty Island National Monuments, Alaska*, to read as follows:

§ 228.80 Operations Within Misty Fjords and Admiralty Island National Monuments, Alaska.

(a) Mineral activities on valid mining claims in the Misty Fjords and Admiralty Island National Monuments must be conducted in accordance with regulations in Subpart A of this Part and with the provisions of this section.

(b) Prior to approving a plan of operations, the authorized officer must consider:

(1) The resources of ecological, cultural, geological, historical, prehistorical, and scientific interest likely to be affected by the proposed operations, including access; and

(2) The potential adverse impacts on the identified resource values resulting from the proposed operations.

(c) A plan of operations will be approved if, in the judgment of the authorized officer, proposed operations are compatible, to the maximum extent feasible, with the protection of the resource values identified pursuant to paragraph (b)(1) of this section.

(1) The authorized officer will deem operations to be compatible if the plan of operations includes all feasible measures which are necessary to prevent or minimize potential adverse impacts on the resource values identified pursuant to paragraph (b)(1)

of this section and if the operations are conducted in accordance with the plan.

(2) In evaluating the feasibility of mitigating measures, the authorized officer shall, at a minimum, consider the following:

(i) The effectiveness and practicality of measures utilizing the best available technology for preventing or minimizing adverse impacts on the resource values identified pursuant to paragraph (b)(1) of this section; and

(ii) The long- and short-term costs to the operator of utilizing such measures and the effect of these costs on the long- and short-term economic viability of the operations.

(3) The authorized officer shall not require implementation of mitigating measures which would prevent the evaluation or development of any valid claim for which operations are proposed.

(d) In accordance with the procedures described in Subpart A and paragraphs (c)(1) through (c)(3) of this section, the authorized officer may approve modifications of an existing plan of operations:

(1) If, in the judgment of the authorized officer, environmental impacts unforeseen at the time of approval of the existing plan may result in the incompatibility of the operations with the protection of the resource values identified pursuant to paragraph (b)(1) of this section; or

(2) Upon request by the operator to use alternative technology and equipment capable of achieving a level of environmental protection equivalent to that to be achieved under the existing plan of operations.

Dated: May 13, 1986.

Peter C. Myers,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 86-12840 Filed 6-6-86; 8:45 am]

BILLING CODE 3410-11-M

VETERANS ADMINISTRATION**38 CFR Part 21****Veterans Education; Nonmatriculated Students; Correction**

AGENCY: Veterans Administration.

ACTION: Final regulations; correction.

SUMMARY: In the Federal Register of Thursday, May 29, 1986, (51 FR 19331-19332), the VA (Veterans Administration) adopted a new, more liberal rule concerning nonmatriculated students. This notice corrects previously published information.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer, 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:

In the preamble, the VA inadvertently published May 8, 1985, as the date the document was approved and as the effective date. This should be corrected to read May 8, 1986, in both instances.

Dated: June 3, 1986.

Patricia Viers,

Chief, Directives Management Division.

[FR Doc. 86-12905 Filed 6-6-86; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21**Veterans Education; Limit on Reimbursement of Wages Under the Veterans' Job Training Act**

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: A few employers have been circumventing the intent of VJTA (Veterans' Job Training Act) in order to receive more than 50% of the wages paid to veterans training under the Act. These amended regulations contain an additional limitation on the amount payable on behalf of a single veteran. The limitation will prevent this abuse.

EFFECTIVE DATE: May 22, 1986.

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 50642 and 50643 of the Federal Register of December 11, 1985, there was published a notice of intent to amend Part 21 to impose a limitation on the amount that may be paid to an employer on behalf of a veteran who is training under the Veterans' Job Training Act.

It was also proposed that any VA payment to an employer in excess of or contrary to payment limitations shall constitute an overpayment for which the employer will be liable.

Interested people were given 30 days to submit comments, suggestions or objections. The VA received four letters. Two were from the same college official. One was from an official of a State employment service. One was from a service organization.

The university official stated in both letters that he did not wish to comment on the proposal.

The State official commented that the proposal did not state who will monitor whether an employer is reducing the wages paid to a trainee during a training period.

Admittedly, § 21.4632, as amended, does not state who will monitor a trainee's wages. However § 21.4642(a) states, "The VA may determine compliance with the provisions of §§ 21.4642(a) states, "The VA may determine compliance with the provisions of §§ 21.4620 through 21.4632 by (1) monitoring employers and veterans participating in job training programs, (2) investigating any matter necessary to determine compliance, and (3) requiring the submission of information deemed necessary by the Administrator of Veterans' Affairs before, during or after training." This paragraph is based on Pub. L. 98-77, section 12. Since it is clear from § 21.4642(a) that the VA will monitor the provisions of § 21.4632, the VA does not think it necessary to repeat that information in § 21.4632 itself.

The service organization did not object to the amendment of § 21.4634. However, that organization did object to the amendment of § 21.4632. The letter writer stated that the service organization is unaware of any employer who is trying to circumvent the intent of the VJTA.

Through its monitoring function described above, the VA has become aware of some employers who have tried to circumvent the intent of the VJTA. Although this is just a small percentage of the employers participating in the program, the VA believes that their number is sufficient to require the amendment to § 21.4632. Accordingly, the VA is making the amended regulations final.

The VA has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They 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-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs certifies that these amended regulations 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 regulations, therefore, are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

It is the intent of the VJTA that no employer be reimbursed for more than 50% of the wage he or she is paying the trainee. This certification, therefore, can be made because this clarification of VA regulations is required to make them consistent with, and to carry out the intent of the VJTA.

(The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.121.)

List of Subjects in 38 CFR Part 21

Civil rights, claims, education, grant programs-education, loan programs-education, reporting and recordkeeping requirements, schools, veterans, vocational education, vocational rehabilitation.

Approved: May 22, 1986.

Thomas K. Turnage,
Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

1. Section 21.4632, is amended by adding paragraph (e)(3) to read as follows:

§ 21.4632 Payments.

* * * * *

(e) *Limitations on payments.* * * *

(3) If an employer reduces the wages paid to a trainee for a training period so that the trainee is paid at a rate which is less than the starting wage rate, the VA shall not pay the employer an amount in excess of 50 percent of the wages (exclusive of overtime and premium pay) paid to the trainee for the training period. (Sec. 8, Pub. L. 98-77)

2. In § 21.4634, paragraphs (d) and (e) are revised and new paragraph (f) is added to read as follows:

§ 21.4634 Overpayments.

* * * * *

(d) *Payment contrary to limitations.* Whenever the VA finds that payment has been made to an employer, on behalf of a veteran, in an amount which exceeds or is otherwise contrary to the limitations set forth in § 21.4632(e), such amount shall constitute an overpayment for which the employer shall be liable to the United States. (Sec. 8, Pub. L. 98-77; 97 Stat. 443)

(e) *Waivers of overpayments.* Any overpayment established under this section may be waived, entirely or

partly, as provided by §§ 1.955 through 1.970 of this chapter. (Sec. 8, Pub. L. 98-77; 97 Stat. 443)

(f) *Recovery of overpayments.*

(1) Any overpayment referred to in paragraph (a), (b), (c), or (d) of this section may be recovered in the same manner as any other debt due the United States.

(2) If both the veteran and employer are found liable to the United States under paragraph (a), (b), (c) or (d) of this section for all or part of the overpayment, they shall be considered to be jointly and severally liable to the extent of their respective liabilities.

(Sec. 8, Pub. L. 98-77, 97 Stat. 443)

[FR Doc. 86-12904 Filed 6-6-86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 403

[FRL 3025-8]

Water Pollution; General Pretreatment Regulations for Existing and New Sources

Correction

In FR Doc. 86-12540 beginning on page 20426 in the issue of Wednesday, June 4, 1986, a portion of the document text appeared out of order. The text appearing on page 20430 should have preceded the text appearing on page 20429.

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Temp. Reg. E-84]

Procurement of Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation changes the number of consolidated procurements of sedans, station wagons, and light trucks that are made by GSA each year on behalf of agencies and revises the schedules for agencies to submit orders to GSA for these types of vehicles. The regulation also establishes a consolidated program for the procurement of medium and heavy trucks and provides for a change in GSA's centralized leasing program. The changes in the consolidated procurement program provided in this

regulation are designed to correlate the ordering of vehicles with current production practices in the industry and thereby expedite delivery to Federal agencies.

DATES: Effective date: April 1, 1986.
Expiration date: March 31, 1987.
Comments due on or before: July 31, 1986.

ADDRESS: Comments should be addressed to: General Services Administration (FCA), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Norberg, Automotive Commodity Center (703-557-5295).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

The Interagency Advisory Committee on Regulatory Review has developed a proposed revision of FPMR Subchapter E (see 51 FR 4619). The revision would delete §§ 101.26.501 thru 101-26.501-8 which cover the procurement of motor vehicles. The amended text of these sections would be incorporated into FPMR Subchapter G, Transportation and Motor Vehicles. Because the timing and final form of the Subchapter E revisions are uncertain and the changes in the text on the procurement of motor vehicles are needed immediately, this temporary regulation is being issued in lieu of a permanent change to the FPMR.

List of Subjects in 41 CFR Part 101-26

Government property management.
(Sec. 205(c) 63 Stat. 390; (40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter E to read as follows:

Federal Property Management Regulations Temporary Regulations E-84

May 12, 1986.

TO: Heads of Federal agencies

SUBJECT: Procurement of motor vehicles

1. *Purpose.* This regulation revises the

schedule for the consolidated procurement of motor vehicles performed by GSA, expands the program to include medium and heavy-duty trucks, and provides for a change in GSA's centralized program for leasing motor vehicles.

2. *Effective date.* This regulation is effective April 1, 1986.

3. *Expiration date.* This regulation expires March 31, 1987, unless sooner superseded or incorporated into the permanent regulations of GSA.

4. *Applicability.* This regulation applies to all executive agencies.

5. *Background.* A review of the procurement operated by GSA for the benefit of agencies indicates that changes in the regulations are needed to correlate the ordering of motor vehicles with current production practices in the industry so as to eliminate delay, to provide for the procurement of additional types of motor vehicles, and to clarify the extent to which motor vehicles are procured for DOD. This temporary regulations was developed to incorporate these changes into the PPMR on a trial basis.

6. *Explanation of changes.* Subpart 101-26.5 is amended as indicated below.

PART 101-26—[AMENDED]

1. Section 101-26.501 is amended to revise the text identifying standard vehicles in paragraph (a), paragraphs (b) and (c), and the introductory text in paragraph (d), as follows:

§ 101-26.501 Purchase of new motor vehicles.

(a) * * *

Sedans, class 1A—small, class 1B—subcompact, or class II—compact; station wagons, class 1B—subcompact or class II compact vehicles, as described in Federal standard No. 122; and light trucks, as defined in Federal standard Nos. 292 and 307. (Federal standard Nos. 122, 292, and 307 as used in this section mean the latest editions.) Requisitions submitted to GSA for motor vehicles shall be in conformance with the requirements of Subpart 101-38.1.

(b) Requisitions submitted to GSA for new passenger vehicles and light trucks shall contain a certification by the agency head or designee that the acquisition is in conformance with Pub. L. 94-163 and Executive Order 12375. The certification may be placed on the requisition or on an appropriate attachment thereto. Agency passenger vehicle requisitions omitting this certification will be processed provided that the certification is forthcoming from the requisitioning agency.

(c) Trucks shall be requisitioned in accordance with the provisions of this § 101-26.501 and the following:

- (1) Light trucks in accordance with Federal standard Nos. 292 and 307; and
- (2) Medium and heavy trucks in accordance with the latest editions of Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and Federal specification No. KKK-B-1579.

(d) Selection of additional systems or equipment in vehicles shall be made by the

requiring agency and shall be based on the need to provide for overall safety, efficiency, economy, and suitability of the vehicle for the purposes intended pursuant to § 101.38.104-2.

2. Section 101-26.501-1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101-26.501-1 General.

(a) DOD shall submit to GSA for procurement its orders for purchase in the United States of all commercial-type passenger motor vehicles (FSC 2310), including buses and trucks (FSC 2320) up to 11,000 pounds gross vehicle weight (GVW) except the following:

- (1) Buses convertible to ambulances.
- (2) Trucks convertible to ambulances.
- (3) Trucks 4x4, dump, 9,000 GVW with cut-down cab.
- (4) Any commercial trucks above 11,000 pounds GVW.

(b) When it is determined by the ordering activity that requirements for passenger motor vehicles and trucks indicate the need for procurement by buying activities other than GSA, a request for waiver justifying the procurement shall be submitted in writing to the General Services Administration (FCA), Washington, DC 20406. GSA will notify agencies in writing whether a waiver has been granted. Justification may be based on the urgency of need or the vehicles having unique characteristics such as special purpose body or equipment that may require close supervision by agency personnel to ensure proper installation of the equipment by the contractor; e.g., when a medical van is to be equipped with Government- or contractor-supplied equipment. Requests for procurement through sources other than GSA will be handled on an individual basis provided full justification is submitted therefor.

3. Section 101-26.501-2 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 101-26.501-2 Consolidated purchase program.

(a) To achieve maximum benefits and economies, GSA (except as noted in § 101-26.501-1(a)), makes consolidated procurement of all motor vehicle types each year as follows:

- (1) Two volume procurements of sedans and station wagons of the types covered by covered by the Federal standard No. 122, excluding family buys.
- (2) Two volume procurements of the types Federal standard Nos. 292 and 307, excluding family buys.
- (3) Three volume procurements of the types covered by Federal specification Numbers KKK-T-2107, 2108, 2109, 2110, 2111, and Federal specification Number KKK-B-1579.

(b) Volume consolidated purchases are made after consolidation of requirements in accordance with the dates set forth in § 101-26.501-4(a). Agencies should submit their

requirements for the types of vehicles covered by Federal standard Nos. 122, 292, 307, Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and Federal specification KKK-B-1579 that can be competitively procured, to the General Services Administration (FCA), Washington, DC 20406, in time for inclusion in the appropriate consolidated purchase as scheduled in § 101-26.501-4(a).

(c) When justified as indicated in § 101-26.501-4, requirements for sedans, station wagons, and light, medium, and heavy trucks will be consolidated and procured on a monthly basis.

4. Section 101-26.501-3 is amended to revise the introductory paragraph and paragraph (b) to read as follows:

§ 101-26.501-3 Submission of orders.

Orders for all motor vehicles shall be submitted on GSA Form 1781, Motor Vehicle Requisition—Delivery Order, or DD Form 448, Military Interdepartmental Purchase Request (MIPR), to the General Services Administration (FCA), Washington, DC 20406, and shall contain required FEDSTRIP data for mechanized processing. The Department of Defense shall ensure that appropriate MILSTRIP data are entered on DD Form 448.

(b) For vehicles within the category of Federal standard Nos. 122, 292, or 307, but for which deviations from such standards are required, unless already waived by the Director, Automotive Commodity Center (FCA), GSA, Federal Supply Service, Washington, DC 20406, requisitions shall include a justification supporting each deviation from the standards and shall contain a statement of the intended use of the vehicles, including a description of the terrain where the vehicles will be used. Prior approval of deviations shall be indicated on the requisition by citing the waiver authorization number.

5. Section 101-26.501-4 is amended by revising paragraphs (a) and (b)(2) and deleting paragraph (b)(3), as follows:

§ 101-26.501-4 Procurement time schedules.

(a) *Volume consolidated purchases.* Requisitions covering vehicle types included in Federal standard Nos. 122, 292, 307, Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and Federal specification KKK-B-1579 will be consolidated for volume procurement unless a statement is included justifying the need for delivery other than at the times indicated in this section. Requisitions containing a statement of specification will be handled on a monthly basis in accordance with this section, or on an emergency basis in accordance with § 101-26.501-4(c).

TIME SCHEDULE FOR VOLUME CONSOLIDATIONS

| Vehicle category | Consolidation date |
|--|---|
| A. Sedans and station wagons of types covered by Federal standard No. 122. | June 1 to Nov. 15, Nov. 16 to May 31. |
| B. Light trucks of types covered by Federal standard Nos. 292 and 307. | June 16 to Dec. 1, Dec. 2 to June 15. |
| C. Medium and heavy trucks in accordance with Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and KKK-B-1579. | March 10 to Aug. 9, Aug. 10 to Dec. 15, Dec. 16 to March 9. |

(b) * * *

(2) Solicitations issued in July for the consolidated purchase of vehicles will cover only the requirements of those executive agencies with requisitions required by § 101-26.501-1 to be placed with GSA. (Submission of requirements for vehicles in categories (i) and (ii), above, is mandatory to the extent provided in § 101-26.501-1.)

6. Section 101-26.501-6 is amended by revising paragraph (c) to read as follows:

§ 101-26.501-6 Forms used in connection with delivery of vehicles.

(c) Instructions to Consignee Receiving New Motor Vehicles Purchased by General Services Administration (formerly GSA Form 6317). This information is printed on the reverse of the consignee copy of the delivery order. Personnel responsible for receipt and operation of Government motor vehicles should be familiar with the instructions and information contained in the document entitled "Instructions to Consignee Receiving New Motor Vehicles Purchased by General Services Administration."

7. Section 101-26.501-8 is amended by revising the addresses of manufacturers in paragraph (a), revising paragraph (b), and deleting paragraph (c) as follows:

§ 101-26.501-8 Notification of vehicle defects.

(a) * * *

Addresses of Manufacturers:
 American Motors Corp., Fleet Sales Department, 27777 Franklin Road, Southfield, MI 48034, (for Jeep, Renault, Eagle, and American Motors vehicles only).
 LTV Aerospace and Defense Co., AM General Division, 701 West Chippewa Avenue, South Bend, IN 46623. (Formerly AM General of the American Motors Corporation).
 Ford Parts and Service Division, Service Engineering Office, 3000 Schaefer Road, PO Box 1904, Dearborn, MI 48121.
 Director of Services, FWD Corporation, 105 East 12th Street, Clintonville, WI 54929.
 Navistar International, Inc., 7927 Jones Branch Drive, Suite 400, McLean, VA 22102. (Formerly known as International Harvester Co.)
 Chrysler Corporation, Product Investigations and Government Liaison, PO Box 1057, Detroit, MI 48288.

General Motors Corporation

Chevrolet Motor Division, Service Department, Chevrolet Central Office, 30007 Van Dyke Avenue, Warren, MI 48090.

Buick Motor Division, Service Department, 902 East Hamilton Avenue, Flint, MI 48550.
 Oldsmobile Motor Division, Service Department, 920 Townsend Street, Lansing, MI 48921.

Pontiac Motor Division, Service Department, One Pontiac Plaza, Pontiac, MI 48053.
 GMC Truck and Bus Group, Federal Government Sales, 31 Judson Street, Pontiac, MI 48058.

Mack Trucks, Inc., 2100 Mack Blvd., PO Box M, Allentown, PA 18105-5000

Thomas Built Buses, Inc., 1408 Courtesy Road, PO Box 1849, High Point, NC 27261.

Supervisor, Vehicle Service and Safety Programs, Volvo White Truck Corporation, PO Box D-1, Greensboro, NC 27402.

(b) When motor vehicles are manufactured by a concern other than one for which an address is shown in § 101-26.501-8(a) and the address of the manufacturer is not known, agencies shall inform GSA of the vehicle location address. In these cases, agencies shall forward the vehicle location address to the General Services Administration (FCA), Washington, DC 20406. GSA will forward the vehicle location address to the manufacturer or advise the agency concerned.

8. Section 101-26.501-9 is revised to read as follows:

§ 101-26.501-9 Centralized motor vehicle leasing program.

GSA has a centralized leasing program to provide an additional source of motor vehicle support to all Federal agencies. This program relieves Federal agencies that use it from both the time constraints and administrative costs associated with independently entering into lease contracts. The centralized leasing program covers subcompact, compact, and midsize sedans, station wagons, and certain types of light trucks (pickups and vans). Participation in the centralized leasing program is mandatory on all executive agencies of the Federal Government (excluding the Department of Defense and the U.S. Postal Service) within the 48 contiguous States and Washington, DC. However, agencies must obtain GSA authorization to lease in accordance with § 101-39.205 prior to using these established mandatory use contracts. For further information on existing contracts, including vehicles covered, rates, and terms and conditions of the contract(s), contact General Services Administration (FCA), Washington, DC 20406.

9. *Agency comments and assistance.* Comments or inquiries concerning the effect or impact of this regulation should be submitted to the General Services Administration (FCA), Washington, DC 20406, not later than July 31, 1986, for consideration and possible incorporation into a permanent regulation.

10. *Effect on other directives.* This regulation supersedes portions of the regulations appearing at FPMR 101-26.501

thru 101-26.501-4, FPMR 101-26.501-6, FPMR 101-26.501-8, and FPMR 101-26.501-9.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-12950 Filed 6-6-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-208]

Organization and Delegation of Powers and Duties

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Assistant Secretary for Policy and International Affairs, the Deputy General Counsel and the Federal Aviation Administrator certain authorities resulting from amendment of section 1115 of the Federal Aviation Act of 1958, as amended, and related provisions which were enacted as a part of the "International Security and Development Cooperation Act of 1985" to improve foreign airport security. This amendment also makes a technical correction to the existing delegation concerning aviation safety to the FAA Administrator.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Becky L. Bentson, Office of the General Counsel, Department of Transportation, Washington, DC., (202) 412-5517.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Department management, procedures, and practice, notice and comment on it are unnecessary, and it may be made effective in fewer than thirty days after publication in the *Federal Register*.

The Secretary's powers and duties to assure the security of foreign airports under section 1115 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1515), (the FAA Act), were recently expanded (and supplemented with related new responsibilities) as a part of the recently enacted "International Security and Development Cooperation Act of 1985." (See Part B of title V, entitled "Foreign Airport Security.") The Secretary has determined that implementation of the expanded section 1115 and the related provisions will require complex and well coordinated interaction of several

DOT offices and other executive departments, and that delegation of these responsibilities is therefore needed.

In an unrelated matter, this amendment also updates the delegation of important aviation safety powers and duties to the Federal Aviation Administrator, simply to conform to rewording of the statutory language on which the delegation has been patterned. This rewording occurred in 1983, when Congress enacted into positive law as 49 U.S.C. 106(g)(1) language which had formerly appeared as a proviso to the first sentence of section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)).

List of Subjects in 49 CFR Part 1

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

PART I—[AMENDED]

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

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

Authority: 49 U.S.C. 322.

2. Section 1.47 is amended by revising paragraphs (a) and (p) to read:

§ 1.47 Delegations to Federal Aviation Administrator.

The Federal Aviation Administrator is delegated authority to:

(a) Carry out the powers and duties transferred to the Secretary of Transportation by, or subsequently vested in the Secretary by virtue of, section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)), including those pertaining to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 308(b) of title 49, U.S.C., and sections 306-309, 312-314, 1101, 1105, and 1111 and titles VI, VII, IX (excluding section 902(h)), and XII of the Federal Aviation Act of 1958, as amended.

(p) Carry out the functions vested in the Secretary by:

(1) Section 553(b) of Pub. L. 99-83 (99 Stat. 226), which relates to the authority of Federal Air Marshals to carry firearms and make arrests, in coordination with the General Counsel; and

(2) The following subsections of section 1115 of the Federal Aviation Act

of 1958, as amended, which relates to the security of foreign airports: Subsection 1115(a), in coordination with the General Counsel and the Assistant Secretary for Policy and International Affairs; subsection 1115(b), in coordination with the Assistant Secretary for Policy and International Affairs; and subsection 1115(e)(2)(A)(ii), in coordination with the General Counsel and the Assistant Secretary for Policy and International Affairs.

3. Section 1.56 is amended by revising paragraphs (j) introductory text and (j)(1) to read:

§ 1.56 Delegations to Assistant Secretary for Policy and International Affairs.

The Assistant Secretary for Policy and International Affairs is delegated authority to:

(j) Carry out the functions vested in the Secretary by:

(1) The following subsections of section 1115 of the Federal Aviation Act of 1958, as amended, which relates to the security of foreign airports: Subsection 1115(e)(1), in coordination with the General Counsel and the Federal Aviation Administrator; and paragraph 1115(e)(3), in coordination with the General Counsel, the Federal Aviation Administrator, the Assistant Secretary for Governmental Affairs, and the Assistant Secretary for Administration.

4. Section 1.57a is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read:

§ 1.57a Delegations to the Deputy General Counsel.

(a) * * *

(b) The Deputy General Counsel is delegated authority to initiate and carry out enforcement actions relating to foreign airport security on behalf of the Department under subsection 1115(e)(2)(B) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1515). In carrying out this function, the Deputy General Counsel is not subject to the supervision of the General Counsel.

Issued in Washington, DC on December 14, 1985.

Elizab eth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86-12937 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 60337-6037]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Emergency interim rule; extension of effective date.

SUMMARY: An emergency rule amending regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) is in effect through June 6, 1986. The Secretary of Commerce (Secretary) extends this rule for an additional nine days, continuing the closure of four areas near Kodiak Island to nonpelagic trawling through June 15, 1986. This extension is necessary to reduce the number of crabs killed during their molting and mating period by trawl fishing gear operating in contact with

the seabed. The closure is intended to help the red king crab population increase in abundance.

EFFECTIVE DATES: Noon Alaska Daylight Time (ADT), June 6, 1986, through noon ADT, June 15, 1986.

FOR FURTHER INFORMATION CONTACT:

Aven M. Anderson (Fishery Management Biologist, NMFS), 907-586-7228.

SUPPLEMENTARY INFORMATION: Under section 305(e) of the Magnuson Fishery Conservation and Management Act, the Secretary issued an emergency rule effective on March 8, 1986 (51 FR 8502, March 12, 1986), to protect concentrations of red king crabs near Kodiak Island during their molting and mating period.

The North Pacific Fishery Management Council has voted to extend the emergency rule (which is currently in effect until June 6, 1986) until noon ADT, June 15, 1986.

The reasons for this closure, which are discussed in the preamble to the emergency rule, still continue. Molting

and mating of red king crabs near Kodiak Island should be effectively completed by mid-June. The areas of the closure are defined in § 672.24 of the emergency rule. Therefore, the Secretary extends the emergency rule, without change, until noon, June 15, 1986.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

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

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: June 4, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-13027 Filed 6-5-86; 2:19 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 51, No. 110

Monday, June 9, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

Freedom of Information Act; Availability of Official Information; Service Charges for Information

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its schedule of service charges for information requested under the Freedom of Information Act (FOIA). These regulations would bring these fees into conformance with current costs for responding to FOIA requests.

DATE: Comments must be received on or before August 8, 1986.

ADDRESS: Send or deliver written comments to William C. Duffy, Chief, Information Systems Plans and Policies Division, Office of Personnel Management, Room 6410, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James M. Farron, (202) 632-7714.

SUPPLEMENTARY INFORMATION: Specifically, we are proposing to increase the fees for manual records searches for professional and clerical employees to hourly rates of \$15 and \$10.25, respectively, which is the average cost for OPM employees handling FOIA requests. In addition, the charges for computer records would be the actual cost of producing the requested data. The cost for duplicating paper records would increase to \$0.13 per page. The fee for unpriced printed material would remain \$0.25 per 25 pages or fraction thereof. Other duplication costs not specifically identified would be chargeable at actual cost.

We are also proposing to add a provision to the current regulations to reserve the right to request prepayment before releasing documents. Therefore, under this provision, if fees for previous

requests are not paid, we would not release additional records without payment of all amounts previously due and prepayment for the new documents.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these proposed regulations would not have a significant economic impact on a substantial number of small entities because they relate entirely to the fees charged for requesting information from the Office of Personnel Management.

List of Subjects in 5 CFR Part 294

Administrative practice and procedure, Freedom of information.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is proposing to amend Title 5 of the Code of Federal Regulations as follows:

Photocopies, per page (up to 8 1/2" x 14")..... \$0.13
Printed materials, per 25 pages or fraction thereof..... \$0.25

Manual records search, per hour:

Professional employees \$14.00
Clerical employees \$10.25
Other costs not identified above..... Actual cost to the Office.
Computerized Records..... Actual costs for the services rendered.

(d) The Office will not release records if a request may reasonably result in a fee assessment of more than \$25 unless the requestor has agreed to pay (1) all costs regardless of the amount; or (2) costs up to a specified amount which is sufficient to cover the anticipated charges. If the request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, the responsible organization within OPM will promptly notify the requestor of the estimated fees. Upon agreement to pay these fees, and payment of any required deposit,

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for Part 294 continues to read as follows:

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

2. In Subpart A of Part 294, § 294.107 is revised to read as follows:

Subpart A—General Provisions

§ 294.107 Service charges for information.

(a) The Office will furnish, without charge, reasonable quantities of information that it has produced for free distribution to the public.

(b) The Office may furnish information made available to the public, other than that described in paragraph (a) of this section, subject to payment of a fee. Individuals may pay the fee by check or money order, payable to the Office of Personnel Management.

(c) Schedule of Fees—When responding to a request under section 552 of title 5, United States Code, the Office will charge fees as follows:

the Office will further process the request.

(e) The Office reserves the right to demand full prepayment before releasing records. If fees for previous requests have not been paid by the requestor, records will not be released without payment.

(f) Normally, when the anticipated fees exceed \$50, the requestor must deposit at least 50 percent of the anticipated amount within 30 days after notification of that fact. The Office will not release the information until it has received the deposit.

(g) The Office will assess charges in cases of unproductive or unsuccessful searches unless an appropriate Office official waives charges. Services requested and performed but not required under the Freedom of Information Act, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes.

(h) The Office will furnish information under the Freedom of Information Act without charge, or at a reduced charge, when an authorized official finds that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

[FR Doc. 86-12970 Filed 6-6-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-039]

Federal Animal Quarantine Stations

Correction

In FR Doc. 86-12119 beginning on page 19560 in the issue of Friday, May 30, 1986, make the following correction:

On page 19560, third column, in the "DATE" caption, the deadline for comments should read "July 29, 1986".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ANM-17]

Proposed Amendment to Eagle, CO, Transition Area.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the 1,200 foot transition area at Eagle, Colorado. The amendment is necessary to provide controlled airspace for aircraft in a holding pattern associated with a new instrument approach procedure.

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

ADDRESSES: Send comments on the proposal to: Manager, Airspace &

System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 86-ANM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel, ANM-7, at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-533, Federal Aviation Administration, Docket No. 86-ANM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2533.

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 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-ANM-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 any 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 at the address listed above 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 filled 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, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. 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 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the 1,200 foot transition area at Eagle, Colorado. The action will provide controlled airspace for aircraft in a holding pattern associated with a new instrument approach procedure at the Eagle County Airport, Colorado. The existing 1,200 foot transition area for the present holding pattern is no longer needed and will be eliminated by this action.

Section 71.181 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 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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:

PART 71—[AMENDED]

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

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

2. § 71.171 is amended as follows:

Eagle, Colorado—(Amended)

That airspace extending upward from 700 feet above the surface within a 9 mile radius

of the Eagle County Airport [lat. 39°38'42" N., long. 106°54'43" W.]; within 3.5 miles each side of the 072° bearing from the Eagle County Airport extending from the 9 mile radius area to 19 miles northeast of the airport; and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 39°11'00" N., long. 106°42'00" W.; to lat. 39°11'00" N., long. 107°14'00" W.; to lat. 40°21'00" N., long. 107°14'00" W.; to lat. 40°21'00" N., long. 106°42'00" W.; to the point of beginning excluding all controlled airspace which overlaps this airspace.

Issued in Seattle, Washington, on May 28, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-12823 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 841 0021]

Independent Insurance Agents of America, Inc.; Independent Insurance Agents Association of Montana, Inc.; Independent Insurance Agents and Brokers of California, Inc.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, these consent agreements, accepted subject to final Commission approval, would, among other things, prohibit: (1) A New York City-based insurance agent association and its Montana affiliate from encouraging their members to refuse to deal with companies based on the companies' sales policies; and (2) a California agents' group from urging its members to take action against insurance companies who use direct marketing.

DATE: Comments will be received until August 8, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/L-501, James C. Egan, Jr., Washington, DC 20580. (202) 254-6024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is

hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Insurance agents, Trade practices.

Before Federal Trade Commission

[File No. 841-0021]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Independent Insurance Agents of America, Inc.,

The Federal Trade Commission having initiated an investigation of certain acts and practices of Independent Insurance Agents of America, Inc. ("IIAA"), an association incorporated under the laws of New York, and it now appearing that IIAA, hereinafter sometimes referred to as the proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated,

It is hereby agreed by and between IIAA, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. IIAA is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its mailing address at 100 Church Street, New York, New York 10017.

2. IIAA admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. IIAA waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement is for settlement purposes only and does not constitute an admission by IIAA that the law has been violated as alleged in the draft of complaint here attached.

5. This agreement shall not become part of the public record of the proceeding unless and until it is

accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify IIAA, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission Rules, the Commission may, without further notice to IIAA, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to IIAA's address as stated in this agreement shall constitute service. IIAA waives any right it may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or agreement may be used to vary or contradict the terms of the order.

7. IIAA has read the proposed complaint and order contemplated hereby. It understands that once the order had been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. IIAA further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

ORDER

I

It is ordered that for purposes of this Order the following definitions shall apply:

A. "IAA" means Independent Insurance Agents of America, Inc., its officers, employees, directors, committee and task force members, its successors and assigns; and

B. "Independent insurance agents" means persons who are engaged in the business of selling insurance as agents for insurance companies and who are not employees of such insurance companies.

C. "Direct marketing" means attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II

It is further ordered that IIAA, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIAA's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIAA or any member of IIAA in engaging in any of the acts prohibited by this Part II.

III

It is further ordered that the provisions of Part II of this Order shall not be construed to prevent IIAA from: (1) Participating, in good faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade group; (3) providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above-enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV

It is further ordered that IIAA shall:

A. At the first regularly-scheduled meeting of the IIAA National Board of Directors, but in no event later than 120 days after this Order becomes final, repeal the Dual Marketing Task Force report;

B. Within sixty days from the date this Order becomes final, mail a copy of this Order, and a letter specifying any changes made pursuant to Paragraph A of this Part, to every IIAA state affiliate; and

C. Within sixty days from the date this Order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this Order, publish this Order in *Independent Agent* in the same type size normally used for articles that are published in *Independent Agent*.

V

It is further ordered that IIAA shall:

A. Within ninety days from the date this Order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this Order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIAA, require;

B. For a period of three years from the date this Order becomes final, maintain in its files for a period of three years a copy of all correspondence referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIAA affiliates or members, and make such copies available for inspection by

representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIAA's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this Order.

Before Federal Trade Commission

[File No. 841-0021]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Independent Insurance Agents Association of Montana, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Independent Insurance Agents Association of Montana, Inc. ("IIAAM"), an association incorporated under the laws of Montana, and it now appearing that IIAAM, hereinafter sometimes referred to as the proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated.

It is hereby agreed by and between IIAAM, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. IIAAM is a corporation organized, existing and doing business under and by virtue of the laws of the State of Montana with its mailing address at P.O. Box 5593, Helena, Montana 59604.

2. IIAAM admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. IIAAM waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement is for settlement purposes only and does not constitute an admission by IIAAM that the law has been violated as alleged in the draft of complaint here attached.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be

placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify IIAAM, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to IIAAM, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to IIAAM's address as stated in this agreement shall constitute service. IIAAM waives any right it may have to any other manner of service. The complainant attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or agreement may be used to vary or contradict the terms of the order.

7. IIAAM has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. IIAAM further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

ORDER

I

It is ordered that for purposes of this Order the following definitions shall apply:

A. "IIAAM" means Independent Insurance Agents Association of Montana, Inc., its officers, employees, directors, committee and task force

members, its successors and assigns; and

B. "Independent insurance agents" means persons who are engaged in the business of selling insurance as agents for insurance companies and who are not employees of such insurance companies.

C. "Direct marketing" means attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II

It is further ordered that IIAAM, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIAAM's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIAAM or any member of IIAAM in engaging in any of the acts prohibited by this Part II.

III

It is further ordered that the provisions of Part II of this Order shall not be construed to prevent IIAAM from: (1) Participating, in good faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade group; (3) providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above-enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV

It is further ordered that IIAAM shall:

A. Within sixty days from the date this Order becomes final, mail a copy of this Order, to every IIAAM local affiliate; and

B. Within sixty days from the date this Order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this Order, publish this Order in *Montana TAGS* in the same type size normally used for articles that are published in *Montana TAGS*.

V

It is further ordered that IIAAM shall:

A. Within ninety days from the date this Order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this Order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIAAM, require;

B. For a period of three years from the date this Order becomes final, maintain in its files for a period of three years a copy of all correspondence referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIAAM affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIAAM's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this Order.

Before Federal Trade Commission

[File No. 841-0021]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Independent Insurance Agents and Brokers of California, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Independent Insurance Agents and Brokers of California, Inc. ("IIABC"), an association incorporated under the laws of California, and it now appearing that IIABC, hereinafter sometimes referred to as the proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated,

It is hereby agreed by and between IIABC by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. IIABC is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its mailing address at 465 California Street, Suite 600, San Francisco, California 94104.

2. IIABC admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. IIABC waives:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- (d) Any claim under the Equal Access to Justice Act.

4. This agreement is for settlement purposes only and does not constitute an admission by IIABC that the law has been violated as alleged in the draft of complaint here attached.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify IIABC in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and

decision, in disposition of the proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to IIABC, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to IIABC's address as stated in this agreement shall constitute service. IIABC waives any right it may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or agreement may be used to vary or contradict the terms of the order.

IIABC has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. IIABC further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

ORDER

I

It is ordered that for purposes of this Order the following definitions shall apply:

A. "IIABC means Independent Insurance Agents and Brokers of California, Inc., its officers, employees, directors, committee and task force members, its successors and assigns; and

B. "Independent insurance agents" means persons who are engaged in the business of selling insurance as agents for insurance companies and who are not employees of such insurance companies.

C. "Direct marketing" means attempts by insurance companies to sell insurance directly to consumers,

together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counseling insureds, serving accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II

It is further ordered that IIABC individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIABC's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIABC or any member of IIABC in engaging in any of the acts prohibited by this Part II.

III

It is further ordered that the provisions of Part II of this Order shall not be construed to prevent IIABC from: (1) Participating, in good faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade groups; (3)

providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above-enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV

It is further ordered that IIABC shall:

A. Within sixty days from the date this Order becomes final, mail a copy of this Order to every IIABC local affiliate; and

B. Within sixty days from the date this Order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this Order, publish this Order in *NEWS 'N VIEWS* in the same type size normally used for articles that are published in *NEWS 'N VIEWS*.

It is further ordered that IIABC shall:

A. Within ninety days from the date this Order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this Order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIABC, require;

B. For a period of three years from the date this Order become final, maintain in its files for a period of three years a copy of all correspondents referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIABC affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIABC's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this Order.

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from the Independent Insurance Agents of America, Inc. ("IIAA"), the Independent Insurance Agents Association of Montana ("IIAAM"), and the Independent Insurance Agents and Brokers of California ("IIABC"). These proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested

persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The proposed consent agreements are the result of a Commission investigation of the activities of various associations of independent insurance agents. Specifically, the investigation focused on the response of the associations to innovative, lower cost insurance programs that reduce the role of independent agents in the marketing of insurance policies, and that were being introduced or considered by a number of insurance companies. Property and casualty insurance have traditionally been marketed to consumers through a variety of channels. Some insurance companies employ sales personnel to market policies directly to consumers, others use independent agents exclusively, and some use both employees and independent agents. In recent years, certain insurance companies that traditionally used independent agents have begun to experiment with direct marketing approaches to reduce costs and achieve operating efficiencies in the sale of their policies. For example, the Hartford Insurance Company developed a program to provide low-cost automobile and homeowners insurance to members of the American Association of Retired Persons using a form of direct marketing.

The complaints issued simultaneously with the provisionally accepted consent orders allege that the agent associations reacted to these new direct marketing programs by organizing (or threatening) refusals to deal with insurers that have proposed or adopted direct marketing programs. The complaints allege that this activity, which amounts to a boycott of the insurance companies, adversely affected competition by deterring the insurers from experimenting with efforts to reduce costs and achieve efficiencies, and by depriving consumers of the benefits of competition in the form of potentially more efficient, lower-cost insurance. Therefore, the proposed consent agreements order the associations to cease and desist from threatening, or engaging in, refusals to deal with companies that adopt or propose direct marketing programs. Such boycott activity would constitute illegal refusals to deal with section 5 of the Federal Trade Commission Act, and would be subject to federal jurisdiction under applicable provisions of the McCarran-Ferguson Act, 15 U.S.C.

1013(b). Because the Commission has found reason to believe that IIAA, IIAAM and IIABC each have engaged in such illegal activity, entry of an order is appropriate in each instance.

The proposed consent orders provide adequate safeguards against future boycott activity while allowing the trade associations to perform their legitimate functions in representing their members' interests. Section I of the orders defines "direct marketing" to mean "attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers."

Section II of the orders contains substantive prohibitions against the associations' engaging in conduct which amounts to recommending, advising, or encouraging their members to refuse to deal with insurance companies that have engaged in the direct marketing of insurance. Conduct designed to coerce or intimidate insurance companies to refrain from adopting direct marketing programs is also prohibited, as is the publication of information or surveys of actual or threatened refusals to deal by independent agents.

Section III of the orders identifies areas of legitimate association activity not proscribed by the orders, namely, (1) participation in legislative, judicial, or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade group; (3) providing factual information to members; and (4) adoption of policy statements and presentation of views, so long as such activity is not undertaken to encourage or facilitate actual refusals to deal.

Section IV of the IIAA order requires the repeal of the IIAA Dual Marketing Task Force Report, which contained language that might be viewed as coercive, and directs the association to disseminate copies of the order to every state affiliate of IIAA. Copies of each of the three orders are to be printed in the appropriate publications which are sent to association members.

Section V of each of the orders contains provisions which require IIAA, IIAAM and IIABC to (1) file reports with the Federal Trade Commission detailing

the manner in which they have complied with the order; (2) maintain records, for a limited period of time, of specified correspondence for possible inspection by the Commission; and (3) notify the Commission prior to any organizational changes that may affect compliance with the order.

The public interest is served by the adoption of these orders in several respects. First, associations of independent insurance agents are placed on notice as to specific types of conduct which the Commission might deem unlawful. Second, agency companies which might have refrained from pursuing beneficial direct marketing programs because of fear of adverse agent reaction may be less inhibited in attempting such programs. Finally, acceptance of this consent order can be expected to save substantial private and public resources that would otherwise have been expended in an effort to resolve the matter through litigation.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-12848 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 86-12]

National Standards for Traffic Control Devices; Revision of Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed amendments to the Manual on Uniform Traffic Control Devices; request for comments.

SUMMARY: The FHWA is inviting comments concerning the need for a new Manual on Uniform Traffic Control Devices (MUTCD) and a new format. If adopted, these standards would result in a new MUTCD. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and recognized as the national standard for traffic control devices on all public roads.

DATE: Comments must be received on or before July 20, 1987.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 86-12, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for \$30.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 050-001-81001-8.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 426-0411, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 426-0762, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD presents traffic control device (TCD) standards for all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

The MUTCD fulfills a statutory responsibility imposed on the Secretary of Transportation in sections 109(b), 109(d), and 402(a) of 23 U.S.C. and delegated to the Federal Highway Administrator in 49 CFR 1.48 (b), (c), and (n). Generally, 23 U.S.C. 109 authorizes the Secretary to develop, approve, and apply standards for the construction of highways in which Federal funds participate. Section 109(b) calls for standards for the Interstate System to be applied "uniformly throughout the States." Section 109(d) directs the Secretary to approve only such standards for "the location, form, and character" of signs, signals, and marking on Federal-aid highways "as will promote the safe and efficient utilization of the highways." Section 402(a) authorizes the Secretary to promulgate uniform national standards relating to "highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic," etc., for use on all public roads.

This advance notice is being issued so that interested persons and/or organizations may have the opportunity to participate in the consideration of this request for amendments to the MUTCD.

Based upon comments received in response to this advance notice and upon its own experience, the FHWA may prepare a notice of proposed amendments. Any final amendments which result from this rulemaking action will be published in the Federal Register and incorporated by reference in the Code of Federal Regulations.

Discussion of Problem

The FHWA is concerned with the extent of the changes made to the 1978 MUTCD and projected changes over the next few years. One of the major concerns is to reduce the number of page changes. Revisions 1 through 4 have included 74 adopted changes which represent about 600 page changes. The FHWA expects that about 10 to 15 changes per year will take place over the next 5 years which will result in about 100 page changes per year for another 400 to 500 page changes. Quite often when revising one section, it requires changes to subsequent sections. Sometimes in spite of diligent reviews, the effects of a change are not always followed throughout the MUTCD.

New and additional provisions are anticipated for several sections of the MUTCD for specific applications such as the channelizing devices in part 6. Also, much information could be removed. For example, there are many provisions in the MUTCD that deal with "how-to" or provide guidance and discussion. The FHWA believes that these are more appropriate for inclusion in the Traffic Control Devices Handbook¹ than in the MUTCD. The FHWA's regulatory involvement would be reduced significantly if the how to, guidance and discussion items were removed from the MUTCD.

From a liability aspect there are current concerns with the existing format of "shall", "should", and "may." An alternative would be to reword the MUTCD to simply establish the traffic control device standards, warrants for use, and placement criteria. This concept is in keeping with standards for other elements of highway features.

If a new MUTCD or a new format is needed within the next 3 to 5 years, the FHWA will need to begin this effort now. A new MUTCD would involve removing general discussion information, provide continuity of existing changes throughout the MUTCD, and add standards and

¹ Available for \$20.00 from the Government Printing Office, Washington, DC 20402, Stock No. 050-001-00270-1. Copies are also available for inspection at the Federal Highway Administration, Office of Traffic Operations (HTO-21), Room 3419, 400 7th St. SW., Washington, DC 20590.

provisions where needed. To develop a new format would involve all the previously mentioned requirements plus elimination of the "shall", "should" and "may" conditions as well as establishing standard traffic control devices and standards for application and placement. This would be a major effort.

The following text from page 2B-1 of the MUTCD is an example of removing guidance information and other discussion material:

Existing Text

2B-1 Application of Regulatory Signs

Regulatory signs inform highway users of traffic laws or regulations and indicate the applicability of legal requirements that would not otherwise be apparent. These signs shall be erected wherever needed to fulfill this purpose, but unnecessary mandates should be avoided. The laws of many States specify that certain regulations are enforceable only when made known by official signs.

Some regulatory signs are related to operation controls but do not impose any obligations or prohibitions. For example, signs giving advance notice of or marking the end of a restricted zone are included in the regulatory group.

Regulatory signs normally shall be erected at those locations where regulations apply. The sign message shall clearly indicate the requirements imposed by the regulation and shall be easily visible and legible to the vehicle operator.

New Text

2B-1 Standard Regulatory Sign Applications

Regulatory signs are erected to inform highway users of traffic laws or regulations and indicate the applicability of legal requirements that would not otherwise be apparent.

Regulatory signs are erected at those locations where regulations apply. The sign message clearly indicates the requirements imposed by the regulation and is easily visible and legible to the vehicle operator.

An example of eliminating the "shall", "should" and "may" conditions can be seen in the first paragraph of MUTCD section 2B-4:

Existing Text

2B-4 STOP Signs

STOP signs are intended for use where traffic is required to stop. The STOP sign shall be an octagon with white message and border on a red background. The standard size shall be 30 x 30 inches.

New Text

2B-4 STOP Signs

STOP signs are used where traffic is required to stop. The standard STOP sign is an octagon with white message and border on a red background. The standard size is 30 x 30 inches. The FHWA has formulated the following questions and invites responses concerning the need for reformatting or revising the MUTCD:

1. Will a new MUTCD be needed in keeping with the above or other reasons in the next 3 to 5 years?

2. If so, in revising the MUTCD, what format should be followed?

3. Are there specific sections which need major revisions such as combining sections 2E and 2F or major additions to Part 6? For example, are warrants needed for the application of the different channelizing devices?

4. Is it appropriate to remove guidance material from the MUTCD? Will this make the MUTCD a more effective standard?

5. Will this lead to more effective and efficient use of the MUTCD?

6. As a related item, should the FHWA continue to be responsible for maintaining the MUTCD? If not, who should maintain the MUTCD? This item was addressed in detail in a January 1983 FHWA staff study. The study was made available to the public in a June 30, 1983 Federal Register Notice of availability of staff study and proposed procedural changes, and request for comments, 48 FR 30145, FHWA Docket No. 83-18.

This advance notice of proposed rulemaking to the MUTCD is issued under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

It is anticipated that any proposed changes to the MUTCD resulting from the comments received would be included in a subsequent notice of proposed rulemaking.

The FHWA has determined, at this time, that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. This determination will be reevaluated and a draft regulatory evaluation will be prepared, if necessary, based upon the data received in response to this advance notice. Based upon the information available to the FHWA at this time, the action proposed in this advance notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and Roads, Signs, Traffic regulations, Incorporation by references.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 29, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86-12955 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Public Comment Period on a Proposed Amendment to the Alabama Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and public hearing on the substantive adequacy of a proposed program amendment submitted by the State of Alabama to modify the Alabama permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment, Senate Bill 445, extends the existence of the Alabama Surface Mining Commission and amends sections of the Code of Alabama 1975. This notice sets forth the times and locations that the Alabama program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures for the hearing, if requested.

DATES: Written comments, data or other relevant information relating to the proposed amendment not received on or before 4:00 p.m. on July 9, 1986 will not necessarily be considered.

A public hearing on the proposed amendment has been scheduled for July 7, 1986, at the address listed below under "ADDRESSES."

Any person interested in making an oral or written presentation at the hearing should contact Mr. John T. Davis at the address or phone number listed below by the close of business June 24, 1986.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 731-0890.

The public hearing will be held at the Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 731-0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program and all written comments received in response to this notice, will be available for review and copying at the OSMRE Field Office, the OSMRE Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the amendment by contacting the OSMRE Birmingham Field Office.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street, NW, Washington, DC 20240.

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Birmingham Field Office, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the date listed under "DATES." If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions. The public hearing will continue on the specific date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and detailed explanation of the conditions of approval of the Alabama program, can be found at 47 FR 22020 (May 20, 1982) and 48 FR 34206 (July 27, 1983). Subsequent actions concerning the Alabama program are listed in 30 CFR 901.15.

III. Proposed Amendment

On May 7, 1986, Alabama submitted a proposed amendment to its approved regulatory program. The amendment is contained in Senate Bill 445 (S. 445). The bill relates to the Alabama Sunset Law, and continues the existence and functioning of the Alabama Surface Mining Commission (ASMC) (which was

voted to be abolished by the Alabama Sunset Commission) as provided in Section 9-16-70 through 9-16-107 of the Code of Alabama 1975. The bill also amends Sections 9-16-73, 9-16-74, 9-16-78, 9-16-85, and 9-16-88 of the Code of Alabama 1975.

Sections 1 and 2 of the S. 445 continue the existence of the ASMC until October 1, 1987, and provide for the review of the ASMC by the Sunset Committee between the 1986 and 1987 Regular Legislative Sessions, and that the ASMC shall be terminated on October 1, 1987, unless a Sunset Bill passes at the 1987 Regular Session to continue the ASMC.

Section 3 of S. 445 amends Sections 9-16-73, 9-16-74, 9-16-78, 9-16-85, 9-16-88 of the Code of Alabama 1975. Section 9-16-73 concerns the composition of the ASMC and how its members are determined. It establishes conflict of interest requirements for members; election procedures for offices; appointment of a director of the ASMC; compensation of ASMC members; what shall constitute a quorum; where the office facilities will be located; disbursement of funds; removal of members from office for neglect of duty, malfeasance or misfeasance; the creation of a subcommittee of the Legislative Sunset Committee, called the Legislative Surface Mining Oversight Committee; and, the appointment of a technical assistant to serve as liaison between the commission and the oversight committee.

Section 9-16-74 is amended to confer on the ASMC, in addition to other powers conferred on it by law, the power to adopt, amend, suspend, repeal and enforce rules and regulations, provided they are no more stringent than those promulgated by Federal law and regulations, and to control surface coal mining operations consistent with legislative requirements; hold public hearings and related requirements; issue and enforce orders; promulgate and enforce blaster certification requirements; and various other listed powers including issuing and denying permits.

Section 9-16-78 establishes requirements concerning hearings and hearing officers' duties and responsibilities.

Section 9-16-86 establishes requirements for permitting for mining and reclamation, including written findings to be made by the regulatory authority before permit approval.

Section 9-16-88 covers requirements for public notification concerning permit applications and applications for revision of existing permits. It establishes provisions for written

comments and informal conferences. It requires issuance of a permit if the application is approved and provides for hearings following a final decision of permit approval or denial.

Section 4 of S. 445 states that the legislature concurs with the recommendations of the Sunset Committee as provided in section 1, 2, and 3 of S. 445.

Section 5 of S. 445 states that the provisions of the bill are severable.

Section 6 of S. 445 repeals all laws or parts of laws in conflict with the bill. It expressly repeals "regulations set forth as 880-X-2E, Rules and Regulations of Alabama Surface Mining Commission, adopted as rulemaking 85-2 on September 17, 1985." Those rules concern extraction of coal incidental to extraction of other minerals.

Section 7 of S. 445 terminates, on October 1, 1987, the Legislative Oversight Committee established in section 9-16-73(k).

Section 8 of S. 445 states: "This Act shall become effective immediately upon its passage and approval by the governor, or upon its otherwise becoming a law."

Therefore, the Director, OSMRE is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of the Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

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

Dated: June 2, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-12917 Filed 6-6-86; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 931

Permanent State Regulatory Program of New Mexico

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

ACTION: Proposed rule.

SUMMARY: OSMRE is seeking comment on New Mexico's request to further extend the deadline for New Mexico to promulgate and submit rules governing the training, examination and certification of blasters. On March 3, 1986, New Mexico requested an additional year for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) were required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments not received by July 9, 1986 at the address below will not necessarily be considered.

ADDRESS: Written comments should be mailed or hand delivered to Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Room 216, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of

Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Room 216, Albuquerque, New Mexico 87102; Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSMRE issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9686). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations within 12 months after approval of a State program or within 12 months after publication date of OSMRE's rule at 30 CFR Part 850, whichever is later. In the case of New Mexico's program, the applicable date is 12 months after publication date of OSMRE's rule, or March 4, 1984.

On March 5, 1984, New Mexico advised OSMRE that it would be unable to meet the March 4, 1984 deadline and requested an extension to develop and adopt a blaster certification program. On May 14, 1984, OSMRE granted New Mexico an extension to March 4, 1985 (49 FR 20287).

On February 6, 1985, the Director of the Energy and Minerals Department advised OSMRE that the State would require another extension of time to submit its blaster training and examination program. On May 8, 1985, OSMRE granted New Mexico an extension to March 4, 1986 (50 FR 19356). On March 3, 1986, the Director of the Energy and Minerals Department requested another one-year extension of time for the submission of its blaster certification program. Following on April 29, 1986, the State of New Mexico sent details of the activities which transpired during the past year (NM-324) and the causes which delayed New Mexico's program development. This letter also explains the steps New Mexico is expected to complete through June 30, 1986, including submittal of a draft proposal stating the alternative New Mexico wishes to use in order to fulfill the requirement.

OSMRE is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

ADDITIONAL DETERMINATIONS**1. Compliance with the National Environmental Policy Act**

The Secretary has determined that, pursuant to section 702(d) of SMCRA, no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501.

List of Subjects in 30 CFR Part 931

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

Dated: June 2, 1986.

James W. Workman,
Deputy Director, Operations and Technical Services.

[FR Doc. 86-12916 Filed 6-8-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 100**

[CGD3 86-20]

Regatta; River Spectacular on the Delaware, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the River Spectacular on the Delaware sponsored

by River Spectacular, Inc. of Philadelphia, Pennsylvania. This event will include high speed boat races using unlimited hydroplane vessels and Jersey Skiffs on about 3.4 miles of the Delaware River in the vicinity of Philadelphia, PA. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during this event.

DATE: Comments must be received on or before July 9, 1986.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004-5098. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopsky, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 86-20) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable.

Drafting Information

The drafters of this notice are Mr. Lucas A. Dlhopsky, Project Officer, Third Coast Guard District Boating Safety Office, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The River Spectacular on the Delaware, sponsored by River

Spectacular, Inc. is a series of marine events to be held on the Delaware River on August 22, 23, and 24, 1986. The events will consist of unlimited hydroplane races (known as "Hydrocade '86") sanctioned by the Unlimited Racing Commission and limited class ("Jersey Skiff") races. In addition, there will be water ski exhibitions and celebrity races at various times on Saturday and Sunday. The powerboats participating in the races will be 30 foot unlimited hydroplanes and 16 foot Jersey Skiffs. The oval race course will be located on the Delaware River between the Walt Whitman bridge (river mile 96.8) and the Benjamin Franklin bridge (river mile 100.2) and will involve the full width of the river.

Time trials will be run on Friday, August 22 and Saturday, August 23, 1986 from 10:00 a.m. to 12:00 noon and again from 2:00 p.m. to 5:00 p.m. each day. In addition, on Sunday, August 24, 1986 there will be a hydroplane testing period between 10:00 a.m. and 12:00 noon. During these times waterborne commerce will be allowed to transit the regulated area after providing at least two hours advance notice to the Coast Guard Patrol Commander at his discretion and in accordance with his instructions. Transiting vessel's speed will be such that wake is minimized while steerageway is maintained. Recreational craft wishing to transit the regulated area will also be permitted to pass at the discretion of the Coast Guard Patrol Commander.

The hydroplane and Jersey Skiff races will be held on Sunday, August 24, 1986 from 12:00 noon to 5:00 p.m. During these hours no vessel traffic other than race participants and patrol craft will be permitted in the regulated area. In the event of inclement weather on 24 August, the races will be postponed to the following day, Monday, August 25, 1986 during the same times. If this occurs, these special local regulations will be effective on Monday instead of Sunday.

Spectator areas will be established up and downstream of the race course in the vicinity of the two bridges. Spectator vessels will remain clear of the existing navigable channel and heed the instructions of the Coast Guard Patrol Commander and patrol personnel particularly in regard to the turning zones at the up and downstream ends of the race course. The sponsor plans to place temporary buoys on the river to mark these turning points.

The sponsors has met with local commercial marine interests represented by the Ports of Philadelphia Maritime

Exchange. As a result of these meetings agreement was reached concerning transit of waterborne commerce during the effective period of these regulations. The U.S. Coast Guard will assist the sponsor and local authorities in providing a safety patrol during this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement and establish spectator areas prior to and during this event.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the races. This should have a favorable impact on commercial facilities providing services to the spectators. Coordination with local commercial marine interests which has already been accomplished should minimize any adverse impact on waterborne commerce during the effective period of these regulations.

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulation

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

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

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

2. Section 100.35-326 is added to read as follows:

§ 100.35-326 River Spectacular on the Delaware, Philadelphia, PA.

(a) *Regulated Area*: That portion of the Delaware River between the Walt Whitman bridge (river mile 96.8) and the Benjamin Franklin bridge (river mile 100.2) for the full width of the river.

(b) *Effective Period*: This regulation is effective from 10:00 a.m. through 5:00 p.m. each day on August 22, 23 and 24, 1986. In case of postponement of the

races due to weather, those regulations in effect on Sunday, August 24, 1986 are in effect the following day.

(c) *Special Local Regulations*: (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No person or vessel shall enter or remain in the regulated area unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(3) At least 30 minutes prior to the start of the races and other events, spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the events.

(4) On Friday and Saturday, August 22 and 23, 1986 between 10:00 a.m. and 5:00 p.m. each day and on August 25, 1986 between 10:00 a.m. and 12:00 noon, commercial vessels may transit the regulated area after providing two hours advance notice to, and at the discretion of, the Coast Guard Patrol Commander. During these times, recreational vessels may transmit the regulated area at the discretion, and in accordance with the directions, of the Coast Guard Patrol Commander.

(5) On Sunday, August 25, 1986 between 12:00 noon and 5:00 p.m., during the unlimited hydroplane and Jersey Skiff races, no vessel shall enter or transit the regulated area unless so directed by the Coast Guard Patrol Commander.

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

(5) For any violation of these regulations, the following maximum penalties are authorized by law:

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

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

(iii) \$250 for any other person.

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

Dated: May 30, 1986.

J.C. Uithol,

Captain, U.S. Coast Guard, Acting
Commander, Third Coast Guard District.

[FR Doc. 86-12910 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Los Angeles/Long Beach
Regulation 86-16]

Safety Zone; Port of Los Angeles, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard intends to establish safety zones in the Port of Los Angeles around dredging, pipeline laying, and construction vessels and around the landfill area during the construction of the Pacific Texas Oil Pipeline Co. Island (Hereinafter referred to as Pactex Island).

These zones will be needed to protect recreational boaters and commercial vessels from the safety hazards associated with the dredging, pipeline laying, and construction.

Entry into these zones will be prohibited unless authorized by the Captain of the Port.

DATE: Comments must be received on or before July 24, 1986.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office Los Angeles/Long Beach, 165 N. Pico Ave., Long Beach, CA 90802. The comments and other materials referenced in this notice will be available for inspection and copying at U.S. Coast Guard Marine Safety Office Los Angeles/Long Beach, 165 N. Pico Ave., Long Beach, CA 90802, in the Port Management Division Office, Normal office hours are between 9:00 AM and 3:00 P.M. Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG M.E. Cutts at (213) 590-2300.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice COTP LA/LB 86-16 and the specific portion of the notice to which their comments apply and give reasons for each comment. The regulations may change in light of comments received. No public hearing is planned, but one may be held if written requests are received and it is determined that the

opportunity to make oral presentations will aid the rulemaking process.

Comments should be limited to the subject of Safety Zones, Vessel Movement, and Commercial Vessel Safety. Comments for or against the project are outside the scope of the United States Coast Guard. The opportunity for public comment on the project itself was available during the EIR/EIS period and ended 23 August 1985. Questions or arguments about the project itself should be directed to the Los Angeles Harbor District and the Bureau of Land Management.

Drafting Information

The drafters of this notice are LTJG M.E. Cutts, project officer for the Captain of the Port, and LCDR J.R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

Pacific Texas Pipeline Co. has received approval to build a 115 acre island in outer Los Angeles Harbor centered at approximate position 33-43.45N, 118-14.30W. The island will be an oil tanker terminal facility for a 42 inch diameter submarine pipeline which will cross under Cerritos Channel to Terminal Island. An area of about 300 acres centered in approximate position 33-42.83N, 118-14.98W will be dredged to a depth of 75 feet to provide a turning basin and entrance channel for vessels calling at the facility. Since exact dates and locations of each activity are not available at this time and may change without notice in the future, the safety zones may shift from day to day depending on progress of construction. Public notice of the exact location and timing will appear in Broadcast and Local Notices to Mariners.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The areas within the port affected by this proposal are so small that costs incurred as a result will be negligible. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations by establishing three safety zones as follows:

1. *Dredging*: The safety zone will include the area within a 100 yard radius of the dredging vessel and support vessels, if any, when they are engaged in dredging operations while anchored or underway from 15 July 1986 to 1 June 1987. A portion of the dredging will disrupt vessel traffic in the Los Angeles Main Channel, the Los Angeles Pilot Area, and Angel's Gate. Other channels closed to vessel traffic will be published in Broadcast and Local Notices to Mariners when information becomes available.

2. *Pipeline laying*: The safety zone will include the area within a 100 yard radius of the pipeline laying vessel when it is engaged in pipeline laying operations while anchored or underway from 1 May 1987 to 1 September 1987. The pipeline will run from the vicinity of the east edge of the circle for anchorage site C-3 on NOAA chart 18749 to the point where the Naval Base Mole connects to Terminal Island.

3. *Island Construction*: The safety zone will include the area within 100 yards of any construction barges or vessels associated with the operation while anchored or underway. In addition, the safety zone will include the area bounded by the following four positions:

- (1) 33 43.23 N., 118 13.91 W.,
- (2) 33 43.00 N., 118 14.52 W.,
- (3) 33 43.62 N., 118 14.81 W.,
- (4) 33 43.82 N., 118 14.13 W.

The zone will be in effect from 1 August 1986 to 1 June 1987.

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

Dated: May 28, 1986.

L.E. Beaudin,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 86-12911 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Benefits; Charges for Car or Medical Services

AGENCY: Veterans Administration.

ACTION: Proposed regulations; correction.

SUMMARY: On pages 19814 and 19815 of the Federal Register of June 2, 1986, the Veterans Administration (VA) published a notice of proposed rulemaking to implement portions of section 19013 of Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985. The law allows the VA to recover the cost of medical care furnished to nonservice-connected veterans from third party health insurance policies carried by those veterans. This notice is to correct the erroneous reference to revising paragraph (d) to § 17.48. The correct paragraph being revised is § 17.48(g).

EFFECTIVE DATE: This correction is effective June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Karen Walters, Chief, Policies and Procedures Division, Medical Administration Service (136F), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2337.

SUPPLEMENTARY INFORMATION: On page 19814 of the Federal Register of June 2, 1986, the first instruction indicates that paragraph (d) to § 17.48 is being revised. Paragraph (g), *not* paragraph (d) is the correct paragraph being revised in this proposed rulemaking. Section 17.48(d) was revised as part of a proposed rulemaking published in the Federal Register of May 14, 1986 at pages 17651 to 17656. This correction is also made to the first paragraph of the shown text of § 17.48, which erroneously shows (d)(1). The first paragraph revised should read (g)(1).

Dated: June 4, 1986.

Patricia Viers,

Chief, Directives Management Division.

[FR Doc. 86-12902 Filed 6-6-86; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Effective Date of Refund Upon Disenrollment From VEAP

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed regulations.

SUMMARY: The law provides a few veterans with the opportunity to choose between receiving benefits under 38 U.S.C. Ch. 34 (commonly called the Vietnam Era G.I. Bill) or 38 U.S.C. Ch. 32 VEAP (Post-Vietnam Era Educational Assistance Program). Once such a veteran begins receiving benefits under the Vietnam Era G.I. Bill, he or she may never receive benefits under VEAP. Current regulations do not provide for a refund of the veteran's contributions to the VEAP fund when this situation occurs unless the veteran applies for a refund. This proposal permits a refund even if the veteran does not fill out an application for it, and provides an effective date for the refund.

DATE: Comments must be received on or before July 10, 1986.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 24, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 389-2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.5064(b) is amended to provide an effective date for a refund of contributions to the VEAP fund when the veteran is in receipt of benefits under 38 U.S.C. Ch. 34. It is not necessary for the veteran to submit an application to receive the refund.

The Veterans Administration (VA) and the Department of Defense have determined that this proposed regulation is not a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The proposal 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-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense certify that the proposed regulation, 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 (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b) this proposed 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 affects only individual benefit recipients.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

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

Approved: May 21, 1986.

Thomas K. Turnage,
Administrator.

Approved: May 14, 1986.

Lieutenant General E.A. Chavarrie,
Deputy Assistant Secretary of Defense.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising § 21.5064 paragraph (b)(2) to read as follows:

§ 21.5064 Refund upon disenrollment.

* * * * *

(b) Effective date of refund.

* * *

(2) If an individual voluntarily disenrolls from the program after discharge or release from active duty, under other than dishonorable conditions, the effective date of the refund or his or her contributions shall be determined as follows.

(i) If an individual described in § 21.5040(g)(1) voluntarily disenrolls by deciding to receive educational assistance allowance under 38 U.S.C. Ch. 34 rather than electing to receive educational assistance allowance under Ch. 32, his or her contributions shall be refunded no earlier than 60 days of the date the VA first authorized benefits for the veteran under Ch. 34.

(ii) If an individual voluntarily disenrolls under circumstances other than those described in subparagraph (i) of this paragraph, the individual's contributions shall be refunded within 60 days of receipt by the VA of an application for a refund from the individual. (38 U.S.C. 1602, 1623, 1632)

* * * * *

[FR Doc. 86-12903 Filed 6-6-86; 45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31, 61, 71, 91, 167, 169, and 189

[CGD 84-024]

Intervals for Drydocking and Tailshaft Examination on Inspected Vessels

Correction

In FR Doc. 86-12059 beginning on page 19720 in the issue of Friday, May 30, 1986, make the following correction:

1. On page 19720, in the first column, under "DATES", the deadline for comments should read "July 29".

§ 31.10-23 [Corrected]

2. On page 19727, in the second column, in § 31.10-23(d), in the second line after "of" insert "alternate".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 60600-6100]

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

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

ACTION: Proposed rule; preseason adjustment.

SUMMARY: The Secretary of Commerce issues a preliminary preseason adjustment of the total allowable catch (TAC), permitting requirements, and bag limits for the Gulf migratory group of king mackerel in accordance with the framework procedure under Amendment 1 to the fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This notice proposes (1) reductions in TAC and allocations for the Gulf migratory group of king mackerel based on recent catch data; (2) changes in the requirements for permits for commercial fishing vessels; and (3) provisions for reducing bag limits for recreational fishermen to zero (0). The intended effects are to protect the Gulf migratory group of king mackerel and still allow a catch by the important recreational and commercial fisheries that are dependent on this species, to allow charter vessels to fish commercially when not under charter, and to ensure that the recreational allocation is not exceeded.

DATE: Comments must be received on or before June 24, 1986.

ADDRESSES: Comments on the rule and supplemental regulatory impact review are invited and should be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Comments on the collection of information requirement are invited and should be addressed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The king mackerel fishery is regulated under the FMP and its final regulations (50 CFR Part 642). An amendment to the FMP (Amendment 1) was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September 22, 1985 (50 FR 34843, August 28, 1985).

The Councils recommended a TAC for the Gulf migratory group of king mackerel at 5.2 million pounds and this was implemented by emergency regulation (51 FR 8326, March 11, 1986), which resulted in the closure of the commercial fishery for this group on March 12, 1986, after its quota was exceeded (51 FR 9013).

In conformance with stock assessment procedures at § 642.27, the Councils convened the Stock Assessment Panel (Panel), reviewed its report, and made recommendations to the Regional Director for changes in the TAC, quotas, and permits for the Gulf group of king mackerel.

The Councils recommended that TAC for the fishing year of July 1, 1986, through June 30, 1987, be set at 2.9 million pounds, which is at the upper limit of the range of the acceptable biological catch (ABC) provided for by the Panel. This action is expected to allow the spawning stock to recover in the next decade to between 18 and 112 percent of the adequate stock levels of 1975-78.

In accordance with the provisions of the FMP, the TAC is allocated to users and areas by prescribed formula. The recreational fishery is allocated 68 percent of the TAC (1.97 million pounds), and the commercial fishery is allocated 32 percent (0.93 million pounds). The commercial allocation is subdivided into three quotas with 0.06 million pounds for the purse seine fishery, 0.60 million pounds for the eastern geographic zone and 0.27 million pounds for the western geographic zone. The commercial fishery quota is regulated under § 642.21(a).

The recreational fishery quota is regulated under § 642.21(b) and bag limits under § 642.28. When the quota of 1.97 million pounds is reached or projected to be reached, the bag limit will be reduced to zero (0) by notice action in the *Federal Register*. Prior to publication of such notice action, the Regional Director will consult with the Councils and advise them of the data on which the bag limit reduction to zero (0) is based.

The recreational bag limit for the Gulf group of king mackerel specified at § 642.28(a)(1) will remain unchanged because of the expected reduction in availability of fish and total effort. Bag limits at the opening of the season will remain at three king mackerel per person per trip for anglers, excluding captain and crew, or two king mackerel per person per trip including the captain and crew, whichever is the greater for persons fishing on charter boats. For persons fishing from other recreational vessels the bag limit will remain at two king mackerel per person per trip.

Vessels fishing commercially for either migratory group will continue to be required to obtain a permit annually and may do so providing the owner or operator has derived at least ten percent of his earned income from commercial fishing in the previous calendar year.

Prior to this regulatory action, charter boats fishing the Gulf migratory group of king mackerel have been ineligible to obtain commercial permits. The rationale was that charter anglers on permitted vessels could exceed bag limits, and the catch would not be reported against the commercial quota. The catch would exceed bag limit estimates causing TAC to be exceeded. A mechanism to allow charter boats to fish under bag limits, when under charter, was subsequently developed and adopted for the Atlantic migratory group, and extension of this authority to charter boats fishing the Gulf group would make the regulations equitable and consistent. Charter vessels fishing off Louisiana and Florida have traditionally engaged in commercial fishing, when not under charter.

Charter boats may obtain a permit to fish commercially if they meet the earned income requirement of ten percent for commercial fishing and provided they adhere to bag limits while under charter. A charter vessel with a commercial permit will be considered to be under charter if more than three persons are aboard including the captain and crew. Permits to fish on the commercial quotas will be issued by the Regional Director at no cost and will be available 60 days prior to the beginning of the season. Permits may be issued at

other times for newly registered vessels or in cases of demonstrated hardship. Also, permits are nontransferable. The issuance of commercial permits for charter vessels will assist in determining the distribution of the lowered TAC between commercial and recreational fishermen and will be an aid in evaluating the status of the catch of each user group. The minimum income percentage requirement for a permit for commercial fishermen also will prevent recreational fishermen from obtaining permits and thereby circumventing the bag limitations.

Other Matters

This action is taken under the authority of 50 CFR 642.27 and is taken in compliance with Executive Order 12291. This action is covered by the supplemental regulatory impact review (SRIR) which concluded that the authorizing regulations could have a significant economic impact on a substantial number of small entities. Comments on the SRIR are invited and should be sent to the **ADDRESS** listed above. A copy is also available from the **ADDRESS** listed above.

This rule revises a collection of information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0097. A request to collect this information has been submitted to OMB for review under section 3504(h) of the PRA. Comments on the collection of information requirements are invited (See **ADDRESSES**).

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 4, 1986.

Carmen J. Blondin.

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

For reasons set forth in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

2. Section 642.1 is amended by revising paragraph (b) to read as follows:

§ 642.1 Purpose and scope.

(b) This part regulates fishing for coastal migratory pelagic fish by fishing vessels of the United States off the Atlantic Coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

3. Section 642.2 is amended by revising the definition of "Charter vessel" to read as follows:

§ 642.2 Definitions.

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. Charter vessels with permits to fish on the commercial allocation for king mackerel will be considered under charter if there are more than three (3) persons aboard including captain and crew.

4. Section 642.4 is amended by revising paragraphs (a) (1) and (2), and (b)(6) to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability.* (1) Owners or operators of fishing vessels which fish for king mackerel under the commercial quotas in § 642.21(a) are required to obtain an annual vessel permit.

(2) Owners or operators of charter vessels may obtain a permit to fish under the commercial allocations for king mackerel provided they adhere to bag limits while under charter.

(b) ***
(6) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing during the preceding calendar year (January 1 through December 31);

§ 642.7 [Amended]

5. Section 642.7 is amended by revising paragraph (a)(18), adding a new paragraph (a)(27), deleting paragraph (a)(28), and renumbering paragraphs (a)(29) through (31) as (a)(28) through (30) to read as follows

(a) ***
(18) Fish for, retain, or have in possession in the FCZ aboard a vessel permitted to fish under § 642.4 king mackerel from a migratory group or allocation zone after the commercial quota for that migratory group or allocation zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22(a) (Table 2);

(27) Possess king mackerel harvested in the FCZ under a recreational allocation set forth in § 642.21(b) after the bag limit for that recreational allocation has been reduced to zero (0) as specified in § 642.22(b);

6. Section 642.21 is amended by revising paragraphs (a), (b), and (c), and redesignating existing paragraph (i) as (f) to read as follows:

§ 642.21 Quotas and allocations.

(a) *Commercial quotas for king mackerel.* (1) The commercial allocation for the Gulf migratory group of king mackerel is 0.93 million pounds per fishing year. This allocation is divided into quotas as follows:

(i) 0.60 million pounds for the eastern allocation zone;

(ii) 0.27 million pounds for the western allocation zone; and

(iii) 0.06 million pounds for purse seines (see Figure 2 and paragraph (f) of this section for description of allocation zones).

(2) The commercial allocation and quota for the Atlantic migratory group of king mackerel is 3.59 million pounds per fishing year.

(3) A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Recreational allocations for king mackerel.* (1) The recreational allocation for the Gulf migratory group of king mackerel is 1.97 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of king mackerel is 6.09 million pounds per fishing year.

(c) *Purse seine quota for king mackerel.* (1) The total harvest of king mackerel by purse seines from the Gulf of Mexico is limited to 0.06 million pounds each fishing year.

(2) The total harvest of king mackerel by purse seine from the Atlantic Ocean is limited to 400,000 pounds each fishing year.

(3) King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraph (a) of this section (Table 2).

7. Section 642.22 is amended by revising paragraph (b) to read as follows:

§ 642.22 Closure.

(b) The Secretary, after consulting with the Councils and by publication of a notice action in the Federal Register, may reduce the bag limit for the recreational fishery for king mackerel in the Atlantic or Gulf migratory group to zero (0) when the allocation for that group under § 642.21(b) is reached or is projected to be reached. After such reduction, all king mackerel caught must be returned to the sea immediately and possession of king mackerel aboard recreational vessels is prohibited.

8. Section 642.28 is amended by revising paragraph (c) to read as follows:

§ 642.28 Bag and possession limits.

(c)(1) After a closure under § 642.22(a) is invoked for the allocations and quotas specified in § 642.21(a), vessels permitted under § 642.4 may not fish for king mackerel in the zone(s) for that allocation or quota under the bag limits specified in paragraph (a) of this section except as provided for under paragraph (c)(2).

(2) Charter vessels permitted to fish under the commercial quotas for king mackerel may fish under the bag limit specified in paragraph (a) of this section provided they are under charter and the recreational fishing allocation for the respective migratory group of king mackerel under § 642.21(b) has not been closed under § 642.21(b).

9. Table 2 of Appendix A is amended in its entirety to read as follows:

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES¹

| Migratory group(s) | Fishing year | Gear | Allocation zone | Fishing year quota TAC (million pound) | Prohibition on sale and/or catch invoked when— |
|---|-----------------------|-----------------------|-------------------------------|--|---|
| King Mackerel: Atlantic | 1 April-31 March..... | All types..... | Entire range ² . | 3.59 | Sales from migratory group are projected to reach quota. |
| Commercial. Atlantic | 1 April-31 March..... | PS ³ | Atlantic Ocean ⁴ . | 0.40 | Landings from migratory group are projected to reach quota. |
| Commercial. Atlantic Recreation- al. | 1 April-31 March..... | All types..... | Entire range ² . | 6.09 | Catches from migratory group are projected to reach allocation. |

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES¹—Continued

| Migratory group(s) | Fishing year | Gear | Allocation zone | Fishing year quota TAC (million pound) | Prohibition on sale and/or catch invoked when— |
|--------------------|------------------------|-----------------------|-----------------------------|--|---|
| Gulf Commercial. | 1 July–30 June | All types..... | Western zone ² . | 0.27 | Sales from migratory group and zone are projected to reach quota. |
| Gulf Commercial. | 1 July–30 June | PS ³ | Eastern zone ² . | 0.60 | Sales from migratory group and zone are projected to reach quota. |
| Gulf Commercial. | 1 July–30 June | All types..... | Entire range ² . | 0.06 | Landings from migratory group are projected to reach quota. |
| Gulf Recreational. | 1 July–30 June | All types..... | Entire range ² . | 1.97 | Landings from migratory group are projected to reach quota. |
| Spanish Mackerel: | 1 January–31 December. | All types..... | GA ⁴ | 27.00 | When landings are projected to reach TAC. |
| | 1 January–31 December. | PS ³ | Atlantic Ocean. | 0.30 | When landings are projected to reach quota. |
| | 1 January–31 December. | PS ³ | Gulf of Mexico. | 0.30 | When landings are projected to reach quota. |

¹ See Figure 2 for delineation of migratory group ranges and allocation zones.

² The range of migratory groups varies by season (§ 642.29)—see Figure 2.

³ See Figure 2 and § 642.21(e).

⁴ See § 642.21(e).

⁵ Purse seines.

⁶ Gulf & Atlantic.

[FR Doc. 86-12966 Filed 6-4-86; 4:58 pm]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket No. 60599-6099]

Northeast Multispecies Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement the conservation and management measures prescribed by the New England Fishery Management Council (Council) in the Fishery Management Plan for the Northeast Multispecies Fishery (FMP), which was resubmitted without change but with additional supporting justification following disapproval by the Secretary. This FMP addresses problems identified in the multispecies finfish fishery and would replace the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan). The proposed rule would (1) establish new minimum sizes for seven major commercial species; (2) establish minimum sizes for recreationally-caught cod and haddock; (3) extend closing spawning areas for haddock on Georges Bank; (4) establish a closed area in Southern New England to enhance yellowtail flounder spawning potential; (5) substantially revise the regulations governing small-mesh fisheries; (6) substantially increase the mesh size of mobile trawl gear; (7) establish a marketing requirement for gill net gear, and (8) establish a seasonal mesh-size restriction for redfish to

increase the spawning potential for redfish. The intended effect of the proposed rule is to maintain the abundance and viability of the stocks to support both commercial and recreational fisheries.

DATE: Comments on the proposed rule must be received on or before June 17, 1986.

ADDRESS: Comments on the proposed rule, the FMP, or supporting documents should be sent to Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on the Multispecies FMP".

Copies of the FMP, the final environmental impact statement, and the draft regulatory impact review are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Peter Colosi (Groundfish Coordinator), 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION:

Background

The FMP was previously disapproved by the Secretary of Commerce, because it did not demonstrate that it would prevent overfishing, or result in benefits outweighing costs. The New England Council (Council) considered the Secretary's comments, and resubmitted the FMP for further review and implementation. The Council made no changes in the previously disapproved

proposed management measures, but provided additional justification for the measures.

Two minority reports were appended to the resubmitted FMP. One report states that the Council has failed to address and resolve a long-standing conflict between commercial and recreational fishermen. The second report charges that the conservation in the FMP is inadequate, and recommends specific improvements for management measures. Both reports are available to the public from the Council.

The FMP was developed by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic Fishery Management Council. The FMP has evolved from the Council's longstanding management efforts first begun in 1977 on cod, haddock, and yellowtail flounder in the original Atlantic Groundfish Plan and more recently the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan). The FMP was developed to replace the Interim Plan on the assumption that cod, haddock, and yellowtail flounder are not isolated stocks, but are part of a highly complex and diversified fishery resource. As a result, the management unit encompasses the interrelated species of a demersal finfish complex, which includes cod, haddock, yellowtail flounder, pollock, redfish, winter flounder, American plaice, witch flounder, windowpane flounder, and white hake.

The goal of the Council in multispecies management is to preserve this mix of species at sufficient abundances to assure that the regulated species maintain adequate spawning potential, so that the resource, as a whole, can recover from outside influences, such as the pressure imposed by fishing. This goal is embodied in the major objectives of the FMP, which are (1) to control fishing mortality on juvenile fish (primarily) and on adults (secondarily) of selected finfish stocks to maintain sufficient spawning potential so that year classes, on a long-term average, replace themselves, and (2) to reduce fishing mortality in order to rebuild those stocks which have insufficient spawning potential to maintain a viable fishery resource. The objectives promote greater egg production by controlling or reducing mortality on non-spawning, juvenile fish, thus allowing more fish to reach sexual maturity and reproduce before they are removed by the fishery.

The objectives are accomplished through several management measures designed to protect species within the

multispecies complex. The Council believes that the measures implement conservation over and above that afforded by the Interim Plan. The measures are: (1) Minimum sizes for seven major commercial species; (2) minimum sizes for recreationally-caught cod and haddock; (3) major extensions of closed spawning areas for haddock on Georges Bank; (4) a closed area in Southern New England to enhance yellowtail flounder spawning potential; (5) major changes in the regulations governing small-mesh fisheries; (6) a major increase in the mesh size of mobile trawl gear; (7) a marking requirement for gill net gear, and (8) a seasonal mesh-size restriction for redfish to increase spawning potential.

The Council believes that these measures will ensure long-term abundance of the demersal finfish complex at levels that will support a viable fishery, and retain the fishing industry's traditional access to a multispecies fishery with a minimum of government regulation. This approach has been designed to be responsive to changing circumstances in the fishery, through the establishment of a Technical Monitoring Group (TMG). The TMG will conduct periodic analyses of changing conditions in the fishery resource, and make recommendations that will keep a continual focus on achievement of the FMP objectives. The FMP is expected to be a framework on which to build to ensure effective management in the long term.

The FMP takes into account the willingness of fishermen to comply with changes in fishing regulations and the ability of the NMFS, the States, and the Coast Guard to enforce them. In summary, the Council believes that the FMP: (1) sets objectives that establish a standard against which success can be measured; (2) reconciles the tension between the need to respond to the condition of stocks within the resource complex and the limitations imposed by the multispecies industry by which those stocks are utilized; (3) takes into account NMFS' enforcement capability; and (4) represents a consensus position within the parameters of what is desirable, possible, and supportable at this stage in the evolution of fishery management in New England.

The Secretary specifically requests comments on:

(1) The likelihood of overfishing considering the present condition of the stocks, the proposed management measures, and the spawning potential objectives of the FMP;

(2) The impact of the exempted fisheries program on the ability of the mesh-size conservation measures to

achieve the FMPs spawning potential objective; and

(3) The enforceability of the management measures if no additional funds are available for enforcement.

One of the premises of the long-term calculation of the appropriate spawning stock is a constant level of fishing mortality. The number of otter trawl vessels has increased an average of 10 percent per year (1976-1983); 44 percent of the total of 302 vessels added to the fleet by 1981 were new and 169 were existing vessels which either switched gear, moved to New England, or were newly-acquired used vessels. However, the number of active otter trawls declined by about 5 percent from 1984 to 1985. Comment is specifically invited on the relationship of increased fishing pressure to the well-being of the fishery resource.

The exempted fisheries program allows the use of a mesh size smaller than the proposed regulated mesh for certain species and seasons throughout the fishing year. Comment is specifically invited on the impact of this program on the attainment of the FMPs spawning potential objectives.

Annual enforcement costs for this FMP, if implemented, would be \$2.6 to \$3.3 million higher than those of the Interim Plan. It is unlikely that additional funds will be available. Comment is specifically invited on the enforceability and effectiveness of closed areas if additional funding is not available.

Classification

Section 304(b)(3)(B) of the Magnuson Act, as amended, requires the Secretary, upon receipt of a revised previously disapproved FMP and proposed implementing regulations, to publish the proposed implementing regulations as soon after receipt as possible. At this time, the Secretary has not determined that the revised FMP that these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared a draft environmental impact statement for this FMP; a notice of availability was published on October 24, 1985 (50 FR 43261).

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed rule, including regulations for minimum fish size, minimum mesh size, exempted fisheries, closed areas,

and a redfish area, may result in a maximum loss to the industry of \$15.4 million (7.8 percent) and 952 man-years during the first year of implementation. The present cost (discounted at 10 percent) of the program (measured as foregone revenues) over a ten-year period is expected to be about \$6.9 million (0.4 percent). The proposed gear marking requirements may result in a maximum annual cost of \$100,000. An annual increase in the cost of enforcement is expected to be \$2.6 to \$3.3 million; however, enforcement may remain at current levels, if additional funding is unavailable. The purpose of the FMP is to enhance productivity and thus promote investment and innovation in the fishery once the industry has absorbed the initial losses. The proposed rule is not expected to have a significant adverse effect on the Northeast multispecies industry. The Council prepared a supplemental regulatory impact review (RIR) for the resubmitted FMP which concluded that this rule will produce long-term benefits associated with the achievement of the FMP objectives within the fourth year of implementation. A copy of this supplemental RIR may be obtained from the Council at the address above.

This proposed rule is exempt from the review procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97-453, require the Secretary to publish this proposed rule as soon as possible after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of the order.

A determination as to whether or not the rule has a significant economic impact on a substantial number of small entities will be made in conjunction with publication of the final rule.

This rule contains a collection of information requirement under the exempted fisheries program, which is subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the PRA. Comments should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503, Attention: Desk Officer for NOAA. The permit requirement contained in the proposed rule has been cleared by OMB under Control Number 0648-0097.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent

practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting requirements.

Carmen J. Blondin,

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

For the reasons set forth in the preamble, Chapter VI of 50 CFR is proposed to be amended by revising Part 651, to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

Subpart A—General Provisions

- Sec.
- 651.1 Purpose and scope.
 - 651.2 Definitions.
 - 651.3 Relationship to other laws.
 - 651.4 Vessel permits.
 - 651.5 Recordkeeping and reporting requirements. [Reserved]
 - 651.6 Vessel identification.
 - 651.7 Prohibitions.
 - 651.8 Facilitation of enforcement.
 - 651.9 Penalties.

Subpart B—Management Measures

- 651.20 Regulated mesh area and gear limitations.
- 651.21 Closed areas.
- 651.22 Exempted fishery programs.
- 651.23 Minimum fish size.
- 651.24 Additional measures.
- 651.25 Experimental fishing.
- 651.26 Gear marking requirements.

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

Subpart A—General Provisions

§ 651.1 Purpose and scope.

This part implements the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

§ 651.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Areas of custody means any vessels, buildings, vehicles, piers or dock facilities where finfish may be found.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, 3300 Whitehaven Street, NW, Washington, DC 20235, or a designee.

Authorized officer means

- (a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
- (b) Any special agent of the National Marine Fisheries Service;
- (c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or
- (d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bottom-tending gill net means any gill net, anchored or otherwise, that is fished on or near the bottom in the lower third of the water column.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish aboard a vessel.

Charter and party boats mean vessels carrying recreational fishing parties for a per capita fee or for a charter fee.

Codend means the terminal portion of an otter trawl, pair trawl, beam trawl, Scottish seine, or mid-water trawl in which the catch is retained.

Council means the New England Fishery Management Council

Exclusive economic zone (EEZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea is measured.

Exempted fisheries means those species found in the exempted fisheries program (§ 651.22).

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

- (a) The catching, taking or harvesting of fish;
- (b) The attempted catching, taking or harvesting of fish;
- (c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or
- (d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for,

equipped to be used for, or of a type which is normally used for

- (a) Fishing; or
- (b) Adding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish or to transfer fish to another vessel.

Longline gear means fishing gear which is set horizontally, either anchored, floating or attached to a vessel, which consists of a main or ground line with three or more gangions and hooks.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Mid-Atlantic area means that area west and south of a line commencing at 41°18'16.2" N. latitude by 71°54'28.5" W. longitude and proceeding south 37°22'32.75", then east to the point of intersection with the outer boundary of the EEZ.

Mid-water trawl gear means pelagic trawl gear, no portion of which is operated in contact with the bottom.

Multispecies finfish means all finfish in the Northeast portion of the Atlantic EEZ not otherwise regulated under the Magnuson Act or by international treaty or otherwise excluded by the management unit of the FMP. These species are cod, yellowtail flounder, haddock, American plaice, pollock, redfish, witch flounder, white hake, winter flounder, and windowpane flounder.

New England area means that area east and north of a line commencing at 41°18'16.2" N. by 71°54'28.5" W. and proceeding south 37°22'32.75", then east to the point of intersection with the outer boundary of the EEZ.

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Owner with respect to any vessel, means

- (a) Any person who owns that vessel in whole or in part;
- (b) Any charterer of the vessel, whether bareboat, time, or voyage;
- (c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows

control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws or any State), and any Federal, State, local, or foreign government or any entity of any such government.

Plan means the Northeast Multispecies Fishery Management Plan (FMP) described at § 651.1.

Recreational fishing means fishing for finfish which does not result in their barter, trade, or sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Party and charter boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Retain aboard means to fail to return to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce, or a designee.

Technical monitoring group (TMG) means that group of scientists/technical analysts which will report to the Council for the purposes of (a) monitoring the implementation of the FMP relative to achievement of the objectives, and (b) making recommendations for changes in the management program.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 651.3 Relationship to other laws.

(a) Fishing for squid, mackerel, and butterfish, which is affected by these rules, also is governed by other domestic rules under Chapter VI, Title 50, Part 655 of the Code of Federal Regulations.

(b) Fishing vessel operators will exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting

from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(c) Nothing in these regulations will supersede more restrictive State or local multispecies finfish management measures.

§ 651.4 Vessel permits.

(a) *General.* (1) Any vessel of the United States fishing for multispecies finfish, except commercial vessels fishing exclusively within State waters and recreational fishing vessels, must have a permit required by this part aboard the vessel.

(2) Vessel owners or operators who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ and without regard to where such fish or gear are possessed, taken, or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable State or local requirements. If a requirement of this part and a conservation measure required by State or local law differ, any vessel owner or operator permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Application.* (1) An application for a fishing vessel to participate in the multispecies finfish fishery must be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application should be submitted to the Regional Director at least two months prior to the date on which the applicant desires to have the permit made effective to ensure that he will receive the permit on time.

(2) Applicants must provide all of the following information:

(i) The name, mailing address, and telephone number of the applicant and the vessel's master;

(ii) The name of the vessel;

(iii) The vessel's official number;

(iv) The home port and gross tonnage of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish-hold capacity of the vessel in pounds;

(vii) The type of fishing gear used by the vessel; and

(viii) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director will issue a permit within 45 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 21 days following the date of notification, the application will be discarded.

(d) *Surrender.* (1) A permit issued for a vessel may be surrendered by the owner thereof by certified mail addressed to the Regional Director.

(2) The Regional Director will reissue a permit which has been surrendered within 45 days from the date the reissuance was requested.

(e) *Expiration.* A permit expires when the owner or the name of the vessel changes.

(f) *Duration.* A permit is valid until it is voluntarily returned or expires or is revoked, suspended, or modified under 15 CFR Part 904.

(g) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(h) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(j) *Display.* Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be displayed for inspection in the pilot house of the vessel or in another appropriate place.

(k) *Suspension and revocation.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. As specified in Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this part; or if a civil penalty or criminal penalty imposed under the Magnuson Act is not satisfied.

(l) *Fees.* No fee is required for any permit under this part.

(m) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change.

(n) *Exempted fisheries program.* Any permit holder may initially request entry into the exempted fisheries program (§ 651.22) by telephoning 617-281-4454. The permit holder must give his/her name, vessel name, vessel permit number, the specific exemption requested, the starting date and estimated duration of participation in the program, and the area of operation. The permit holder must have the letter of authorization aboard at all times while he/she is engaged in an exempted fishery.

§ 651.5 Recordkeeping and reporting requirements. [Reserved]

§ 651.6 Vessel identification.

(a) *Official number.* Each fishing vessel over 25 feet in length subject to this part must display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for vessels over 65 feet in length, and at least 10 inches in height for vessels over 25 feet in length. The length of a vessel, for purposes of this section, will be the length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each vessel subject to this part will

(1) Keep the vessel's name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(d) *Nonpermanent markings.* Vessels carrying fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for multispecies finfish.

§ 651.7 Prohibitions.

(a) It is unlawful for any person owning or operating a vessel issued a permit under § 651.4 to do any of the following:

(1) Land or possess any multispecies finfish which fails to meet the minimum fish sizes specified in § 651.23; and

(2) Fail to affix and maintain permanent markings as required by § 651.6.

(b) It is unlawful for any person to do any of the following:

(1) Use any vessel of the United States (except recreational fishing vessels) for taking, catching, harvesting, or landing any multispecies finfish taken from the EEZ unless the vessel or operator has a valid permit issued under this part and the permit is aboard the vessel;

(2) Fish within the large-mesh area specified in § 651.20(a) with nets smaller than the minimum size specified in § 651.20(b) unless the vessel is registered in an exempted fisheries program established under § 651.22;

(3) Fish in either area specified in § 651.21 during a period in which that area is closed, unless allowed by that section;

(4) Dump the contents of the net after being signaled by an authorized officer that the vessel is to be boarded.

(5) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, or export any multispecies finfish taken, retained or imported in violation of the Magnuson Act, this part or any other regulation under the Magnuson Act;

(6) Import regulated species which are inconsistent with § 651.23;

(7) Make any false statement in connection with an application under § 651.4 or fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(8) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchasing, selling, or transferring of any multispecies finfish.

(9) Refuse to permit an authorized officer to board a fishing vessel or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit under the Magnuson Act.

(10) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (b)(5) of this section;

(11) Resist a lawful arrest for any act prohibited by this part;

(12) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the

knowledge that such other person has committed any act prohibited by this part;

(13) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(14) Fail to comply immediately with enforcement and boarding procedures specified in § 651.8;

(15) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested multispecies finfish not otherwise specifically authorized under § 651.26 to any foreign fishing vessel within the EEZ; or

(16) Violate any provisions of the exempted fisheries program specified in § 651.22.

(c) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

(d) *Presumption.* The possession of multispecies finfish which do not meet the minimum sizes specified in § 651.23 for sale will be *prima facie* evidence that such multispecies finfish were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel fishing exclusively within State waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

(e) *Dumping.* No person, having been signaled by an authorized officer, may dump on board or into the water the contents of the net before the authorized officer has permitted the net to be emptied.

§ 651.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable) and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high

place throughout the fishing year with cod end mesh sizes less than the regulated size, provided that mid-water trawl gear is used exclusively, and the bycatch of multispecies finfish is not greater than one percent by weight of all other fish aboard the vessel at the end of each fishing trip.

(2) In the closed area described for the Southern New England/Mid-Atlantic Region in § 651.21, fishing for herring, mackerel, and squid with mid-water trawl gear may be permitted by the Regional Director subject to the stipulation that no regulated species may be retained aboard or landed.

(f) *Mesh measurements.* (1) Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the cod end will be measured at least 10 meshes from the lacings, beginning at the after-end and running parallel to the long axis.

(2) No fishing vessel may use any means or device, including, but not limited to, chafing gear, liners, or double nets, if it would obstruct the meshes of the cod end or otherwise diminish the size of the meshes of the cod end. However, canvas, netting, or other material may be attached to the under side of the cod end to reduce wear and prevent damage so long as no more than 50 percent of the meshes are obstructed. Net strengtheners may be attached to the cod end of trawl nets, providing such net strengtheners consist of mesh material similar to the material of the cod end and have a mesh size of at least twice the authorized minimum mesh size.

§ 651.21 Closed areas.

(a) *Georges Bank.* No person may fish within the following areas during the months of February through May.

(1) An area known as Closed Area I (see Figure 2) bounded by straight lines (rhumb lines) connecting the following coordinates in the order stated:

(i) 40°53' N. latitude, 68°53' W. longitude;

(ii) 41°35' N. latitude, 68°30' W. longitude;

(iii) 41°50' N. latitude, 68°45' W. longitude; and

(iv) 41°50' N. latitude, 69°40' W. longitude;

(2) An area known as Closed Area II (see Figure 2) bounded by three straight lines described as follows:

(i) A line originating at 41°15' N. latitude, 67°00' W. longitude, projected eastward along 41°15' N. latitude to the

point of intersection with the United States/Canada Maritime Boundary;

(ii) A second line originating at 41°15' N. latitude, 67°00' W. longitude, projected northward along 67°00' W. longitude to the point of intersection with the United States/Canada Maritime Boundary; and

(iii) That portion of the United States/Canada Maritime Boundary that intersects with the lines described in (2) (i) and (ii).

(3) *Exceptions.* Paragraphs (a) (1) and (2) of this section do not apply to the following:

(i) Longline vessels that fish with hooks having a gape of not less than 1.18 inches (30 mm), Closed Area I, only;

(ii) Pot gear designed and used to take lobsters; or

(iii) Dredges designed and used to take scallops.

(4) The Regional Director may open either or both Closed Areas I and II prior to the scheduled opening in May by notice in the *Federal Register*, if he determines that concentrations of spawning fish are no longer in the area(s).

(b) *Southern New England/Mid-Atlantic Region.*

(1) Except as provided in § 651.20(d), and paragraph (b)(3) of this section, during a closure, no person may fish within the area bounded by straight lines (rhumb lines) in the order stated (see Figure 3):

(i) The line drawn from the intersection of LORAN C, 9960-Y-43700 and 72°20' W. longitude southward along 72°20' W. longitude to the intersection with line LORAN C, 9960-Y-43500;

(ii) Then eastward LORAN C, 9960-Y-43500 to the intersection with line 72°00' W. longitude;

(iii) Then northward along 72°00' W. longitude to the intersection with line LORAN C, 9960-Y-43600;

(iv) Then eastward along LORAN C, 9960-Y-43600 to the intersection with line 70°40' W. longitude;

(v) Then southward along 70°40' W. longitude to the intersection with line LORAN C, 9960-Y-43500;

(vi) Then eastward along LORAN C, 9960-Y-43500 to the intersection with line 69°40' W. longitude;

(vii) Then northward along line 69°40' W. longitude to the intersection with line 40°50' N. latitude;

(viii) Then eastward along 40°50' N. latitude to the intersection with line 70°30' W. longitude;

(ix) Then northward along 70°30' W. longitude to the intersection with line 41°00' N. latitude;

(x) Then westward along 41°00' N. latitude to the intersection with line LORAN C, 9960-Y-43750;

(xi) Then westward along LORAN C, 9960-Y-43750 to the intersection with line 72°00' W. longitude;

(xii) Then southward along 72°00' W. longitude to the intersection with line LORAN C, 9960-Y-43700; and

(xiii) Then westward along LORAN C, 9960-Y-43700 to the point of origin.

(2) The area defined in (b)(1) of this section will be regulated as follows—

(i) The portion of the area east of 71°30' W. longitude will close on March 1 of each year and the portion west of 71°30' W. longitude will close on April 1 of each year.

(ii) The entire area will be reopened by the Regional Director on or after May 1 of each year after the Regional Director has determined that the closure achieved the 20 percent spawning potential for yellowtail flounder and winter flounder.

(3) *Exceptions.* (i) Paragraph (b)(1) of this section does not apply to—

(A) Pot gear designed and used to take lobsters; and

(B) Dredge gear designed and used to take scallops, ocean quahogs, or surf clams.

(ii) The Regional Director may permit the use of mid-water trawl nets with cod ends constructed of mesh less than the size prescribed in § 651.20(b) in the closed area described in § 651.21(b) to fish for herring, mackerel, and squid provided that the total amount of multispecies finfish taken does not exceed one percent of the weight of all other fish aboard the vessel at the end of each fishing trip.

(A) Upon final implementation of the Plan, the Regional Director will determine the allowable mesh that may be used in mid-water trawl nets within the closed area. Such determination will be published in the *Federal Register*.

(B) Any person intending to use mid-water trawl nets in any area described in paragraph (b) of this section must notify the Regional Director in writing 30 days prior to the date on which the nets will be used. The Regional Director will issue a letter authorizing the use of such nets. Fishing in these areas with mid-water trawl nets may not commence without a letter of authorization carried aboard the vessel.

§ 651.22 Exempted fishery programs.

(a) *General.* The Regional Director will establish and implement an exempted fishery program to allow fishing vessels to engage in small mesh fisheries for species which require the use of mesh smaller than the size

specified in § 651.20(b). Exempted fishing may be conducted shoreward of the area bounded by the straight lines (rhumb lines) in the order stated (see Figure 1)—

(1) The line beginning at the intersection of the territorial sea and 41°35' N. latitude and proceeding eastward along 41°35' N. latitude to the intersection with line 69°40' W. longitude;

(2) Then northward along 69°40' W. longitude to the intersection with line LORAN C, 9960-X-25600;

(3) Then eastward along LORAN C, 9960-X-25600 to the intersection with the line demarking the U.S./Canadian boundary; and

(4) Then northward along the U.S./Canadian boundary line to the intersection with the territorial sea.

(b) *Entry.* (1) Any person holding a valid Federal multispecies finfish permit may apply to fish under the exempted fisheries program by following the procedures set forth in § 651.4(n).

(2) The period of participation must be for at least 7 days, but not longer than 30 days. There is no limit on the number of times a vessel can apply to participate in the exempted fisheries program.

(c) *Certification.* (1) The Regional Director will certify in writing the entry of the applicant into the exempted fisheries program. Entry may be denied to an applicant based upon previous violations of the Magnuson Act or these regulations. Any applicant denied entry into the program may request a hearing. The hearing will be conducted in accordance with the procedures of 15 CFR Part 904.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(d) *Commencement of fishing.* Fishing under the exempted fisheries program may begin after the applicant has received the certification from the Regional Director provided that a letter of authorization is retained aboard the vessel and displayed for inspection in the pilot house of the vessel, or in another appropriate place.

(e) *Limitations.* (1) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and to restrictions placed on the allowable percentage of multispecies finfish to other specified species as follows:

| Period | Exempt species | Comment |
|----------------------|-----------------------|---|
| June to November. | Open..... | Regulated species may not exceed 10 percent of the total landings of all species during the reporting period. |
| December to January. | Whiting..... | Regulated species may not exceed 10 percent of the amount of whiting landed over the reporting period; the fishery will be monitored by sea sampling. |
| January to April.... | Shrimp..... | Regulated species may not exceed 10 percent of the amount of shrimp landed during the reporting period. |
| December to May. | Herring mackerel..... | Regulated species may not exceed 10 percent of the amount of herring plus mackerel landing over the reporting period. |

(2) Adjustments in the seasons, species or percentages of the exempted fisheries will be accomplished in accordance with the procedures detailed in § 651.24(c).

(f) *Recordkeeping and reporting.* The reporting period for the exempted fisheries will be 30 calendar days. Within one week from the expiration of the reporting period or withdrawal from the program under paragraph (h), or receipt of a notice of revocation under paragraph (i), the participant must mail or deliver to the Regional Director a NOAA Form 88-153 "Fishing Vessel Record" listing or on business records that provide equivalent information, in pounds, all fish landed during participation in the exempted fishery program on a trip-by-trip basis. The participant must maintain trip landing records that are certified as accurate by both the buyer and seller for one year after his/her participation in the exempted fishery program. These forms must be supplied upon the request of the Regional Director to confirm the information presented in NOAA Form 88-153. Buyer certification may be satisfied by the buyer's signature on the trip record that is retained by the seller (vessel operator). The responsible fishing vessel owner or operator may maintain accurate trip-by-trip landings data on a form provided by the Regional Director.

(g) *Expiration or withdrawal.* Participation in the program expires at the end of the participation period under § 651.4(n), or when the owner's or vessel's name changes, or when a participant who has been duly operating in the program for at least 7 days notifies the Regional Director of his/her intent to withdraw from the program. Such withdrawal will be effective when

the participant receives notice of the withdrawal from the Regional Director.

(h) *Revocation.* The Regional Director may end the participation of any applicant in the exempted fisheries program upon issuance of a notice of violation and assessment for violating any provisions of the program or the Magnuson Act. Notification will be in writing and take effect upon receipt by the participant. Any applicant whose certification is revoked may request a hearing. The hearing will be conducted in accordance with the procedures of 15 CFR Part 904.

§ 651.23 Minimum fish size.

(a) The minimum sizes (total length) for certain related finfish follow:

| (1) Commercial | Year 1 | Year 2 |
|---|----------------|------------|
| Cod, haddock and pollock. | 17 inches..... | 19 inches. |
| Witch flounder (gray sole). | 14 inches..... | 14 inches. |
| Yellowtail flounder, American plaice (dab). | 12 inches..... | 12 inches. |
| Winter flounder (blackback). | 11 inches..... | 11 inches. |

(2) *Recreation fishing vessels, charter and party boats, and individuals.*

(i) Effective—Year 1—

Cod and haddock: 15 inches.

(ii) Effective—Years 2 and 3—

Cod and haddock: 17 inches.

(iii) Effective—Years 4 and onward—

Cod and haddock: 19 inches

(b) The minimum lengths allowed by paragraph (a) of this section are measured on a straight line from the tip of the snout to the end of the tail

§ 651.24 Additional measures.

(a) *Regulated mesh areas.* If fishing mortality for a key species is determined to jeopardize achievement of the management objectives, or if a new year class of haddock is jeopardized by the conduct of the fishery, then four additional options to control fishing mortality will be considered for Council action (no priority implied):

(1) Modify existing measures;

(2) Establish further time/area restrictions;

(3) Increase minimum fish size; or

(4) Increase mesh size.

(b) *Non-regulated mesh area.* If fishing mortality for key stocks not adequately protected by the regulated mesh area remains too high to achieve the plan objectives, then three additional options to further control fishing mortality will be considered for Council action using the regulatory amendment process (public hearings will be held):

(1) Close key fishing grounds in appropriate areas and times necessary to control fishing mortality;

(2) Increase minimum fish size; or

(3) Establish a minimum mesh size for all or part of the area during a specified period of the year.

(c) *Adjustment of management measures.* (1) The Council will establish a Multispecies Technical Monitoring Group (TMG). The TMG will meet at least annually or more often to evaluate the effectiveness of the Plan in meeting its objectives. The TMG will make its recommendations to the Council of alternative or additional measures including but not limited to the scope of those measures described in paragraphs (a) and (b) of this section.

(2) *Determination.* A Committee designated by the Council will review the recommendations of the TMG in consultation with industry advisors. The Council will consider the recommendations of the TMG and the Committee and the views of the industry advisors and will determine whether and what additional or alternative measures will be proposed to achieve the objectives of the Plan.

(3) *Public comment.* The Council will hold public hearings at appropriate times and places to allow interested persons an opportunity to be heard on the proposed changes to the FMP.

(4) *Procedure.* (i) *FMP amendment.* If the recommendations of the Council are outside the scope of paragraphs (a) and (b) of this section, the Council will amend the FMP.

(ii) *Regulatory amendment.* If the recommendations of the Council are within the scope of paragraphs (a) and (b) of this section and do not impose gear or area restrictions in the Mid-Atlantic area with which the Mid-Atlantic Fishery Management Council has not agreed, the Council will forward the recommendations to the Regional Director.

(A) The Regional Director will review the Council's recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejects the recommendations, he will provide written reasons to the Council for the rejection and existing regulations will remain in effect until the issue is resolved.

(B) If the Regional Director concurs that the Council's recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director shall recommend that the Secretary publish a proposed rule in the *Federal Register* prior to the appropriate fishing year. A 30-day period for public comment will be afforded. The Secretary will consider all comments received and will publish a final rule, with revisions as may be required, following the end of the public comment period.

§ 651.25 Experimental fishing.

The Secretary may authorize experimental fishing for the acquisition of information and data activities, not

otherwise authorized by these regulations.

§ 651.26 Gear marking requirements.

(a) Bottom-tending fixed gear (gill nets and longlines) fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys, gill nets, or longlines.

(b) Bottom-tending gill net or longline gear must be marked so that the westernmost end (meaning the half compass circle from magnetic south through west to and including north) of the gear displays a standard 12-inch tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 feet above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to and including south) of the gear must display only the standard 12-inch tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gill nets must not exceed 6,600 feet between the end buoys.

(d) In the Gulf of Maine large mesh area specified in § 651.20, sets of gill net gear which are of an irregular pattern or which deviate more than 30' from the original course of the set will be marked at the extremity of the deviation with an additional marker which must display two or more visible streamers and may either be attached to or independent of the gear.

BILLING CODE 3510-22-M

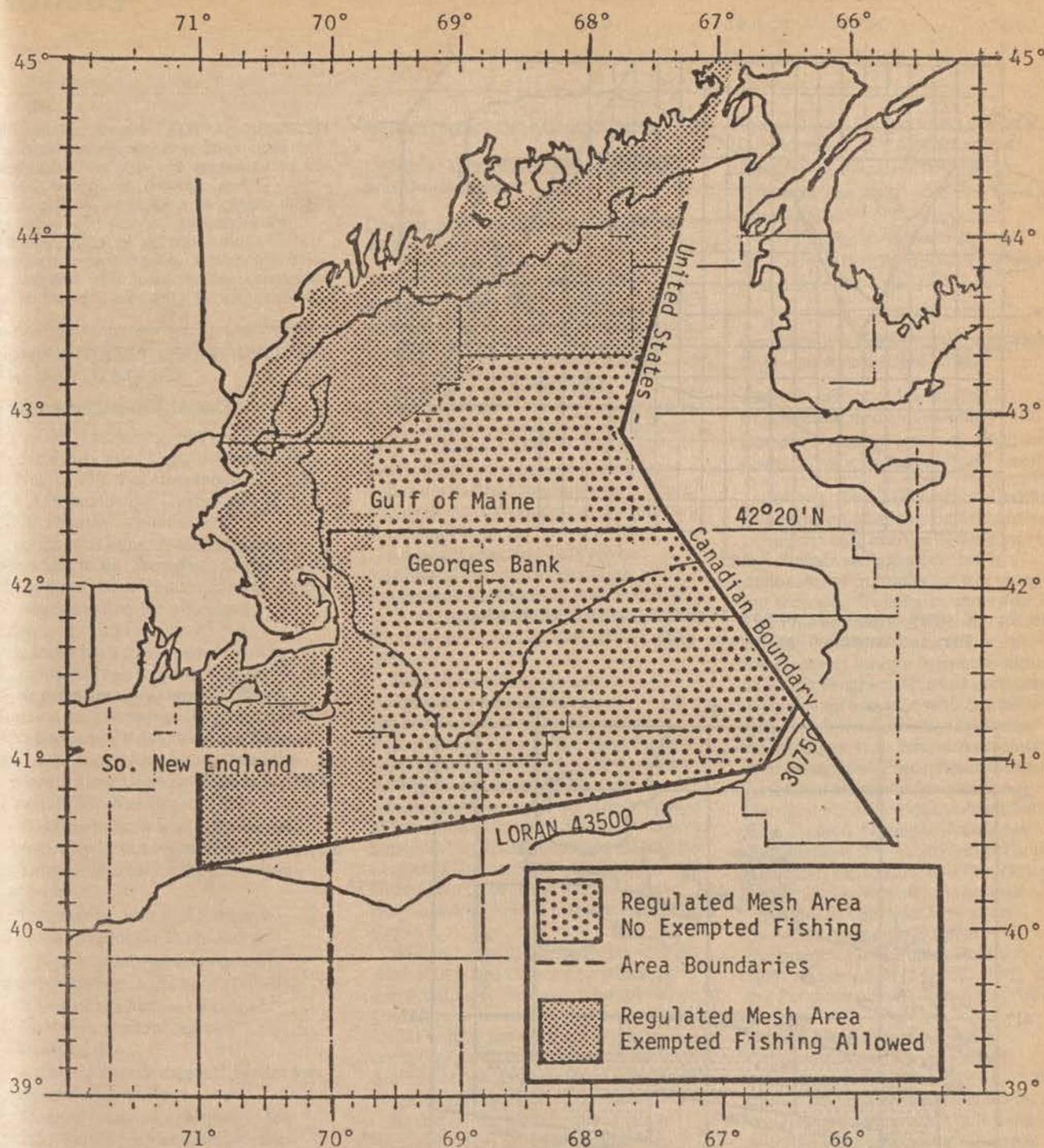


Figure 1. Regulated large mesh area showing the part where exempted fishing can occur. Not to scale. For information purposes only.

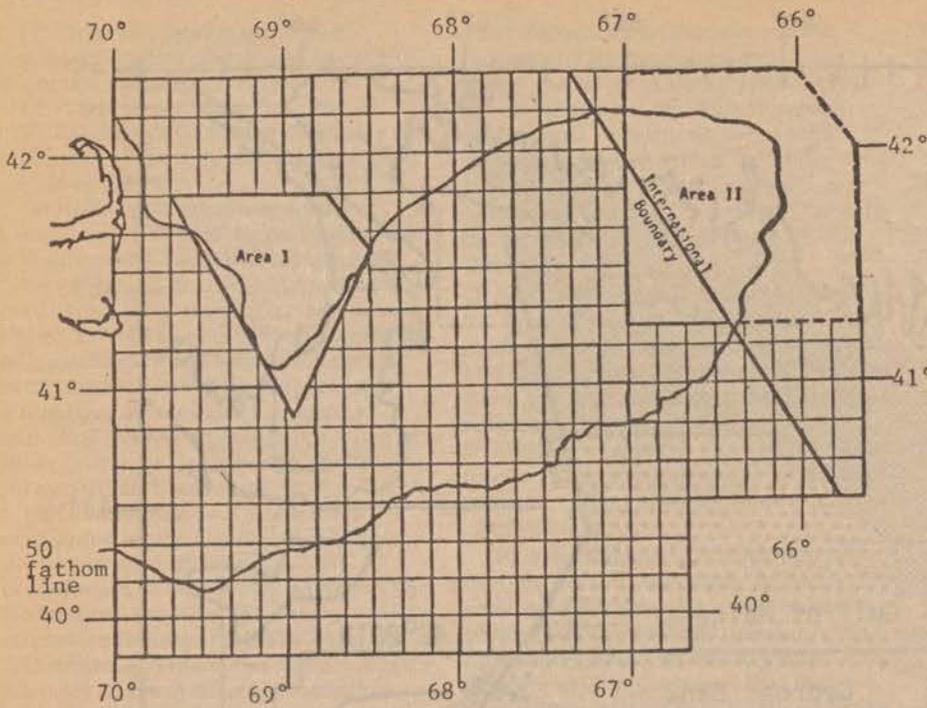


Figure 2. Closed spawning Areas I and II. Not to scale. For information purposes only.

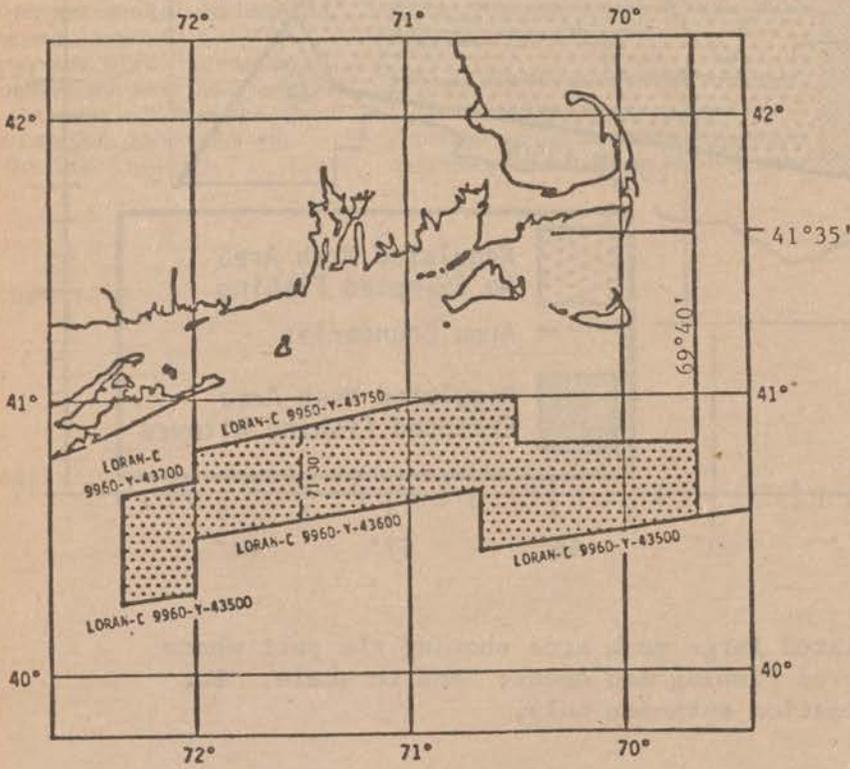


Figure 3. Southern New England closed spawning area. Not to scale. For information purposes only.

Notices

Federal Register

Vol. 51, No. 110

Monday, June 9, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary Session on Thursday, June 19, 1986 at 1:15 p.m. and Friday, June 20, 1986 at 9:30 a.m. in the Amphitheater of the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC.

The Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects.

1. Agencies' Use of Alternative Dispute Resolution Techniques.
2. Non-lawyer Assistance and Representation in Agency Activity.
3. Use of the Federal Rules of Evidence in Federal Agency Adjudications.
4. The Split-Enforcement Model for Agency Adjudication.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., Suite 500, Washington, DC 20037, telephone (202) 254-7020.

Dated: June 4, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86-12860 Filed 6-6-86; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Cooperative Agreements; Alabama A&M University

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to enter into a cooperative agreement.

The Office of International Cooperation and Development intends to enter into a cooperative agreement with Alabama A&M University to provide partial support funding for collaborative international agricultural research on "Development of Nutritious Weaning Foods for Sierra Leone."

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

The Office of International Cooperation and Development announces the availability of funds during Fiscal Year 1986 to enter into a cooperative agreement with Alabama A&M University to collaborate on international research on "Development of Nutritious Weaning Foods for Sierra Leone." Approximately \$30,000 will be available in fiscal year 1986 to the University to conduct collaborative research with Sierra Leone's Fourah Bay College.

Assistance will be provided only to Alabama A&M University which is contributing resources and experience to conduct the research. Funds provided by OICD will be used for supplies, computer time, and international travel. Sierra Leone's Fourah Bay College will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated that approximately \$30,000 will be available in fiscal year 1986 to support this work. A total of \$58,000 is anticipated to be provided for this cooperative research effort over a three year period, subject to the availability of federally appropriated funds in future fiscal years.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of

International Cooperation and Development, U.S. Department of Agriculture (58-319R-6-028).

Dated: 4 June, 1986.

Allen Wilder,

Chief, Management Services Branch.

[FR Doc. 85-12841 Filed 6-6-85; 8:45 am]

BILLING CODE 3410-DP-M

Cooperative Agreements; American Soybean Association et al.

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to enter into cooperative agreement(s).

Activity: The Office of International Cooperation and Development intends enter into cooperative agreements to collaborate with the several agribusiness organizations in carrying out technical training courses and study tours for agriculturalists from middle income countries under the auspices of the Cochran Middle Income Country Training Program. Current planning includes agreements with the following organizations: American Soybean Association, U.S. Wheat Associates, American Seed Trade Association, American Holstein Association, National Forest Products Association, Rice Council, National Renderers Association, U.S. Feed Grains Council, Tobacco Associates, and the Brown Swiss Cattle Breeders Association.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

The Office of International Cooperation and Development announces the availability of funds during fiscal year 1986 to enter into cooperative agreements collaborating with the above listed agribusiness organizations in carrying out technical courses and study tours for agriculturalists from middle income countries. Technical courses will take place at universities and private industries. The study tours will take place on farms and at industries. Assistance will be provided only to the above listed agribusiness organizations who will be involved in participant identification, selection, and program

development. Therefore, this is not a formal request for applications. It is estimated that approximately \$100,000 will be available in fiscal year 1986 to support this work. It is anticipated that the cooperative agreements will be funded over a budget period of 12 months.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of International Cooperation and Development, U.S. Department of Agriculture, Washington, DC 20250.

Dated: June 4, 1986.

Allen Wilder,

Chief, Management Services Branch.

[FR Doc. 86-12842 Filed 6-8-86; 8:45 am]

BILLING CODE 3410-DP-M

Federal Grain Inspection Service

U.S. Standards for Barley; Meeting

Notice is hereby given of a public meeting to be held to discuss possible changes in the U.S. Standards for Barley. Major changes to the barley standards were last made in 1976. Since these changes became effective, some members of the barley industry have asked that certain provisions of the barley standards be modified. Accordingly, the following meeting is scheduled.

Name: Federal Grain Inspection Service Meeting on Barley Standards.

Date: June 24, 1986.

Place: Thunderbird Motel, 28th Avenue and Highway 494, Bloomington, Minnesota.

Time: 10:00 a.m.

Purpose: To provide and solicit pertinent information to make the barley standards a more useful marketing tool. Information obtained at this meeting will be utilized to evaluate possible future action on the U.S. Standards for Barley. The agenda includes a discussion by the Federal Grain Inspection Service of possible changes in the barley standards and provides an opportunity for comments from interested persons.

Persons who wish to present comments during the meeting are requested to inform Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1738 by June 17, 1986.

Dated: June 4, 1986.

Kenneth A. Gilles,

Administrator.

[FR Doc. 86-12947 Filed 6-8-86; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Coronado National Forest, Graham County, AZ; Revised Release of an Environmental Impact Statement

As announced on July 16, 1985, the Department of Agriculture, Forest Service, is preparing an environmental impact statement for a proposed astrophysical area on the Safford Ranger District, Coronado National Forest, Graham County, Arizona.

A range of alternatives for future management of this area are being considered. Several of these include no astrophysical development, as required by the agency and also suggested by the public. Other alternatives include different levels of astrophysical development and the location of support facilities.

The revised schedule to have a draft environmental impact statement available for public review is approximately late September 1986. The final environmental impact statement should be available by January 1987.

Sotero Muniz, Regional Forester of the Southwestern Region of the Forest Service in Albuquerque, New Mexico, is the responsible official.

Questions concerning the analysis and schedule should be addressed to Robert Tippeconnic, Forest Supervisor, Coronado National Forest, Tucson, Arizona 85701.

Dated: May 30, 1986.

Sotero Muniz,

Regional Forester.

[FR Doc. 86-12826 Filed 6-8-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[(A-201-504) and (C-201-505) Mexico; (A-583-508) and (C-583-509) Taiwan; (A-570-506) The People's Republic of China]

Postponement of Antidumping Duty Determinations for Porcelain-On-Steel Cooking Ware from Mexico, Taiwan and the People's Republic of China, and Postponement of the Deadline for Final Countervailing Duty Determinations for Porcelain-On-Steel Cooking Ware from Mexico and Taiwan

ACTION: Notice.

SUMMARY: The final antidumping duty determinations involving porcelain-on-steel cooking ware from Mexico, Taiwan, and the People's Republic of China are being postponed until not later than October 2, 1986, as permitted

in section 735(a)(2) of the Tariff Act of 1930, as amended.

Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), the deadline for the final countervailing duty determinations on porcelain-on-steel cooking ware from Mexico and Taiwan is also extended until October 2, 1986, to coincide with the revised date of the final antidumping duty determinations. In keeping with paragraph 8 of the "Understanding Between Mexico and the United States Regarding Subsidies and Countervailing Duties," the Department will terminate the suspension of liquidation in the countervailing duty investigation on porcelain-on-steel cooking ware from Mexico 120 days after the date of publication of the preliminary determination in that case.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT:

Loc Nguyen (all countries), (202) 377-0167 or Betsy Killian (Mexico) 377-1673; Laurel LaCivita (Taiwan) 377-0189; Tom Bombelles (the People's Republic of China) 377-3174. Written inquiries should be addressed to the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, Attn: Room B-099.

SUPPLEMENTARY INFORMATION:

On December 4, 1985, we received antidumping duty and countervailing duty petitions filed in proper form by the Porcelain-On-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, producers of porcelain-on-steel cooking ware. The Department found that the petitions contained sufficient grounds on which to initiate investigations, and on December 24, 1985, the Department initiated countervailing duty investigations on porcelain-on-steel cooking ware from Mexico and Taiwan (50 FR 53355 and 50 FR 53354) and antidumping duty investigations on the subject merchandise from Mexico, Taiwan and the People's Republic of China (50 FR 53352 and 50 FR 53353, and 50 FR 53352).

On March 7, 1986, we issued a preliminary affirmative countervailing duty determination for Mexico (51 FR 7978) and a preliminary negative countervailing duty determination for Taiwan (51 FR 7982). These notices stated that we expected to issue our final determinations by May 13, 1986.

On March 10, 1986, petitioners requested, and the Department

subsequently granted, a postponement of the deadline for the final countervailing duty determinations in the investigations of the subject merchandise from Mexico and Taiwan to coincide with the final determinations in the antidumping investigations (51 FR 10249 and 51 FR 15519 respectively).

On May 20, 1986, the Department preliminarily determined that porcelain-on-steel cooking ware from Mexico, Taiwan, and the People's Republic of China is being, or is likely to be, sold in the United States at less than fair value (51 FR 18470, 51 FR 18472, and 51 FR 18470 respectively). The notices stated that we would issue our final determinations by July 28, 1986. On May 16, 1986, counsel for respondents in the antidumping duty investigations on porcelain-on-steel cooking ware from Mexico and Taiwan requested that the Department postpone the final determinations until not later than 135 days after the date of publication of the preliminary determinations in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). On May 21, 1986, counsel for respondents from the People's Republic of China filed a similar request. The respondents are qualified to make this request because they are exporters who account for a significant proportion of exports to the United States of the merchandise under investigation. Accordingly the period for the final determinations in these cases is hereby extended. We intend to issue the final determinations no later than October 2, 1986.

Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), at petitioner's request the Department postponed the deadline for the final countervailing duty determinations in the investigations of the subject merchandise from Mexico and Taiwan to coincide with the final determinations in the antidumping duty investigations. Therefore, in accordance with 19 U.S.C. 1671(a)(1), the final countervailing duty determinations are also extended until October 2, 1986.

As required by the "most favored nation" clause in paragraph 8 of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties," which was signed on April 23, 1985, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on porcelain-on-steel cooking ware from Mexico on July 5, 1986, which is 120 days from the date of publication of the

preliminary determination in that case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after July 5, 1986. The suspension of liquidation will not be resumed unless and until a final affirmative ITC determination is published in that case. We will also direct the U.S. Customs Service to hold the entries suspended prior to July 5, 1986, until the conclusion of that investigation.

In accordance with § 355.35 of our regulations, we will hold hearings, if requested, to afford interested parties an opportunity to comment on the preliminary antidumping duty determinations. Individuals who wish to participate in the hearings must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within ten (10) days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

The United States International Trade Commission is being advised of the postponements in accordance with section 735(d) and section 705(d) of the Act.

Comments

In order to have written comments considered for our final antidumping duty and countervailing duty determinations, parties must submit them by September 2, 1986. All written views should be filed at the U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, in at least 10 copies.

This notice is published pursuant to section 735(d) and 705(d) of the Act.

Dated: June 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-12928 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Certain Flat Rolled Products; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain flat rolled products.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "... determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a short supply request for a certain AISI 1080 flat rolled carbon spring steel product, in coils, that is hardened, tempered, grinded, and polished. It will be used as a component in a carpet pile looping and tufting device. The product ranges from 0.120 to 0.875 inch in width and from 0.038 to 0.090 inch in thickness.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Dated: June 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-12933 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-177R. Applicant: University of California, Livermore, CA 94550. Instrument: Mass Spectrometer, Model VG 3001A with Accessories. Manufacturer: VG Instruments, Inc., United Kingdom. Original notice of this resubmitted application was published in the Federal Register of June 11, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of providing an absolute sensitivity of N_2 (nitrogen 28 peak) stable to 0.4 percent over 24 hours and two percent over one week; and relative sensitivity of CO_2 (44 of $CO_2/28$ of N_2) and n-butane (43 of $n-C_4H_{10}/28$ of N_2) stable of 0.2 percent over 24 hours and one percent over one week. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff,

[FR Doc. 86-12935 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related

records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-024R. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: Thermal Ionization Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotopes Limited, United Kingdom. Original notice of this resubmitted application was published in the Federal Register of November 6, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of providing an external precision of 30 parts per million on neodymium. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff,

[FR Doc. 86-12934 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In FR Doc. 86-12162 appearing on page 19580 in the issue of Friday, May 30, 1986, make the following correction:

In the second column, in the second table, under "Periods to be reviewed", the last entry should read "10/83-12/84".

BILLING CODE 1505-01-M

[C-351-604]

Preliminary Negative Countervailing Duty Determination; Brass Sheet and Strip From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip. The estimated net subsidy is 0.48 percent *ad valorem*. The rate is *de minimis*, and therefore our preliminary countervailing duty determination is negative. We have notified the U.S. International Trade Commission (ITC) of our determination.

If this investigation proceeds normally, we will make our final determination by August 18, 1986.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3174, or (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that the following programs are countervailable:

- Preferential Working Capital Financing for Exports—Resolution 950;
- Export Financing Under the CIC-CREGE 14-11 Circular; and
- Income Tax Exemption for Export Earnings.

We preliminarily determine the estimated net subsidy to be 0.48 percent *ad valorem*. Although we have determined these programs to be countervailable, the respondents received *de minimis* benefits during the review period, calendar year 1985. Therefore, we preliminarily determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip.

Case History

On March 10, 1986, we received a petition in proper form from American Brass, Bridgeport Brass Corporation, Chase Brass and Copper Company, Hussey Copper Ltd., the Miller Company, Olin Corporation-Brass group, and Revere Copper Products, Inc., domestic manufacturers of brass sheet and strip, and by the International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), the Mechanics

Educational Society of America (Local 56), and the United Steelworkers of America (AFL-CIO/CLC), filed on behalf of the U.S. industry producing brass sheet and strip.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Brazil of brass sheet and strip receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 31, 1986, we initiated such an investigation (51 FR 11776). We stated that we expected to issue a preliminary determination by June 3, 1986.

Since Brazil is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On April 24, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of brass sheet and strip (51 FR 16235).

On April 9, 1986, we presented a questionnaire to the government of Brazil in Washington, D.C. concerning the petitioners' allegations and we requested a response by May 9, 1986. On April 30, 1986, upon request of respondent, we granted additional time to submit a response. On May 16, 1986, we received a response to our questionnaire.

There are two known producers and exporters in Brazil of brass sheet and strip that exported to the United States during the review period. These are Laminacao Nacional de Metais S.A. (Laminacao) and Eluma S.A. Industria e Comercio (Eluma). According to the government of Brazil, Laminacao and Eluma account for substantially all exports of brass sheet and strip to the United States.

Scope of Investigation

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass sheet and strip, currently classified under the *Tariff Schedules of the United States Annotated (TSUSA)* item numbers 612.3960, 612.3982, and 612.3986. The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200

series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the *Federal Register* (49 FR 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1985. In its response, the government of Brazil provided data for the applicable period, including financial statements for Laminacao and Eluma.

Based upon our analysis of the petition and the response to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

We preliminarily determine that countervailable benefits are being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip under the following programs:

A. *Preferential Working-Capital Financing for Exports.* The Carteira do Comercio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. These working-capital loans were originally authorized by Resolution 674. During the review period, these loans were provided under Resolution 950 as amended by Resolution 1009.

Eligibility for this type of financing is determined on the basis of past export performance or of an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the maximum level of eligibility for such financing was 20 percent of the adjusted value of exports.

Following approval by CACEX of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates, which must be used within one year of their issue, may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation. Loans provided through this program are made for a term of up to one year.

Resolution 950 loans are available from commercial banks, with interest calculated at the time of repayment. Under Resolution 950, the Banco do Brasil paid the lending institution an equalization fee of up to 10 percent of the interest (after monetary correction). Resolution 950 was amended in May 1985 and the equalization fee was increased to 15 percent of the interest (after monetary correction). Therefore, if the interest rate charged to the borrower is less than full monetary correction plus 15 percent, the Banco do Brasil pays the lending bank the difference, up to 15 percent. According to the response, the lending bank passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due. Receipt of the equalization fee by the borrower reduces the interest rate on these working capital loans below the commercial rate of interest. Resolution 950 loans are also exempt from the Imposto Sobre Operacoes Financieras (IOF), a tax charged on all domestic financial transactions in Brazil.

Since receipt of working-capital financing under Resolution 950 is contingent on export performance, and provides funds to participants at preferential rates, we preliminarily determine that this program confers an export subsidy.

In order to calculate the benefit, we multiplied the value of the Resolution 950 loans repaid in 1985 by the sum of the equalization fee and the IOF. We then allocated the benefit over the total value of all 1985 exports, resulting in an estimated net subsidy of 0.43 percent *ad valorem*.

B. *Export Financing Under the CIC-CREGE 14-11 Circular.* Under its CIC-CREGE 14-11 Circular (14-11), the

Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. Loans under this program are also exempt from the IOF.

According to the response, one company received one 14-11 loan on which interest was paid during the review period. We compared the interest charged on the 14-11 loan to our short-term loan benchmark for Brazil, i.e., the nominal discount rate on accounts receivable. This comparison shows that the rate on the 14-11 loan is below the benchmark. Since 14-11 loans are available only to exporters and since the interest charged is less than the benchmark, we preliminarily determine that the 14-11 loan confers an export subsidy.

In order to calculate the benefit from this program, we multiplied the principal of the 14-11 loan by the difference between our benchmark rate and the interest rate charged on 14-11 loan, adjusted by the value of the IOF exemption. We allocated that benefit over the total value of all exports, resulting in an estimated net subsidy of 0.05 percent *ad valorem*.

C. Income Tax Exemptions for Export Earnings. Under Decree-Laws 1158 and 1721, Brazilian exporters are eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we preliminarily determine that this exemption confers an export subsidy.

In its response, the government of Brazil stated that even though the brass sheet and strip producers under investigation claimed this deduction on their 1984 tax returns, this claim did not affect their tax liability during the review period because the respondents would have incurred a tax loss even absent this exemption. Therefore, although we preliminarily determine this tax exemption program to be countervailable, the estimated net countervailable benefit during the review period is zero.

II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers, or exporters in Brazil of brass sheet and strip did not use the following programs which were

listed in our notice of "Initiation of a Countervailing Duty Investigation: Brass Sheet and Strip from Brazil" (51 Fed. Reg. 11776).

A. Resolution 330 of the Banco Central do Brasil. Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. Exporters of brass sheet and strip would be eligible for financing under this program. However, the government of Brazil stated in its response that none of the brass sheet and strip producers under investigation participated in this program during the review period; therefore, we preliminarily determine that this program was not used.

B. Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI). Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

The government of Brazil stated in its response that none of the brass sheet and strip producers subject to the investigation received incentives under this program during the review period.

C. The BEFIE Program. The Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIE) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIE may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;

- Under article 13 of Decree No. 72.1219, BEFIE may extend the carry-forward period for tax losses from four to six years; and

- Under article 14 of the same decree, BEFIE may allow special amortization of pre-operational expenses related to approved products.

In its response, the government of Brazil stated that brass sheet and strip producers under investigation did not participate in this program during the review period.

D. The CIE Program. Decree-Law 1428 authorized the Comissao para Incentivos a Exportacao (Commission for Export Incentives, or CIE) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. In its response, the government of Brazil stated that none of the brass sheet and strip producers under investigation participated in this program during the review period.

E. Accelerated Depreciation for Brazilian-Made Capital Equipment. Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. In the response, the government of Brazil stated that none of the brass sheet and strip producers under investigation used this program during the review period.

F. Incentives for Trading Companies. Under Resolution 643 of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 950. In its response, the government of Brazil stated that the brass sheet and strip producers under investigation did not receive any benefits under this program during the review period.

G. The PROEX Program. Short-term credits for exports are available under the Programa de Financiamento a Producao para a Exportacao (PROEX), a loan program operated by Banco Nacional do Desenvolvimento Economico e Social (National Bank of Economic and Social Development, or BNDES). In its response, the government of Brazil stated that none of the brass sheet and strip producers under investigation received loans or had loans outstanding under this program during the review period.

H. Resolution 68 and 509 (FINEX) Financing. Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (CONCEX) provide that CACEX may draw upon the resources of the Fundo de Financiamento a Exportacao (FINEX) to extend dollar-denominated loans to both exporters and foreign buyers of Brazilian goods. Financing is granted on a transaction-by-transaction basis. In its response, the government of Brazil stated that neither the brass sheet and strip producers under investigation nor U.S. buyers of

the subject merchandise received Resolution 68 or 509 financing or had outstanding loans during the review period.

I. Loans Through the Apoio o Desenvolvimento Tecnológico a Empresa Nacional (ADTEN). Petitioners allege that the government of Brazil maintains, through the Financiadora de Estudos e Projetos (FINEP), a loan program, ADTEN, that provides long-term loans on terms inconsistent with commercial considerations to encourage the growth of industries and development of technology. In its response, the government of Brazil stated that none of the companies under investigation had loans through this program outstanding during the review period.

J. Preferential Pricing of Electricity. Petitioners allege that the government of Brazil provides electricity at preferential prices to manufacturers, producers, and exporters of brass sheet and strip in Brazil. In its response the government of Brazil stated that the brass sheet and strip producers under investigation paid normal published rates for all electricity consumed.

K. BANDES Financing and Other Regional Financing. Petitioners allege that the government of Brazil provides financing on terms inconsistent with commercial considerations to the brass sheet and strip industry through regional development banks, such as BANDES. BANDES is the regional development bank for the state of Espírito Santo, where the respondent companies are located. In its response, the government of Brazil stated that a BANDES loan was made to a subsidiary of Eluma. However, that company does not produce the product under investigation. Accordingly, we preliminarily determine that BANDES financing was not used by producers of the subject merchandise.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential 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 consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the Department makes its final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35) we will hold a public hearing, if requested to afford interested parties an opportunity to comment on this preliminary determination at 10:00 on July 11, 1986, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of the publication of this notice in the Federal Register.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the confidential version and seven copies of the nonconfidential version of the prehearing briefs must be submitted to the Deputy Assistant Secretary by June 30, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.34, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: June 4, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-12929 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-427-603]

Preliminary Affirmative Countervailing Duty Determination: Brass Sheet and Strip From France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute

subsidies within the meaning of the countervailing duty law are being provided to manufactures, producers, or exporters in France of brass sheet and strip. The estimated net subsidy is 7.19 percent *ad valorem*.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of brass sheet and strip from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination on or before August 18, 1986.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Loc Nguyen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2830 or (202) 377-0167.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in France of brass sheet and strip. For purposes of this investigation, the following programs are found to confer subsidies:

- Government Equity Infusions and Other Financial Assistance to Trefimetaux S.A. (Trefimetaux) through Pechiney S.A. (Pechiney); and
- Certain Financing from Credit National.

We preliminarily determine the estimated net subsidy to be 7.19 percent *ad valorem* for all manufacturers, producers, or exporters in France of brass sheet and strip.

Case History

On March 10, 1986, we received a petition in proper form from American Brass, Bridgeport Brass Corporation, Chase Brass & Copper Company, Hussey Copper Ltd., the Miller Company, Olin Corporation-Brass Group, and Revere Copper Products, Inc., domestic manufacturers of brass sheet and strip, and the International

Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL-CIO/CLC), filed on behalf of the U.S. industry producing brass sheet and strip. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in France of brass sheet and strip, directly or indirectly, receive subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 31, 1986, we initiated such an investigation (51 FR. 11778). We stated that we expected to issue a preliminary determination on or before June 3, 1986.

Since France is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On April 24, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from France of certain brass sheets and strip (51 FR. 16235).

On April 9, 1986, we presented a questionnaire to the government of France, in Washington, DC, concerning the petitioners' allegations, and we requested a response by May 9, 1986. On May 7, 1986, we received a letter from the French Embassy in Washington, DC., requesting an extension of ten days for the filing of the questionnaire responses. An extension until May 16, 1986, was granted by the Department. On May 19, 1986, we received responses to our questionnaire from Pechiney, Trefimetaux, and the government of France. Additional information was supplied on May 22, 27, 29, and 30, 1986.

The government's response stated that Griset S.A. (Griset) had exported one small shipment of brass strip to the United States in 1985, but that it had no intention of exporting the products to the United States in the future. Griset requested that it be allowed not to respond to the questionnaire and that it be excluded from any countervailing duty order that the Department might publish. Griset's application for exclusion was not timely because it was

not made within 30 days after publication of the notice of initiation of the countervailing duty investigation. See 19 CFR 355.38. Moreover, Griset did not state that it had not participated in the programs under investigation. Therefore, we have not excluded Griset from this investigation.

Scope of Investigation

The products covered by this investigation are brass sheet and strip other than leaded brass and tin brass sheet and strip, currently classified under the *Tariff Schedules of the United States Annotated (TSUSA)* item numbers 612.3960, 612.3982, and 612.3986. The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the *Federal Register* (49 FR. 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1985.

Petitioners alleged that Trefimetaux has been both unequityworthy and uncreditworthy since 1981. We address this issue in the program-specific section of this notice.

Based upon our analysis of the petition and the responses to our questionnaire submitted by the

government of France, Pechiney and Trefimetaux, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in France of brass sheet and strip under the following programs:

A. Government Equity Infusions and Other Financial Assistance to Trefimetaux

Trefimetaux is the copper subsidiary of Pechiney, which has been owned by the French government since it was nationalized by French Law No. 82-155 of February 11, 1982. During 1985, the French government owned 85 percent of the voting shares of Pechiney and Societe Francaise de Participations Industrielles, a nationalized company, owned all the remaining voting shares with the exception of one share owned by each of the members of Pechiney's board. Pechiney owns virtually all the stock of Trefimetaux.

The Government of France provided funds to Pechiney during 1982-1985 in the form of direct equity investments, conversion of debt into equity, and subordinated shareholder investments. These subordinated shareholder investments, which were treated by the company as equity for financial analysis purposes, have a yearly return based on the company's yearly cash flow and gross income and a fixed percentage component. Although the French government made no direct investments in Trefimetaux, Pechiney provided equity infusions and other financial assistance to Trefimetaux. For purposes of this preliminary determination, we consider Pechiney to be under the direction of the French government, its sole owner, and the transfer of money from Pechiney to Trefimetaux to constitute a receipt of money indirectly from the French government.

1. Equity Infusions

During 1983-1985, Pechiney provided Trefimetaux with equity infusions. These infusions resulted from conversion of debt, stock purchases and subordinated shareholder investments which were made without provisions for schedules of repayment or payments of interest.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government infusions bestow countervailable benefits only when provided on terms

inconsistent with commercial considerations.

For the purpose of this preliminary determination, government equity purchases bestow countervailable bounties or grants only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether equity purchases in the company are reasonable commercial investments. Trefimetaux's shares are not publicly traded and there are no market-determined prices for its shares.

For purposes of this preliminary determination, we reviewed and assessed financial statements from 1976 to 1985. In analyzing the financial statements, we considered the impact of the accounting practices used by the company on its overall financial results. In this review, we analyzed the results and evaluated the information from the viewpoint of an investor. This review included analysis of the following ratios:

- Rate of return on sales and equity;
- Gross margin to sales;
- Financial expenses to sales;
- Cash flow to debt service payment;
- Current ratio; and
- Debt to equity.

Based on these factors, we preliminarily determine Trefimetaux to be unequityworthy between 1983-1985. Consequently, the action of the government, through Pechiney, in taking an equity position in the company in those years is inconsistent with commercial considerations and may confer a subsidy.

To calculate the benefit, we compared Trefimetaux's rate of return on equity with the average rate of return in France for 1985. We then applied the "rate of return" shortfall to all purchases of equity that we consider to be inconsistent with commercial considerations. For this preliminary determination, we used as best information available for the rate of return on equity in France figures developed for U.S. Direct Investment Abroad as published in *Survey of Current Business*.

Because the amount of benefit calculated exceeded the amount of benefit calculated by treating the equity infusions as outright grants, we have limited the benefits realized to the "grant cap." We divided these benefits by Trefimetaux's total sales in 1985 to calculate an estimated net subsidy of 4.47 percent *ad valorem*.

2. Preferential Loans

During the period 1982-1985, the government, through Pechiney, provided loans to Trefimetaux on terms

inconsistent with commercial considerations. We have no information indicating that such loans are available to any other company in France. Petitioners alleged that Trefimetaux has been uncreditworthy since at least 1981. We preliminarily determine that Trefimetaux was uncreditworthy for the years 1982-1985. To determine the creditworthiness of Trefimetaux, we analyzed its present and past health, as reflected in various financial indicators calculated from its financial statements. In making our preliminary determination of uncreditworthiness, we considered Trefimetaux's inability to meet its costs and financial obligations from its cash flow, its consistent pattern of losses, and its deteriorating capital structure.

We applied the loan methodology for uncreditworthy companies described in the Subsidies Appendix. We treated all loans with variable interest rates as short-term loans and compared the principal and interest a company would pay a normal commercial lender in any given year with amounts actually repaid in that year under these loans. We also treated the loans with fixed interest rates as short term loans because no information was provided on the duration of these loans.

For the benchmark rate, we used the "taux de base bancaire" (TBB), plus the maximum premium and other charges, plus the risk premium as explained in the Subsidies Appendix. The TBB is the rate used in France by banks for loans to corporations. We allocated the benefits from these loans over Trefimetaux's total sales in 1985 and calculated an estimated net subsidy of 0.44 percent *ad valorem*.

3. Government Grant

During 1983, the government, through Pechiney, provided Trefimetaux with a short-term advance. This debt was subsequently written off. Since no additional information has been provided about this money, we have preliminarily determined to treat it as a grant. We have no information indicating that such grants are available to any other company in France, nor do we have reason to believe that the grant was tied to exports. Therefore, we are considering the grant to be a domestic subsidy.

To calculate the benefits attributable to this grant, we used our grant methodology and allocated the grant money over 14 years (the average useful life of renewable physical assets for the manufacture of primary nonferrous metals) using the weighted-average cost of capital for Trefimetaux as the discount rate. The estimated net subsidy is 1.10 percent *ad valorem*.

B. Certain Financing from Credit National (CN)

Trefimetaux received financing from Credit National during the period 1976-1985. Credit National is a major financial institution which plays an important role in the French financial banking system, and it has a special legal status. See "Final Affirmative Countervailing Duty Determination; Industrial Nitrocellulose from France" (48 FR 11971 at 11974). Though not nationalized, 36.85 percent of Credit National's stock is owned by nationalized institutions. The General Manager of Credit National is nominated by the President of France and the government is at least indirectly represented by a majority of its board of directors. Credit National undertakes special operations for the government. These include extending "special procedure loans" on behalf of the government and performing certain advisory and management functions on projects designated for the government, its agencies and authorities. A substantial portion of Credit National's economic and financial activity is directed to sectors of French national interest. Thus, while Credit National is not a government institution, it does maintain a variety of official, semi-official and indirect ties with the government of France.

While some of the loans made by Credit National are of a "special" nature (i.e., at interest rates set by the government and made in conjunction with medium term credits which may be rediscounted), "ordinary" loans are also extended on commercial terms, with interest rates similar to those of commercial banks in France. In the Nitrocellulose case cited above, we found the "ordinary" loans to be made on commercial terms and hence not countervailable. We have no indication that the nature of these loans has changed from our previous determination.

Trefimetaux states that it received both "ordinary" and "special" loans from Credit National. While some of the special loans were for products not subject to this investigation, one loan was specifically related to brass sheet and strip. This "special" loan included an interest reduction contingent upon increasing exports of certain products including brass sheet and strip.

Because the "special" Credit National loan for the products under investigation is at a preferential interest rate that is specifically linked to a target level of exports, we preliminarily determine that

it is an export subsidy within the meaning of the countervailing duty law.

We calculated the benefits conferred by this loan in accordance with our long-term loan methodology as contained in the Subsidies Appendix. We divided the benefit provided by the loan by the value of Trefimetaux's 1985 exports of brass sheet and strip to arrive at an estimated net subsidy of 0.18 percent *ad valorem*.

II. Program Preliminarily Determined not To Confer Subsidies

We preliminarily determine that the French government is not providing subsidies to manufacturers, producers or exporters in France of brass sheet and strip under the following program:

Fonds National de l'Emploi (FNE)

The FNE was established in 1963 to provide vocational training programs and early retirement allowances to workers confronted with industrial changes brought about by economic development. The government of France's response states that the FNE's adjustment assistance programs are generally available in France. The FNE provides benefits to individuals and groups dismissed from employment because of technological evolution or by adverse economic conditions. These benefits consist of training agreements for wage-earners eligible for retraining and allowance agreements for older wage-earners who are not likely to be reemployed. The allowance agreements involve employees between the ages of 55 and 60 who choose early retirement and then receive their unemployment allowance from the FNE until they reach the retirement age of 60. The special allowance funds are obtained entirely from dues paid by employers and employees.

Trefimetaux's response states that it was not compensated by the French government through FNE for reductions in its work force. To avoid labor problems, Trefimetaux entered into collective agreements with the labor unions which provided training programs and severance pay to certain employees in amounts that exceeded the amounts the company would have otherwise been legally required to pay.

Because this program does not appear to be limited to a specific enterprise or industry or group of enterprises or industries, we preliminarily determine that the program is not countervailable.

III. Programs Preliminary Determined Not To Be Used

We preliminarily determine that the following programs are not used by the

manufacturers, producers or exporters in France of brass sheet and strip:

A. Preferential Electricity Rates for Trefimetaux

Pechiney on behalf of several subsidiaries entered into agreements with Electricite de France to provide electricity. However, Trefimetaux's response states that it did not receive electricity under any agreement providing preferential rates. Trefimetaux purchases electricity from Electricite de France at rates established by published tariffs depending on the type of current and the customers' power requirements.

B. Regional Development Incentives

The government of France provides a series of tax and non-tax regional incentives to French and foreign businesses to establish new, or to expand existing businesses in certain French regions selected as those in which to promote additional development. The Delegation a l'Amenagement du Territoire et a l'Action Regionale (DATAR) coordinates the programs of various government agencies and ministries. The responses state that Trefimetaux did not receive any benefits through DATAR.

C. Export Credit Insurance for Political, Exchange Rate Fluctuation and Inflation Risks

The Compagnie Francais d'Assurance pour le Commerce Exterieur (COFACE) is a government corporation that provides export insurance to cover commercial, political, exchange rate fluctuation and inflation risks. We have previously determined that COFACE export insurance does not confer a subsidy with respect to exports to the United States. See "Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from France" (47 Fed. Reg. 42422 at 42427). Trefimetaux's response states that COFACE does not insure the company for inflation or exchange rate fluctuation risks. In addition, Trefimetaux has no COFACE political risk insurance on its sales to the United States.

D. Export Financing

In France, exports may be financed or guaranteed through the Banque Francais du Commerce Exterieur (BFCE), and French companies may receive financing for the transfer abroad of their inventories of capital goods from Compagnie pour le Financement du Stock a l'Etranger (COFISE). Trefimetaux's response stated that it received no export financing under these programs during the review period.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of brass sheet and strip from France which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated *ad valorem* rate. The estimated net subsidy is 7.19 percent *ad valorem* for all manufacturers, producers, or exporters in France of brass sheet and strip. This suspension will remain in effect until further notice.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential 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 our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the Department makes its final affirmative determination.

Public Comment

In accordance with section 355.35 of the Commerce Regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. July 16, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice in the **Federal Register**. Requests should contain: (1)

The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of the confidential version and seven copies of the nonconfidential version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by July 10, 1986. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 4, 1986.

[FR Doc. 86-12930 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On October 31, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico. The review covers the period January 1, 1983 through June 30, 1983 and eight programs.

We gave interested parties an opportunity to comment on the preliminary results. After review of all of the comments received, the Department has determined the bounty or grant during the period of review to be zero for 19 firms and 2.17 percent *ad valorem* for all other firms.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1982, the Department of Commerce ("the Department") published in the *Federal Register* (47 FR 20013) a countervailing duty order on ceramic tile from Mexico. We began this review under our old regulations on July 18, 1983, and published the preliminary results of the review on October 31, 1984. After the promulgation of our new regulations, the Mexican government, on November 15, 1985, and several exporters, on September 10, September 19, and October 15, 1985, requested that we complete the administrative review of this order, in accordance with § 355.10(a) of the Commerce Regulations. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now completed that 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 ceramic tile, including non-mosaic, glazed and unglazed ceramic floor and wall tile. Such merchandise is currently classifiable under items 532.2400 and 532.2700 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983 through June 30, 1983 and eight programs: (1) CEDI; (2) FOMEX; (3) CEPROFI; (4) FOGAIN; (5) FONEI; (6) state tax incentives; (7) import duty reductions and exemptions; and (8) National Development Plan ("NDP") preferential discounts.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results. At the request of the petitioner, the Title Council of America, Inc., we held a public hearing on December 17, 1984.

Comment 1: The Title Council contends that the Mexican government's questionnaire response was sketchy, inconsistent, and contained numerous omissions making the data suspect. For example, the list of names and addresses covered 23 firms, while the annexes setting forth sales and exports listed approximately 80 firms. In addition, the response contained some quantities in square meters and others in kilograms, it stated some export values in dollars and others in pesos, and it failed to list any ratios or exchange rates for converting the disparate figures to a common base.

Department's Position: We disagree with the petitioner's characterization of the response. The first example is not a discrepancy, merely an incomplete

listing of addresses. As for the second example, our questionnaire did not specify the unit of measurement for reporting the quantity and value of sales. Each firm reported volume figures in the unit in which it kept its records. We could convert all volume figures to the same unit for comparison, but in this case it is unnecessary because we have calculated the benefits based on value rather than volume. Most companies reported export values in dollars, but some reported them in pesos. Some firms maintain export sales in dollars and domestic sales in pesos, and other firms maintain all records in pesos. To arrive at the same unit of measurement in the absence of any reported conversion factor, we converted all peso amounts to dollars using as the best information available the average exchange rate for the period of review, as published by the Federal Reserve Bank of New York.

Comment 2: The Department verified only three programs (FOMEX, CEPROFI and FOGAIN) of the eight programs under review. Even for the three programs examined, the Department did not verify whether the questionnaire response included all ceramic tile recipients of benefits. For example, in verifying CEPROFI, the Department checked the Mexican government's printout for the 19 zero-rate firms and the four firms listed as receiving CEPROFI's, but did not check the printout for other ceramic tile exporters to the United States. Thus the Department failed to verify the completeness of the response. The Department should examine the use of CEPROFI's by firms listed in the response as exporters but not discussed in the response with regard to this program.

The Tile Council also contends that on-site verification occurred at so few firms as to render the exercise meaningless. The Department failed to subject to on-site verification any firm listed in the response as using FOGAIN benefits. Of the 11 firms listed in the response as receiving benefits under one of the eight programs, the Department did not verify nine of them on-site. Among those nine were the largest recipient of FOMEX export loans, the largest recipient of FOGAIN loans, and the second-largest recipient of FOMEX pre-export loans. In addition, the Department should have done an on-site verification of the exporter in Chihuahua, Mexico, since that firm is one of the largest tile firms and firms in that area are eligible for NDP preferential discounts.

Department's Position: It would be administratively impossible to verify all programs and all companies in this case. Therefore, we selected a sample of programs and companies to concentrate on during verification. The purpose of a verification is to establish the accuracy, completeness, and overall reliability of the entire questionnaire response, and our verification process in this case met this standard.

We based our selection of programs to verify on the degree of use and the amount of benefits we have found for each program in this and other Mexican cases. Using these guidelines, we chose to specifically examine FOMEX, CEPROFI, and FOGAIN.

Our next step was to choose the companies to verify at the government level and/or company level. We chose to verify through government records 19 zero-rate firms for any receipt of the three programs mentioned above. We believe that concentration on such zero-rate firms is important because of the unique status a zero-rate firm has in our administration of this order. We have only permitted zero-rate certification in this and one other Mexican case. See the final results of administrative review of the countervailing duty order on leather wearing apparel from Mexico (48 FR 13474, March 31, 1983). In order to assure that the certification process is not abused, we must check whether the government was correct in its listing of firms not receiving benefits.

For the firms we verified at the company level, we chose to verify at the government level the use of all three programs. For each of the four firms listed as receiving CEPROFI benefits, we verified the accuracy of the amounts reported. The 23 firms we verified for CEPROFI benefits at the government level accounted for over 52 percent of the value of tile exported to the United States during the period.

We chose the firms for on-site verification based on the amounts of exports to the United States and on the amount of benefits reported. Our sample included three zero-rate firms and two firms with reported benefits, including by far the largest tile exporter to the United States (representing almost 40 percent of all exports to the United States).

Although the Tile Council did not name "the largest recipient of FOMEX export loans" and "the second-largest recipient of FOMEX pre-export loans," it appears that both these categories apply to one firm which we successfully verified during our last review. We chose not to verify on-site "the largest recipient of FOGAIN loans" because it accounted for a small percentage of

exports to the United States. We did verify the response for that firm by a detailed review at the government level. We also chose not to verify the manufacturer located in Chihuahua because it accounted for less than 3 percent of the total exports of Mexican tile to the United States. Any possible benefit from NDP preferential discounts found during verification would have had a minimal effect on the overall subsidy level for all firms. It should be emphasized that the Tile Council has not presented any evidence contradicting the Mexican government's statement that no tile firm received NDP preferential discounts.

We found no significant discrepancies at the on-site verifications or at the Mexican government agencies. Therefore, through sampling, we have confirmed the validity of the questionnaire responses.

Comment 3: The Tile Council claims that the Department did not provide to the petitioner advance notice of the verification trip. This prevented the Tile Council from full participation in the verification process.

Department's Position: It is not mandatory for the Department to notify specifically all interested parties of verification schedules. The petitioner was served with a copy of the non-confidential version of the questionnaire responses and should have been aware that the next step was possible verification.

Comment 4: The Tile Council argues that the Department failed to consider four programs found countervailing in other Mexican cases: Article 94 loans, FOMEX loans to U.S. importers, NAFINSA loans, and delays in payments of loans or of fuel charges.

Department's Position: Our policy during verification is to review government and company records for any unreported benefits a company might have received. We found no benefits other than those reported. In our current review, we are further investigating these programs.

Comment 5: The Tile Council argues again that the Department should not use the zero-rate certification mechanism. The mechanism goes against the Department's long-standing policy of a single country-wide rate.

Department's Position: We discussed this issue at great length in the original final determination and order and in subsequent reviews. The Department has determined to continue the use of the zero-rate procedure in this case.

Comment 6: The petitioner argues that the difference between the Department's preliminary rate of 2.10 percent for "all other" firms and the zero rate is not a

"significant" difference, either under the Commerce Regulations or under the 1984 changes in the Tariff Act. The Department therefore should not set separate rates of zero for selected firms.

Department's Position: We have previously found that there is a significant difference between zero and any positive rate. See the final results of administrative review of the countervailing duty order on cement from Mexico (50 FR 51732, December 19, 1985).

Comment 7: The petitioner asserts that, if the Department does set zero rates for individual firms, such rates should apply only to firms certified as not receiving any benefits from February 23, 1982, the date of the preliminary determination in this case, through June 30, 1983, the end of the review period. The Department should not permit a firm that persisted after the preliminary determination in receiving benefits to forego benefits in 1983, receive a zero deposit rate, obtain benefits in 1984 and not have to pay duties until at least 1985, if at all.

Department's Position: We disagree. Using the petitioner's example, the firm may have received a zero deposit rate during 1984, but in a subsequent review of 1984 we would determine the amount of benefits received and would assess countervailing duties plus interest. Furthermore, we would declare the firm ineligible for a zero rate in the future.

Comment 8: The petitioner believes that the Department relied on inaccurate response data. The value of exports to the United States in Annex 1 of the questionnaire response, which the Department used as the denominator in calculating benefits, is at least 20 percent higher than the U.S. import statistics (IM-146) for the period. This had the effect of lowering the *ad valorem* benefits.

Department's Position: Mexican tariff numbers for ceramic tile at the most disaggregated level include merchandise not covered by this order, such as paving stones and certain other ceramic products. Therefore, the Mexican government export figures for tile cannot be separated from the other products for calculation purposes. To compensate for the higher value of exports, the Mexican government reported and we used as our numerator all benefits received by the firms on the larger product range covered by the response.

Comment 9: The Tile Council believes that the Department erred in not excluding from the denominator used in calculating FOMEX benefits the export figures for two zero-rate firms, Juan Rodriguez Benavides and Reynaldo

Gutierrez (Ladrillera la Casa). Inclusion improperly decreased the calculated benefit.

Department's Position: There were no export figures for Reynaldo Gutierrez (Ladrillera la Casa). Thus, there was nothing to exclude. This was also true for a few other zero-rate firms not mentioned by the petitioner. As for Juan Rodriguez Benavides, we agree that the firm's export figure should have been deducted from the total. That firm however accounted for a relatively small share of exports, and eliminating those exports from the total increases FOMEX benefits from 1.62 to 1.64 percent.

Comment 10: The petitioner states that the Department in its preliminary results should not have reduced the CEPROFI benefits that Ladrillera Monterrey received on purchases of Mexican-made equipment.

Department's Position: In the final affirmative determination and countervailing duty order on oil country tubular goods from Mexico (49 FR 47054, November 30, 1984), the Department held that a five percent CEPROFI is available to all purchasers of Mexican-made capital goods, and that we would countervail only the difference between the generally available five percent and the higher 20 percent rate granted in that case to OCTG manufacturers. In this case, since the CEPROFI rate available to ceramic tile manufacturers was 10 percent, the benefit is the difference between the 10 percent and five percent rates. However, the CEPROFI amount that Ladrillera Monterrey received is so small that, even if we countervailed the entire 10 percent CEPROFI for Mexican-made equipment, the overall CEPROFI benefit would not change from the 0.31 percent we calculated for the preliminary results.

Comment 11: The Department failed to calculate a rate for FONEI benefits received by a firm for which the Mexican government filed a supplemental submission on February 3, 1984.

Department's Position: We agree. Based on the information submitted by the Mexican government, we determine that the amount of bounty or grant under FONEI during the period was 0.05 percent *ad valorem*.

Final Results of the Review

After consideration of all of the comments received, we determine the total bounty or grant during the period of the review to be zero for the following 19 certified firms:

- (1) Alfareria San Marcos, S.A. de C.V.;
- (2) Arturo Carranza de la Peña;
- (3) Ceramica Santa Fe;

- (4) Ceramica Santa Julia;
- (5) Ceramicas y Pisos Industriales de Culiacan, S.A. de C.V.;
- (6) Corporacion Euromexicana Comercial, S.A.;
- (7) Eduardo S. Garcia de la Peña;
- (8) Francisco Heriberto Villa Vega;
- (9) Impulsora Normax, S.A. de C.V.;
- (10) Industrias AGE, S.A.;
- (11) J. Garza Arocha, S.A.;
- (12) Juan Rodriguez Benavides;
- (13) Juana Maria Ramos Trevino;
- (14) Luz Maria de la Peña Sanchez;
- (15) Manuel Alvarez Ramon (Pisos de Barro);
- (16) Pisos Coloniales de Mexico, S.A.;
- (17) Porcelanite;
- (18) Prodiba, S.A.; and
- (19) Reynaldo Gutierrez (Ladrillera la Casa).

For all other firms, we determine the total bounty or grant during the period to be 2.17 percent *ad valorem*.

The Department will instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the 19 certified firms and to assess countervailing duties of 2.17 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1983 and on or before June 30, 1983.

The Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 19 certified firms and to collect a cash deposit of 2.17 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. These deposit requirements 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 15, 1985).

Dated: June 8, 1986.

Gibert B. Kaplan,
Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-12931 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to U.S. Shippers Association (USSA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

All Products (except that Export Trade does not include export by the Members of chlorine, sodium carbonate, sodium hydroxide, sodium hydrosulfite, and phosgene).

Export Trade Facilitation Services (as they relate to the export of Products)

Procurement of Transportation Services for products exported or in the course of being exported. Transportation Services include overseas freight transportation; inland freight transportation to a U.S. export terminal, port, or gateway; packing and creating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; insurance; forwarder services; export sales documentation and services; and customs clearance.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern

Mariana Islands, and the Trust Territory of the Pacific Islands).

Members

FMC Corporation, Olin Corporation, and Stauffer Chemical Company.

Export Trade Activities and Methods of Operation

USSA and its Members may:

(1) Act jointly to negotiate charges and other terms and enter into contracts with providers of Transportation Services, including the chartering and space chartering of vessels, for any or all of the Members, and/or non-members;

(2) Enter into agreements among themselves on the terms of their participation in the negotiation and fulfillment of transportation contracts, including the amount of Transportation Services that each will commit to purchase under such contracts, provided that no such agreements or contracts shall contain product-specific volume commitments;

(3) Meet and exchange the following information on Transportation Services:

- Potential suppliers of Transportation Services.
- Rates and terms.
- Volume of products anticipated to be exported through USSA.
- Scheduling.
- Other information on Transportation Services necessary to analyze, negotiate for, and procure Transportation Services.

(4) Prescribe the following conditions with respect to the membership in USSA:

(a) A Member may withdraw its membership from USSA as of the last day of any calendar year by giving 180 days' prior written notice to the remaining Members. The remaining Members shall then have the option to terminate USSA or to pay the withdrawing Member the value of its capital account, as adjusted, on the date of its withdrawal. The withdrawing Member shall remain responsible for commitments made by such Member and by USSA on behalf of such Member prior to the effective date of such Member's withdrawal.

(b) Additional parties may be admitted to membership in USSA from time to time upon:

- Receiving a minimum of a two-thirds affirmative vote of USSA's existing Members,
- Executing a counterpart of USSA's membership agreement, and
- Making such capital contribution in cash as is determined in good faith by USSA's Board of Directors to represent a fair allocation of the start-up and capital cost of USSA.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 4, 1986.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 86-12932 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DR-M

University of New Mexico; Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In FR Doc. 86-12301 appearing on page 19779 in the issue of Monday, June 2, 1986, make the following correction: In the first column, in the second paragraph, in the first line, "96-002" should read "86-002".

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Lawler, Matusky & Skelly Engineers

On February 25, 1986, notice was published in the *Federal Register* (51 FR 6578) that an application had been filed by Lawler, Matusky & Skelly, Engineers, One Blue Hill Plaza, Pearl River, New York 10965, for a permit to take shortnose sturgeon for the purpose of scientific research.

Notice is hereby given that on May 29, 1986, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220 through 222 of Title 50 CFR, the National Marine

Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and
Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: May 30, 1986.

Henry R. Beasley,

Director, Office of International Fisheries National Marine Fisheries Service.

[FR Doc. 86-12900 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase in Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 4, 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 June 10, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated October 31, 1985 (50 FR 46152) established limits for certain specified categories of cotton, wool, and man-made fiber textile products within the aggregate, including Categories 351, 640, and 641, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1985 and extends through June 30, 1986. Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, between the Governments of the United States and Indonesia, carryforward is being applied to the restraint limits established for Categories 351, 640, and 641.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on

December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of October 31, 1985 from the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1985 and extends through June 30, 1986.

Effective on June 10, 1986, the directive of October 31, 1985 is hereby further amended to adjust the previously established restraint limits for Categories 351, 640 and 641 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended:¹

| Category | Adjusted Twelve-Month Limit ¹ (July 1, 1985-June 30, 1986) |
|----------|---|
| 351..... | 116,600 dozen. |
| 640..... | 349,800 dozen. |
| 641..... | 1,165,500 dozen. |

¹ The limits have not been adjusted to reflect any imports exported after June 30, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12926 Filed 6-6-86; 8:45 am]

BILLING CODE 3510-DR-M

¹ The agreement provides, in part, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Establishment of an Import Restraint Level for Certain Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 10, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 27, 1985 a notice was published in the *Federal Register* (50 FR 52988) establishing specific limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

During consultations held under the terms of the bilateral agreement of November 8, 1982, the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) agreed to establish a specific limit of 3,915,000 dozen pairs for man-made fiber textile products in Category 631, as a whole, in lieu of the individual limits previously established for work gloves (Category 631-W) and gloves other than work gloves (631-O), produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption, or withdrawal from warehouse for consumption, of man-made fiber textile products in Category 631 be limited to the designated limit during the twelve-month period beginning January 1, 1986 and extending through December 31, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July

16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1986.

Commissioner of Customs,
*Department of the Treasury
Washington, DC 20229*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 23, 1985, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on June 10, 1986, the directive of December 23, 1985 is hereby further amended to include a specific limit for man-made fiber textile products in Category 631 of 3,915,000 dozen pairs.¹ This limit cancels and supersedes the limit established in the directive of December 23, 1985 for man-made fiber textile products in Category 631pt. (only TSUSA numbers 704.3215, 704.8525, and 704.9000).

Textile products in Category 631pt. (all TSUSA numbers except 704.3215, 704.8525, and 704.9000) which have been exported to the United States prior to January 1, 1986, shall not be subject to this directive.

Textile products in Category 631pt. (all TSUSA numbers except 704.3215, 704.8525, and 704.9000) which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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.

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-12727 Filed 6-9-86; 8:45 am]

BILLING CODE 3510-DR-M

¹ The limit has not been adjusted to account for any imports exported after December 31, 1985.

DEPARTMENT OF DEFENSE**Office of the Secretary****Renewal of the Secretary of the Navy Health Care Advisory Committee**

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Secretary of the Navy Health Care Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department by law and is being renewed effective June 19, 1986.

This committee serves the public interest by functioning as an independent external source of expert knowledge, experience, and judgment in health care management and administration. The committee will explore and recommend alternatives for the improvement of policy implementation, health care planning, and resource allocation.

Patricia Means,

*OSD Federal Registration Officer,
Department of Defense.*

June 2, 1986.

[FR Doc. 86-12844 Filed 6-6-86; 8:45 am]

BILLING CODE 3810-01-M

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 1, 1986; Tuesday, July 8, 1986; Tuesday, July 15, 1986; Tuesday, July 22, 1986; and Tuesday, July 29, 1986 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of

an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

*OSD Federal Register Liaison Officer,
Department of Defense.*

June 3, 1986.

[FR Doc. 86-12846 Filed 6-6-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 10-11 July 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Policy Board is to advise the Secretary of Defense, Deputy Secretary and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with the Pacific area, nuclear deterrence and the Strategic Defense Initiative.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this DPB Board meeting concerns matters listed in 5 U.S.C.

552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

*OSD Federal Register Liaison Officer,
Department of Defense.*

June 3, 1986.

[FR Doc. 86-12845 Filed 6-6-86; 8:45 am]

BILLING CODE 3810-01-M

Ada Board Task, Force of Export Controls; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Task Force on Export controls will be held Monday, 21 July 1986 from 9:00 A.M. to 5:00 P.M. at the Pittsburgh Hilton, Gateway Center, Pittsburgh PA.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Carolson, Intermetrics, 4733 Bethesda Avenue, Suite 415, Bethesda, MD 20814, (301) 657-3775.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

June 4, 1986.

[FR Doc. 86-12968 Filed 6-6-86; 8:45 am]

BILLING CODE 3810-01-M

U.S. Court of Military Appeals Code Committee Meeting

ACTION: Notice of public hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 2:00 p.m. on June 9, 1986, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, NW., Washington, DC 20442-0001. The agenda for this meeting will include various matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, NW., Washington, DC 20442-0001; telephone (202) 272-1448.

Patricia H. Means,

*OSD Federal Register Liaison Officer,
Department of Defense.*

June 4, 1986.

[FR Doc. 86-12969 Filed 6-6-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force**Air Force Activities for Conversion to Contract****ACTION:** Notice.

The Air Force recently determined that the aircraft wash rack function at Columbus, AFB, MS; Laughlin AFB, TX; Reese AFB, TX; Williams AFB, AZ will be converted to contract.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Moore, HQ ATC/XPMR, Randolph AFB, TX, telephone (512) 652-2384.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-12949 Filed 6-6-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army**Army Science Board; Closed Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 23 June—3 July 1986.

Times of Meeting: 0800-1730 hours weekdays and as needed on weekends.

Place: National Academy of Sciences Study Center, Woods Hole, Massachusetts.

Agenda

The Army Science Board 1986 Summer Studies on Technology Forecast for Key Operational Capabilities and C³I Requirements for AirLand Battle will meet for discussions of briefings to-date to develop and write the final report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-13036 Filed 6-6-86; 8:45 am]

BILLING CODE 3710-08-M

Rocky Mountain Arsenal Containment Cleanup

AGENCY: Department of the Army, DOD.

ACTION: Request for Public Comment on Draft Report on Accelerated Cleanup Plan for the Contamination at Rocky

Mountain Arsenal (RMA), Denver, Colorado.

SUMMARY: The Secretary of the Army gives notice that, pursuant to Pub.L. 99-167, section 822, of the 1986 Military Construction Act, the Army requests public comment on a draft report on an accelerated cleanup for the contamination at RMA, Denver, Colorado.

DATE: Comments should be submitted on or before July 24, 1986.

ADDRESS: Comments should be sent to Captain Andrew Kingery, Office of the Program Manager, Rocky Mountain Arsenal Contamination Cleanup, ATTN: AMXRM-PM, Aberdeen Proving Ground, Maryland 21010-5401. Correspondence should be labeled "Comments on Draft Accelerated Cleanup Report."

Copies of Report: Copies of the draft report may be reviewed during normal business hours at the Denver Public Library, Aurora Public Library, Commerce City Library, Environmental Protection Agency Library, 999 18th Street, Denver, Colorado, and Rocky Mountain Arsenal Program Manager's Staff Office, Building 111, Rocky Mountain Arsenal, Commerce City.

FOR FURTHER INFORMATION CONTACT: Captain Andrew Kingery, Office of the Program Manager, Rocky Mountain Arsenal Contamination Cleanup, ATTN: AMXRM-PM, Aberdeen Proving Ground, Maryland 21010-5401, (301) 671-3261.

Introduction

Section 822 of the 1986 Military Construction Authorization Act (ACT) requires the Army to develop and transmit to the Congress a comprehensive plan for completing the cleanup of Rocky Mountain Arsenal (RMA) by September 30, 1993. Accordingly, the Program Manager for RMA had Environmental Science and Engineering, Inc., develop a draft report which establishes study constraints and examines critical path elements, and presents accelerated schedules with associated cost estimates. The accelerated schedules utilize the existing technologies of excavation, incineration, and secure disposal in order to remedy an estimated 16 million cubic yards of contaminated materials at approximately 88 sites on RMA. Various scenarios consider the use of existing or proposed commercial landfills and/or an onsite disposal facility.

The draft report finds that the earliest possible date for cleanup and closure (with reclamation) at the Rocky

Mountain Arsenal could be in January 1995. Only the removal and disposal of contaminated material at the Arsenal could be accomplished by September 1993, even with a scenario of round-the-clock operations and simultaneous onsite and offsite disposal. The cost of implementing this scenario is estimated at \$2.5 billion. The least expensive scenario (again with three shifts per day) would secure all of the contaminated material in an onsite vault and could accomplish cleanup and closure in December 1996, at a cost of \$972 million.

The accelerated cleanup schedule could be affected by a number of factors including volume of contaminated material; available landfill capacity; litigation developments; necessary plan modification in response to public comment; and the design, construction, and operation of large-scale remedial action systems.

It should be noted that these accelerated scenarios are prepared solely in response to the Act and are not consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which was adopted pursuant to the Comprehensive Environment Response, Compensation and Liability Act of 1980 (CERCLA). In particular, the development of these scenarios is not consistent with the NCP's requirements for scoping of response actions, development of alternatives, initial screening of alternatives, detailed analyses of alternatives, notice and public comment, consideration of cost-effectiveness and other factors, and selection of the final response action. Nevertheless, the Army has endeavored to have significant aspects of the NCP¹ incorporated into the draft report wherever possible.

It should be further noted that the submission of this plan in no way indicates that the Program Manager's Office has abandoned its efforts under the NCP. The NCP remedial action decision-making process for the arsenal cleanup is presently on-going and is

¹ On February 18, 1986, the most recent revision of the NCP became effective. 50 FR 47912 (1985). As part of this rulemaking, the preamble stated that "no permits, Federal or State, will be required in carrying out CERCLA Sections 104 and 106 on site response actions . . ." 50 FR 47925. Since the Army is the lead agency under the NCP in this instance, the scenarios presented in the report assume a need for substantive compliance with all applicable or relevant and appropriate law, but not with the procedural aspects of these laws, such as permits. This is intended to ensure expedited compliance with appropriate state standards without the additional time delays inherent in obtaining permits. In this regard, it should be noted that the NCP requires substantial state and public participation in the remedy selection process.

expected to result in the selection of a final response action, fully consistent with NCP, by March 1988. The final response action will be selected from a list of alternatives to be developed during the feasibility study (FS) process (October 1987). While it is possible that one or more of the FS alternatives may substantially resemble the scenarios presented in this plan, the Program Manager's Office is at this time not committed to adopting any of the listed scenarios and remains committed to considering fully all of the information which will be developed during the remedial investigation/feasibility study and to select the final response accordingly.

Comments from the General Public

With the publication of this notice, the Army commences its 45 day comment period on the draft report. During this period, the public is encouraged to submit all written comments and suggestions with respect to the draft report.

Comments from State and Local Officials

The Army is making a special effort to consult with State and local officials (including officials of water districts) and obtain their views on the draft report. Copies of the draft report will be provided directly to these officials and thereafter Army representatives will meet with them at length to discuss the various scenarios and any proposed modifications of the suggested plans.

Submission of Final Report

At the end of the comment period, the Army will review and consider all of the written and oral comments which it has received. Thereafter, appropriate modifications will be made of the various proposed scenarios in response to these comments. A final comprehensive cleanup report will be submitted to Congress by September 1, 1986.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 86-12861 Filed 6-6-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Graduate Academic Facilities Program

AGENCY: Department of Education.

ACTION: Application notice for new awards under the graduate academic facilities program for fiscal year 1986.

SUMMARY: Applications are invited for new projects for the construction, reconstruction and renovation of academic facilities.

Authority for this program is contained in Title VII, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1132a and 1132e-1).

Accredited undergraduate and graduate institutions of higher education are eligible to apply for funding, as directed by the Department of Education Appropriation Acts of 1985 and 1986.

The purpose of these awards is to assist colleges and universities to construct, reconstruct or renovate academic facilities.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 31, 1986.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.172), 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th & D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m.

(Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

Grants awarded under this program are authorized for the support of projects which provide construction assistance for new or existing academic facilities and which enable institutions of higher education to (1) economize on the use of energy resources; (2) comply with the Architectural Barriers Act of 1968, and section 504 of the Rehabilitation Act of 1973, or with environmental protection or health and safety programs mandated by law, if these requirements were not in effect at the time the facilities were constructed; (3) improve research facilities, including libraries, and acquire special research equipment; (4) accommodate unusual increases in enrollment; or, (5) detect, remove, or contain asbestos hazards.

Program Priorities

Program funding priorities for fiscal year 1986 have been established in two grant categories and in certain academic areas for research facilities, as authorized by the proposed program regulations.

The two categories of projects that will be funded are (1) environmental protection or health and safety programs mandated by Federal, State, and local law, if these requirements were not in effect at the time the facilities were constructed; and, (2) research facilities, including libraries, and the acquisition of special research equipment. Pursuant to 34 CFR 75.105(c), (3), the Secretary will give an absolute preference to applications for projects in either of these two categories. Since only two categories of projects will be funded, no additional priority points will be assigned to applications, as provided for in § 619.30(d) of the proposed program regulations. For purposes of review under § 619.36(e), the academic areas which are designated as priorities are: physical sciences, mathematics, engineering, environmental sciences, biological sciences, and social sciences.

Because of the limited amount of funds available for the Title VII-B program, applications in all other authorized funding categories will not be accepted. Although the category related to the detection, removal or containment of asbestos hazards will not be considered for funding, projects designed to comply with environmental protection or health and safety laws

may, however, include the removal or containment of asbestos hazards.

Technical Assistance Workshops

Applicants are invited to participate in technical assistance workshops to be held in five regional locations to assist applicants in the preparation of applications. The workshops will take place in San Francisco on June 9, 1986, Dallas on June 12, 1986, Washington, DC on June 16, 1986, Atlanta on June 18, 1986, and Cincinnati on June 20, 1986. For specific information on these workshops, please contact the Division of Higher Education Incentive Programs on (202) 245-3253.

Other Information

Pursuant to § 619.51 of the proposed program regulations, grants will not be made to institutions that are financially insolvent, are in default on a construction loan previously made under Part C of Title VII of the Higher Education Act or Title VI of the Housing Act of 1950, or are in default of any other obligation made under any other Federal program (34 CFR 619.51).

Available Funds

A total of \$37,570,000—\$28 million from the FY 1985 appropriation and \$9,570,000 from the FY 1986 appropriation—is available to fund approximately 150 projects, with awards ranging between \$25,000 and \$500,000 and averaging about \$250,000. The Secretary expects to make awards of no more than \$500,000. Pursuant to § 619.50 of the proposed program regulations, no award shall exceed fifty percent of the total eligible development costs of the project. The minimum grant award will be \$25,000. The total amount of all awards made to institutions located in a single State will not exceed \$4,696,250, which is 12.5 percent of the total available funds, as prescribed by the program's authorizing legislation.

The project period for an award will be determined when the appropriate official of the Department approves the project. Construction must begin within a reasonable time—usually within eighteen months of project approval. The project period will end when construction is completed and final eligible project costs are determined.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms

Application forms and program information packages are expected to be

available by June 16, 1986. These may be obtained by writing to the Division of Higher Education Incentive Programs, Graduate Academic Facilities Program, Office of Postsecondary Education, U.S. Department of Education, Room 3022 ROB #3, 400 Maryland Avenue, SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms, included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the research applications not exceed 20 pages.

The Secretary further urges that applicants not submit information that is not requested.

(The application form is approved by the Office of Management and Budget under control number 1840-0580)

Applicable Regulations

The following regulations apply to this program:

(a) When published in final and effective, the Graduate Academic Facilities Program regulations, as proposed in the **Federal Register** on April 22, 1986, 51 FR 15292-15297. (If any substantive changes are made in the final regulations, applicants will be given an opportunity to revise or resubmit their applications.)

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (with the exception of § 75.217 and §§ 75.219 through 75.222), and Parts 77 and 78.

FURTHER INFORMATION: For further information contact Charles I. Griffith, Director, Division of Higher Education Incentive Programs, U.S. Department of Education, Room 3022, ROB #3, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 245-3253.

(20 U.S.C. 1132c)

(Catalog of Federal Domestic Assistance Number 84.172, Construction, Reconstruction, and Renovation of Academic Facilities)

Dated: June 5, 1986.

William J. Bennett,
Secretary of Education.

[FR Doc. 86-13019 Filed 6-5-86; 2:07 pm]

BILLING CODE 4000-01-M

Carl D. Perkins Scholarship Program

AGENCY: Department of Education.

ACTION: Notice of closing date for receipt of State applications for fiscal year 1986.

The Secretary gives notice of the closing date for receipt of State applications for fiscal year 1986 funds under the Carl D. Perkins Scholarship Program. This program is a Federally-funded program to provide college scholarships to outstanding high school graduates to enable and encourage them to pursue teaching careers at the elementary or secondary school level.

Authority for this program is contained in Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984.

A State that desires to receive Carl D. Perkins Scholarship Program funds for fiscal year 1986 must submit an application as provided for under the authorizing law. The State must provide the information requested in section 563 of the authorizing law and should be guided by § 653.20 of the Notice of Proposed Rulemaking for the Carl D. Perkins Scholarship Program which was published in the **Federal Register** on June 4, 1986, 51 FR 20408-20412. If proposed § 653.20 is changed in the final regulations, the Secretary will notify the States of any application revisions they must make and the date by which the revisions must be submitted.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands (20 U.S.C. 1119d-1119d-8).

Closing Date for Transmittal of Applications

An application for fiscal year 1986 Carl D. Perkins Scholarship Program funds must be mailed or hand-delivered by July 9, 1986.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, DC 20202, Attention: Dr. Neil C. Nelson, Chief, State Student Incentive Grant Program, Room 4026, ROB #3.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice or receipt from a Commercial Carrier; or

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use registered or at least first-class mail.

Each late applicant for fiscal year 1986 funds will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., Room 4026, GSA Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

The Secretary requires the submission of an application for receipt of Carl D. Perkins Scholarship Program funds. State allotments are determined by population formula and are not subject to negotiations.

Application Information

There is no required application form for receiving Carl D. Perkins Scholarship Program funds. Applications must be prepared and submitted in accordance with the authorizing law and the program regulations cited in this notice. The Secretary strongly urges that applicants not submit information that is not requested.

Applicable Regulations

The following regulations are applicable to the Carl D. Perkins Scholarship Program:

(1) When published in final and effective, the Carl D. Perkins Scholarship Program regulations, published as proposed regulations in the

Federal Register on June 4, 1986, 51 FR, 20408-20412.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and strengthened federalism by relying on processes developing by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State will be attached to the copy of this notice which the Department will mail to the State agencies designated to administer the Carl D. Perkins Scholarship Program.

In States that have not established a process for or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by Aug. 8, 1986, to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA No. 84.176), 400 Maryland Avenue, SW., Washington, DC 20202.

Please Note That the Above Address is Not the Same Address as the One to Which the Applicant Submits Its Completed Application. *Do Not Send Applications to the Above Address.*

For Further Information

For further information contact Dr. Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, U.S.

Department of Education, Washington, DC 20202 telephone (202) 472-4265.

(20 U.S.C. 1119d-1119d-8)

(Catalog of Federal Domestic Assistance Number 84.176, Carl D. Perkins Scholarship Program)

Dated: June 5, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86-13066 Filed 6-6-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Atomic Energy Agreements; Proposed Subsequent Arrangements With Canada and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following sales:

Contract Number S-CA-388, to the Key Lake Mining Corp., Saskatchewan, Canada, 63.581 grams of natural uranium, for use as standard reference material.

Contract Number S-JA-367, to the National Institute for Environmental Studies, Japan, 3.31 grams of natural uranium contained in pitchblende ore, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 4, 1986

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12957 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community

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" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the export of 1,500,000 kilograms of natural uranium to Canada for conversion to uranium hexafluoride and the subsequent transfer to enrichment facilities in the European Community for enrichment and fabrication of fuel assemblies. The material is to be used as low-enriched power reactor fuel in various reactors in the United States and in the European Community. This subsequent arrangement is to be carried out under the above-mentioned agreements pursuant to section 402(A) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2153a).

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: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12958 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangements With European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses

of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following sales:

Contract Number S-EU-892, for the sale of 0.011 gram of thorium in monazite ore, and 0.001 gram of uranium in pitchblende ore, to the Littlemore Scientific Engineering Co., Oxford, England, for use as standard reference material.

Contract Number S-CA-389, for the sale of 0.001 gram of plutonium-244 to the University of Toronto, Toronto, Canada, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12959 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community and Japan

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" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following transfer:

RTD/JA(EU)-37, for the transfer of 501 kilograms of uranium, enriched to 18.7 percent in the isotope uranium-235 from Hanau, the Federal Republic of Germany to Japan, for use in the fabrication of fuel for the JOYO experimental fast breeder reactor.

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: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12960 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With Japan

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" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the following sale:

Contract Number S-JA-368, for the supply of 3 grams of plutonium-238 for use in the evaluation of alpha irradiation effects on vitrified high level radioactive waste at the waste safety testing facility at the Japanese Atomic Energy Research Institute, Tokyo, Japan.

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: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12961 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With Norway

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" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/NO(EU)-52, for the retransfer from the Federal Republic of Germany to Norway of 24 kilograms of uranium, enriched to 19.95 percent in the isotope uranium-235, for blending and use as fuel for the heavy water boiling water reactor at Halden, Norway.

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: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12962 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement with Norway

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" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/NO(SW)-17, for the transfer of 10,000 grams of uranium containing 400 grams of the isotope uranium-235 (4.00 percent enrichment) from Sweden to Norway, for analysis for safeguards and control. After examination the samples will be disposed of as waste.

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: June 4, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-12963 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Crude Oil From Naval Petroleum Reserve; Elk Hills, CA

AGENCY: U.S. Department of Energy (DOE).

ACTION: Solicitation of comments and suggestions on NPR-1 crude oil sales.

SUMMARY: The U.S. Department of Energy (DOE) solicits written comments and suggestions on methods to improve the provisions under which DOE sells crude oil from Naval Petroleum Reserve No. 1 (NPR-1), Elk Hills, near Bakersfield, California. Under the existing provisions, DOE solicits bids in the form of bonuses or discounts to a "base price," composed of the average of the three highest prices posted in nearby oil fields for comparable quality crude oil. For the last several sales, the contract durations have been for six months, but the law permits contract terms of up to one year. See title 10, section 7430, United States Code, for the law governing DOE's sale of NPR-1 crude oil.

DATES: Those wishing to submit written comments and suggestions on alternative contract durations, bidding and pricing provisions (including the establishment of minimum prices), and other contractual provisions or techniques which might increase competition, should submit them to the address below. Comments need to be received by June 16, 1986 in order for DOE to fully consider them prior to the next sale (deliveries scheduled to begin October 1, 1986).

ADDRESS: Comments should be addressed to: Mr. Arnold A. Gjerstad, Contracting Officer, United States Department of Energy, Office of Procurement Operations, MA-453.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-1880.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia A. Green, Contract Specialist, United States Department of Energy, Office of Procurement Operations, MA-453.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-8248.

Issued in Washington, DC, on May 30, 1986.

Edward T. Lovett,

Director, Procurement Operations Division "B" Office of Procurement Operations.

[FR Doc. 86-12850 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-16-NG]

Canterra Natural Gas 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 Canterra Natural Gas Inc. (CNG). The order issued in ERA Docket No. 86-16-NG authorizes CNG to import up to 25 Bcf per year for a period of two years beginning on the date of first delivery. CNG would either purchase and resell the imported gas, or act as agent for its Canadian suppliers and U.S. purchasers.

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 30, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-12851 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Technical Panel on Magnetic Fusion; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub.

L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Technical Panel on Magnetic Fusion of the Energy Research Advisory Board.

Date and Time: June 25, 1986—9:00 a.m.—5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Room 8E-089, Washington, DC 20585.

Contact: Charles E. Cathey, Department of Energy, Office of Energy Research (ER-6), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 252-2263.

Purpose of the Technical Panel

To perform a review of the conduct of the national magnetic fusion energy program and make recommendations to the Energy Research Advisory Board. After consideration of the Panel report, the Board shall submit such report, together with any comments that the Board deems appropriate, to the Secretary of Energy. The purpose of the Energy Research Advisory Board is 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.

Tentative Agenda

- Presentation of Office of Energy Research senior staff member on fusion energy issues
- Presentations by Office of Fusion Energy staff on laboratories' current programs and issues
- Review of international collaboration on the Engineering Test Reactor
- Presentation by staff from involved private firms
- Review of past recommendations of the Magnetic Fusion Advisory Committee
- Public Comment—10 minute rule

Public Participation

The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. 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 the agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

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 June 4, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-12965 Filed 6-6-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-502-000 et al.]

Appalachian Power Co. et al.; Electric Rate and Corporate Regulation Filings

May 30, 1986.

Take notice that the following filings have been made with the Commission:

1. Appalachian Power Co.

[Docket No. ER86-502-000]

Take notice that Appalachian Power Company (Appalachian) on May 23, 1986, tendered for filing a modification to its April 18, 1977 Power Service Agreement (Agreement) with the City of Bedford, Virginia (Bedford). The modification revises the service Agreement between the parties to reflect the addition of a new electric service delivery point. Appalachian has requested an effective date of June 1, 1986.

Copies of the filing have been provided to the Virginia State Corporation Commission and to Bedford.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Co.

[Docket No. ER86-513-000]

Take notice that on May 27, 1986, Arkansas Power & Light Company (AP&L) tendered for filing a Letter Agreement dated April 1, 1986 between AP&L and the City of Ruston, Louisiana (Ruston) for transmission services through the system of AP&L to the system of Louisiana Power & Light Company to permit a sale by Arkansas Electric Cooperative Corporation to Ruston of 27 MW of capacity and associated energy. AP&L requests an effective date of July 1, 1986 for the Agreement.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Co.

[Docket No. ER86-507-000]

Take notice that Carolina Power & Light Company ("Company"), on May

27, 1986, tendered for filing in Docket No. ER86-507, an Amendment, dated January 16, 1986, between the City of Fayetteville ("Customer") and Carolina Power & Light to the Service Agreement dated October 27, 1972, which is on file with the Commission as Carolina Power & Light Company Rate Schedule FPC No. 102. The Amendment, dated January 16, 1986, provides for the supplying of Backstand and Replacement Power by Company for Customer's generation and the purchase by Company from Customer of Peak, Reserve, and Surplus Power when such is available from Customer. Included in the Agreement are provisions for the addition of a heat recovery steam generating unit. Partial requirements service will be rendered under Company's filed Resale Service Schedule. Provisions are also made for Company to purchase from Customer any capacity not being used by Customer for peak shaving service.

The Amendment between the parties, dated January 16, 1986, supersedes the Amendments to the Service Agreement dated June 30, 1977 (Supplement No. 10 to FPC No. 102), and February 19, 1981 (Supplement No. 1 to Supplement No. 10 to FPC No. 102).

Appendix C, dated May 1, 1986, amending the Amendment to the Service Agreement provides for equal sharing of any savings when Company offers Replacement power to Customer and Customer elects to receive Replacement power; and the "metered demand or computed demand" to which the ratchet applies shall be the demand provided in the applicable Resale Service Schedule.

It is proposed that the Amendment, dated January 16, 1986, be effective sixty days after filing or on July 1, 1986, if allowed by the Commission.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this document.

4. Iowa Power and Light Co.

[Docket No. ER86-508-000]

Take notice that Iowa Power and Light Company ("Iowa Power") on May 27, 1986, tendered for filing an Amendment to Transmission Service Agreement ("Amendment"), between Iowa Power and Waverly, Iowa Municipal Electric Utility ("Waverly"), dated September 7, 1983. The proposed changes would increase revenues from jurisdictional sales and service by \$1,148.52 based on the twelve month period ending December 31, 1985.

The Amendment provides for Waverly's continued use of certain portions of Iowa Power's electric transmission system for delivery of power to Waverly at a proposed increased rate to recover increased

costs incurred by Iowa Power in its fixed costs at the Hills substation terminal, and as a result of storm damage incurred on its Montezuma-Hills transmission line.

Copies of the filing were served upon Waverly and the Iowa State Commerce Commission.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Southern Utilities Co.

[Docket No. ER86-509-000]

Take notice that Iowa Southern Utilities Company (Iowa Southern) on May 27, 1986, submitted for filing modifications to Iowa Southern's Electric Tariff Original Volume No. 1, including the termination and commencement of wholesale electrical service agreements.

Iowa Southern filed a Utility Service Contract between Iowa Southern and the United States of America for interruptible wholesale power under Rate 52 to the Iowa Army Ammunition Plant and request that such contract be effective on July 1, 1986.

Iowa Southern also filed a Notice of Termination of Service Agreements between Iowa Southern and Albia Light and Railway Company and between Iowa Southern and Seymour Municipal Utilities, and request that such terminations be effective on July 1, 1986.

Iowa Southern also filed revised tariff sheets to conform Iowa Southern's tariff to said terminations and commencement of service.

Copies of this filing have been served upon all parties in interest.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Southern Utilities Co.

[Docket No. ER86-510-000]

Take notice that Iowa Southern Utilities Company (Iowa Southern), an Iowa corporation, on May 27, 1986, submitted for filing a Notice of Succession in Ownership pursuant to § 35.16 of the Commission's regulations.

Iowa Southern states that it is the successor in interest to Iowa Southern Utilities Company, a Delaware corporation, and as such adopts and ratifies all existing applicable tariffs, rate schedules and supplements thereto on file with the Federal Energy Regulatory Commission (Commission).

Iowa Southern requests that such Notice be effective on May 31, 1986.

Copies of this filing have been served upon all parties of interest.

Comment date: June 13, 1986, in

accordance with Standard Paragraph E at the end of this notice.

7. Kansas Gas and Electric Co.

[Docket No. ER86-503-000]

Take notice that Kansas Gas and Electric Company (KG&E) on May 23, 1986 tendered for filing a proposed Participation Power Agreement between KG&E and Oklahoma Municipal Power Authority (OMPA).

This filing is necessary because OMPA desires to purchase power and energy to assure its ability to meet the needs of its municipal systems. KG&E has requested an effective date of July 1, 1986.

Copies of the filing were served upon OMPA and the utilities Division of the Kansas Corporation Commission.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of the this notice.

8. The Kansas Power and Light Co.

[Docket No. ER86-512-000]

Take notice that on May 27, 1986, the Kansas Power and Light Company (KPL) tendered for filing certain changes to a Non-Contract Service to Ark Valley Electric Cooperative Association, Inc., from the Kansas Power and Light Company (KPL) dated June 1, 1983 extending previous service under Supplement No. 11 to Rate Schedule FERC No. 148. This supplement provides for the deletion of the Abbyville (Noblesville), Hudson, Tobias, and Zenith delivery points. A new delivery point at Huntsville will be added allowing for a delivery voltage of 115 KV. Additionally, the Little River delivery point maximum capacity will change from 700 KW to 1,500 KW and the Sand Hill delivery point will change from 3,000 KW to 6,000 KW with increased delivery voltage from 69 KV to 115 KV. The redistribution of load will allow for greater efficiency by the Cooperative. Copies of the filing have been mailed to Ark Valley Electric Cooperative Association, Inc., and the State Corporation Commission of Kansas.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Co.

[Docket No. ER 86-504-000]

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on May 23, 1986, as a Supplement to Rate Schedule FERC No. 68 an executed agreement dated as of May 20, 1986 between PP&L and UGI Corporation (UGI). The agreement

reduces the prescribed rate of return on common equity from 15.50% to 14.50%. A Certificate of Concurrence executed by UGI accompanied PP&L's filing

Copies of PP&L's filing have been served upon UGI and the Pennsylvania Public Utility Commission.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. San Diego Gas & Electric Co.

[Docket no. ER86-505-000]

Take notice that on May 23, 1986 Sand Diego Gas & Electric company ("SDG&E") tendered for filing a Certificate of Concurrence assenting to and concurring with Arizona Public Service Company's filing of the Power coordination Agreement between Arizona Public Service (APS) and San Diego Gas & Electric Company.

The Agreement provides for the terms and conditions of interconnection between the two parties.

Copies of this Certificate of Concurrence were served upon the Public Utilities Commission of the state of California and APS.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Co.

[Docket No. ER86-511-000]

Take notice that, on May 27, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of change of rates for the modification of Table 1 of Appendix B of the Integrated Operations Agreement ("IOA") to reflect the scheduling units for scheduling and dispatching of entitlement in Intermountain Power Project ("IPP") under the provisions of the following rate schedule:

| | Rate schedule FERC No. |
|----------------------|------------------------|
| City of Anaheim..... | 95 |

Edison requests, to the extent necessary, Waiver of Notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comments date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Electric Power Co.

[Docket No. ER86-506-000]

Take notice that on May 23, 1986,

Southern Electric Power Company ("SWEPCO") tendered for filing decreases in the return on common equity component of the formula rates for requirements service to Northeast Texas Electric Cooperative, Inc. ("NTEC"), the Cities of Bentonville ("Bentonville") and Hope ("Hope"), Arkansas and Cajun Electric Power Cooperative, Inc. ("Cajun") and decreases in rates for transmission service to the Oklahoma Municipal Power Authority ("OMPA") for the period of January 1, 1986 to December 31, 1986. SWEPCO also tendered for filing executed letter agreements between SWEPCO and Bentonville and between SWEPCO and Cajun amending the contracts for service to Bentonville and Cajun. SWEPCO requests that the changes in rates be made effective as of January 1, 1986, that the letter agreement with Bentonville be made effective as of December 1, 1982, and that the letter agreement with Cajun be made effective as of September 1, 1982. Accordingly, SWEPCO requests waiver of the notice requirements under the Federal Power Act.

Copies of the filing have been served on NTEC, Bentonville, Hope, Cajun, OMPA, the Arkansas Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: June 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12863 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-730-000 et al.]

Amoco Production Co. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

May 29, 1986.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Amoco Production Co.

[Docket No. QF86-730-000]

On May 12, 1986, Amoco Production Co. (Applicant), of P.O. Box 3092, Houston, Texas 77253 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located in Yoakum County, Texas. The facility will consist of a natural gas-fired combustion turbine and a waste heat recovery system. Heat recovered by this system will be utilized in the applicant's Wasson Carbon Dioxide Removal Plant for the regeneration of various amines used to remove carbon dioxide from natural gas. The net electric power production capacity of the facility will be approximately 20.66 MW. The installation of the facility is expected to begin in September 1986.

2. Penntech Papers, Inc.

[Docket No. QF86-722-000]

On May 6, 1986, Penntech Papers, Inc. (Applicant), of 3 Barker Avenue, White Plains, New York 10601, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Johnsonburg, Elk Co., Pennsylvania. The facility will consist of two coal fired boilers, one black liquor recovery boiler, and one extraction/condensing turbine generating unit. Extraction steam produced by the facility will be used to supply the pulp and paper mill process requirement. The electric power production capacity of the facility will be 38 MW. The primary energy sources will be coal and black liquor. The installation of the facility will begin in early 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12864 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-107-000]

Algonquin Gas Transmission Co.; Filing of Tariff Sheets

June 4, 1986.

Take notice that on May 30, 1986, Algonquin Gas Transmission Company ("Algonquin Gas"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed the following nine proposed sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Seventh Revised Sheet No. 100
First Revised Sheet Nos. 538-550
First Revised Sheet No. 551
First Revised Sheet No. 552
First Revised Sheet No. 553
First Revised Sheet No. 554
First Revised Sheet No. 555
First Revised Sheet No. 556
First Revised Sheet Nos. 557-599

Algonquin Gas states that such tariff sheets are proposed to become effective October 31, 1985 in order to comply with § 284.7(b)(1) of the Commission's Regulations.

The filing indicates that such tariff sheets, which comprise Algonquin Gas' Rate Schedule 311-T, are being filed in order to give Algonquin Gas the flexibility to render NGPA Section 311 transportation service under such Rate Schedule after June 30, 1986 if the Commission should allow such service to be rendered after such date under the same terms and conditions as currently apply to NGPA Section 311

transportation service, and without subjecting Algonquin Gas to the CD reduction/conversion provisions in § 284.10 of the Commission's Regulations. Algonquin Gas states that by this filing it is not in any way committing itself to provide any transportation service after June 30, 1986. Algonquin Gas further states that any decision on whether to extend service will be implemented in a non-discriminatory fashion.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12865 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-105-000]

ANR Pipeline Co.; Changes in Rates

June 4, 1986.

Take notice that ANR Pipeline Company ("ANR"), on May 30, 1986, tendered for filing a proposed new Original Volume 1-A of its FERC Gas Tariff.

The purpose of this filing is to comply with 18 CFR 284.7, which requires restated rates for transportation under "grandfathered" agreements under Order No. 436. The proposed effective date of the tariff sheets is July 1, 1986.

Copies of this filing have been served on all of ANR's customers and interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12866 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-104-000]

Colorado Interstate Gas Co.; Revised Changes in Rates

June 4, 1986.

Take notice that Colorado Interstate Gas Company (CIG) on May 30, 1986, tendered for filing a proposed changes in its FERC Gas Tariff, Original Volume No. 1.

The purpose of this filing is to comply with 18 CFR 284.105 and 284.7, where the Commission has required restated rates for transportation under "grandfathered" agreements under Order No. 436. The proposed effective date of the original tariff sheets is July 1, 1986.

Copies of this filing have been served on all of CIG's jurisdictional customers.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12867 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-112-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Columbia Gas Transmission Corporation (Columbia Gas), on May 30, 1986, tendered for filing the following revised sheets to its FERC

Gas Tariff, Original Volume No. 1, to be effective July 1, 1986:

One hundred and eighth Revised Sheet No. 16
Fourth Revised Sheet No. 16A2

Columbia Gas states that these changes are being filed to comply with the provisions of § 284.7(a) and 184.7(b)(2) of the Commission's Regulations as promulgated by Order No. 436.

Columbia Gas also states that it filed an Offer of Settlement in Docket No. RP86-15 that covers its implementation of nondiscriminatory transportation under Order No. 436, and includes the transportation rates shown on Fourth Revised Sheet No. 16A2 to be charged by Columbia Gas under proposed Rate Schedules FTS and ITS. In addition, Columbia Gas proposed to provide a Standby Sales Service under certain rate schedules in said Offer of Settlement. The rates for this service, shown on One hundred and eighth Revised Sheet No. 16, were also included as part of the Offer of Settlement.

It is also stated that the transportation rates shown on Fourth Revised Sheet No. 16A2 fully comport with the requirements of § 284.7 of the Commission's Regulations, as promulgated by Order No. 436, by including a reservation charge and a commodity charge for firm transportation and one-part, volumetric rates for interruptible transportation service; separately identifying cost components; and stating maximum and minimum rates. Columbia Gas states that it cannot verify material variations in the cost of providing service due to time or distance because of the nature of its integrated pipeline system and therefore does not propose to differentiate rates on the basis of time and distance.

Copies of the filing were served upon the Company's jurisdictional customers, interested state regulatory commissions, and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12914, Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-108-000]

**Columbia Gulf Transmission Co.;
Proposed Changes in FERC Gas Tariff**

June 4, 1986.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on May 30, 1986, tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1986:

Original Volume No. 1
Original Sheet Nos. 160, 161, 199, 200, 236
through 246 and 284 through 294

Columbia Gulf states that these changes are being filed to comply with the provisions of §§ 284.7(a) and 284.7(b)(2) of the Commission's Regulations as promulgated by Order No. 436.

Columbia Gulf also states that it filed an Offer of Settlement in Docket No. RP86-14 that covers its implementation of nondiscriminatory transportation under Order No. 436, and includes the transportation rates shown on the above proposed Tariff Sheets to be charged by Columbia Gulf under proposed Rate Schedules FTS-1 & 2 and ITS-1 & 2.

It is also stated that the transportation rates shown on the attached proposed Tariff Sheets fully comport with the requirements of § 284.7 of the Commission's Regulations, as promulgated by Order No. 436, by including a reservation charge and a commodity charge for firm transportation and one-part, volumetric rates for interruptible transportation service; separately identifying cost components; and stating maximum and minimum rates.

Copies of this filing were served upon the Company's jurisdictional customers, interested state regulatory commissions and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12868 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-102-000]

**Equitable Gas Co., a Division of
Equitable Resources, Inc.; Tariff Filing**

June 4, 1986.

Take notice that on May 30, 1986, Equitable Gas Company, a division of Equitable Resources, Inc. ("Equitable") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations under the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff:

First Revised Volume No. 1
Twelfth Revised Sheet No. 1
Original Sheet No. 1-A
Second Revised Volume No. 10-II
First Revised Sheet No. 36
Original Volume No. 3
Original Sheet Nos. 1-41

Equitable states that it has been providing open-access transportation services pursuant to the self-implementing provisions of Section 311 of the Natural Gas Policy Act of 1978 ("NGPA") and in accordance with the Commission's Order No. 436 issued at Docket No. RM85-1, as amended. Consistent with the requirements of Order No. 436, as amended, the tendered tariff sheets serve to establish as part of Equitable's FERC Gas Tariff the rates, rate schedules, and operating conditions applicable to such transportation service rendered by Equitable under Subpart B of Part 284 of the Commission's Regulations, as well as service to be rendered upon receipt of blanket certificate authorization pursuant to Order No. 436, as amended.

Equitable requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective July 1, 1986, and states that copies of the filing have been served upon all jurisdictional customers and all affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214

and 385.211 of this chapter. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12869 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-113-000]

Gas Transport, Inc.; Tariff Filing

June 4, 1986.

Take notice that on May 30, 1986, Gas Transport, Inc., 109 North Broad Street, Lancaster, Ohio 43130, ("Gas Transport") filed First Revised Volume No. 1 and Original Volume No. 2 to its FERC Gas Tariff. Gas Transport states that this filing is in compliance with the order issued by the Commission in *Gas Transport, Inc.*, Docket No. CP86-291-000, on May 21, 1986. In that order, the Commission granted Gas Transport a blanket transportation certificate under the Commission's Order Nos. 436, et al., and directed Gas Transport to "file new transportation rates, to be effective not later than July 1, 1986, that conform to the provisions of § 284.7 as required under § 284.7(b)(2) of the Regulations."

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12870 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-99-000]

**Granite State Gas Transmission, Inc.;
Filing Proposed Tariff Changes**

June 4, 1986.

Take notice that on May 30, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1 for effectiveness on July 1, 1986:

Seventeenth Revised Sheet No. 7
Second Revised Sheet No. 11
Fourth Revised Sheet No. 68
Third Revised Sheet No. 70
Second Revised Sheet No. 71
Third Revised Sheet No. 75
First Revised Sheet No. 75-A
First Revised Sheet No. 82
Original Sheet No. 116

According to Granite State, the foregoing revised tariff sheets propose changes in rates for wholesale sales of natural gas to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) based on a cost of service for the twelve months of actual experience ended February 28, 1986, adjusted for changes that are known and measurable with reasonable accuracy and which will become effective within nine months thereafter. Granite State further states that the proposed rates, based on the adjusted test year cost of service, reflect increased costs for new plant, increased operating and maintenance expenses, increased ad valorem taxes, an increased cost of capital and income taxes that are not recovered in its underlying rates. According to Granite State, the proposed rates have been derived by applying the Modified Fixed Variable methodology of cost allocation and rate design to the adjusted test year cost of service which is a departure from the *United* cost allocation and rate design methodology on which its underlying rates are based.

Granite State avers that its underlying wholesale rates are those made effective as of April 1, 1986 in Docket No. RP86-65-000 in which Granite State restated its Base Tariff rates in compliance with the requirements of Section 154.38(d)(4)(vi)(a) of the Regulations. According to Granite State, the proposed rates submitted herewith result in an increase of \$826,464 annually for Bay State and a reduction of \$14,375 annually for Northern Utilities, exclusive of gas costs, compared to the underlying rates in docket No. RP86-65-000.

According to Granite State, copies of its filing were served on the foregoing

customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Dated:

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12871 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-103-000]

**Great Lakes Gas Transmission Co.;
Proposed Changes in FERC Gas Tariff
Under Purchased Gas Adjustment
Clause Provisions**

June 4, 1986.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on May 30, 1986 tendered for filing Original Sheet No. 57(iii), FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective July 1, 1986.

Original Sheet No. 57(iii) reflects the minimum and maximum rates to be charged by Great Lakes to Southeastern Michigan Gas Company for transportation service under Subpart B of Part 284 of the Commission's Regulations as grandfathered under Order No. 436 issued by the Commission on October 9, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12872 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-109-000]

**Kentucky West Virginia Gas Co.;
Proposed Changes in FERC Gas
Tariff**

June 4, 1986.

Take notice that Kentucky West Virginia Gas Company on May 30, 1986 tendered for filing revisions to its FERC Gas Tariff so as to establish rates and reasonable operating conditions implementing Kentucky West's concurrently filed blanket certificate of public convenience and necessity wherein Kentucky West will become an "open access" national gas transporter pursuant to Order No. 436 effective July 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12873 Filed 6-6-86; 8:45 am]

Billing Code 6717-01-M

[Docket No. CP85-57-008]

**Natural Gas Pipeline Co. of America;
Tariff Filing**

June 4, 1986.

Take notice that on May 27, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing Fifth Revised Sheet No. 5E to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the sheet is filed in accordance with the provisions of Rate Schedule IOS which was authorized by FERC order issued March 13, 1986, at

Docket No. CP85-57-003. The purpose of this sheet is to set out the threshold percentages and discount rates applicable to Rate Schedule IOS for the month of June, 1986.

Natural requests waiver of the Commission's regulations to the extent necessary to permit this tariff sheet to become effective June 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-12874 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-57-002]

Northwest Pipeline Corp.; Tariff Revisions

June 4, 1986.

Take notice that on May 30, 1986, May 30, 1986, Northwest Pipeline Corporation (Northwest) submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheet: Eleventh Revised Sheet No. 2-B

Northwest states that the purpose of the filing is to satisfy the concerns raised by the Commission in its order dated April 2, 1986 in the above-referenced docket.

Northwest has requested an effective date of May 1, 1986 for the tendered tariff sheet to conform to the effective date granted by the Commission in its April 2, 1986 order in the above-referenced docket.

A copy of this filing has been served on all jurisdictional customers and affected state regulatory commissions and on all parties of record in Docket No. RP86-57-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12875 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-116-000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

June 4, 1986.

Take notice that on May 30, 1986 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheet for its FERC Gas Tariff, Original Volume No. 1.

Eleventh Revised Sheets No. 1

Original Sheet No. 3-F

Original Sheet No. 32-Y

Original Sheet No. 32-Z

The proposed effective date of these revised tariff sheets is July 1, 1986.

Panhandle states this new PT Rate Schedule is submitted because of the requirements of § 284.7(b)(2) of the Commission Regulations and to enable Panhandle to continue providing interruptible service to the grandfathered shippers that are authorized to receive such service at the present time.

In accordance with the provisions of Part 154 of the Commission's Regulations, Panhandle states that these tariff sheets reflect establishment of Panhandle's new Rate Schedule for the continuation of interruptible service to customers that had been authorized for transportation as of June 30, 1986 under 18 CFR Part 284 or § 157.209 self-implementing provisions of the Commission's Regulations or that may subsequently be authorized under Section 7(c) certificates. As of the date of this submission, Panhandle has not agreed to become an open access transporter on a permanent basis, nor to become subject to the contract demand reduction or conversion provisions of § 284.10.

Panhandle also respectfully requests that the Commission grant such waivers of the applicable requirements of the Natural Gas Act and the Commission's

Regulations thereunder, including section 154 and § 284.7 as may be necessary, so that the enclosed tariff sheets may be accepted for filing and made effective on July 1, 1986. Grant of such waivers is reasonable given the nature of this filing, the limited scope of its applicability and the desirability of having the proposed tariff sheets become effective July 1, 1986.

Copies of this letter and enclosures are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12913 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-8-000, 001]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that on May 30, 1986, South Georgia Natural Gas Company (South Georgia) tendered for filing Thirty-Seventh Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information is being filed with a proposed effective date of July 1, 1986, pursuant to the Purchased Gas Cost Adjustments provisions set out in Section 14 of South Georgia's tariff.

South Georgia states that its Thirty-Seventh Revised Sheet No. 4 reflects an increase of 4.74¢ per MMBtu in the Current Adjustment and a decrease of 7.79¢ per MMBtu in the Surcharge Adjustment presently in effect.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12876 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-114-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Southern Natural Gas Company (Southern) on May 30, 1986, tendered for filing proposed changes to its FERC Gas Tariff to become effective July 1, 1986. Southern states that the filing is made pursuant to Section 284.7 of the Commission's Regulations and revises the transportation rates applicable to the short-term, interruptible transportation services performed by Southern pursuant to the "grandfathered" provisions of Order No. 436 in accordance with the requirements of that section.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12877 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-101-000]

Superior Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that on May 30, 1986, Superior Offshore Pipeline Company ("SOPCO") tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1. SOPCO states that this filing was made in order to comply with Order No. 436. SOPCO currently transports natural gas pursuant to 18 CFR 284.102 and 284.221.

SOPCO states that its tariff filing replaces its existing transportation tariff and encompasses all of the services provided by SOPCO, including certificated service. The tariff includes both firm and interruptible transportation service on a first-come/first-served basis. The tariff states that existing customers may choose between firm or interruptible service.

SOPCO requests that the Commission waive its regulations to permit SOPCO to collect a one cent per Mcf rate for transportation. When SOPCO received a certificate of public convenience and necessity, the Commission waived its regulations to allow SOPCO to collect a one cent rate until it filed for a rate change under section 4(e) of the Natural Gas Act. SOPCO now seeks a similar waiver to permit collection of the same one cent rate for self-implementing transportation services.

Copies of the filing were served upon the company's jurisdictional customers and other parties and affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12878 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-100-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Rate Change and Tariff Revisions

June 4, 1986.

Take notice that on May 30, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1986:

Second Revised Sheet No. 22

Original Tariff Sheet No. 22A

First Revised Tariff Sheet No. 97

Tennessee states that pursuant to § 284.7 of the Commission's regulations the revised tariff sheets reflect maximum and minimum rates for service under Tennessee's Rate Schedule IT and a revision to Rate Schedule IT to provide that Tennessee may adjust the rates for service to any Shipper between the maximum and minimum.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-12879 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-110-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Texas Eastern Transmission Corporation ("Texas Eastern") on May 30, 1985 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies each of the following tariff sheets:

Second Revised Seventy-ninth Revised Sheet No. 14

First Revised Seventy-ninth Revised Sheet No. 14A

First Revised Seventy-ninth Revised Sheet No. 14B
 First Revised Seventy-ninth Revised Sheet No. 14C
 First Revised Seventy-ninth Revised Sheet No. 14D
 Original Sheet No. 14F

Pursuant to 18 CFR 284.7(b)(2), any person offering a transportation service under Subparts B, G, or H of Part 284 must file rates in accordance with the requirements of 18 CFR 284.7 with a proposed effective date not later than July 1, 1986. Texas Eastern Transmission Corporation ("Texas Eastern") respectfully requests that its offer of settlement filed on March 13, 1986 in Docket No. RP85-177 et al. be accepted, by reference, as the filing contemplated by 18 CFR 284.7(b)(2). Further, Texas Eastern asks that the Commission act on this request prior to July 1, 1986. The March 13, 1986 offer of settlement is currently pending before the Commission pursuant to the "Certification of Offer of Settlement and Record" issued by the Honorable Samuel Z. Gordon, Presiding Administrative Law Judge on May 12, 1986. As part of the March 13, 1986 offer of settlement, Texas Eastern filed a pro forma copy of a proposed FERC Gas Tariff, Fifth Revised Volume No. 1, containing inter alia rate and rate schedules in full compliance with the requirements of 18 CFR 284.7. The March 13, 1986 offer of settlement represents a comprehensive approach to the issues raised by Order No. 436 and Texas Eastern urges expeditious approval in order to permit its implementation.

Until such time that the March 13, 1986 offer of settlement becomes effective, it is Texas Eastern's desire and intent to continue offering Shippers firm, if available, and interruptible open-access, non-discriminatory transportation, authorized by Section 311 of the Natural Gas Policy Act and 18 CFR 284.102 of the Commission's Regulations, to the extent such service does not result in Texas Eastern being deemed to have agreed to offer its firm sales customers the options set out in paragraphs (c) and (d) 18 CFR 284.10 (Transition Transportation Service). Texas Eastern proposes to charge Shippers, with certain exceptions discussed below, for such Transition Transportation Service the applicable rate under Texas Eastern's Rate Schedule TS-3. The rates under Rate Schedule TS-3 and the terms and conditions are currently subject to refund in Docket No. RP85-177. Texas Eastern also proposes to continue transportation under certain agreements

which are "grandfathered" as defined below.

The above listed tariff sheets (with the exception of Original Sheet No. 14F) set forth the applicable rates under Rate Schedule TS-3 in compliance with the requirements of 18 CFR 284.7. Original Sheet No. 14F sets forth relevant information regarding the transportation services authorized and commenced by Texas Eastern on or before October 9, 1985 under Subpart B and G of Part 284, as such Subparts were effective before November 1, 1985 ("grandfathered agreements"). Pursuant to 18 CFR 284.105, these agreements may be continued under the terms and conditions that applied prior to November 1, 1985 with the exception of the requirements of 18 CFR 284.7 and 18 CFR 284.106 until the earlier of the expiration of the authorized arrangement or October 9, 1987. With the exception of the agreements identified as being exchanges, Texas Eastern proposes to charge Shippers under these agreements the applicable rate under Texas Eastern's Rate Schedule TS-3.

With regard to the exchange agreements identified on Original Sheet No. 14F, Texas Eastern believes it is appropriate, based on the individual circumstances as more fully set forth in the initial reports filed in the relevant ST Dockets, that service under these agreements continue to be provided by the parties at no charge. To the extent necessary, Texas Eastern respectfully requests a waiver of 18 CFR 284.7 and any other rule or regulation necessary to permit the parties to continue to render service under these agreements at no charge.

Texas Eastern respectfully requests that the Commission accept the March 13, 1986 offer of settlement as in compliance with 18 CFR 284.7(b)(2). Until such time that the offer of settlement becomes effective, Texas Eastern requests that the Commission approve the above mentioned tariff sheets to become effective July 1, 1986.

Copies of this filing are being posted in accordance with § 154.16 of the Commission's Regulations. Copies of this filing are being mailed to all parties of record in Docket No. RP85-177 et al., and to all Shippers under grandfathered agreements and Rate Schedule TS-3, and to all Authorized Purchasers of Natural Gas from Texas Eastern Transmission Corporation and Interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825

North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
 Secretary.

[FR Doc. 86-12880 Filed 6-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-111-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on May 30, 1986 tendered for filing Original Sheet No. 19 to its FERC Gas Tariff, Second Revised Volume No. 1. The tariff sheet is proposed effective July 1, 1986.

The purpose of this filing is to establish, in accordance with the requirements of Order Nos. 436 and 436-A, rates for ongoing "grandfathered" interruptible transportation services rendered by Transco pursuant to Section 311 of the NGPA and Part 284 of the Commission's Regulations. Transco states that in determining these rates, Transco has utilized the cost and throughput determinants which underlie Transco's currently effective rates approved by the Commission in Docket Nos. RP83-137 and RP83-30 effective April 1, 1984.

Transco filed on May 13, 1986 a revised "Stipulation and Agreement" in Docket Nos. TA85-1-29-000 et al. (Agreement) proposed to be effective July 1, 1986, the provisions of which, upon approval by the Commission, will enable Transco to become an "open access" transporter. Included in the Agreement are rates for interruptible transportation service which, pursuant to the Agreement, are deemed to comply with the requirements under the Commission's Order Nos. 436 and 436-A. Transco states that the interruptible transportation rates reflected in this instant filing are identical to those proposed in the Agreement. Transco further states that the instant filing is without prejudice to (1) its litigating position on interruptible transportation

issues if these matters are not resolved through approval of the Agreement, and (2) its right to file revised compliance rates in conformance therewith.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12881 Filed 6-6-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-115-000]

Trunkline Gas Co.; Change in Tariff

June 4, 1986.

Take notice that on May 30, 1986 Trunkline Gas Company (Trunkline) tendered for filing the following sheets for its FERC Gas Tariff, Original Volume No. 1.

Fourteenth Revised Sheet No. 1
Original Sheet No. 3-A.3
Original Sheet No. 9-BJ
Original Sheet No. 9-BK
Original Sheet No. 9-BL.

The proposed effective date of these revised tariff sheets is July 1, 1986.

Trunkline states this new PT Rate Schedule is submitted because of the requirements of § 284.7(b)(2) of the Commission Regulations and to enable Trunkline to continue providing interruptible service to the grandfathered shippers that are authorized to receive such service at the present time.

In accordance with the provisions of Part 154 of the Commission's Regulations, Trunkline states that these tariff sheets reflect establishment of Trunkline's new Rate Schedule for the continuation of interruptible service to customers that had been authorized for transportation as of June 30, 1986 under

18 CFR Part 284 or § 157.209 self-implementing provisions of the Commission's Regulations or that may subsequently be authorized under Section 7(c) certificates. As of the date of this submission, Trunkline has not agreed to become an open access transporter on a permanent basis, nor to become subject to the contract demand reduction or conversion provisions of Section 284.10.

Trunkline also respectfully requests that the Commission grant such waivers of the applicable requirements of the Natural Gas Act and the Commission's Regulations thereunder, including section 154 and § 284.7 as may be necessary, so that the enclosed tariff sheets may be accepted for filing and made effective on July 1, 1986. Grant of such waivers is reasonable given the nature of this filing, the limited scope of its applicability and the desirability of having the proposed tariff sheets become effective July 1, 1986.

Copies of this letter and enclosures are being served on all affected customers, jurisdictional customers, and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12882 Filed 6-6-86; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3026-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44

U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR's are available for review and comment.

FOR FURTHER INFORMATION CONTACT:
Nanette Liépman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Mobile Sources Emission Factors Survey (EPA ICR #0619). (This is an extension of a previously approved ICR; there are no changes.)

Abstract: The Emission Factors Survey tests a random sample of privately owned motor vehicles, stratified by class of vehicle and by mileage of vehicle use within each class, for the purpose of characterizing levels of exhaust pollutants for each combination of class and mileage in the sample. The data generated by this survey are used to model air pollution attributable to mobile sources and to determine the impact of regulations and the benefits of control programs.

Respondents: Random sample of private owners of motor vehicles.

Office of Water

Title: Provision for Discharge Authorization—Ore Recovery Mills (EPA ICR #1013). (This is an extension of a previously approved ICR; there are no changes.)

Abstract: Ore mills using the froth flotation process may request permission to discharge wastewater if necessary to eliminate interference in ore recovery. Applicants submit technical data once to the permit authority (EPA or State agency), which reviews it and approves or denies the discharge.

Respondents: Owners and operators of ore mills using the froth flotation process.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0004, Pretreatment Removal Credit Approval Request, was approved 4/29/86 (OMB #2040-0020; expires 9/30/87).

EPA ICR #0009, Industry and POTW Maintenance of Monitoring Records, was approved 4/29/86 (OMB #2040-0022; expires 12/31/88).

EPA ICR #0126, Report by Publicly Owned Treatment Works (POTWs) of New or Increased Pollution Introduction, was approved 4/29/86 (OMB #2040-0010; expires 12/31/88).

EPA ICR #0220, Information Requirements for 404 State Permit Applications, was approved 5/16/86 (OMB #2090-0015; expires 5/31/88).

EPA ICR #0663, New Source Performance Standards (NSPS) for Beverage Can Surface Coating (Subpart WW)—Information Requirements, was approved 5/14/86 (OMB #2060-0001; expires 5/31/89).

EPA ICR #1025, National Pollution Discharge Elimination System (NPDES) Notice of Actual Production Level—Automotive Manufacturing Industries, was approved 5/13/86 (OMB #2040-0077; expires 5/31/87).

EPA ICR #1245, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs, was approved 5/22/86 (OMB #2030-0021; expires 10/31/88).

EPA ICR #1298, Used Oil Regulatory Impacts, was approved 5/15/86 (OMB #2050-0056; expires 12/31/86).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Wayne Leiss (ICR #0619) or Rick Otis (ICR #1013), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: June 2, 1986.

Daniel J. Fiorino,
Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-12719 Filed 6-6-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3028-6]

Environmental Engineering Committee, Science Advisory Board; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a two-day meeting on June 24-25, 1986 of the Environmental Engineering Committee of the Science Advisory Board. The meeting will be held at the Environmental Protection Agency, Hazardous Waste Engineering Research Laboratory/ORD, 26 West St. Clair Street, Cincinnati, OH. The

meeting will begin at 9:00 a.m. each day, and last until 5:00 p.m. on June 24, and until 1:00 p.m. on June 25.

The purpose of the meeting will be to review the Office of Research and Development's Alternative Technology Research Program. This review is one of a series of quarterly research reviews conducted by the Science Advisory Board at the request of EPA's Deputy Administrator.

The meeting will be open to the public on June 24, and will be closed for a writing session of June 25. Any member of the public wishing to attend or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126.

Dated: June 4, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-12883 Filed 6-6-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-458; FRL-3028-8]

Pesticide Tolerance Petition; Mobay Chemical Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Mobay Chemical Corp. has submitted to EPA a feed/food additive petition proposing to establish regulations permitting residues of the insecticide [cyano-(4-fluoro-3-phenoxyphenyl)-methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxy-ate] (referred to in this notice as cyfluthrin) in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-458] and the petition number, attention Product Manager (PM-15), at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A

copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca (PM-15), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 204, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA, (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA has received a feed/food additive petition (FAP), from Mobay Chemical Corp., Agricultural Chemicals Division, P.O. Box 4913, Hawthorn, Kansas City, MO 64120, proposing to amend 21 CFR Part 193 (food) and Part 561 (feed) by establishing regulations permitting residues of the insecticide cyfluthrin in or on certain processed agricultural commodities as follows:

| Petition identity | CFR affected | Commodities | Part per million (ppm) |
|-------------------|------------------|-------------------------------|------------------------|
| FAP 5H5470... | 21 CFR Part 193. | Concentrated tomato products. | 0.5 |
| FAP 5H5470... | 21 CFR Part 561. | Tomato pomace (dry). | 5.0 |
| | | Tomato pomace (wet). | 2.0 |

Authority: 21 U.S.C. 348.

Dated: June 2, 1986.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-12884 Filed 6-6-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Evaluation of Mesothelioma Production by Asbestos Substitutes Test Protocol for "Project Firesmoke"; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the

public for observation and participation, limited only by the space available:

Evaluation of Mesothelioma Production by Asbestos Substitutes

Date: June 25, 1986

Time: 9 a.m.-4 p.m.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226

Purpose: To review and discuss the scientific merit of an experimental investigation designed to determine the ability of modified chrysotile asbestos to produce mesotheliomas.

Additional information may be obtained from: S. Frank Platek, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8400, Commercial: (513) 533-8400.

Test Protocol for "Project Firesmoke"

Date: June 25, 1986

Time: 9 a.m.-4:30 p.m.

Place: Room 138-B, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888

Purpose: To discuss the research study protocol for "Project Firesmoke" which will measure workplace protection factors using in-facepiece and outside carbon monoxide measurement and will characterize the fireground for particulate and gaseous exposures.

Additional information may be obtained from: Gary P. Noonan, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888, Telephones: FTS: 923-4362, Commercial: (304) 291-4362.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: June 2, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 86-12838 Filed 6-6-86; 8:45 am]

BILLING CODE 4160-19-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-86-1614]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTON: Notices.

SUMMARY: The proposed information collection requirements described below

have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

Action

Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FUR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Section 8 HAPP Application for Existing Housing

Office: Housing

Form Number: HUD-52515

Frequency of Submission: Annually and On Occasion

Affected Public: State or Local Governments

Estimated Burden Hours: 6,000

Status: Extension

Contact: Myra Newbill, HUD, (202) 755-6477; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System; Determination of Operating Subsidy

Office: Public and Indian Housing
Form Number: HUD-52728A, 52728B, and 52728C

Frequency of Submission: On Occasion and Annually

Affected Public: State or Local Governments

Estimated Burden Hours: 61,200

Status: Revision

Contact: John Comerford, HUD, (202) 426-1872; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Housing Counseling Program & Recordkeeping Requirements (Funded)

Office: Housing
Form Number: HUD-9921

Frequency of Submission: Monthly and On Occasion

Affected Public: State or Local Governments and Non-Profit Institutions

Estimated Burden Hours: 5,635

Status: Reinstatement

Contact: O.T. Miles, HUD, (202) 755-6664; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Community Development Block Grant (CDBG) Program Small Cities Performance Assessment Report (PAR)

Office: Community Planning and Development

Form Number: HUD-4052

Frequency of Submission: Annually
Affected Public: State or Local Governments

Estimated Burden Hours: 17,197

Status: Reinstatement

Contact: Patricia G. Myers, HUD, (202) 755-6322; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the

Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Compliance Inspection Report and Mortgagee's Assurance of Completion

Office: Housing

Form Number: HUD-92051 and 92300

Frequency of Submission: On Occasion

Affected Public: Businesses or Other

For-Profit

Estimated Burden Hours: 253,500

Status: Extension

Contact: Bud Carter, HUD, (202) 426-7212; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Annual Public Housing Agency (PHA) Performance Awards

Office: Public and Indian Housing

Form Number: None

Frequency of Submission: Annually

Affected Public: State of Local

Governments

Estimated Burden Hours: 6,000

Status: New

Contact: Odessa W. Burroughs, HUD, (202) 472-4703; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary.

[FR Doc. 86-12918 Filed 6-6-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; 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 President's Commission on Americans Outdoors (Commission) will be held Friday, June 27, 1986, beginning at 8:30 am, in Rooms 5 and 10 in the Minnesota State Office Building, 435 Park Street, St. Paul, MN 55155. Due to heavy citizen participation the hearing will be split into two concurrent sessions in the rooms listed above.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this

country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

This meeting is opened to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111 20th Street, NW, Washington, DC 20036-8547, (202) 634-7310.

Dated: June 3, 1986.

Victor H. Ashe,

Executive Director, President's Commission on American Outdoors.

[FR Doc. 86-12839 Filed 6-6-86; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

Information Collection Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: 43 CFR Part 3160—Onshore Oil and Gas Operations Non-form Items.

Abstract: Federal and Indian (except Osage) oil and gas lessees and operators are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

Bureau Form Numbers: None.

Frequency: Nonrecurring.

Description of Respondents: Lessees and operators of Federal and Indian (except Osage) oil and gas leases.

Annual Responses: 191,980.

Annual Burden Hours: 93,559.

Annual Clearance Officer: Rebecca Daugherty, 202-653-8853.

Dated: May 6, 1986.

George F. Brown,

Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 86-12951 Filed 6-6-86; 8:45 am]

BILLING CODE 4310-84-M

Alaska Native Claims Selection; Sealaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sections 14(h)(1), 14(h)(7), and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), 1613(h)(7), 1621(j), will be issued to Sealaska Corporation. The lands involved are in the Tongass National Forest, Alaska.

| Serial No. | Land description | Approximate acreage |
|------------------------------|-------------------------------------|---------------------|
| Copper River Meridian | | |
| AA-10446 | T. 73 S., R. 84 E., Secs. 1 and 12 | 4.55 |
| AA-10451 | T. 82 S., R. 98 E., Sec. 11 | 19.20 |
| AA-10462 | T. 83 S., R. 85 E., Sec. 14 | 8.70 |
| AA-10464 | T. 68 S., R. 78 E., Sec. 36 | |
| | T. 69 S., R. 79 E., Sec. 3 | 6.30 |
| AA-10469 | T. 83 S., R. 89 E., Sec. 3 | 4.79 |
| AA-10473 | T. 66 S., R. 77 E., Sec. 23 | 3.10 |
| AA-10474 | T. 66 S., R. 77 E., Secs. 11 and 14 | 1.40 |
| AA-10475 | T. 66 S., R. 77 E., Sec. 14 | 3.80 |
| AA-10482 | T. 62 S., R. 72 E., Sec. 24 | |
| | T. 62 S., R. 73 E., Sec. 19 | 13.80 |
| AA-10496 | T. 58 S., R. 70 E., Sec. 11 | 9.70 |
| AA-10507 | T. 54 S., R. 68 E., Sec. 6 | 1.40 |
| AA-10530 | T. 32 S., R. 40 E., Sec. 11 | 178.60 |

A notice of the decisions will be published once a week for four (4) consecutive weeks in the JUNEAU EMPIRE. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions shall have until July 9, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ann Adams,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-12952 Filed 6-6-86; 8:45 am]

BILLING CODE 4310-JA-M

[OR 38278 (WA)]

Modification of Notice of Realty Action; Exchange of Public Lands in Okanogan and Kittitas Counties, WA

This notice modifies that Notice of Realty Action published in the *Federal Register*, Volume 50, No. 45 on March 7, 1985, (50 FR 9333, March 7, 1985), by adding the following described parcel of land that has been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 36 N., R. 26 E., W.M.,
Sec. 13, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Publication of this notice segregates the public lands from the operation of all forms of appropriation under the public land laws, including the mining laws, for a period of 2 years from the date of first publication.

For a period of 45 days from the date of first publication, interested parties may submit comments to the District Manager, Bureau of Land Management, U.S. Department of the Interior, East 4217 Main Avenue, Spokane, Washington 99202.

Dated: May 12, 1986.

Joseph K. Buesing,
District Manager.

[FR Doc. 86-12825 Filed 6-6-86; 8:45 am]

BILLING CODE 3410-11-M

Fish and Wildlife Service**Togiak National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, Alaska**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a final Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Togiak National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS describes five strategies for long-term management of the 4.3 million acre refuge. Lands suitable for wilderness designation are identified for four of the alternatives. Each one identifies lands

that would be suitable for addition to the National Wilderness Preservation System.

DATE: Remarks on the final CCP/EIS must be submitted on or before July 25, 1986 to receive consideration by the Regional Director.

ADDRESS: Remarks should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

A final CCP/EIS has been prepared for general distribution. Copies of it will be sent to all persons, organizations, and agencies which participated in the public-review process (either scoping meetings, alternative workshops, and/or public meetings/hearing). In addition, copies will be sent to all persons who have requested them. Those wishing to review the final document may obtain a copy by contacting Mr. Knauer.

Copies of the final CCP/EIS are available for public review at the office of the Regional Director, at the above address; at the Togiak National Wildlife Refuge Office, Dillingham, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg. 18th and C Streets, NW, Washington, DC 20240.

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232.

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103.

U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111.

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell, Federal Bldg., 75 Spring Street, Atlanta, GA 30303.

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158.

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Blvd., Lakewood, CO 80225.

SUPPLEMENTARY INFORMATION: The final CCP/EIS for the Togiak National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive

conservation plans. In addition, the final CCP/EIS and Wilderness Review also describe the general wilderness suitability of various acreages of refuge lands, under each of the management alternatives, in order to comply with the requirements of section 1317(a) of ANILCA. This requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987.

Issues addressed by the plan focus on fish and wildlife management; problems with intensive human use in subarctic, sensitive fish and wildlife habitats; potential conflict between subsistence use, sport fishing, and off-refuge commercial fisheries; lack of resource data; potential oil and gas exploration and development; development and use of adjacent State and private lands; and management of refuge inholdings. Overall goal of the plan is to afford maintenance of fish and wildlife populations in their present state while creating opportunities for hunting, fishing, and other recreation uses, plus retention of historical subsistence use of the area.

This plan describes five options for management of the Refuge; the process pursued in their development; and the environmental consequences of implementing each alternative. The alternatives cover a broad spectrum of management emphasis. Alternative A describes the current situation which would maintain the Refuge in an undeveloped state. Alternative E is the more development oriented alternative, allowing for compatible oil and gas development and support facilities in designated areas. A modified alternative (Alternative CM), created in response to the comments to the draft plan made by the local residents and recreational users, emphasizes maintenance of existing (1985) recreational-use levels and traditional-access opportunities on the Refuge's rivers until affected user groups, adjacent landowners, and other interested groups can make recommendations on river management and until the Service completes a detailed public-use management plan. The Service chose this new alternative (Alternative CM) as the preferred alternative. By ensuring the Refuge's natural diversity, Alternative CM would support maintenance of key fish and wildlife populations and habitats by minimizing potential impacts from development. Furthermore, Alternative CM will provide for maintenance of

traditional access and for continued subsistence use of the Refuge's resources, while affording opportunities for oil and gas studies where compatible with refuge purposes. In response to recommendations, made during the public review process, Alternative B has been revised to address local concerns; emphasis on protection of fish and wildlife resources and opportunities for subsistence harvests. The Service would conduct detailed subsistence studies and limit levels of river recreational use to 1980 levels. Alternative C has not been changed significantly from that in the draft plan, while Alternative D, parts of which are now embodied in other alternatives, was dropped.

The final plan also describes the general wilderness suitability of differing acreages of refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987. About half (2.3 million acres) of the Refuge is designated as wilderness. A range of recommendations is included in the plan's five alternative management strategies. Two alternatives (Alternatives C and CM) call for the same amount of acreage in designated wilderness while in one alternative (Alternative E) none is recommended; another (Alternative B) suggests as much as 1.4 million acres be considered for the National Wilderness Preservation System.

The Notice of Intent to prepare the draft CCP/EIS was published in the May 24, 1985, **Federal Register**. Other government agencies and the general public contributed to the development of this final CCP/EIS and Wilderness Review. After dissemination of the draft version nine public meetings were held during June and August, 1985, in Quinhagak; Togiak/Twin Hills; Manokotak (at Igushik fish camp); Good News Bay; Platinum; and Dillingham. A public hearing was held in Anchorage, on July 9, 1985.

The U.S. Fish and Wildlife Service will issue a Record of Decision on this CCP/EIS after July 25, 1986.

Dated: June 2, 1986.

Robert E. Gilmore,

Regional Director.

[FR Doc. 86-12837 Filed 6-6-86; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Species; Receipt of Applicants for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Florida State Museum, Gainesville, FL—PRT-707683, 708073, and 708074.

The applicant requests a permit to import and reexport collected and salvaged specimens of *Caiman latirostris*, *Caiman crocodylus yacare*, and *Melanosuchus niger* for scientific purposes. Specimens will be imported from and reexported to Bolivia, Brazil, and Paraguay.

Applicant: Duke University Primate Center, Durham, NC 27705—PRT-707856.

The applicant requests a permit to export one male and one female captive-bred ringtailed lemurs (*Lemur catta*) to Wielkopolski Park Zoo in Poland for enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 2, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-12912 Filed 6-6-86; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventeenth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International

Food and Agricultural Development (BIFAD) on June 23 and 24, 1986.

The purpose of the meeting is to discuss issues and problems involving the establishment of international networks for transfer of technology generated in the implementation of international collaborative research support programs in food and agriculture by U.S. and developing country institutions. A new format for JCARD's operation and relationship with BIFAD will also be discussed.

JCARD will meet from 9:00 a.m. to 5:00 p.m. on June 23, 1986 and from 9:00 a.m. to 5:00 p.m. on June 24, in Rooms 3524 and 1107 respectively, New State Department Building, 22nd and C Streets, NW., Washington, DC (The Executive Committee will meet from 9:00 a.m. to 12:00 noon on June 23rd, 1986 in Room 5316, New State Building and the purpose of this meeting is to consider agenda items for future JCARD meetings). Any interested person may attend, may file written statements with the Committee before or after the meetings, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits. An escort from the "C" Street Information Desk (Diplomatic Entrance) will conduct you to the meeting.

Dr. John Stovall, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meetings. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, DC 20523 or telephone him at (202) 647-8532.

Dated: May 30, 1986.

John Stovall,

A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Research and Development, Board for International Food and Agricultural Development.

[FR Doc. 86-12899 Filed 6-6-86; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Petroleum Environmental Research Forum

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Petroleum Environmental Research Forum ("PERF") has filed a written notification

simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of PERF. The change consists of the addition of Ashland Oil, Inc., P.O. Box 391, Ashland, Kentucky 41114, to the membership of PERF.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification disclosing the identities of the original parties to the venture and the objectives of PERF and the area of its planned activity was published at 51 FR 8903, on March 14, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-12836 Filed 6-6-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket Nos. 85-61, 85-63, and 86-3]

Geoffrey A. W. DiBella, M.D. et al.; Hearings

Notice is hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice, issued to Geoffrey A. W. DiBella, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AD6591843 and AD1452767, and deny his applications, executed on May 11, 1985 and May 21, 1985, respectively, for renewal of his registration as a practitioner under 21 U.S.C. 823(f).

Notice is also hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice, issued to Manuel A. Sanchez-Acosta, M.D., two Orders To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AA 5052256 and AS2396011, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f).

Notice is also hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice issued to Irving M. Greenfarb, D.O., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AG4091714, and deny his application for renewal of that registration, executed on September 3, 1985, as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since each said Order To Show Cause was received by the respective Respondent, and a

written request for hearing having been filed with the Drug Enforcement Administration on behalf of each Respondent, notice is hereby given that hearings in these matters will be held, commencing at 10:00 a.m. on Monday, June 16, 1986, in the U.S. Tax Court Courtroom, Room 208, 26 Federal Plaza, New York, New York.

Dated: May 29, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-12843 Filed 6-6-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-5319 et al.]

Proposed Exemptions; Annuity Trust Fund of Exxon Corp., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200

Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Annuity Trust Fund of Exxon Corporation (the Fund) Located in Houston, Texas

[Application No. D-5319]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply on and after June 30, 1984, to: (1) The retention by the Fund of certain oil and gas royalty interests in properties where Exxon Corporation is the lessor, or retains a working interest or operates those properties through its division, Exxon Company, U.S.A.; (2) the Fund's disposition of oil for fair market value to

Exxon Corporation, its divisions or affiliates or other parties in interest; and (3) the Fund's receipt of the fair market value of gas from Exxon Corporation, its divisions or affiliates or other parties in interest.

The proposed exemption is subject to the condition that all terms and conditions under which the above-described transactions take place are at least as favorable to the Fund as could be obtained in an arm's-length transaction.

Summary of Facts and Representations

1. The Annuity Plans of Exxon Corporation, its divisions and affiliates which participate in the Fund (the Plans) are defined benefit pension plans having, as of December 31, 1984, approximately 84,000 participants and net assets of \$4.5 billion. The Fund consists of a group of trusts created to hold plan assets such as securities and real property. Prior to 1982, the Fund was a consolidated trust for reporting purposes. On January 1, 1982, a master trust format was adopted, with the majority of assets held by Irving Trust, as trustee, and managed by several investment managers.

2. The named fiduciary of the Plans, for financial matters is the Administrator-Finance, Mr. E.A. Robinson, who is Vice President and Treasurer of Exxon Corporation. The Administrator-Finance is responsible for establishing and carrying out funding policies and methods consistent with the objectives of the Fund. He also appoints trustees to hold, manage and control Fund assets and may direct any such trustee in the management and control of any assets held by the trustee. In addition, he is responsible for appointing and vesting in one or more investment managers the power to manage any Fund assets, including the power to acquire and dispose of Fund assets. The performance of all trustees is reviewed by the Administrator-Finance on a periodic basis.

3. Beginning in 1947, oil and gas royalty interests were acquired as investments for the 1932 Annuity Trust Fund, a predecessor of the current Fund. While these interests were created by conveyance from various parties from 1947 to 1973, the majority of acquisitions occurred from 1955 through 1957. No royalty interests have been acquired since the enactment of the Act in 1974.

4. The Fund owns royalty interests created under 431 oil and gas leases. Exxon Corporation (hereafter referred to as Exxon) has an interest in 230 of those leases, as follows: Exxon, through its division, Exxon Company, U.S.A., operates 151 leases; Exxon retains a

working interest or has a royalty interest in an additional 79 leases; and Exxon has fee title to the property under three of the 230 leases. The Fund's royalty interests in the properties having Exxon involvement are small relative to other royalty interests that are widely held by parties unrelated to Exxon.

5. The Fund's royalty interests are held in two separate trusts. The Administrator-Finance has appointed First City National Bank of Houston (hereafter referred to as First City National Bank), Houston, Texas, and Louisiana National Bank, Baton Rouge, Louisiana, as trustees to hold Fund royalty interests in various oil and gas fields located in Louisiana, Texas, New Mexico and Mississippi. Louisiana National Bank holds title to the interests located in Louisiana and First City National Bank holds title to all other Fund royalty interests. The banks are independent trustees having the necessary authority to exercise independent judgment on administration and disposition of these royalty interests. The trust department of each bank has other accounts holding substantial oil and gas properties and maintains a staff experienced in managing these investments. As of December 31, 1984, Fund royalty interests accounted for less than 1% of all assets managed by First City National Bank and those interests together with Fund common stocks accounted for 1.2% of all assets managed by the bank. As of the same date, Fund royalty interests accounted for less than 1% of all assets managed by Louisiana National Bank. That bank does not hold any other Fund assets as trustee. Exxon and its affiliates account for less than 1% of the commercial credit and deposit business of each bank.

6. A typical oil and gas lease usually entitles a royalty interest owner to a fraction of oil produced and saved from the property; alternatively, the lessee has a right to take the royalty oil, paying the royalty owner the market price prevailing in the field on the date of purchase. In addition, a royalty interest owner is usually entitled to a fraction of the market value of gas produced from the leased property and sold or used off the premises, but is not entitled to take gas in kind. If a party owns only a royalty interest in a property, the party normally does not participate in leasing the property and does not have control over the terms of the lease. The royalty interest owner is simply entitled to a share of the proceeds of production if the property under lease is productive of oil and/or gas. Moreover, royalty owners not engaged in the refining and marketing of petroleum, such as the

trustees of the Fund, have no means of disposing of their share of oil production under the royalty interests except to other parties, usually the operator of the lease. Payments for royalty owners' respective shares are generally made to them directly by the operator.

7. The Fund, acting through its trustees, currently disposes of its share of produced oil, as determined by a division order, to various oil purchasers. This has occurred since the inception of production from the leases covering these royalty interests and is planned to continue until no further oil is produced from the leased property. In many cases, the Fund's royalty oil, where Exxon operates or has a working interest in a lease, is acquired by Exxon. In some cases where Exxon acquires this oil, the oil is processed through Exxon-operated field facilities and may go to an Exxon refinery through pipelines connecting the leased property with a refinery.

8. From 1947 through 1984, Fund royalty interests provided more than \$229 million of income, before depletion. In 1984, total Fund royalty interest income was \$12 million, before depletion. At year-end 1984, the estimated market value of all Fund royalty interests was \$41 million, or 1.1% of the market value of all trustee Fund assets. The annual percentage returns on the Fund's royalty interests for the one, three, five, and ten-year periods ending December 31, 1984, were 25.1%, -4.2%, 12.1%, and 25.2%. The comparable annual percentage returns on the total trustee assets of the Fund were 4.9%, 12.9%, 13.2%, and 12.2% and on the total trustee assets of the Fund combined with insurance company contracts were 5.4%, 12.2%, 12.4%, and 11.0%. These rates of return take into account both cash income received by the Fund during the period and changes in the market value of the underlying assets during the period. The three-year negative return (-4.2%) on royalty interests was principally due to a one-time change in assumptions as to the future applicability of the windfall profits tax.

9. An exemption is requested to allow the Fund to continue holding its royalty interests in properties in which Exxon has related interests and to dispose of the oil to, and receive the market value of gas from, Exxon or other parties in interest of the Plans. The applicants believe that an administrative exemption for these transactions is not needed for the period prior to June 30, 1984, because of the transitional relief provided under sections 414(c)(2) and

2003(c)(2)(B) of the Act, relating to certain leases or joint uses of property.¹

10. The applicants represent that sales of the royalty interest investments where Exxon has an interest would be difficult and economically injurious to the Fund. Unlike stocks and bonds, royalty interests generally are not traded on an exchange. The Fund's royalty interests could be sold only as the result of negotiated arrangements. Moreover, it is likely that these geographically dispersed interests would have to be packaged in some manner to make a sale economically attractive to a purchaser. In addition, each of the properties underlying the leases would need to be examined in detail and valued. The applicants believe that, overall, the cost to the Fund of selling these interests would be substantial and that there is a high risk the Fund would not receive fair market value since such a sale would be forced and the market for royalty interests is not liquid. The applicants also represent that the Fund would be interested in acquiring replacement royalty interests, to maintain its investment diversity, if the royalty interests with Exxon involvement were sold. However, there would be similar difficulties and expenses in identifying suitable, high-quality replacements and reserve data for replacement royalty interests would be controlled by third parties.

11. The applicants further represent that, if the Fund is allowed to retain the royalty interests with Exxon involvement, it would be impractical to prohibit the Fund from disposing of oil to Exxon and from receiving its fractional share of the value of gas from Exxon, for the following reasons:

(a) Since gas royalty interests normally do not permit the interest owner, such as the Fund, to receive its share of production in kind, the Fund cannot preclude Exxon, as operator, from taking the gas, selling it and paying the Fund its royalty share. Consequently, the Fund has no gas to sell directly to a third party. More than one-half of the Fund's 1984 royalty interest income was attributable to proceeds of gas production.

A similar result can arise where the royalty provisions in a lease specifically preclude taking oil in kind. The Fund would have to negotiate the right to take in kind with third-party operators. However, an operator, including Exxon, has no incentive to allow a royalty owner to take oil in kind. Generally, if

there is any right to take oil in kind, this right is established when a lease is given. Successful attempts to negotiate this right after the lease has been given and the property has produced for a number of years are unlikely; an operator calculates facilitates needed to produce the minerals prior to actual operations on the basis of the quantity of oil and gas available to the operator.

(b) Even if the Fund could arrange to take its share of oil production in kind for disposition to third parties, this option is substantially curtailed by the logistics and economics of transporting produced oil. Currently, wells in fields where the Fund's royalty interests are located in many instances have been and now are being served by Exxon-operated field facilities built and maintained to gather oil from all wells in the field. The Fund's royalty interests are widely dispersed through these fields. There is no economic incentive for a third party to invest in a costly delivery system for geographically dispersed wells, each producing relatively small amounts of Fund royalty oil.

An alternative would be shipment of oil from the well by tank truck. To make this attractive, the Fund would have to install tanks and metering facilities at each well and provide and maintain access roads suitable for tank truck operations. Even if oil brokers could be attracted to take the small volumes of royalty oil available at each well in this manner, the cost of providing these facilities could be high relative to the value of the oil. Also, additional marketing and accounting expenses would have to be borne by the Fund to dispose of the royalty oil in this manner.

(c) Under the existing arrangement, the Fund receives the same proportionate amount of income as other royalty interest owners on a given lease. In protecting their own interests, these royalty holders protect the Fund's interests. Moreover, Fund trustees can independently verify price and production data at all times to assure that the Fund is receiving fair market value. For example, oil is sold at nonregulated market prices that are posted for large areas, not on a lease-by-lease basis. The posted prices are well known and widely disseminated. Gas prices are regulated under the Natural Gas Policy Act. Ceiling prices, by category of gas, are published monthly by the Federal Energy Regulatory Commission. Royalty owners can review information on volumes of oil and gas production that producers are required to report to state regulatory agencies. Also, royalty owners have a legal right

of access to sales contracts on oil and gas sold from royalty properties.

12. The applicants indicate that Exxon's involvement in properties where the Fund has royalty interests is advantageous to the Fund. Exxon is an operator of established competence; its enhanced recovery and other production technology capabilities can assure that the value of the Fund's royalty interests is maximized. The operators of the leases in which Exxon has only working interests are companies in whose competence Exxon has sufficient confidence to invest its own money. In addition, Exxon's operation of, or its working interest in, producing leases affords the Fund superior access to important reserve information.

13. Louisiana National Bank, acting as an independent fiduciary on behalf of the Fund, represents that it believes the Fund's Louisiana royalty interests are good investments that have provided a high investment return, carry a relatively stable market value and add to the diversification of plan assets. Similarly, First City National Bank, acting as an independent fiduciary on behalf of the Fund, represents that it considers the Fund's royalty interests under its management to be a prudent investment within the meaning of section 404(a)(1)(B) of ERISA. Each bank further represents that it maintains adequate controls for tracking royalty payments, that it will monitor payments on a regular basis to assure their accuracy and completeness, and that in the event of discrepancies it will take appropriate actions, including legal action, to enforce the rights and protect the interests of the Fund.

14. In summary, the applicants represent that the transactions meet the criteria for an exemption under section 408(a) of the Act because: (1) First City National Bank and Louisiana National Bank have been appointed as independent fiduciaries having authority to administer and dispose of the royalty interests; (2) the royalties paid to the Fund are proportionately comparable to those received by other royalty interest owners from Exxon in arm's-length transactions; (3) market prices and production volumes of oil and gas can be independently verified; (4) the royalty interests now yield, and are predicted to yield, attractive returns in comparison to other Fund investments; (5) it would be difficult and costly for the Fund to divest the royalty interests and to acquire comparable replacement investments; or to provide for the disposition of oil to, and the receipt of gas value from, entities other than Exxon or other parties in interest with

¹ The Department expresses no opinion concerning the status of the royalty interest investments under sections 414(c)(2) and 2003(c)(2)(B) of the Act.

respect to the Plans; (6) Exxon's involvement has certain advantages for the Fund; and (7) the independent fiduciaries will take appropriate actions to enforce the rights and protect the interest of the Fund.

Notice to Interested Persons: Notice to interested persons will be provided within 45 days of the date of publication of this notice in the *Federal Register*. Comments and hearing requests are due within 75 days of the date of publication.

For Further Information Contact: Mr. John S. Hunter of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and

that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of June, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-12948 Filed 6-6-86; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC) announces that grant funds are available for improving the quality of law school civil clinical programs. The Corporation will distribute between eight and twenty-four one-time grants to geographically dispersed law schools of varying sizes. Each grant will be for 12 months. Applicants may request funding of up to \$50,000 per grant. All grants will be awarded pursuant to authority conferred by section 1006(a)(1)(B) and section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. Grantees are required to guarantee that more than 50 per centum of the funds required shall come from non-Federal sources and that federally funded assets and projects will not be included in in-kind services.

Proposals for the grants will be solicited from all law schools which are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools. Each applicant must submit schools, appropriate documentation of eligibility.

Copies of the solicitation package are available from the LSC Office of Field Services.

DATE: All grant proposals must either be postmarked or received by the Office of Field Services on or before July 10, 1986. Grant awards will be announced by August, 1986.

FOR FURTHER INFORMATION CONTACT:

Charles Moses, Legal Services Corporation, Office of Field Services, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: In 1984, LSC funded fourteen (14) law school clinics in a nationwide research project designed to test the utility of LSC involvement with clinical legal education. In 1985, this effort was supplemented by a special Congressional appropriation which allowed LSC to fund an additional twenty (20) law school clinics. On the basis of these experiments, LSC has discovered that such law school clinics offer a unique opportunity for augmenting existing legal services programs. Efficient and cost-effective services can be provided by permitting law students to participate directly in the delivery of legal services. More importantly, such clinics create a "ripple" effect which encourage law students to become actively involved in the provision of legal services to the poor. They provide an excellent training ground for future legal services attorneys by encouraging more clinic trained students to actively seek employment with legal services field offices. Further, after being exposed to the special needs of LSC eligible clients, law students are more likely to continue to provide *pro bono* representation or reduced fee representation in private practice. This clinical experience provides students with the legal knowledge necessary to insure effective future representation. In these ways, law school clinics can not only help to meet the immediate needs of indigent persons, but potentially work, now and into the future, to reduce the ever increasing case burden of federally funded legal assistance programs.

Consequently, the LSC Board of Directors has annualized law school clinical education as a separate item in the LSC budget. This marks the first year in which Congress has been specifically requested by LSC for an additional sum of money to be dedicated to law school clinical education. These clinical grant competitions are planned to continue on a yearly basis.

This grant program is designed to provide monetary assistance for expansion or development of law school clinical programs which address the civil legal needs of poor persons. This expansion could include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects which provide services to underserved segments of the population (e.g., Native American, handicapped, homebound,

isolated, and rural residents) or filling in the gaps in existing services and resources.

A variety of methods could be used to provide these services including but not limited to: (1) An independent university sponsored clinic; (2) a joint clinic in which existing faculty provide legal instruction while LSC field attorneys provide the necessary clinical supervision; (3) a law school clinic concentrating on a previously underserved, specific client population (e.g., Native American); (4) a law school clinic concentrating totally in one field of law (e.g., Social Security Disability, SSI); and (5) a joint model in which an attorney becomes appointed as an adjunct professor at the law school thereby becoming responsible for both the law education and the clinical supervision of law students.

All proposals will be evaluated by an advisory committee comprised of outside experts and Corporation staff using selection criteria which include: (1) The provision of a clear description of clinic activities to increase legal services to the local LSC eligible client population, and an effective plan for management of the project; (2) evidence that the clinic director and key clinic staff have the necessary qualifications and experience to effectively administer the proposed clinic and will be able to allocate an adequate amount of time and resources to the clinic, especially to appropriate levels of student supervision; (3) the extent to which a cooperative effort is shown between an area's legal services provider and the corresponding area law school clinics. Letters or other evidence of support by this organization for the proposed clinic may be attached where appropriate; (4) evidence that the proposed clinic provides for the high quality education and training of students in the necessary areas of the law; (5) the degree to which the institution's regular budget is currently allocated to its clinical education program, and to its clinical activities. Assurances or evidence that such budgetary support will be maintained during and beyond the term of the grant. The viability of the civil clinic beyond the term of the grant must be specifically addressed; (6) the provision of the budget which is adequate to support clinic activities which cites costs that are reasonable in relation to the duration and objectives of the proposed clinic. Funds should be used to maximize the number of student participants and quality service provision; and, (7) demonstration that the applicant plans to make an adequate in-kind contribution which, among other

things, could include contribution of adequate facilities and equipment to the proposed clinic. Indirect administrative costs cannot be charged to the LSC grant funds.

Note.—*Federally funded assets and projects cannot be counted as an in-kind contribution.* Final funding decisions will be made by the President of LSC.

To ensure nationwide participation and geographic distribution, OFS has created seven administrative regions to be used strictly for the purposes of this project. The boundaries of these regions were drawn based upon the need for geographic dispersion combined with the desire that each region contain a generally proportionate number of states as well as eligible law schools. Depending upon the availability of qualified applicants, at least one grantee will be selected in each of the seven regions.

The seven LSC/OFS Law School Civil Clinical Program regions containing all areas in which LSC provides legal services are listed below:

| | |
|----------------------|---------------------|
| Region #1 | |
| Connecticut | New Jersey |
| Maine | New York |
| Massachusetts | Rhode Island |
| New Hampshire | Vermont |
| Region #2 | |
| Delaware | North Carolina |
| District of Columbia | Virginia |
| Kentucky | West Virginia |
| Maryland | |
| Region #3 | |
| Alabama | Mississippi |
| Arkansas | Tennessee |
| Florida | Puerto Rico |
| Georgia | South Carolina |
| Louisiana | U.S. Virgin Islands |
| Region #4 | |
| Illinois | Ohio |
| Indiana | Pennsylvania |
| Michigan | |
| Region #5 | |
| Colorado | New Mexico |
| Kansas | Oklahoma |
| Missouri | Texas |
| Region #6 | |
| Alaska | North Dakota |
| Idaho | Oregon |
| Iowa | South Dakota |
| Minnesota | Washington |
| Montana | Wisconsin |
| Nebraska | Wyoming |
| Region #7 | |
| Arizona | Utah |
| California | Micronesia |
| Hawaii | Guam |
| Nevada | |

James H. Wentzel,

President, Legal Services Corporation.

[FR Doc. 86-12859 Filed 6-6-86; 8:45 am]

BILLING CODE 6820-35-M

NUCLEAR REGULATORY COMMISSION

Niagara Mohawk Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50-220]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-63 issued to Niagara Mohawk Power Corporation for operation of the Nine Mile Point Nuclear Station, Unit No. 1, located in Oswego County, New York.

The application for amendment dated May 22, 1986, would modify Technical Specification (TS) section 6.12, High Radiation Area, Table 3.6.2a, Instrumentation That Initiates Scram, Table 3.6.2b, Instrumentation That Initiates Primary Coolant System or Containment Isolation, Table 3.6.2h, Vacuum Pump Isolation, and the notes to these three tables to allow Niagara Mohawk to demonstrate the feasibility of a Hydrogen Water Chemistry System as a mitigator of intergranular stress corrosion cracking of stainless steel piping at Nine Mile Point Unit 1.

Niagara Mohawk is investigating the implementation of Hydrogen Water Chemistry as a possible mitigator of intergranular stress corrosion cracking in reactor recirculation system piping. To demonstrate the feasibility of a permanent Hydrogen Water Chemistry System for Nine Mile Point Unit 1, a pre-implementation test will be conducted. The test is to be performed by Niagara Mohawk and General Electric and is similar in scope to hydrogen injection tests previously performed at other nuclear power plants. Experience gained from these programs will be incorporated into the Nine Mile Point Unit 1 test plan.

The pre-implementation test involves injecting hydrogen into the feedwater system from zero to approximately 45 standard cubic feet per minute in predefined increments of 2-4 standard cubic feet per minute. A stoichiometric amount of oxygen will be added upstream of the recombiner to aid in proper off-gas recombination. During this stage, various chemical and operating parameters (e.g., H₂O₂, electrochemical potential) will be monitored to define the intergranular stress corrosion immune regime for Nine Mile Point Unit 1.

The addition of hydrogen lowers the solubility of the nitrogen in the reactor

water causing increased nitrogen carryover in the main steam; thereby resulting in approximately a one- to five-fold increase in the N-16 activity in the steam. The resultant increase in the background radiation level necessitates a temporary change to the main steam line high radiation scram and isolation setpoints.

The changes made to the Technical Specifications are the inclusion of a note to the main steam line high radiation scram and isolation setpoints (Tables 3.6.2a, 3.6.2b) and vacuum pump isolation (Table 3.6.2h). This change will allow the setpoints initially to be changed based on a calculated value of the radiation level expected during the test. Once the test has begun, these setpoints may be changed based on either revised calculations or measurements of actual radiation levels resulting from hydrogen injection.

The test will be performed with the reactor power at greater than 20% rated power. The initial setpoint changes may be made within 24 hours prior to the planned start of the hydrogen injection test. The setpoints shall be re-established to five times normal rated power background within 24 hours following completion of the test or within 12 hours of establishing reactor power levels below 20% rated power, while these functions are required to be operable. Additionally, hydrogen injection shall be terminated and the injection system secured if reactor power is less than 20% rated power.

The only accident which takes credit for this setpoint is the control rod drop accident. This accident is most severe at hot standby with the main steam lines wide open as opposed to power operation because:

(1) Reactivity worths of the control rods are greater at hot standby than at power, and

(2) Fission products released as a result of the excursion are transported to the main condenser, then to the high flow mechanical vacuum pump system and eventually offsite, instead of the offgas system.

A bounding analysis (FSAR Revision 3, Chapter XV, section C.4, Control Rod Drop Accident) has been performed to establish limits for incremental control rod worths to ensure that the peak fuel enthalpy does not exceed 280 cal/gm (a limiting value) if the maximum worth control rod were to drop out. The analysis has shown that limits on control rod worths are necessary for power levels less than 20 percent of design rated. Above 20 percent of rated design power inherent feedback mechanisms, primarily in the form of steam voids, limit the control rod worth

to such an extent that the control rod drop accident need not be considered.

As stated in Chapter XV, section C.4.5.2 of the Final Safety Analysis Report for Nine Mile Point Unit 1, the doses resulting from this accident are well below 10 CFR 100 guidelines. Hence, even assuming a five-fold increase in the accident because of the increase in the background level following hydrogen injection, the resulting off-site radiological effects would conservatively remain below 10 CFR 100 guidelines.

The bases for 3.6.2 and 4.6.2, Protective Instrumentation, indicates that in addition to the control rod drop accident, the radioactivity at the main steam line radiation monitor, due to the gross failure of one rod with complete fission product release from the rod, would exceed the normal background at the monitor. This function of the main steam line radiation monitor can also be provided by the condenser air ejector radioactivity monitor and the stack monitor, which must meet the operability requirements of Specification 3.6.14. These monitors can detect lower levels of radioactivity than the main steam line radiation monitor.

In addition to the above, a note is being added to Specification 6.12 to indicate that certain areas may temporarily exceed 1000 mrem/hr during the hydrogen water chemistry test without having access controlled by locked doors under the administrative control of the Station Shift Supervisor. These areas do not have to be continually manned to safely shut the plant down.

An ALARA review will be performed prior to beginning the injection test. The hydrogen water chemistry tests will be conducted at night to minimize potential exposure to plant personnel. Extensive in-plant and site radiation surveys will be conducted at regular intervals during the test to monitor the actual doses. As required, radiation protection measures will be implemented to maintain doses as-low-as-reasonably achievable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has presented its determination of no significant hazards consideration as follows:

10 CFR 50.91 requires that at the time a license requests an amendment, it must provide to the Commission its analysis, using the standards in § 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed:

Operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The only accident which takes credit for the Main Steam Line High Radiation trip is the design basis control rod drop accident (Technical Specification Bases for 3.6.2 and 4.6.2, Protective Instrumentation). As stated in the FSAR, Chapter XV, section C.4, a control rod drop accident occurring at power greater than 20%, regardless of the rod pattern, will never result in a peak fuel enthalpy that will result in fuel damage. Since the Main Steam Line High Radiation Monitor setpoints will be increased for hydrogen injection at power levels of 20% or higher, there is no effect on the Technical Specification Bases and the design function of the Main Steam Line High Radiation Monitor trip will remain valid.

If the reactor drops below 20% rated power prior to setpoint readjustment, the hydrogen injection shall be terminated and the system secured. The necessary setpoint readjustment shall be made within 12 hours, while these functions are required to be operable. At all times the capability to monitor for fuel failures, which is the purpose of the Main Steam Line Radiation trip setpoint, will be maintained by: (i) The continued operability of the main steam radiation monitors which provide signals to the reactor protection and primary containment isolation systems; (ii) routine radiation surveys; (iii) the performance of primary coolant water analysis; and (iv) the continued operability of the condenser air ejector radioactivity monitor and stack monitor. Due to these continued monitoring capabilities, the proposed license amendment does not involve a significant increase in the consequences of an accident previously evaluated.

The addition of the note to Specification 6.12 to allow certain areas to exceed 100 mrem/hr without having access controlled by locked door (gates) under the administrative control of the Station Shift Supervisor is an administrative control to maintain personnel exposure ALARA. Since additional administrative controls are being taken during the hydrogen water chemistry test, personnel exposure will still be maintained ALARA and the proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated.

Operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the only event affected by the temporary increase on the main steam line High Radiation scram and isolation setpoints is the control rod drop accident, which has been previously evaluated. This proposed amendment will result only in the changing of a setpoint; which by itself, cannot introduce a new or different kind of accident from any previously evaluated.

The addition of the note to Specification 6.12 is an administrative control to assist in maintaining personnel exposure ALARA. Therefore, this proposed change also cannot create the possibility of a new or different kind of accident from any previously evaluated. *Operation of Nine Mile Post Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.* A temporary increase in the Main Steam Line High Radiation scram and isolation setpoints will not affect any FSAR Chapter 15 accident or transient analysis, other than the control rod drop accident, which is the only event that takes credit for this signal. Also, since the Main Steam Line Radiation monitor setpoint will be increased only for hydrogen injection at power levels of 20% or higher, the Technical Specification Bases and the design function of the Main Steam Line High Radiation trip will remain valid.

The addition of the note to Specification 6.12 has no effect on any margins of safety.

As determined by the analysis above, this proposed amendment involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed 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. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. By July 8, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility

operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result 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, Att: 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 John A. Zwolinski, Director, BWR Project Directorate #1, Division of BWR

Licensing; 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 Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania, NW, Washington, DC 20006, 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 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 State University College at Oswego, Penfield Library—Documents, Oswego, New York.

Dated at Bethesda, Maryland, this 3rd day of June 1986.

Jack N. Donohew, Jr.,
Acting Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 86-12925, Filed 6-8-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-373 and 50-374]

Commonwealth Edison Co.; La Salle County Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-11 for La Salle Unit 1, and Facility Operating License No. NPF-18 for La Salle Unit 2, issued to the Commonwealth Edison Company (licensee), for operation of the La Salle County Station, Units 1 and 2 located in La Salle County, Illinois.

Environmental Assessment

Identification of Proposed Actions

The proposed actions would provide revisions to Appendix B "Environmental Protection Plan" for La Salle County Station, Units 1 and 2 by: (1) Terminating the present required monitoring of fog and ice due to the

cooling pond to determine whether there is an environmental impact, and (2) terminating the requirement to report violations of the National Pollutant Discharge Elimination System (NPDES) Permit or State Certification to the NRC.

The fog and ice monitoring program was undertaken to explore the validity of a concern expressed in the La Salle County Station Final Environmental Statement for the possible occurrence of heavy fog arising from the cooling pond drifting to and obscuring the state, county, and township roads that border the site or the possible formation of rime ice on nearby vegetation. Reporting violations of the NPDES to the NRC is done for the NRC's general information; licensee's compliance with the NPDES is regulated by the Illinois Environmental Protection Agency.

The licensee's request for these revisions, and the basis therefor, are contained in its letter dated March 10, 1986.

The Need for the Proposed Actions

The licensee's justification for terminating the fog and ice monitoring programs is that the results of the monitoring programs have met the requirements of performing analyses for a 12 month period of one unit in operation and a 12 month period of two unit operation. The results of the monitoring program showed icing not to be a factor in vegetation injury in or around La Salle County Station and that fogging was of minimal occurrence. In the area of NPDES compliance, the NRC relies on the Illinois Environmental Protection Agency for regulation; and therefore, the NPDES noncompliance reports to the NRC are not needed.

Environmental Impacts of the Proposed Actions

The results of the observations of fog and icing conditions relating to the cooling pond operation during the cold periods from 1980 through 1984, indicated minimal impact in that fog and icing events were primarily on site, in close proximity to the cooling pond and, thus, did not affect public roads or structures offsite which was the concern stated in the La Salle County Station Environmental Statement. Termination of the monitoring program will have no impact on the environment. Regarding the reporting of NPDES noncompliance, since NPDES matters are regulated by the Illinois Environmental Protection Agency and not by the NRC, submittal of noncompliance reports to the NRC was only for general information. Discontinuing the submittal of the reports to the NRC will have no

environmental effect of any kind. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed revisions.

Alternative to the Proposed Actions

Because the Commission has concluded that there is no measurable environmental impact associated with the proposed revisions, any alternative to the revisions would have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the revisions. Such action would not reduce environmental impact of the operation of La Salle County Station, Units 1 and 2 and would require actions no longer necessary.

Alternative Use of Resources

These revisions to Appendix B do not involve the use of sources not previously considered in connection with the La Salle County Station Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request to support the proposed revisions. In addition, the NRC staff contacted the state of Illinois for any comments and the state of Illinois had no comment.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed actions will not have significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed revisions.

For further details with respect to the actions, see the licensee's request for the revision dated March 10, 1986, which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Dated at Bethesda, Maryland, this 4th day of June 1986.

For The Nuclear Regulatory Commission,

Anthony Bourmia,

Acting Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86-12919 Filed 6-8-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-251]

**Florida Power and Light Co.;
Environmental Assessment and
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.48(c)(4) to Florida Power and Light Company (the licensee), for the Turkey Point Plant, Unit No. 4, located at Dade County, Florida.

Environmental Assessment

Identification of Proposed Action

The exemption would grant schedular extensions for the completion of the following fire protection items for Unit 4 and common areas.

1. Cable reroute.
2. Penetration seals.
3. Raceway (conduit) protection by fire rate barriers.
4. Alternate Shutdown System, common procedures and areas (control room, cable spreading rooms and the Auxiliary Building north-south breezeway).

The scope of additional work needed in these areas was identified as the result of reverification effort by the licensee.

The Need for the Proposed Action

When the reverification program indicated the need for additional modifications, necessary engineering and procurement were required by the licensee. The magnitude of the work associated with the modifications is such that it does not allow the 10 CFR 50.48(c) schedule to be met. The exemptions are strictly schedular in that they allow the modification schedule to be extended, with interim compensatory measures in place, which will provide the necessary fire protection until the corresponding modifications are completed.

Environmental Impact of the Proposed Action

The proposed action only affects the length of time for the required modifications to be completed. The licensee has proposed interim compensatory measures to provide the necessary level of fire protection until the modifications are completed. Thus, fire-related radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents

and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the 50.48(c)(4) requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Turkey Point Plant, Units 3 and 4.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and 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 exemption. Based upon the environmental assessment, the NRC staff concludes 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 requests for exemption dated October 11, 1985 and April 4, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 3rd day of June 1986.

For the Nuclear Regulatory Commission,
Daniel G. McDonald,
Acting Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-12920 Filed 6-6-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Babcock and Wilcox (B&W) Reactor Plants; Meeting

The ACRS Subcommittee on Babcock and Wilcox (B&W) Reactor Plants will

hold a meeting on June 25, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 25, 1986—8:30 a.m. until the conclusion of business.

The Subcommittee will consider the B&W Owners Group plans to reassess the long-term safety of B&W reactors, including, the implications of operating experience on the adequacy of B&W plant designs. The focus of this section of the meeting will be the B&W Owners Group Trip Reduction and Transients Response Improvement Program. The Subcommittee will also be briefed on the NRC Staff's Incident Investigation Team's (IIT) findings related to the December 26, 1985 loss of integrated control system power and overcooling transient at the Rancho Seco nuclear power plant.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1413) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 2, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-12922 Filed 6-6-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Davis-Besse; Meeting

The ACRS Subcommittee on Davis-Besse will hold a meeting on June 27, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, June 27, 1986—8:30 a.m. until the conclusion of business.

The Subcommittee will review start-up activities for Davis-Besse.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable to that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact one of the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 2, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-12921 Filed 6-6-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Gas Cooled Reactor Plants; Meeting

The ARCS Subcommittee on Gas Cooled Reactor Plants will hold a meeting on June 26, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, June 26, 1986—1:00 P.M. until the conclusion business

The Subcommittee will review the applicability of NRC requirements for equipment qualification and cable testing and other topics related to Fort St. Vrain, an HTGR.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John C. McKinley (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Person planning to attend this meeting are urged to contact one of the above named individual one or two days before the scheduled meeting to be

advised of any changes in schedule, etc., which may have occurred.

Dated: June 2, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-12923 Filed 6-6-86; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.56, "General Guidance for Designing, Testing, Operating, and Maintaining Emission Control Devices at Uranium Mills," describes procedures acceptable to the NRC staff for designing, testing, operating, and maintaining these emission control devices to ensure the reliability of their performance.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. 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.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated At Silver Spring, Maryland, this 2nd day of June 1986.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 86-12924 Filed 6-6-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Revision of OMB Circular A-21, "Cost Principles for Educational Institutions"

AGENCY: Office of Management and Budget.

ACTION: Notice of revision to OMB Circular A-21, "Cost Principles for Educational Institutions".

SUMMARY: This notice revises OMB Circular A-21, "Cost Principles for Educational Institutions." This revision is based on the numerous thoughtful comments received in response to the proposed revision published for comment in the February 12, 1986 Federal Register.

Effective July 1, 1987, Circular A-21 is revised to set a fixed overhead allowance for the administration of federally sponsored grants and contracts by department heads and faculty. The fixed allowance will equal 3 percent of modified total direct costs. No faculty reporting will be required to support the allowance. University indirect cost rates will be the sum of the rate negotiated for departmental administration, the negotiated rates for the remaining six cost pools, plus the 3 percent fixed allowance. The revision takes effect on July 1, 1987. Individual Federal agencies may elect to utilize the fixed allowance prior to July 1, 1987.

We agree with many of the comments received during the 3 month consultation with the university and scientific community begun with the February 12, 1986 Federal Register notice. We have refined the February 12th proposal accordingly. The final revision focuses on the narrow area of departmental administration. This area is costly to document and subject to considerable audit controversy.

A fixed allowance for the salaries of faculty and department heads engaged in administrative activities which support federally-funded research will eliminate any Federal requirement for faculty reporting to document overhead allocations. The elimination of this requirement will greatly reduce the controversy among individual researchers, their institutions, and the Federal funding and audit agencies. In

addition, the allowance will restore, a more appropriate balance between direct Federal research support and overhead payments.

When additional data become available, we will consider an adjustment to the 3 percent fixed rate for departmental administration by department heads and faculty. We are also willing to consult further with universities on ways to improve the conduct of research.

Background

Prior to 1966, the Federal Government used a fixed, national rate to establish the amount of Federal payments for overhead allocated to federally sponsored research. After the Federal Government adopted the current policy of negotiating individual cost-based requirement rates with individual universities, Federal overhead payments increased from 22 percent of total Federal research support to universities in 1970 to 24 percent in 1974 and 31 percent in 1985.

The disproportionate growth of overhead payments has been recognized as a threat to maintaining appropriate levels of research support. This growing share of overhead payments has provoked tensions within universities, between scientists and administrators, and between universities and Federal funding and audit agencies.

The discussion of increasing overhead payments resulted in a consensus among Congress, the General Accounting Office, the Inspector General of the Department of Health and Human Services (HHS), the Office of Science and Technology Policy, and the White House Science Council on the need for a government-wide policy to address the share of Federal university research spending expended on allocated overhead.

Congressional Directives

The FY82 Senate Labor/HHS Appropriation report stated, "Should indirect costs continue to increase as a percentage of total costs, the amount of money appropriated by the Congress will finance less and less actual research." (Report 97-268, p. 48) The House Appropriations subcommittee on Labor/HHS, expressing itself in its FY85 report (House Report 98-911, p. 31), held that allocated overhead should be addressed through a government-wide plan. In the conference report for the RY86 Labor/HHS appropriation bill (House Report 99-402, p. 28), Congress stated that containing research costs and payments for allocated overhead should be a high priority of all executive branch agencies.

General Accounting Office

In the 1984 report, "Assuring Reasonableness of Rising Indirect Costs on NIH Research Grants—A Difficult Problem," (GAO/HRD-84-3) the General Accounting Office found that university allocations of departmental administration overhead to federally sponsored research are subjective and difficult to verify. The General Accounting Office also found that: first, current A-12 allocation criteria give universities broad discretion in allocation of overhead to Federal research grants and, second, universities' overhead allocations are rarely audited by HHS, which sets overhead payment rates for 98 percent of the universities receiving Federal research grants.

The General Accounting Office recommended that OMB revise A-21 to limit overhead allocations to a fixed percentage of departmental administration expenses, thus ensuring reasonable reimbursement for overhead and a reduction of universities' accounting and reporting burden.

HHS Inspector General

In December, 1985, the HHS Inspector General published the report, "The Impact of Indirect Costs on Research Sponsored by the Federal Government at Universities and Colleges." The report recommended a 7 percent fixed allowance for all departmental administration overhead allocated to federally sponsored research. The 7 percent fixed allowance applied to the entire departmental administration pool—deans, department heads, faculty, clerical support, and miscellaneous overhead.

In a sample of 13 research universities, the HHS Inspector General found that faculty administration (and the associated salaries) tends primarily to benefit instruction and not federally sponsored research—and recommended that no allowance be made for such salaries. The HHS Inspector General also found that clerical support which ought properly to be allocated to instruction and other institutional activities is being charged to federally sponsored research—and recommended that a fixed allowance be established for such support activities. In the view of the HHS Inspector General, OMB Circular A-21 lacks clear criteria for allocation of departmental administration overhead to federally sponsored research, particularly with respect to the allocation guidelines for faculty salaries.

Office of Science and Technology Policy

The Office of Science and Technology recommended last fall that a single fixed rate for all allocated administrative overhead, based on a five year average, be phased in over two years. In addition to restoring the balance between direct Federal research support and overhead payments, the Office of Science and Technology Policy argued that the plan would eliminate the need for faculty activity reporting to document university allocations of faculty and department heads salaries to federally sponsored research.

Packard-Bromley Panel

On May 13, 1986, the White House Science Council released the report of the Panel on the Health of U.S. Colleges and Universities. Among its numerous recommendations, the Panel recommended a fixed, national rate for allocated administrative overhead. The Panel proposed to phase-in the national rates over two years. The Panel also proposed: (1) Elimination of faculty reporting to document overhead allocations, (2) peer review of allocated overhead as well as direct costs, (3) increases in use allowances for facilities and equipment, and (4) reductions of Federal administrative burdens.

Proposed Revision of February 12, 1986

On February 12, 1986, OMB proposed to phase-in a fixed rate for administrative allocated overhead to: first, reduce the controversy among researchers, their institutions, and Federal funding and auditing agencies and, second, restore an appropriate balance between direct Federal research support and overhead payments. This proposal followed up on Congress' directive to address the growth of overhead payments, and was based on recommendations of the General Accounting Office, the HHS Inspector General, and the Office of Science and Technology Policy to set a fixed rate for a subset of the overhead categories. The proposal also adopted the HHS Inspector General's specific recommendation to reduce administrative overhead rates from the current national average.

Comments on the February 12th Proposal

Over 300 comments were received in response to the February 12th publication. The major comments were:

Comment: Due to organizational differences, some universities charge clerical support as allocated overhead while others charge it as a direct cost. The February 12th proposed revision

would impact more heavily on universities which charge clerical support as allocated overhead.

Response: We agree. In light of these legitimate organizational differences, a more selective approach is preferable to the February 12th proposal. We have accordingly focused the fixed allowance on salaries of faculty and department heads. This will avoid disruption to the organizational arrangements of universities and will not restrict the allocation of clerical support costs.

Comment: Set payments for faculty administrative efforts at a fixed percentage of faculty salaries.

Response: We agree conceptually with this approach. The revision applies this concept against the base of modified total direct costs of federally sponsored research.

Comment: Focus the revision on departmental administration, excluding non-controversial administrative overhead from the fixed rate.

Response: We agree.

Comment: Allocated overhead as well as direct costs should be reviewed during scientific peer review of funding applications.

Response: We agree.

Comment: Universities should be permitted to charge more of allocated overhead as direct costs.

Response: We agree. Charging more of existing allocated overhead as direct costs would subject these charges to proper scientific peer review and improve the allocation and management of scarce research funds.

Comment: Federal administrative burdens, such as effort reporting, application requirements, and funding controls should be reduced to a minimum.

Response: We agree. The three percent fixed allowance for research administration by faculty and department heads will result in the elimination of Federal requirements for faculty reporting to document overhead allocations. OMB encourages the research community to identify areas where federally-imposed administrative burdens could be reduced. In addition, OMB will conduct a thorough review of all paperwork requirements associated with Circular A-21.

Comment: Universities would not have time to adjust to reduced payments for allocated overhead.

Response: We agree that the February 12th notice did not clearly indicate that the fixed rate would be phased-in gradually by being applied to only new grants. We have corrected this, and believe most universities are able to adjust to the revision. Those facing a

severe hardship will, under the current notice, be able to apply for a waiver.

Comment: Freeze overhead payment rates at 90 percent of current rates for one year rather than changing A-21.

Response: An arbitrary reduction would affect all universities regardless of their current overhead payment rate, and would run counter to specific Congressional guidance. In addition, a rate freeze would not permit the elimination of Federal requirements for faculty reporting to document overhead allocations.

Comment: OMB proposed the revision without consulting the affected parties.

Response: The February 12th proposal was published to initiate the consultation process. We believe that consultation is best achieved when all affected parties have a specific proposal to discuss and analyze, thus permitting the presentation of alternatives. We believe in fostering the university-government partnership by opening the debate on issues to all affected parties. Since the February 12th proposal, we have heard from and consulted with numerous affected parties.

Comment: The proposal departs from the White House Science Council report.

Response: The report, released in early May, is currently being reviewed by the Executive Branch. Based on a preliminary review, we believe that the report's recommendations regarding overhead deserve considerable attention. We believe the 3 percent fixed allowance is consistent with the report's recommendations. We note that the formal requirement for cost sharing has already been eliminated. Further, we note that the Department of Health and Human Services (HHS) intends to adopt the National Science Foundation's practices for the award and payment of overhead allocated by universities to federally sponsored research. HHS also intends to institute peer review of allocated overhead associated with proposed grant budgets. Together, these initiatives will respond to a significant number of the report's recommendations.

Comment: Circular A-21 should be revised to change the use allowances for buildings and equipment.

Response: While use allowances are beyond the scope of the February 12, 1986 notice, we will consider any proposals advanced as part of future discussions on improving the administration of research. Until a further revision of Circular A-21, institutions may find it profitable to use the current A-21 provisions which allow depreciation of facilities.

Revision of Circular A-21

We continue to share Congress' concern that the growth of allocated overhead threatens the continued productivity of the Federal/university research partnership.

Consistent with the reports of the General Accounting Office, the HHS Inspector General, and the Office of Science and Technology Policy, we believe that Circular A-21 should be revised to reduce the controversy among scientists, their institutions, and the various Federal funding and auditing agencies. In addition, the revision should restore an appropriate balance between direct Federal research spending and overhead payments.

Responding to the numerous thoughtful insights of commenters, a fixed 3 percent allowance for the research administration efforts of faculty and department heads is established, effective July 1, 1987. The revision will greatly reduce the current friction among researchers, universities, and Federal funding and auditing agencies. The allowance focuses on the area of greatest concern, salaries of department heads and faculty in departmental administration, but adopts the thrust of numerous suggestions that the revision recognize the organizational diversity of educational institutions.

Overhead payments for salaries of faculty and department heads will be calculated as 3 percent of modified total direct costs. University indirect cost rates will be the sum of the rate negotiated for departmental administration, the negotiated rates for the remaining six pools, plus the 3 percent fixed allowance.

Faculty reporting will not be required to support the 3 percent allowance.

Implementation

The revision is effective July 1, 1987. Individual Federal agencies may implement the revision upon publication.
June 4, 1986.

Circular No. A-21, Revised Transmittal Memorandum No. 2

To the Heads of Executive Departments and Establishments
SUBJECT: Cost Principles for Educational Institutions

This transmittal memorandum revises OMB Circular No. A-21, "Cost Principles for Educational Institutions," to establish a 3 percent allowance to cover the administrative work of department heads and faculty.

Effective on grants and contracts awarded on or after July 1, 1987, Circular A-21 is revised as follows:

Departmental administration expenses.

Revise F.4.a.(2)(a):

(2) Academic departments

(a) Salaries and fringe benefits attributable to the administrative work of department heads, directors of divisions and organized research units, faculty and professional staff shall be allowed at a rate of 3 percent of modified total direct costs. This allowance shall be added to the computation of the indirect cost rate for major function in section G.; the expenses covered by the allowance shall be excluded from the development and allocation of the departmental administration cost pool. No documentation is required to support this allowance.

General Administration and General Expenses

Add the following sentence to F.3.a.:

General administration and general expenses shall not include expenses incurred within dean's offices, academic departments, organized research units, or similar organizational units (see section F.4., departmental administration expenses).

Sponsored Projects Administration

Revise F.5.a. as follows:

(a) The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal) special security, purchasing, personnel administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, stenographic pools and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation/use allowances. Appropriate adjustments will be made for services provided to other functions or organizations.

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

Federal agencies are authorized to implement these changes earlier if they choose.

James G. Miller III,
Director.

[FR Doc. 86-12888 Filed 6-6-86; 8:45 am]

BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD**Agency Forms Submitted for OMB Review**

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Application for Employee Annuity Under the Railroad Retirement Act.

(2) Form(s) submitted: AA-1, AA-1d, G-214 and G-204

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 26,700.

(7) Annual reporting hours: 11,925.

(8) Collection description: The Railroad Retirement Act provides for payment of age, disability and supplemental annuities to qualified employees. The application and related forms obtain information about the applicant's family, work history, military service, disability benefits from other government agencies and public or private pensions. The information is used to determine entitlement to and amount of annuity applied for.

(1) Collection title: Application for Spouse Annuity Under the Railroad Retirement Act.

(2) Form(s) submitted: AA-3.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 17,000.

(7) Annual reporting hours: 7,367.

(8) Collection description: The Railroad Retirement Act provides for the payment of annuities to spouses of railroad retirement annuitants who meet

the requirements under the Act. The application will obtain information supporting the claim for benefits based on being a spouse of an annuitant. The information will be used for determining entitlement to and amount of annuity applied for.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86-12953 Filed 6-6-86; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal

- (1) Collection title: Application for Survivor Death Benefits.
- (2) Form(s) submitted: AA-21, AA-11a, G-131 and G-273a.
- (3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
- (4) Frequency of use: On occasion.
- (5) Respondents: Individual's or households, Businesses or other for-profit.
- (6) Annual responses: 28,200.
- (7) Annual reporting hours: 10,459.
- (8) Collection description: The collection obtains the information needed to pay death benefits and annuities due but unpaid at death under the RRA. Benefits are paid to designated beneficiaries or to survivors in a priority designated by law.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement

Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86-12954 Filed 6-6-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15126; File No. 812-6397]

Co-operative Bank Investment Fund; Application

June 3, 1986.

Notice is hereby given that the Co-operative Bank Investment Fund, a registered investment company (the "Applicant"), 265 Franklin Street, Boston, Massachusetts 02110 filed an application on May 29, 1986, for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") to amend a prior order to confirm the Applicant's exemption from the provisions of sections 13(a), 15(a), 16 (a) and (b), 18(i), 22 (d) and (e), 24(d) and 32(a) (2) and (3) of the Act, to the extent required by certain proposed changes in Massachusetts law. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, the Applicant was organized as a corporation effective April 7, 1985, pursuant to a special act of the Commonwealth of Massachusetts, primarily to provide a mutual fund investment medium to Massachusetts states chartered thrift banks. Investment in the Applicant is limited to such banks and a retirement association organized under Massachusetts law. Pursuant to the Commission's order dated October 17, 1985 (Investment Company Act Release No. 14760, the "1985 Order"), the Applicant was granted an exemption from the provisions of section 13(a), 15(a), 16 (a) and (b), 18(i), 22 (d) and (e), 24(d) and 32(a) and (3) of the Act. The application indicates that since the time of the 1985 Order, a bill was introduced in the Massachusetts Legislature, designated as House No. 5624, which would amend the Applicant's charter and amend another Massachusetts statute relating to the Applicant.

The application indicates that House No. 5624 would make three additional

organizations eligible to invest in the Applicant, namely The Co-operative Central Bank (the "Central Bank"), the Massachusetts Co-operative Bank League (the "League"), and the National Consumer Cooperative Bank (the "National Cooperative Bank"). The Central Bank is the reserve bank and a deposit insurer for Massachusetts co-operative banks. The Central Bank's Board of Directors are constituted as the Incorporators of the Central Bank. The Central Bank and the Applicant also share the same executive management. The Applicant indicates that allowing the Central Bank to invest in the Applicant would give their common management greater operational flexibility and allow for economies with regard to investments in similar assets.

The application further indicates that the League is a voluntary association of Massachusetts co-operative banks, and that the National Cooperative Bank is a body corporate established by the National Consumer Cooperative Bank Act (12 U.S.C. 3001 *et seq.*) as an instrumentality of the United States. None of the National Cooperative Bank's stockholders or borrowers, or organizations eligible to borrow from the National Cooperative Bank, would be eligible to invest in the Applicant (other than the Central Bank, which is currently a stockholder in the National Cooperative Bank). The Applicant states that the ability of the League and the National Cooperative Bank to invest in the Applicant would provide those organizations with a vehicle in which their liquid funds could be invested on a short-term, readily redeemable basis. The Applicant indicates that the Central Bank, the League and the National Co-operative Bank are financially sophisticated institutions, and the Applicant undertakes to provide, or make available, to them all disclosure materials which it currently provides or makes available to its current investors.

The application further indicates that House No. 5624 would reduce the minimum and maximum number of its directors. In addition, House No. 5624 would forbid any person from holding office in the Applicant both as a director and as an officer. The Applicant contends that this provision would ensure the independence of its board of directors.

House No. 5624 would change applicable Massachusetts law regulating the amount which a Massachusetts co-operative bank and savings bank may invest in a "district investment fund" comprised of debt obligations which is established by the Applicant. The Applicant states that the proposed change is not likely to lead to excess

concentration of investment by investor-banks because of the regulatory oversight of such banks exercised by the Massachusetts Commissioner of Banks.

The application indicates that House No. 5624 would limit to some degree the Applicant's authority to invest in government obligations. The Applicant states that this restriction on investment would not affect the Applicant's current obligations.

House No. 5624 would give the Applicant the power to borrow money, provided that such borrowings may not be for a term in excess of three business days. The Applicant indicates this authority is designed to meet its short-term liquidity needs, which might otherwise require liquidation of portfolio assets. The Applicant states that any borrowings made under this authority would be limited to borrowings allowable under section 18 of the Act and applicable regulations promulgated thereunder.

House No. 5624 would give the Applicant the authority to enter into repurchase agreements, provided that such agreements may not be for a term in excess of three business days. The Applicant states that this authority complements the Applicant's current authority to enter into money market type repurchase agreements with banks. The Applicant further states that this authority would not be a major expansion of its current repurchase agreement authority, and in any case it is the Applicant's policy to minimize risk under any repurchase agreement into which it enters. Applicant represents for one thing, that its custodian takes possession under such an agreement.

The Applicant states that the changes proposed under House No. 5624, individually and as a whole, are in the best interests of its current investors and the three proposed investors. The Applicant further states that in view of the supervisory powers of the Massachusetts Commissioner of Banks, the form of the Applicant's organization, and the nature of the Applicant's current and proposed investors, the continuation of the Applicant's exemption from the provisions of sections 13(a), 15(a), 16(a) and (b), 18(i), 22(d) and (e), 24(d) and 32(a)(2) and (3) of the Act is justified.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 25, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington,

DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated below. 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,

Acting Secretary.

[FR Doc. 86-12941 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15124; File No. 812-6276]

Delaware Fund, Inc., et al.; Notice of Exchange Offer Application

June 2, 1986.

Notice is hereby given that Delaware Fund, Inc., Decatur Fund, Inc., Delta Trend Fund, Inc., Delchester Bond Fund, Inc., DMC Tax-Free Income Trust—PA, DMC Tax-Free Income—USA, Inc., Delaware Group Government Fund, Inc., Delcap Fund, Inc., Delaware Cash Reserve, Delaware Tax-Free Money Fund, Inc., Delaware Treasury Reserves ("Funds"), Delaware Management Company, Inc. ("DMC") and Delaware Distributors, Inc. ("DDI"), each at Ten Penn Center Plaza, Philadelphia, PA 19103, filed an application on January 6, 1986, and an amendment thereto on May 16, 1986, for a Commission order pursuant to section 11(a) of the Investment Company Act of 1940 ("Act") permitting certain offers to exchange among the Funds and any other investment company for which DMC (or its subsidiaries or affiliates) serves as investment manager or for which DDI (or its subsidiaries or affiliates) acts as national distributor. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable sections and rules.

According to the application, each Fund has entered into an investment management contract with DMC pursuant to which DMC provides investment advice and management services to each Fund. Applicants state further that DDI is the national distributor for each Fund, and that each existing Fund maintains a continuous

public offering of its shares at the respective net asset value of each no-load Fund ("No-Load Funds") and at a public offering price including a sales charge for each load Fund ("High-Load Funds" or "Reduced-Load Funds").

Applicants propose the following exchange privileges:

(i) Shares of the High-Load Funds may be exchanged for shares of any other Fund on the basis of relative net asset value at the time of the exchange without any sales load;

(ii) Shares of the Reduced-Load Funds may be exchanged for shares of a Reduced-Load or No-Load Fund at their relative net asset value without any sales load; and

(iii) Shares of the Reduced-Load Funds which have not been held six months may be exchanged for shares of a High-Load Fund at their relative net asset value upon payment of the difference between the sales load paid on the original shares and the load payable on the shares being acquired;

(iv) Shares of No-Load funds may be exchanged for shares of other No-Load Funds at their relative net asset value without any of a sales load; and

(v) Shares of No-Load Funds may be exchanged for shares of a Reduced- or High-Load Fund upon payment of the public offering price.

(vi) Shares of Reduced-Load Funds which have been held six months (or which are outstanding as a result of a previous exchange of sales load fund shares which in combination with the currently held shares have been outstanding for six months or more) may be exchanged for shares of High-Load Funds at relative net asset value without any sales charge.

Applicants state that where a shareholder has exchanged shares of a High-Load Fund for shares of a Fund with a lower or no sales load, and thereafter exchanges those shares to any Fund with a higher sales load (not exceeding the load that was paid on the original shares), no further sales load will be imposed. Applicants also state that shareholders eligible for the one-time privilege to reinvest the proceeds of any redemption effected within the preceding 90 days may purchase shares of any Fund at the same sales charge, if any, which would have been payable on an exchange of their shares if not redeemed.

In the relative net asset value exchanges described above the Funds' service agent, on behalf of the Funds, performs the requisite recordkeeping functions, arranges for the issuance of necessary confirmations to the shareholder, may arrange reissuance of

certificates without charge (if requested), updates all relevant accounts, checks documents, etc., and the cost of these functions is a factor in determining the fees and expenses of the Funds. To reflect the benefit of such services to that shareholder, the shareholder is charged a nominal processing fee to meet the costs to the Funds of performing the transaction, currently \$5.00 per transaction. This nominal fee has been set to defray the expense incurred by the Fund to permit a shareholder to utilize the exchange privilege. The charge is assessed whenever the transaction does not involve the imposition of a sale charge. If a transaction involves a sales charge, the Funds do not assess any "user" fee for the exchange.

Applicants request an order under section 11(a) of the Act permitting the exchange privileges described above to the extent some of the proposed exchanges may be effected on a basis other than relative net asset value. In support of this request, Applicants submit that the proposed exchanges will not dilute the assets of any Fund. Applicants also submit that the proposed exchanges are fair and equitable to all Fund shareholders and will give them flexibility in their financial planning. Further, Applicants represent that the Funds' shareholder servicing personnel, who receive a substantial portion of exchange requests direct from shareholders through the Funds' shareholder servicing system, are salaried personnel who do not receive any commission income and have no incentive to promote exchanges for their personal gain.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 26, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 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,

Acting Secretary.

[FR Doc. 86-12942 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15125; File No. 811-1492]

Hemisphere Fund, Inc.; Application for Investment Company Deregistration

June 2, 1986.

Notice Is Hereby Given that Hemisphere Fund, Inc. ("Applicant"), 342 Madison Avenue, New York, NY 10173, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on April 23, 1986, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

According to the application, Applicant registered under both the Act and the Securities Act of 1933 on or about April 20, 1967, to issue and sell shares representing interests in two classes of stock; Income Shares and Capital Shares. Applicant states that its registration became effective on June 21, 1967, and that the initial public offering of its stock commenced on said date. Applicant also states that its Board of Directors took action authorizing a merger of Applicant and Manhattan Fund, Inc. ("Manhattan") at a meeting held on July 18, 1985, and reaffirmed this action at a meeting held on January 13, 1986. Applicant represents that its shareholders authorized the merger on February 28, 1986, and that thereafter, all portfolio securities and other assets of Applicant were transferred to Manhattan in exchange for shares of Manhattan having an equivalent net asset value. Applicant further represents that no brokerage commissions were paid in connection with the merger.

According to the application, immediately preceding the merger on February 28, 1986, Applicant had 948,052.930 Capital Shares outstanding (Income Shares of Applicant were retired on June 30, 1985, in accordance with Applicant's charter), total net

assets of \$4,783,698.97 and a per share net asset value of \$5.05. Applicant represents that a total of 526,117.281 shares of Manhattan, having a value of \$4,787,667, were issued to Applicant's shareholders and that the conversion ratio was .55494505 shares of Manhattan for each share of Applicant. Applicant further states that Manhattan and Applicant each bore their own expenses in connection with the merger, and that Applicant and Manhattan paid approximately \$41,400 and approximately \$4,600, respectively. Applicant further represents that it has no debts or liabilities outstanding as of the time of filing of this application.

Applicant states that it is not a party to any current or pending litigation or administrative proceedings, and that it does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs. According to the application, Articles of Merger were filed with the State Department of Assessments and Taxation of the State of Maryland on February 27, 1986, and became effective on February 28, 1986. Applicant also states that the Merger Agreement, with certifications attached thereto, was filed with the Secretary of State of the State of Delaware on February 28, 1986, and that its legal existence ceased pursuant to Delaware law under which Applicant was created.

Notice Is Further Given that any interested person wishing to request a hearing on the application may, not later than June 27, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) 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 applicant 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,

Acting Secretary.

[FR Doc. 86-12943 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Cincinnati Stock Exchange,
Inc.**

June 3, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

American General Corporation

Warrants (File No. 7-8979)

Navistar International Corporation

Series B Warrants (File No. 7-8980)

Triton Energy Corporation

Preferred, Minority Interest:

\$15,059,000; \$1.10

Convertible Exchangeable Depositary

Preferred; \$1.10

Convertible Exchangeable Depositary

Preferred Stock: 24,300,000 Shares

(No Par Value); Represents 0.10

Shares of \$11.00 Convertible

Exchangeable Preferred;

Convertible into Common or 11%

Debentures (File No. 7-8981)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 24, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-12940 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23284; File No. SR-PCC-85-08]

**Self-Regulatory Organizations; Pacific
Clearing Corp.; Order Approving
Proposed Rule Change**

The Pacific Clearing Corporation ("PCC") on October 17, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") concerning payment in connection with PCC's Securities Collection Division ("SCD") Service.¹ Notice of the proposal appeared in the *Federal Register* on November 11, 1985.² No comments were received. This Order approves the proposal.

I. Description

PCC's proposal amends PCC Rule IX, section 2 to permit non-members to pay amounts less than \$1,000 due PCC in connection with SCD Service³ by non-certified or non-cashier's checks.⁴ PCC will continue to require non-members to pay PCC with certified and cashier's checks for amounts equal to or exceeding \$1,000. The rule change also clarifies PCC's authority to require, in its discretion, certified checks for any amount due PCC from either Members or non-members. (Currently, Members are required to pay PCC with certified or cashier's checks only for amounts over \$10,000.)⁵

II. PCC's Rationale

PCC believes that the proposal is consistent with the Act, particularly section 17A(b)(3)(F), because it will

¹ PCC's SCD Service provide a mechanism through which Members can deliver or receive securities. Members may make securities deliveries to, and receive securities from, other Members or non-members by any of three methods. First, Members may physically deliver securities to PCC for delivery through SCD. Alternatively, Members may draft securities directly from daily balances due the Member from PCC. Finally, Members may deliver securities to SCD through their Pacific Securities Depository Trust Company ("PSDTC") accounts.

² See Securities Exchange Act Release No. 22607 (November 8, 1985), 50 FR 47484 (November 18, 1985).

³ Non-Members pay PCC for the value of securities PCC delivers to them on behalf of the PCC Member.

⁴ On May 12, 1986, PCC filed an amendment to the proposed rule change which clarified PCC's ability to require certified or cashier's checks from Members and non-members for SCD Service should PCC decide it necessary.

⁵ On May 12, 1986, PCC filed an amendment to the proposed rule change which clarified PCC's ability to require certified or cashier's checks from Members and non-members using the SCD Service for amounts less than \$10,000 or \$1,000, respectively.

promote the prompt and accurate clearance and settlement of securities transactions and will foster cooperation and coordination among persons engaged in the clearance and settlement of securities transactions. PCC believes that Rule IX in its current form is unduly burdensome on non-members using PCC's SCD Service and occasionally delays the processing of transactions. For example, non-members often do not learn that certified checks are required for small payments until they attempt to pay PCC with uncertified checks. Thus, completion of the transactions is delayed until the non-members provide PCC with replacement certified checks. Moreover, PCC notes that frequently non-members refuse deliveries because of the inconvenience and expense of obtaining cashier's checks for small amounts.

PCC believes that the proposal will facilitate non-members' use of the SCD Service without subjecting PCC or other users of the SCD Service to undue risk. PCC believes that the risk to PCC is small because, among other things, PCC's exposure is only \$1,000 and both the non-member and the delivering Member (to whom PCC would turn if it could not collect from the non-member) would have to become insolvent. PCC believes that such an occurrence is unlikely.

III. Discussion

For the following reasons, the Commission agrees with PCC that the proposal is consistent with the Act and should be approved. First, the Commission agrees with PCC that the proposed rule change should facilitate settlements between PCC members and non-members. Requiring non-members to provide PCC with certified checks in all cases seems to have resulted in settlement delays and extra processing costs. The proposal should eliminate those delays and costs.

Second, the Commission believes that the potential financial exposure to PCC from eliminating the certified check requirement is minimal. According to PCC, it receives each month, on average, only 30 checks from non-members in amounts of less than \$1,000. The Commission believes that PCC's exposure, if all these payments are now made with non-certified or non-cashier's checks is not so significant that it poses a serious risk to PCC. Indeed, because PCC may look to both the non-member and the Member for payment, PCC would suffer no loss unless both the delivering Member and receiving non-member became insolvent.

PCC also has developed a set of safeguards to further limit its risks. First, PCC will require a cashier's or certified check where multiple deliveries are made to the same broker and the total amount due exceeds \$1,000. PCC also has reserved the discretion to require certified checks for any amount from non-members whenever PCC feels it necessary. Moreover, if a non-member's check for less than \$1,000 is returned, PCC will demand payment in either a cashier's or certified check and will insist on certified checks from that non-member for the next six months for all payments.⁶ After six months, in PCC's discretion, the privilege of paying with non-cashier's and non-certified checks may be restored to the defaulting broker. PCC will, as a last resort, look to its Member for the money it credited to its Member's account that it is unable to collect from the non-member.

IV. Conclusion

The Commission believes that PCC's proposed amendment to Rule IX, section 2 will lessen the burden on non-member users of PCC's SCD Service for transactions involving small dollar amounts. Furthermore, the Commission believes that PCC's proposed amendment will adequately safeguard PCC and SCD Service users from financial loss. The Commission therefore finds PCC's proposed rule change consistent with the Act and, in particular, Section 17A of the Act.

Accordingly, It Is Therefore Ordered, under section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1986.

Shirley E. Hollis,
Acting Secretary

[FR Doc. 86-12938 Filed 6-6-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-23287; File No. SR-PSE-86-7]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to the Proposal to Change the Method for Billing IPC Telephone Service Rates to Exchange Members

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given

⁶ If PCC must resort to legal action to obtain payment from the non-member, PCC will notify all its Members that PCC will not make, on behalf of PCC Members, any deliveries to the defaulting non-member.

that on May 16, 1986, The Pacific Stock Exchange, Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") proposes to change its method for charging IPC telephone service rates to its members. The Exchange will go to a system of billing the members the actual Interconnect Planning Corp. ("IPC") charges for installation, moves and other charges, plus a 20 percent (20%) administration fee to cover the Exchange's direct costs of coordination and control. At the current time the Exchange currently charges flat fixed rates. These proposed changes will more accurately match the IPC charges of the services provided, with the member receiving such service, and will therefore result in a more equitable distribution of these charges to the members.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change proposes to alter the current system of allocating IPC charges for installation, moves and other changes to the IPC telephone instruments and lines located on the Options and Los Angeles Equity Trading Floors. Currently the Exchange charges flat fixed rates for these charges.

When such changes are effected IPC does the actual servicing work and they then bill the PSE at agreed upon rates for time and materials. In an attempt to more accurately match the IPC charges to the services provided and to the member receiving the service, the Exchange is requesting approval to bill the members utilizing the service the actual amount of

the IPC charges plus a 20 percent (20%) administration fee to cover the Exchange's direct cost of coordination and control. This will generate approximately the same monthly revenue, but more equitably pass on the costs to the member receiving the service. Currently most of the services are charged by IPC at a rate of \$45 per hour in San Francisco and \$54 per hour in Los Angeles, plus materials. All IPC invoices are reviewed by the Exchange's DPI Communications Department for reasonability and adherence to contractual rates.

The proposed changes are consistent with section 6(b)(4) of the Securities Exchange Act of 1934 ("Act") in that they will provide for an equitable allocation of reasonable fees and charges among members which use facilities provided by the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All Submissions should refer to the file number in the caption above and should be submitted by June 30, 1986.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: May 30, 1986.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 86-12939 Filed 6-6-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 10 days of this publication in the *Federal Register*. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Copies of form, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.
OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory

Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231.

Title: Development Company Reporting Requirements

Frequency: On occasion

Description of Respondents:

Development companies must provide basic information to determine the visibility and eligibility of the development companies and to protect SBA's financial interest.

Annual Responses: 2,422

Annual Burden Hours: 424

Type of Request: Reinstatement

Dated: June 2, 1986.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-12856 Filed 6-6-86; 8:45 am]

BILLING CODE 8025-01-M

Declaration of Disaster Loan Area # 2238 Iowa

Polk County in the State of Iowa constitutes a disaster area because of heavy rains and flash flooding which occurred on May 9, 1986. Applications for loans for physical damage may be filed until the close of business on July 31, 1986, and for economic injury until the close of business on September 2, 1986, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, or other locally announced locations.

The interest rates are:

| | Per- cent |
|---|--------------|
| Homeowners with credit available elsewhere..... | 8.000 |
| Homeowners without credit available elsewhere..... | 4.000 |
| Businesses with credit available elsewhere..... | 8.000 |
| Businesses without credit available elsewhere..... | 4.000 |
| Businesses (EIDL) without credit available elsewhere..... | 4.000 |
| Other (nonprofit organizations including charitable and religious organizations)..... | 10.500 |

The number assigned to this disaster is 223806 for physical damage and for economic injury the number is 641000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 30 1986.

Charles L. Heatherly,
Acting Administrator.
[FR Doc. 86-12855 Filed 6-6-86; 8:45am]
BILLING CODE 8025-01-M

[License No. 06/06-0228]

Retail Capital Corp.; License Surrender

Notice is hereby given that Retail Capital Corp., 7915 FM 1960 W, Houston, Texas 77070, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Retail Capital Corp. was licensed by the Small Business Administration on May 20, 1980. Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 20, 1986, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 29, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-12854 Filed 6-6-86; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IV, located in the geographical area of Birmingham, Alabama, will hold a public meeting at 9:00 a.m.-2:00 p.m., on Monday, June 23, 1986, in the Birmingham District Office of the U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203—(205) 731-1341.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 30, 1986.

[FR Doc. 86-12857 Filed 6-6-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[OGD 86-040]

National Boating Safety Advisory Council; Applications for Appointment to Membership

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the National Boating Safety Advisory Council (NBSAC). This Council advises the Secretary of Transportation on rulemaking matters related to recreational boating.

Seven members will be appointed as follows: Three (3) members from the recreational boating industry; two (2) members from the State Boating Administrators; and two (2) members from boating organizations and the public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The Council normally meets twice each year at a location selected by the Coast Guard.

DATE: Requests for applications should be received no later than July 10, 1986.

ADDRESS: Persons interested in applying should write to Commandant (G-BBS/43), U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Captain M. B. Stenger, Executive Director, National Boating Safety Advisory Council (G-BBS), Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001; (202) 426-1060.

Dated: June 4, 1986.

L. C. Kindbom,

Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 86-12908 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Palm Beach County,

Florida, for Palm Beach International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Palm Beach International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before December 30, 1986.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is May 16, 1986. The public comment period ends July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, Community Planner, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812, (305) 648-6583.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Palm Beach International Airport are in compliance with applicable requirements of Part 150, effective May 16, 1986. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 30, 1986. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operation who has submitted noise exposure maps that are found by FAA to be compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which set forth the

measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Palm Beach County, Florida, submitted to the FAA on December 13, 1985, with minor modifications on May 1, 1986, noise exposure maps, descriptions, and other documentation which were produced during the development of Palm Beach International Airport FAR Part 150 Noise Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Palm Beach County, Florida. The specific maps under consideration are depicted as the "1983 Ldn Contours" (current NEM) and the "Five Year Noise Exposure Map" (5-year NEM) in the submission. The FAA has determined that these maps for Palm Beach International Airport are in compliance with applicable requirements. This determination is effective on May 16, 1986. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedure contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship or specific properties to noise exposure contours depicted on the noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying

of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Palm Beach International Airport, also effective on May 16, 1986. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 30, 1986.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility programs are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812

Mr. Bruce Pelly, Director of Airports, Palm Beach International Airport, Bldg. 846, West Palm Beach, Florida 33406-1491.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, May 16, 1986.
James E. Sheppard,
Manager, Orlando Airports District Office,
[FR Doc. 86-12824 Filed 6-6-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 21]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, American-European Reinsurance Corp.

Notice is hereby given that the Certificate of Authority issued by the Treasury to American-European Reinsurance Corporation, under the United States Code, Title 31, Sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27107, July 1, 1985.

With respect to any bonds currently in force with American-European Reinsurance Corporation, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2214.

Dated: May 30, 1986.

W.E. Douglas,
Commissioner, Financial Management Service,
[FR Doc. 86-12828 Filed 6-6-86; 8:45 am]
BILLING CODE 4810-35-M

[Dept. Circ. 570, 1985 Rev., Supp. No. 23]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, Hudson Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Hudson Insurance Company, under the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27118, July 1, 1985.

With respect to any bonds currently in force with Hudson Insurance Company, bond-approving officers for the

Government may let such bonds run to expiration and need not secure new bonds. However, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2214.

Dated: May 30, 1986.

W. E. Douglas,
Commissioner, Financial Management Service,
[FR Doc. 86-12829 Filed 6-6-86; 8:45 am]
BILLING CODE 4810-35-M

[Dept. Circ. 570, 1985 Rev., Supp. No. 22]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, IGF Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to IGF Insurance Company of Des Moines, Iowa under the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27118, July 1, 1985.

With respect to any bonds currently in force with IGF Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2347.

Dated: May 29, 1986.

W.E. Douglas,
Commissioner, Financial Management Service,
[FR Doc. 86-12830 Filed 6-6-86; 8:45 am]
BILLING CODE 4810-35-M

[Dept. Circ. 570, 1985 Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, Universal Security Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Universal Security Insurance Company, under the United States Code, Title 31, sections 9304-

9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27134, July 1, 1985.

With respect to any bonds currently in force with Universal Security Insurance Company, bond-approving officers for

the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond

Branch, Washington, DC 20226, telephone (202) 634-2119.

Dated: May 30, 1986.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86-12831 Filed 6-6-86; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 110

Monday, June 9, 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).

CONTENTS

| | Item |
|--|------|
| Commodity Futures Trading Commission | 1 |
| National Credit Union Administration..... | 2 |
| Securities and Exchange Commission..... | 3 |

1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 19920.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 10, 1986.

CHANGE IN THE MEETING: The meeting has been changed to June 11, 1986 at 10:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-13015 Filed 6-5-86; 12:04 pm]

BILLING CODE 8351-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION

Previously Held Emergency Meeting

TIME AND DATE: 1:30 p.m., Wednesday, June 4, 1986.

PLACE: 1776 G Street, NW., Washington, DC, 6th Floor.

STATUS: Closed.

MATTER CONSIDERED:

1. Litigation.

The Board unanimously voted that the Agency business required that a meeting

be held with less than the usual seven days advance notice.

The Board unanimously voted to close the meeting under exemption (10). The General Counsel certified that the meeting could be closed under that exemption.

FOR MORE INFORMATION CONTACT:
Rosemary Brady, Secretary of the Board,
Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86-13042 Filed 6-5-86; 2:50 pm]

BILLING CODE 7535-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 9, 1986:

Closed meetings will be held on Tuesday, June 10, 1986, at 1:00 p.m., on Thursday, June 12, 1986 following the 2:30 p.m. open meeting and on Friday, June 13, 1986, at 10:00 a.m. An open meeting will be held on Thursday, June 12, 1986, at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 10, 1986, at 1:00 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Report of investigation.

Settlement of injunctive actions.

Formal orders of investigation.

Institution of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, June 12, 1986, at 2:30 p.m., will be:

The Commission will hear oral argument on appeals by Rooney Pace, Inc., a registered broker-dealer, Randolph K. Pace, its president, and the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, June 12, 1986, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Friday, June 13, 1986, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceeding of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272-2149.

Shriley E. Hollis,

Acting Secretary.

June 3, 1986.

[FR Doc. 86-13056 Filed 6-5-86; 3:56 pm]

BILLING CODE 8010-01-M

Monday
June 9, 1986

Small Business Administration

Part II

Small Business Administration

13 CFR Part 115

Surety Bond Guarantee; Emergency Final
Regulation

SMALL BUSINESS ADMINISTRATION**13 CFR Part 115**

(Rev. 1, Amdt. 3)

Surety Bond Guarantee**AGENCY:** Small Business Administration.**ACTION:** Emergency final regulation.

SUMMARY: These amendments lower the maximum guaranty for surety losses (resulting from the breach of the conditions of a bond) from 90 percent to 80 percent, increase the maximum premium that a surety may charge a small concern from 1.5 percent to 1.8 percent, and raise SBA's guarantee fee from \$5 per thousand of contract amount to \$6 per thousand. This action more fairly apportions the risk inherent in this program between SBA, the contractor, and the private sector surety companies. This action will also mitigate the sureties' increased exposure resulting from the lower guarantee percentage by the increase in the premium charge.

EFFECTIVE DATE: June 24, 1986.

Applications for surety bond guarantees received by SBA before the effective date shall be processed under the prior rules.

ADDRESS: Comments may be addressed before August 5, 1986, to Howard F. Huegel, Director, Office of Surety Guarantees, Small Business Administration, 4040 No. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT:

Howard F. Huegel, (703) 235-2900.

SUPPLEMENTARY INFORMATION: Section 411 of the Small Business Investment Act, 15 U.S.C. 694a, authorizes SBA to guarantee a surety against up to 90% of its loss under a bond guaranteed by SBA resulting from the breach of the terms by a small concern of any contract up to \$1 million. Current SBA policy, as set forth in 13 CFR 115.2(b) is to pay up to 90% of loss under a bonded contract up to \$250,000, and up to 80% on contracts beyond that amount, not to exceed \$1 million. Current policy also limits the maximum premium change in excess of the Surety Association of America's "Rating Manual" to 1.5% if approved by the appropriate State Insurance Department [13 CFR 115.9(c)(2)].

Increased losses in the insurance industry have resulted in a sharp decline in surety bond availability to small contractors from standard sureties, and in a corresponding increase in the demand for SBA's guarantees. Our efforts to meet this demand have prematurely exhausted our authorized guarantee level for the first quarter of Fiscal Year 1986, and in most regions for

the second quarter as well. This exhaustion of SBA's program authority has caused severe hardship to some small business contractors unable to obtain contracts requiring bonds, which include nearly all government contracts. Since an increase in our authorized guarantee level cannot be expected, and because our guarantee authority is allotted in quarterly increments, we must anticipate that our authority would again be exhausted before the end of each calendar quarter as long as present conditions prevail. It is therefore necessary to reduce our present maximum guaranty to 80% of the surety's loss on all contracts up to the statutory limit of \$1 million. This will allow existing SBA resources to accommodate the demand by allocating more of the risk inherent in this program to the participating sureties.

At the same time it is our intention to avoid, as best we can, discouraging surety companies from participation in this program. Accordingly, SBA must weigh any proposed guarantee percentage reduction against possible reduction of private sector participation resulting from the concomitant exposure to loss. With this dilemma in mind, SBA has considered several methods of using our guarantee authority. Of these, the reduction of SBA's guarantee to 80% for all contracts—not, as now, 90% for contracts below \$250,000, and 80% for contracts above that amount—appears the simplest in its application and the most promising in terms of benefit to small business and acceptability by the industry. We estimate that the proposed reduction would enable us under our present guaranty authority to satisfy demand, while maintaining maximum participation in the surety bond guarantee program by the surety bonding industry.

It should be noted that the indicated percentage is a maximum figure, and that SBA will continue to reserve the right, now stated in § 115.6(b), to vary terms, depending on its experience with a particular surety.

The reduction of the maximum guarantee percentage, however, doubles the exposure to loss of the guaranteed sureties under bonds for contracts up to \$250,000 from 10% to 20% of loss. The majority of bonds guaranteed by SBA falls into this category. In order to encourage continued participation by the private sector in this program, SBA is also raising the maximum premium that the surety may charge the small concern from 1.5 percent to 1.8 percent of the contract price or bond amount, whichever is greater [Section 115.9(c)(2)]. The Surety Association of America has proposed a 20 percent

increase in the "Contract Bonds" section of its Rating Manual, and as of January, 1986, thirty-nine States had adopted this increase. As a result, the premium differential between standard surety bonds and the high risk bonds partially guaranteed by SBA, has been diminished. We believe that the permitted premium increase will help to restore the prior ratio.

An increase in SBA's guarantee fee from \$5 per thousand to \$6 per thousand corresponds to the increase proposed by the industry. The increase will help SBA defray the cost of losses from bond default.

In order to prevent a cessation of SBA's surety bond guaranty program, these amended regulations must be put into effect quickly, and are therefore published without prior notice. The policies announced here will become effective June 23, 1986. Accordingly, SBA will guarantee bonds subject to and in accordance with prior regulations, if the guaranty was applied for before June 23, 1986.

Notwithstanding the promulgation of these amendments in final form, SBA invites comments before August 8, 1986.

On August 21, 1985, at 50 FR 33766, SBA published a Notice of Proposed Rule Making which would revise the entire regulatory system of its surety bond guarantee program. Under that proposed revision, the maximum guarantee percentage would not exceed 85% of loss [Section 115.3(b)], the limitation on premium rates would be removed entirely, and the guarantee fee would have remained at \$5 per thousand. SBA intends to go forward with promulgation of the final rule as expeditiously as possible. Any comments received on this emergency final rule will be taken into consideration when the proposed revision is promulgated in final form.

Executive Order 12291 of February 17, 1981.

SBA has determined that these amendments are not a major rule for purposes of the Executive Order as they cannot result in an annual economic effect of \$100 million or more. Moreover, they are unlikely to result in a major increase in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions and will not have a significant adverse effect on competition, unemployment, investment, productivity, innovation or on the ability of U.S.-based businesses to compete in domestic or export markets.

Regulatory Flexibility Act

For purposes of 5 U.S.C. 601 *et seq.*, the provisions of this proposal may have a significant impact on a substantial number of small entities. The following analysis of the impact of these provisions is provided within the context of the review prescribed by the Regulatory Flexibility Act:

1. The amendment to § 115.2(b) lowers the 90% ceiling on the guaranty against loss by a surety on bonds covering contracts under \$250,000. Thus, the maximum guaranty against loss by a surety will be a uniform 80% on all contracts up to the statutory limit of \$1 million. At the present time there are between 30 and 40 sureties actively participating with SBA in this program. Their exposure to loss will be doubled, from 10% to 20% of loss, on bonds covering contracts under \$250,000 which constitute the majority of bonds guaranteed under this program. This increased exposure is inevitable if SBA is to serve the demand for the program. As explained above, this increase in surety exposure was chosen among several other options (lesser or greater increase in exposure, or a "layered" approach with differing percentages of guaranty for different sizes of contracts) as promising the greatest benefit to small businesses with the least detriment to the surety industry.

2. We believe that the benefit derived by small concerns from this increased exposure of our participating sureties will outweigh the detriment of the additional cost to these sureties, which should be able to reduce their additional cost to some extent by more exacting underwriting, and to some further extent by virtue of the other rule change enacted herewith. In addition, it will result in a more equitable risk-sharing between SBA and the sureties.

3. The second rule change revises the maximum premium that a surety may charge a contractor for an SBA-guaranteed bond from 1.5% to 1.8% of the contract price or bond amount,

whichever is greater, provided such greater premium is acceptable to the respective State insurance regulator. As noted above, the maximum premium charged by standard sureties on standard risks has been raised (as of January 1986) to 1.44% in 39 States. This increase has virtually obliterated the historic premium differential between standard and high-risk sureties. The present increase for high risk surety premiums by 20% to 1.8% of contract price or bond amount will restore this differential and will partially compensate our participating sureties for the increased exposure caused by the reduced maximum guaranty. The premium increase, if also approved by State regulators, will affect all the contracts for which we expect to guarantee bonds in one fiscal year. Since our experience is that we guarantee on the average three bonds per year for one client contractor, we estimate that this increased premium burden will fall on approximately 3,700 small business concerns. We anticipate that this increased burden to small contractors will be outweighed by the benefit accruing to both participating sureties and small contractors from the greater number and greater aggregate dollar amount of contractors for which SBA will be able to guarantee bonds.

4. Because of the detrimental impact of the recurring exhaustion of our guaranty authority in each quarterly period on some small business contractors, SBA deems it necessary to adopt these regulatory changes forthwith without an opportunity for prior comments. SBA invites such comments, nevertheless, and will take them into consideration before the proposed revision of all surety bond guarantee regulations (see 50 FR 33766) is promulgated in final form.

There are no Federal rules which may duplicate, overlap or conflict with these amended regulations. There are no significant alternatives to these regulations consistent with the stated objectives of the statute, 15 U.S.C. 694 a

and b. These amendments to the regulations do not impose any reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 115

Surety bonds.

Accordingly, pursuant to the authority of sections 308(c) and 411(d) of the Small Business Investment Act of 1958, as amended, sections 687(c) and 694(d), Part 115 of Chapter I, Title 13, code of Federal Regulations, is hereby amended effective June 23, 1986, as follows:

PART 115—SURETY BOND GUARANTEE

1. The authority citation for Part 115 continues to read as follows:

Authority: Title IV—Part B of the Small Business Investment Act of 1958 (15 U.S.C. 694a, 694B) and the Inspector General Act of 1978 (5 U.S.C. App. 1)

2. Section 115.2(b) is revised to read as follows:

§ 115.2 Policy.

(b) *Percentage guarantee.* SBA may guarantee up to eighty percent (80%) of the loss incurred and paid under a bond on a contract up to \$1,000,000 in face value.

§ 115.9 [Amended]

3. Section 115.9(c)(2) is hereby amended by striking the words "1.5 percent" and substituting "1.8 percent" therefor.

4. Section 115.9(a) is hereby amended by striking the words "\$5 per thousand" and substituting "\$6 per thousand" therefor.

(Catalog of Federal Domestic Assistance No. 59.016, Bond Guarantees for Surety Companies)

Dated: May 28, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-12548 Filed 6-6-86; 8:45 am]

BILLING CODE 8025-01-M

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Monday
June 9, 1986

REGISTRATION
RECORDS

Part III

**Department of
Transportation**

**Research and Special Program
Administration**

**Illinois Fee on Transportation of Spent
Nuclear Fuel; Application for
Inconsistency Ruling by Wisconsin
Electric Power Company; Notice**

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-17; Docket No. IRA-34]

Illinois Fee on Transportation of Spent Nuclear Fuel; Application for Inconsistency Ruling by Wisconsin Electric Power Company

Applicant: Wisconsin Electric Power Co. (WEPCO)

State Law Affected: Section 4(7) of the Illinois Nuclear Safety Preparedness Act, codified as § 4304(7), chapter 111½, Illinois Revised Statutes.

Applicable Federal Requirements: The Hazardous Materials Transportation Act (49 U.S.C. 1801-1811); and the Hazardous Materials Regulations (49 CFR, Parts 171-179).

Modes Affected: Rail and Highway.
Ruling: The requirement imposed by Ill. Rev. Stat., chap. 111½, § 4304(7) is not inconsistent with the Hazardous Materials Transportation Act or the Hazardous Materials Regulations promulgated thereunder.

SUMMARY: This inconsistency ruling is the opinion of the Department of Transportation concerning whether a fee of \$1,000 per cask, which Illinois has statutorily imposed upon owners of spent nuclear fuel being transported through Illinois, is inconsistent with the Hazardous Materials Transportation Act or the regulations promulgated thereunder and, therefore, preempted under 49 U.S.C. 1811(a).

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590. (Tel: 202/755-4972).

I. General Authority and Preemption under the HMTA

The Hazardous Materials Transportation Act (HMTA) authorizes the Secretary of Transportation to promulgate substantive regulations governing the safe transportation of hazardous materials in commerce. Known as the Hazardous Materials Regulations (HMR), they are codified at 49 CFR Parts 171-179.

The HMR apply to persons who offer hazardous materials for transportation (shippers), those who transport the materials (carriers), and those who manufacture and retest the packagings and other containers intended for use with the materials. The scope of transportation activity affected includes: packaging of shipments of hazardous materials; package markings (to show content) and labeling (to show hazard);

vehicle placarding (to show hazard); handling procedures, such as loading and unloading requirements; routing; care of vehicle and lading during transportation; preparation and use of shipping papers to show the identity, hazard class and amount of each hazardous material being shipped; and requirements for reporting any unintentional release of a hazardous material during transportation.

A discussion of the preemptive effects of the HMTA appears in previous inconsistency rulings. The discussion in IR-6 (48 FR 760, January 6, 1983) is extracted and summarized here.

The HMTA at Section 112(a) (49 U.S.C. 181(a)) preempts "... any requirement of a State or political subdivision thereof, which is inconsistent with any requirements set forth in [the HMTA] or regulations issued under the HMTA." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirement that are "inconsistent."

In 49 CFR Part 107, Subpart C, the Department has published procedures by which a state or political subdivision thereof having a requirement pertaining to the transportation of hazardous materials, or any person affected by the requirement, may obtain an administrative ruling as to whether the requirement is inconsistent with the HMTA or regulations under the HMTA. The Department may also initiate such a proceeding *sua sponte*. At the time these procedures were published, the Department observed that "(t)he determination as to whether a State or local requirement is consistent or inconsistent with the Federal statute or Federal regulations is traditionally judicial in nature." (41 FR 38167, September 9, 1976). Despite this judicial tradition, the Department found that there were two principal reasons for providing an administrative forum for such a determination. First, an inconsistency ruling could provide an alternative to litigation for a determination of the relationship of Federal and state or local requirements. Second, if a state or local requirement were found to be inconsistent, such a finding would provide the basis for an application to the Secretary of Transportation for a waiver of preemption (49 U.S.C. 181(b); 49 CFR 107.215-107.225). Subsequent to the adoption of these procedures, a third purpose has become apparent. The inconsistency rulings have come to

constitute a body of precedent to guide state and local governments contemplating rulemaking action. The rulings, thus, have a value which goes beyond the resolution of individual conflicts.

Because the instant proceeding is being conducted pursuant to the provisions of the HMTA, this ruling will consider only the question of statutory preemption. A Federal court may find that a state requirement which is not preempted statutorily is, nonetheless, preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. The Department of Transportation, however, does not make such determinations in the context of an inconsistency ruling proceeding.

Given the judicial character of the inconsistency ruling proceeding, the Department has incorporated case law criteria for analyzing preemption issues into the inconsistency ruling procedures (See *e.g. Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978).) At 49 CFR 107.209(c) the following tests are set forth for determining whether a state or local requirement is "inconsistent".

- (1) Whether compliance with both the [state or local] requirement and the Act or the regulations issued under the Act is possible; and
- (2) The extent to which the [state or local] requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

The first criterion, known as the "dual compliance" test concerns those state or local requirements that are incongruous with Federal requirements; that is, compliance with the state or local requirement causes the Federal requirements to be violated, or *vice versa*. The second criterion, known as the "obstacle" test, essentially subsumes the first and concerns those state or local laws that, regardless of conflict with a Federal requirement, stand as "an obstacle to the accomplishment and execution of the [HMTA] and the regulations issued under the [HMTA]." In determining whether a state or local requirement presents such an obstacle, it is necessary to look at the full purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objective have been carried out through the Department's regulatory program.

In enacting the HMTA, Congress recognized that the Department's efforts in hazardous materials transportation regulation lacked coordination by being divided among the various transportation modes and lacked

completeness because of gaps in Department authority. In order to "protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 U.S.C. 1801), Congress enacted the HMTA, which both consolidated and expanded the Department's regulatory and enforcement authority.

With specific reference to the preemption provision of the HMTA, the legislative history indicates that Congress intended it "to preclude a multiplicity of state or local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation" (S. Rep. No. 1192, 93rd Cong., 2nd Sess. 37(1974)). While the HMTA does not totally preclude state and local action in this area, it is the Department's opinion that Congress intended, to the extent possible, to make such state and local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible state and local activity. The nature, necessity and number of hazardous materials shipments make nationally uniform safety standards essential.

In summary, the Department applies two tests to determine whether a state or local requirement is inconsistent and, therefore, preempted: the "dual compliance" test and the "obstacle test". When a state or local rule presents an issue which has already been considered in a previous inconsistency ruling, however, the Department may cite the established precedent without reiterating the underlying tests.

II. Background and Chronology

By letter dated March 21, 1985, Wisconsin Electric Power Company (WEPCO) applied for an administrative ruling on the question of whether a transportation fee imposed by the State of Illinois is inconsistent with and, thus, preempted by the HMTA or the regulations issued thereunder. The specific requirement on which WEPCO seeks an inconsistency ruling is *Ill. Rev. Stat.*, chapter 111 1/2 Section 4304(7) which reads as follows:

Sec. 4304. Persons engaged within this State in the business of producing electricity utilizing nuclear energy or operating facilities for storing spent nuclear reactor fuel for others shall pay fees to cover the cost of establishing plans and programs to deal with the possibility of nuclear accidents. Except as provided below, the fees shall be used exclusively to fund those Departmental and local government activities defined as necessary by the Director to implement and

maintain the plans and programs authorized by this Act. Local governments incurring expenses attributable to implementation and maintenance of the plans and programs authorized by this Act may apply to the Department for reimbursement of those expenses, and, upon approval by the Director of claims submitted by local governments, the Department shall reimburse local governments from fees collected pursuant to this Section, except that such reimbursements, in the aggregate, shall not exceed \$150,000 in any year. In addition, a portion of the fees collected may be appropriated to the Illinois Emergency Services and Disaster Agency for i.e. activities associated with preparing and implementing plans to deal with the effects of nuclear accidents. Such appropriation shall not exceed \$350,000 in any year. Such fees shall consist of the following: . . .

(7) A fee assessed at the rate of \$1,000 per cask for shipments of spent nuclear fuel traversing the State to be paid by the owner of such shipments.

As required by 49 CFR 107.205, WEPCO served a copy of its application on the State of Illinois. On May 8, 1985, Illinois submitted its comments on the application. Illinois challenged the WEPCO application on both procedural and substantive grounds.

On October 30, 1985, the Department published a notice and invitation to comment under docket No. IRA-34 (50 FR 45186). A subsequent amendment (50 FR 51767) extended the period for public comment to January 21, 1986.

On February 12, 1986, Illinois requested an opportunity to file final comments responding to arguments first raised during the comment period. WEPCO indicated, by letter dated February 13, 1986, that it had no objection to a reopening of the comment period so long as all parties had an opportunity to respond. The Departmental objective in soliciting public comment on applications for inconsistency rulings is to obtain the broadest possible compilation of views. Unlike in an adversarial proceeding, no party is assigned a burden of proof and, correspondingly, no party has a right to present final arguments. For these reasons, the Department granted both Illinois' request for a reopening of the comment period and WEPCO's request that all parties be permitted to supplement their comments. The notice was published on March 5, 1986 (51 FR 7661) with comments due by April 21, 1986. A total of eight parties (including Illinois and WEPCO) submitted comments on this proceeding. Where appropriate these comments, as well as previous administrative determinations, are discussed in this ruling.

III. Analysis

A. Introduction

This ruling considers the question of whether a particular provision of the Illinois Nuclear Safety Preparedness Act (INSPA) is inconsistent with and, thus, preempted by the HMTA. The legislative purpose in enacting INSPA was the establishment of a Nuclear Safety Preparedness Program "to protect the people of the State of Illinois against adverse health effects resulting from radiological accidents" and "to mitigate the effects of such accidents." (*Ill. Rev. Stat.*, Chap. 111 1/2, § 4302). In order to fund the Preparedness Program, INSPA required that certain fees be paid in connection with specified nuclear activities. As originally enacted in 1979, INSPA imposed fixed fees on owners of nuclear power stations and away-from-reactor (AFR) spent fuel storage facilities in Illinois; it also imposed a per-cask fee on shipments of spent fuel received at AFR storage facilities in the state. It did not impose fees on shipments which passed through the state.

In 1984 INSPA was amended by P.A. 83-1342 to increase the fees payable by operators of nuclear power and storage facilities. The amendment also imposed, for the first time, fee assessments at the rate of \$1000 per cask on owners of spent nuclear fuel traversing the State of Illinois. (*Ill. Rev. Stat.*, Chap. 111 1/2, § 4304(7)). The new fee on shipments in transit is the subject of the proceeding. For the sake of brevity, it is hereinafter referred to as the "transit fee". As amended, INSPA imposes the transit fee on both interstate and intrastate shipments of spent fuel. Such fees are payable prior to the movement of such shipments within the state. (*Ibid.*, § 4305).

All fees collected under INSPA are deposited into a special fund from which monies may be expended only to support the activities of the Illinois Nuclear Safety Preparedness Program (INSPP). (*Ibid.*, § 4307). The major components of the INSPP are described at pages 40-41 of Illinois' supplemental comments dated January 20, 1986. These include: (1) Development of a coordinated system of Federal, state and local responsibilities for planning for and responding to radiological emergencies; (2) inspection of all highway shipments upon entry into Illinois to ensure compliance with Federal radiological standards and motor vehicle safety regulations; and (3) escort of all shipments by a hazardous materials officer and a health physicist

who remain in radio or visual contact with the transport vehicle at all times.

B. Procedural Arguments

Throughout this proceeding, the State of Illinois has maintained that the Department should dismiss the application for procedural defects in both the instant proceeding and the administrative process itself. The Department has considered these arguments and has concluded (1) that the validity of the inconsistency ruling process is well-established and (2) that its procedural requirements have been fully satisfied in this proceeding. I, therefore, find that Illinois' procedural arguments are without merit. Since this ruling upholds Illinois' position on substantive grounds, summary dismissal of Illinois' procedural arguments will not adversely affect the State's position. Nor is WEPCO, which urged rejection of Illinois' procedural arguments, adversely affected by summary dismissal. Accordingly, no further discussion is offered on this point.

C. Substantive Arguments

The first criterion for determining the consistency of a state requirement with the HMTA is the dual compliance test. The state requirement being considered herein is a transit fee. Compliance with the state requirement consists of payment of a sum certain to the State of Illinois. Nothing in the HMTA or HMR prohibits regulated party from paying such fees. Consequently, on the narrow question of whether it is physically possible to comply with both the Federal and state requirements, I find in the affirmative. The transit fee cannot be deemed inconsistent on the basis of the dual compliance test.

The second criterion for determining consistency is the obstacle test, which requires consideration of the extent to which the transit fee impedes the accomplishment and execution of the HMTA and HMR. As described above, this test requires an examination of the challenged state requirement in light of the Congressional objectives in enacting the HMTA and the manner and extent to which those objectives have been carried out through the Department's regulatory program.

The principal Congressional objectives in enacting the HMTA were "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 U.S.C. 1801) and "to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials

transportation" (S.Rep. 1192, September 30, 1974, p. 37). The Department, therefore, considers state or local requirements to be inconsistent with these objectives if they reduce safety and/or enhance multiplicity.

WEPCO, as well as those commenters supporting WEPCO's application, argued that the transit fee constitutes a clear impediment to the execution and accomplishment of the Congressional objectives underlying enactment of the HMTA. Illinois, and those commenters opposing WEPCO's application, offered both rebuttal arguments and affirmative reasons for finding the transit fee to be consistent with the HMTA. These arguments are considered below, beginning with separate analyses of the transit fee's impacts on the highway and rail modes.

Is the transit fee a prohibited routing rule within the meaning of the Department's regulations on highway routing of radioactive materials?

In 1981 the Department issued a Final Rule on highway routing of radioactive materials which is commonly referred to by its docket number as HM-164 (46 FR 5298, January 19, 1981). In addition to establishing Federal rules on highway routing and driver qualifications, HM-164 added an Appendix A to Part 177 of the HMR. Appendix A is not a regulation. It is a policy statement in which the Department has set forth its interpretation of the general preemptive effect of its regulations on state and local highway routing requirements. As such, it was intended to advise state and local government contemplating rulemaking action of the likelihood of such actions being deemed inconsistent.

To consider whether the transit fee is a routing rule within the meaning of Appendix A, one must refer to the definition contained therein:

"Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. Traffic controls are not included if they are not based on the nature of the cargo, such as truck routes based on vehicles weight or size, nor are emergency measures.

There is no question that the transit fee "applies because of the hazardous nature of the cargo." There is considerable room for difference, however, on the question of whether the transit fee "effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing" spent nuclear fuel. The comments offered

extensive discussion on this point which actually involves three questions:

- (1) Does the transit fee effectively redirect highway shipments of spent fuel away from preferred routes in Illinois?
- (2) Does it significantly restrict the highway transportation of spent fuel in Illinois?
- (3) Does it significantly delay the movement by public highway of motor vehicles carrying spent fuel?

Each of these questions is addressed in turn below.

(1) *Does the transit fee effectively redirect highway shipments of spent fuel away from preferred routes in Illinois?* No commenter argued that the transit fee had the direct effect of diverting spent fuel shipments, as would be the case with, e.g., a transportation ban. Several commenters, however, asserted that the foreseeable indirect impact of the transit fee was to redirect shipments away from Illinois whenever possible. Reference was made to a prior inconsistency ruling in which the Department found a Vermont fee requirement to be inconsistent with the HMTA. (IR-15, 49 FR 46660, November 27, 1984.) The Vermont requirement involved a fee of \$1000 on each shipment of highway route controlled quantity radioactive waste proposed to be transported in Vermont. In that ruling, the Department stated: (49 FR 46664)

The immediate and direct result of Vermont's transport approval fee is to cause transporters to redirect shipments away from Vermont whenever possible. Such diversion onto less direct routes would reduce Vermont's exposure to the risks of radioactive materials transportation at the expense of neighboring jurisdictions by increasing total transport time and, therefore, overall exposure to risk.

WEPCO, *et al.*, argue that Illinois' \$1000 transit fee is indistinguishable from Vermont's \$1000 transport approval fee and should, therefore, also be deemed inconsistent. The facts, however, do not support such a conclusion.

IR-15 was one of nine inconsistency rulings which were issued together. They involved state and local requirements in Michigan, New York and Vermont whose combined effect had been to divert and ultimately blockade shipments of spent fuel originating in Canada. Because the shipments were not subject to HM-164 when in Canada, the carrier had a choice of entry points into the United States. In fact, shipments had been diverted as a result of, *inter alia*, Vermont's transport approval fee.

The situation in Illinois is considerably different. Highway shipments of spent fuel entering Illinois

necessarily arrive already subject to the routing requirements of HM-164. As Illinois has correctly noted, carriers have no choice but to comply with the requirement of HM-164 to "operate over preferred routes selected to reduce time in transit . . ." (49 CFR 177.825(b)). Of course, the Department acknowledged at the time it adopted HM-164 that "more than one route could qualify as an acceptable alternative and it is not incumbent on [transporters] to make detailed calculations in selecting the most appropriate route." (46 FR 5309). Thus, there is some scope for carriers to avoid and still comply with HM-164. As pointed out by Illinois, however, such diversions would also entail costs which could exceed the amount of the fee to be avoided. Furthermore, no evidence was offered to suggest that such diversions have occurred.

On the basis of the foregoing, I find that the transit fee does not have the effect of redirecting highway shipments of spent fuel away from preferred routes in Illinois.

(2) *Does the transit fee significantly restrict the highway transportation of spent fuel in Illinois?* In previous inconsistency rulings, the Department has considered a variety of state and local requirements which significantly restricted the highway transportation of spent fuel. These have included prenotification (IR-6, 8, 10-15, and 16), advance approval (IR-8, 10-15), and additional packaging design standards (IR-8). The common aspect of all these inconsistent requirements was the prohibition of highway transportation by carriers of radioactive material, notwithstanding their compliance with all Federal safety standards, unless and until there had been compliance with additional mandatory (and sometimes discretionary) requirements imposed by the enacting jurisdiction. Such requirements were based on the false assumption that the non-Federal jurisdiction had the authority to prohibit a form of interstate commerce which is the subject of a pervasive system of Federal regulation.

The transit fee does not appear to present the kind of significant restriction described above. It requires highway transporters to pay a fee, submit to a safety inspection, and accept the state-provided escort. The state has not denied entry to any shipment for failure to pay the required fee in advance. (This matter is discussed further in connection with the question of delay.)

The safety inspections are based on the Federal regulations, not on additional or different state requirements. From an examination of the record, it appears that the only

highway shipments whose movement is restricted in Illinois are those which have been found to be in violation of applicable Federal safety standards. This is not the sort of significant restriction which the Department considers to be inconsistent with the HMTA. Rather, it is precisely the sort of state action which the drafters of the HMTA intended and which the Department endorses as sound enforcement policy.

The additional escorts are provided by the state. This contrasts with state or local requirements that require the transporter to provide additional or differently equipped escorts when in the enacting jurisdiction. Such requirements have the effect of prohibiting the transportation of radioactive material, notwithstanding compliance with Federal safety standards, unless and until there is compliance with additional non-Federal requirements. Since Illinois provides the additional escorts, the only requirement placed upon transporters is to accept their company. (The operational impacts of this are discussed below in connection with the question of delay.)

On the basis of the foregoing, I find that the transit fee does not significantly restrict the highway transportation of spent fuel in Illinois.

(3) *Does the transit fee significantly delay the movement by public highway of motor vehicles carrying spent fuel?* After considerable research and analysis, the Department adopted a highway routing rule based, in large part, on the finding of a direct correlation between transportation risk and time in transit. State or local requirements which delay shipments, thereby increasing time in transit, necessarily increase transportation risk. The Department, therefore, considers non-Federal requirements which have such an effect to be inconsistent with HM-164.

In previous inconsistency rulings, the Department has found a number of non-Federal requirements to be inconsistent with HM-164 because they had the effect of delaying radioactive materials transportation. Most recently, the Department considered a Tucson ordinance requiring carriers to provide notification 48 hours in advance of transporting radioactive materials in the city. (IR-16, 50 FR 20872, May 20, 1985). For many radiopharmaceuticals, the time between placement of an order and delivery is 8-24 hours. The Department thus concluded that "[i]n view of these operational realities, transportation delay is inherent in compliance with Tucson's requirement for 48-hour advance notification." (50 FR 20879)

Several commenters asserted that the potential for transportation delay was inherent in the transit fee. They noted that § 4305 of INSPA states that the transit fee "shall be paid to the Department [of Nuclear Safety] prior to the movement of such shipments within this State." (Ill. Rev. Stat., ch. 111½, § 4305). From this, the commenters concluded that, if a shipment reached Illinois before the fee had been paid, there would be a potential for delay until the fee were paid or the shipment rerouted. To date, no shipment has been delayed or refused entry into Illinois for non-payment of the fee. The commenters acknowledge that this has been the state's practice, but rely on IR-16, wherein the Department refused to base its ruling on enforcement policy rather than the wording of a regulation. At that time, the Department stated "[n]otwithstanding the City's explanation of its legislative intent, the actual language of the law must govern." (50 FR 20877) The Tucson ordinance, however, is distinguishable from the transit fee.

The Tucson ordinance stated explicitly that "[i]t shall be unlawful for any person to transport . . . radioactive materials . . . except as provided in subsection C." Subsection C required such persons to notify the city fire chief "at least forty-eight (48) hours prior to commencement of transportation." (Tucson City Code, § 13-12.) Therefore, regardless of the City's having instructed its emergency personnel to accept whatever notice was possible in a given circumstance, transporters remained liable for performing an unlawful act if they gave less than 48 hours notice.

The transit fee presents a different situation. The language of the law is that the transit fee "shall be paid . . . prior to the movement of such shipments within this State." (§ 4305) Applying a strict interpretation, one may reasonably argue that § 4305 establishes payment of the fee as a condition precedent to transportation of spent fuel within Illinois. Assuming, *arguendo*, that § 4305 must be so interpreted, the question remains as to whether this delays transportation. As noted above, some commenters argue that, if a shipment reached the state before the fee had been paid, there would be a potential for delay until payment had been made. In such an instance, however, the delay would be attributable to the transporter's failure to act in a timely manner. Given the long lead time in planning spent fuel shipments, transporters have ample time to pay the fee. Delay is inherent when the act of

complying with a requirement causes the delay. This was the case with Tucson's requirement of 48 hours advance notice of shipments which would otherwise have arrived in 8 hours.

Commenters also attributed delay to the safety inspections and escorts funded by the transit fee. These require a different analysis.

As part of the emergency preparedness program funded, in part, by the transit fee, Illinois provides for the inspection of all highway shipments of spent fuel through the state at the point of entry. The purpose of this inspection is to identify and rectify any violations of Federal radiological standards or motor vehicle safety regulations before the transport vehicle proceeds through the state. Illinois concedes that a delay of twenty to sixty minutes is inherent in its inspection program, but asserts that this is not a significant delay. Rather, it is commensurate with other delays inherent in spent fuel transportation, such as rest, food and fuel stops. WEPCO argued that "[i]f a comprehensive inspection is undertaken at point of origin, duplicative enroute inspections do not add to safety but do create demands for notifications and scheduling problems that severely impair the most time efficient transport of the radioactive material." (WEPCO comments, January 21, 1986, p.11). WEPCO also described the extent to which its own shipments had undergone repetitive inspections. (*Ibid.*, 6). Illinois responded that the reasonableness of its inspection program was substantiated by the number of violations it found among shipments which had been inspected prior to entry into Illinois.

Upon considering these arguments, the Department finds merit in both positions. States clearly have a responsibility to protect the public, and may do so by ensuring that motor carriers of hazardous materials comply with the safety regulations promulgated for that purpose. Transporters clearly have a responsibility to comply with those regulations. But when the cumulative effect of several states independently exercising their respective enforcement responsibilities is to render transporters less able to comply with their responsibility to reduce time in transit, conflicts must arise. The solution, however, does not lie in preemption of valid state inspection programs.

The Department has long sought to develop a Federal/state partnership in hazardous materials transportation safety. Under the authority of the HMTA, the Department developed and

funded the State Hazardous Materials Enforcement Development Program whose primary objective was adoption and enforcement of the HMR by the states. In view of these affirmative efforts, the Department can hardly be expected to find that the objective sought in furtherance of the HMTA is inconsistent with the HMTA. The Department does recognize, however, that its success in fostering state adoption of the Federal rules has contributed to the rise of parallel state enforcement programs. This has not seemed to be a problem with hazardous materials transportation generally, since the sheer volume of shipments operates to prevent significant duplication of effort. With regard to highway route controlled quantity radioactive materials, however, the situation is different. The level of public concern is much higher and the total number of shipments is much smaller. This results in shipments of such materials, especially spent fuel, being subjected to multiple, duplicative and time-consuming inspections during the course of transportation.

Illinois, like many other states, has assumed a responsibility to ensure the safety of radioactive materials being transported within its borders. But independent, uncoordinated state inspection programs can result in costly and inefficient duplication of effort. And the scope of this problem can be expected to increase significantly once transportation begins under the Nuclear Waste Policy Act (42 U.S.C. 10101). For this reason, Department of Energy favored a national inspection program: (DOE supplemental comments, April 22, 1986)

The Department in its concern for safe and efficient transportation under the Nuclear Waste Policy Act (NWPA) strongly favors a national safety inspection program, and in this regard plans to work with the States and DOT to institute a program for rigorous pre-shipment inspections of the transportation equipment and packaging at the point of origin. This should minimize the need for interim inspections enroute and thus control unnecessary additional costs as well as prevent undesirable transit delays.

The Department believes that such an approach has merit so long as developed in the context of a Federal/state partnership. In the absence of such a program, however, there is no basis for a finding that Illinois' inspection program constitutes an obstacle to the accomplishment of the purposes of the HMTA or the regulations issued thereunder.

Commenters also suggested that the state escorts partially funded by the transit fee were a source of

transportation delay. WEPCO asserted that "[t]he escort requirement imposed both a financial and logistical burden on the spent fuel transportation campaign because of the need to give precise information regarding time of arrival at the Illinois border to reduce waiting time for the Illinois State Police." (WEPCO comments, January 21, 1986, p. 6). Since the HMR require all shipments of spent fuel to comply with a physical protection plan (49 CFR 173.22(c)) which provides for escorts capable of communicating with local law enforcement agencies, the operational impact of notifying Illinois of shipment arrival time would not appear to involve any significant transportation delay.

Having considered the operational impacts of the transit fee, the inspection program and the escorts, I do not find that the challenged requirement significantly delays the movement by public highway of motor vehicles carrying spent fuel.

In summary I find that the transit fee does not effectively redirect or otherwise significantly restrict or delay the movement by public highway of motor vehicles containing spent nuclear fuel. Accordingly, I find that the transit fee is not a prohibited routing rule within the meaning of HM-164.

Does the transit fee effectively redirect or otherwise significantly restrict or delay rail shipments of spent nuclear fuel?

The Department has not promulgated routing requirements for rail shipments or radioactive materials as it has for highway shipments. Therefore, there is no routing regulation with which the transit fee can be compared for consistency. This does not, however, prevent an application of the obstacle test with respect to the transit fee's impact on rail transportation of spent nuclear fuel.

In the course of issuing inconsistency rulings, the Department has developed a body of precedent regarding its interpretation of the HMTA's objectives and the manner in which state or local regulations may pose an obstacle to the accomplishment and execution of those objectives. Some basic precepts have been articulated, several of which are reflected in Appendix A to Part 177. The precepts, however, apply to hazardous materials transportation by all modes.

An important precept addresses the problem of transportation delay. As first articulated in IR-2: (44 FR 75566, 75571, December 20, 1979)

The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous

with safe transportation. Given that the materials are hazardous and that their transport is not risk-free, it is an important safety aspect of the transportation that the time between loading and unloading be minimized.

This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame.

Closely related to the problem of delay is that of redirection. In the absence of a Federal requirement to use certain routes, the mere threat of delay (or other restrictions) may operate to redirect shipments into other jurisdictions. This impermissible exportation of risk (see, e.g., *Kassel v. Consolidated Freightways*, 450 U.S. 662, 1981) can actually increase transportation risk. State or local requirements which directly or indirectly divert hazardous materials shipments onto longer, more circuitous routes increase the time both that these shipments are in transit and that the public is exposed to the risks inherent in their transportation.

In view of these established precepts, it is possible to apply the same analysis to the transit fee's impact on rail shipments of spent fuel as was completed above with respect to highway shipments.

(1) *Does the transit fee effectively redirect rail shipments of spent fuel away from Illinois?* As discussed in connection with highway shipments, compliance with the transit fee does not require the redirection of shipments. Rather, it was argued that redirection of shipments was a foreseeable result of the requirement to pay the transit fee. Rail shipments, unlike highway shipments, are not subject to Federal routing regulations. Therefore, shippers by rail have relatively greater discretion in selecting routes which avoid Illinois, although they have fewer routes to choose from. The basis for such routing decisions, however, would be based on economic considerations. And the cost savings achievable by avoiding Illinois would have to be balanced against the increased operational costs of a more circuitous route. If it could be shown that the cost savings clearly exceeded the increased operational costs, then it would be reasonable to conclude that redirection of rail shipments was a logical result of the transit fee. That point, however, has not been demonstrated in this case. The Department acknowledges that the transit fee will stimulate shipper consideration of alternate routes. But

the Department does not conclude that such alternates are categorically more cost-effective. Longer routes increase not only risks but also costs of transportation. Thus, safety and economics can both operate to ensure selection of the most direct route. Granted, the imposition of an extortionary fee can so upset this balance as to operate as a *de facto* ban, but that is not the situation alleged here.

On the basis of the foregoing, I do not find that the transit fee effectively redirects rail shipments of spent fuel away from Illinois.

(2) *Does the transit fee significantly restrict rail shipments of spent fuel in Illinois?* In the foregoing analysis of whether the transit fee significantly restricts highway shipments of spent fuel, the Department found in the negative. Since rail shipments are not limited to the use of "preferred routes" and, moreover, are not subjected to state inspections upon entry into Illinois, the restrictive effect of the transit fee is even less than on highway shipments. I, therefore, find no basis for concluding that the transit fee significantly restricts rail shipments of spent fuel in Illinois.

(3) *Does the transit fee significantly delay the movement by rail of spent fuel shipments?* The foregoing discussion of highway shipments considered and dispensed with the comment that the potential for transportation delay was inherent in the requirement that the transit fee be paid prior to the movement of spent fuel shipments in Illinois. The impact on rail shipments being identical to that on highway shipments, I find no basis for reaching a different conclusion here.

A different type of delay was attributed to the requirement that all rail shipments be accompanied by state-provided escorts. DOE asserted that "[t]he concept of State motor vehicles escorting rail shipments on parallel roads in itself has the potential to be a safety hazard and unduly delays the rail shipping transit time in order to accommodate the escort vehicle." (DOE comments, January 21, 1986, p. 5). But the Illinois requirement recognizes the problems inherent in a highway escort of a rail shipment and, therefore, prescribes that escorts shall remain in visual or radio contact with the shipment. Absent more specific information, the Department cannot conclude that the escorts significantly delay time in transit.

In summary, I find that the transit fee does not effectively redirect or otherwise significantly restrict or delay rail shipments of spent nuclear fuel.

Is the transit fee an inconsistent permit requirement?

Supporters of WEPSCO's application argued that the requirement for a pre-removal payment rendered the transit fee indistinguishable from the various permit requirements which the Department has found to be inconsistent.

The Department first addressed the issue of state transportation permit requirements in an inconsistency ruling dealing with a Rhode Island regulation governing the transportation of liquefied energy gases. (IR-2, 44 FR 75566, December 20, 1979). In that ruling, the Department articulated the policy which it has subsequently applied in interpreting other state permit requirements: (44 FR 75570-1)

A permit may serve several legitimate State police power purposes, and the bare requirement . . . that a permit be applied for and obtained is not inconsistent with Federal requirements. However, a permit itself is inextricably tied to what is required in order to get it. Therefore, the permit requirement . . . must be considered together with the application requirements . . .

The Rhode Island permit which the Department found to be inconsistent required transporters to apply for a permit not less than four hours before transporting certain gases in the state. But the application for a permit required information that could be obtained only after loading. Thus, the permit process on its face created a delay of at least four hours between loading of a cargo tank and movement of the shipment. The Department considered this permit requirement to be inconsistent because it unnecessarily delayed the transportation of hazardous materials.

This ruling has already addressed the question of whether the transit fee has the effect of delaying spent fuel shipments and has found no such effect. Thus, the precedent of IR-2 does not apply.

WEPSCO further argued that the transit fee was indistinguishable from a Vermont permit requirement which was found to be preempted in IR-15. (49 FR 46660, November 27, 1984.) The Vermont requirement imposed a fee of \$1,000 on each shipment of highway route controlled quantity radioactive waste proposed to be transported in Vermont. Payment of the fee was a necessary precondition for written approval by the State Secretary of Transportation, such written approval being a necessary precondition to transportation in the State of Vermont.

The Vermont permit requirement (including the fee) was found to be preempted by the HMTA principally because it prohibited the interstate

transportation of spent nuclear fuel and other radioactive waste notwithstanding a shipment's full compliance with all Federal regulations until there was full compliance with additional state requirements. "If Vermont could impose such preconditions upon access to preferred routes, any State could do so. This would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA." (49 FR 46664).

The transit fee involves no application for state approval to transport spent fuel. Neither does it involve any assertion by Illinois of a right to deny entry to any shipment which is in compliance with Federal safety standards. Even if one narrowly construes the requirement at § 4305 that payment of the transit fee occur prior to transportation in the state, the nature of the "precondition" is qualitatively different from that imposed by the Vermont regulations. Because Vermont's permit system involved a detailed application, administrative processing by the state and, finally, an affirmative action by the state to grant written approval, the potential for delay was both significant and beyond the control of the transporter, the transit fee, by contrast, involves only one action by the transporter, i.e., payment of the fee. The nature of spent fuel transportation is such that there is ample time between identification of a shipment and commencement of transportation to enable transporters to perform that action prior to movement of a shipment in Illinois. Thus, the potential for delay is not inherent in the transit fee, even if it is construed as a precondition. (*N.B.* This is not the case with most hazardous materials shipments, so the conclusion reached here cannot be applied directly to per-trip fees on other kinds of hazardous materials.)

When considering the consistency of the Vermont regulations in IR-15, the Department made a number of findings with respect to the arguments Vermont had offered in support of its permit scheme. Several commenters on this proceeding have cited these subsidiary findings as a basis for finding the transit fee to be inconsistent. These subsidiary findings addressed the discriminatory application of the fee, the characterization of the state-provided escorts as a mobile emergency response program, and the claim of unique circumstances justifying denial of entry for non-payment of the fee. These findings were presented as rebuttal of Vermont's assertion that its unique circumstances justified its requiring transporters of radioactive waste to pay

a fee before being allowed to operate in Vermont. They were not, however, the basis for finding the fee provision to be inconsistent. That conclusion was based on the finding that (1) the fee effectively redirected shipments of radioactive materials away from preferred routes in Vermont; and (2) if Vermont's *inconsistent* requirement were allowed to stand, all other states could enact such *inconsistent* requirements, thereby totally undermining the national system of radioactive materials transportation safety regulation. Since the subsidiary findings were related to Vermont's arguments rather than the principal holding, they should not be considered to have precedential effect and need not be considered further in connection with the transit fee.

Commenters opposing WEPCO's application argued that the transit fee was analogous to the New Hampshire hazardous materials permit fee which the First Circuit Court of Appeals found not to be preempted by the HMTA in *N.H. Motor Transport Assoc. v. Flynn*, 751 F.2d 43 (1984). The New Hampshire law requires transporters of placarded shipments of hazardous materials or waste to obtain a license for an annual fee of \$25 or a per-trip fee of \$15. While most of the funds collected thereby go into the state's superfund for cleanup of hazardous wastes, the Court found that the fees were not improperly assessed on hazardous materials shipments because the total amount collected was not shown to be excessive in comparison to the enforcement and response costs actually incurred by the state as a result of this type of transportation. The Court also noted that the fees were assessed upon both interstate and intrastate transportation. The Court, therefore, concluded that the license fees could be justified as a constitutionally permissible "user fee" under the standards relied on in *Evansville-Vanderburgh Airport Authority Dist. v. Delta Airlines, Inc.*, 405 U.S. 707 (1972). Several commenters asserted that the transit fee was equally justified as a "user fee." It may be, but that question arises under the Commerce Clause, not the HMTA, and is, therefore, beyond the scope of the inconsistency ruling process.

The primary relevance of *Flynn* for this proceeding is the Circuit Court's reversal of the District Court's finding that the New Hampshire licensing law created transportation delay and was, therefore, inconsistent with an important objective of the HMTA. The District Court found delay in the fact that licenses could be obtained only during ordinary business hours.

Therefore, shippers wishing to have materials transported at night or on weekends, would be restricted to those vehicles already licensed. But the Circuit Court found that "[p]recisely this type of delay arises out of the licensing requirements that New Hampshire (and other states) imposes on all interstate motor carriers . . . ; that is to say, the shipper must restrict its choice to truckers that are licensed to drive in New Hampshire. Yet, no one claims that such requirements are inconsistent with HMTA." (*Flynn* at 51). Because carriers anticipating nighttime or weekend shipments could obtain an annual license for \$10 more than a single-trip license, thereby avoiding the risk of being caught unprepared to accept a shipment, the Circuit Court found that the essential objection to the license fee rested upon cost. Having found nothing unreasonable about the cost, or any unreasonable about the cost, or any unreasonable interference with Federal objectives, the Circuit Court concluded that there was no inconsistency between the license fee and the HMTA.

Supporters of WEPCO's application attempted to distinguish the transit fee from the New Hampshire license fee on a number of grounds. First, they pointed to differences in the amount of the fee and the scope of its applicability. The transit fee is \$1000 per cask of spent fuel. The New Hampshire fee was much lower (\$25 per year or \$15 per trip) and was spread over a much broader field (all placarded shipments of hazardous materials or wastes). However, the *Flynn* Court did not find that the New Hampshire fee was reasonable because it was a relatively nominal amount of money. Reasonableness was a function of the nexus between the amount collected from transporters and the costs incurred by the state as a result of that transportation activity. Illinois offered evidence to demonstrate that the amount collected by the transit fee was commensurate with the costs incurred as a result of the shipments on which the fee was assessed. Supporters of the WEPCO application did not rebut this evidence but argued that the state's costs resulted from activities which were inconsistent with the HMTA. This ruling, however, has already considered the state's requirements for shipment inspections and escorts and found no inconsistency.

Supporters of the WEPCO application also argued that *Flynn* was not on point because it involved hazardous materials generally, for which there is no Federal regulation comparable to HM-164. The transit fee, by contrast, affects spent nuclear fuel for which there is a specific

highway routing regulation and a Departmental policy statement (Appendix A to Part 177) which expresses the view that a routing rule which embodies a licensing fee is likely to be deemed inconsistent. Since no comparable policy statement exists with respect to other hazardous materials, this argument goes, the decision in *Flynn* is not relevant here. This argument is flawed for two reasons. First, as discussed previously in this ruling, the transit fee is not a "routing rule" within the meaning of HM-164, so the language of Appendix A does not apply. Second, the New Hampshire license fee was assessed on all placarded shipments of hazardous materials, a category which includes highway route controlled quantity shipments of spent fuel. Thus, no distinction is possible on the basis of whether or not fees were assessed on shipments subject to a Federal routing rule.

Upon consideration of the foregoing arguments, I conclude that the transit fee is not an inconsistent permit requirement. I make no finding as to whether or not the transit fee is a valid user fee, as this is a Commerce Clause question properly addressed by the courts.

Is the transit fee part of a regulatory program which is inconsistent with the HMTA?

The transit fee, and the inspections and escorts which it partially funds, are part of a larger state program, the Illinois Nuclear Safety Preparedness Program (INSPP). Many comments in this proceeding revolved around the question of whether the INSPP is a valid state program or whether it constitutes the type of varying state requirements which the HMTA was intended to preclude. In short, has the field of emergency preparedness for nuclear emergencies been occupied by the Federal Government to the exclusion of the states?

WEPCO *et al.* argued that the INSPP was redundant in that it duplicated Federal programs and, therefore, enhanced multiplicity. For this reason, they urged that the INSPP and the fees which support it be deemed inconsistent with the HMTA. This argument was based, in large part, on the reference in IR-15 to Vermont's decision to field a completely independent response team, rather than relying on available Federal resources. "By requiring transporters to pay a fee, Vermont seeks to transfer the financial burden of its decision to replicate Federal efforts . . ." (49 FR at 46664). According to WEPCO, "Illinois has apparently chosen to develop a completely independent response mechanism in addition to the federal

response capability." (WEPCO comments, January 21, 1986, p. 16).

Unlike the Vermont regulations addressed in IR-15, however, the INSPP provides the necessary framework for access to available Federal assistance. As expressed by Illinois in its supplemental comments on this proceeding: (January 20, 1986, p. 34)

Illinois recognizes that there are multiple Federal agencies that have programs that relate, in one fashion or another, to emergency planning elements. However, these programs relate to generic planning and training issues. They are not site-specific either in their planning or implementation and they have almost no day-to-day operational components. It has been left to the respective States to undertake the burden of developing site-specific inspection and emergency preparedness plans and programs and to ensure their implementation and smooth operation.

While noting that Federal programs also exist for hands-on response in the event of emergencies, the Department agrees that the Federal programs were designed as supplements, rather than substitutes, for "an integrated, on-going State/local system of emergency response preparedness." (IR-8, 49 FR 46637, 46641, November 27, 1984). When the Department referred to emergency preparedness as "an innately governmental responsibility" (Ibid.), it pointedly avoided reference to any single level of government. This was because the Department has long recognized that certain aspects of hazardous materials transportation are not amenable to effective nationwide regulation. One such aspect is emergency response. "Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and State planning and preparation, when an accident does occur, response is, of necessity, a local responsibility." (IR-2 at 75568).

WEPCO acknowledged the Department's finding in IR-8 that emergency preparedness was "an innately governmental responsibility" which could not be shifted to particular users. WEPCO then extended this reasoning to argue that the cost of preparedness could not be shifted either, citing *Bd. of Commissioners, County of Cuyahoga v. Nuclear Assurance Corp.*, 588 F. Supp. 856, 863 (N.D. Ohio 1984) (a local government has not sustained an injury giving rise to recovery because it has incurred expenses in preparing for a possible radiological accident). The Department notes, however, that the court in *Cuyahoga County* followed the holding in *In re TMI Governmental Entities Claims*, 544 F. Supp. 853, 855

(M.D. Pa. 1982) (responsibility for public expenditures made in the performance of governmental functions falls upon the governmental body providing the service absent statutory authority to the contrary). Since the transit fee constitutes such "statutory authority to the contrary", WEPCO's reliance on *Cuyahoga County* is misplaced.

In summary, the Department has long recognized that preparedness for transportation emergencies is not the exclusive province of any single level of government; Federal courts have held that governmental entities may statutorily require payment for services provided in the performance of governmental functions; and Illinois has by statute created an emergency preparedness program which coordinates Federal, state and local responsibilities and provides for financing of the state and local expenditures incurred thereby. Having found no evidence that the INSPP either reduces transportation safety or increases regulatory multiplicity, I find that the INSPP is not inconsistent with the HMTA. Accordingly, I find that the transit fee is not part of a regulatory program which is inconsistent with the HMTA.

Does the transit fee increase regulatory multiplicity by encouraging other jurisdictions to enact similar requirements?

In its application, WEPCO made the following argument: (p. 3)

If Illinois is permitted to charge transport fees, transporters will no doubt divert shipments onto less direct routes through other states, increasing total transport time and potential risk of accident and imposing an unreasonable burden on interstate commerce. Surrounding jurisdictions are likely to respond to this diversion of shipments by imposing and escalating their own fees. Ultimately, as such fee structures develop, increasing numbers of transporters will be forced to select routes with an eye towards minimizing state fees as opposed to minimizing time in transit.

This argument is premised on the belief that transporters of spent fuel can and will divert shipments onto less direct routes in order to avoid the transit fee. The Department considered and rejected this premise earlier in this ruling. That reasoning is not repeated here.

WEPCO subsequently expanded on the theme of cumulative effect (WEPCO comments, January 21, 1986, p. 20):

. . . the interstate transportation of spent fuel, which is necessitated by the federally supported policy of power generation by nuclear fuel, will be disrupted or destroyed by states and localities which determine that existing federal emergency response

capability is inadequate and that the shipper must pay for a system which they deem "adequate." If Illinois can finance a supplementary program from fees imposed on shippers, so can other states, counties and municipalities which feel a need for greater protection.

This line of argument goes beyond the question of redirection and requires further analysis.

First, WEPCO correctly characterizes nuclear power generation as an area of Federal interest. But this interest is not one of the Federal objectives under the HMTA. Assuming *arguendo* that the transit fee impedes the accomplishment of this Federal objective, there would be no basis for preemption under the HMTA. There might be a basis for preemption under the Atomic Energy Act or under the Commerce or Sovereignty Clauses of the U.S. Constitution, but an inconsistency proceeding is not the proper forum for consideration of these issues.

Next, WEPCO argues that if Illinois can impose a transit fee, other jurisdictions can and will do so; and the cumulative effect will be far greater than that of the Illinois requirement alone. To some extent, this echoes language which the Department has used in prior inconsistency rulings. (See *e.g.*—IR-6, 48 FR 760, 765 "If the approach taken by Covington were deemed an appropriate local activity, it would be no less so for Covington's neighbors . . ."; also IR-10, "49 FR 46645, 46647 . . . if one State may use insurance requirements to deflect interstate carriers of hazardous materials into other jurisdictions, then all States may be so.") The Department, however, has never relied on the potential cumulative effect of a requirement as a basis for finding inconsistency. Rather, the Department has used this device to illustrate more effectively the adverse impact of a requirement already found to be inconsistent. In its first inconsistency ruling (IR-1, 43 FR 16954, April 20, 1978), the Department found no Federal requirement under the HMTA with which to compare a New York City transportation ban for inconsistency and acknowledged the great likelihood that other jurisdictions would enact similar

restrictions, the cumulative effect of which could seriously impact transportation safety. Because of the potential cumulative effect, the Department announced that it would initiate rulemaking to address the problem. This, and not a finding of inconsistency, was the response to anticipated cumulative effect.

Finally, WEPCO argues that a finding of consistency with respect to the transit fee will require a similar finding with respect to fees imposed not only by other states, but also by any political subdivision of a state. The Department is not prepared to accept this proposition. This proceeding involves a state fee which is part of a state program of emergency preparedness. It is not at all clear that the municipal role in nuclear safety preparedness is coextensive with that of the states. In any event, that question is not presented in this proceeding and no finding is made.

In responding to the cumulative effect argument, Illinois and the States of Colorado and Wisconsin, relied on the holding in *Flynn*. In that case, the court was presented with arguments that the proliferation of fees similar to New Hampshire's would greatly increase transport costs and seriously burden interstate commerce. The court stated simply that "the Commerce Clause does not prevent states from charging for services they provide" but noted that this answer was "not totally satisfactory, however, for the "burden of proof" rules mean that each state can charge an amount that cannot be *proved* excessive", the sum total of which "may well exceed the sum total of the *actual* cost of state services." (*Flynn* at 50, emphasis in original). The court went on to find a conclusive answer to the argument in the Department's power to promulgate rules that preempt state law in this area. "DOT can promulgate a regulation prohibiting or controlling the imposition of excessive license fees." (*Ibid.*) Here, the court may have overestimated the Department's regulatory creativity. The Department may require transporters to maintain such strict compliance with Federal rules adopted under the HMTA that few

additional state requirements could withstand the dual compliance or obstacle test. But such rules would have to serve a legitimate safety purpose. In any event, the Department has not adopted any rules which preempt state fees *per se*.

On the basis of the foregoing, I find that the "multiplicity" that may result from other jurisdictions enacting requirements similar to the transit fee is not the type of regulatory multiplicity which would give rise to a finding of inconsistency with the HMTA.

D. Conclusion

Upon consideration of the foregoing arguments, the Department has concluded that the issues presented in this proceeding lie at the outer reaches of the HMTA's scope of preemption. So long as a state-imposed fee is not an element of an inconsistent transportation requirement, there is no basis for preemption under the HMTA. There may be multiple reasons for finding such a fee to be preempted under other statutes or under the U.S. Constitution. But these are not issues to be resolved by the Department of Transportation. The Department's responsibility is limited to issuing interpretations of the preemptive effect of that statute under which it has implemented a national program of safety regulation, the HMTA. And even the most confirmed federalist must concede that there are limits to the scope of Federal preemption under the HMTA.

IV. Ruling

For the foregoing reasons, I find that the transit fee imposed by Illinois under Illinois Revised Statutes, Chapter 111½, § 4304(7), which imposes a fee of \$1000 per cask upon owners of spent nuclear fuel traversing the State of Illinois, is not inconsistent with the Hazardous Materials Transportation Act or the regulations promulgated thereunder.

Issued in Washington, DC, on June 4, 1986.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86-12967 Filed 6-6-86; 8:45 am]

BILLING CODE 4910-60-M

Federal Register

Monday
June 9, 1985

Part IV

Federal Trade Commission

16 CFR Part 455

Trade Regulation Rule; Sale of Used
Motor Vehicles; Exemption for Wisconsin

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final determination to grant a statewide exemption from the Commission's Used Car Rule to apply within Wisconsin.

SUMMARY: The Federal Trade Commission has determined that the petition for statewide exemption filed by the State of Wisconsin meets the standard for such exemptions in § 455.6 of the Commission's Used Car Rule. This notice announces that action and also sets forth the Commission's reasons for reaching this determination.

DATE: This statewide exemption is effective as of June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Lee J. Plave (202/376-2805) or Lemuel W. Dowdy (202/376-2893), Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:**I. Background**

On March 21, 1985, the Wisconsin Department of Transportation (the "Petitioner" or "WisDOT") filed a petition for a statewide exemption (the "Petition"), pursuant to § 455.6 of the Commission's Trade Regulation Rule Concerning the Sale of Used Motor Vehicles (the "Used Car Rule" or the "Rule"), 16 CFR Part 455.6¹ The Petition sought to allow Wisconsin used vehicle dealers to use a disclosure label required by a Wisconsin administrative regulation, in the place of the Buyers Guide required by the Commission's Used Car Rule.²

On May 8, 1985, the Commission stayed the effective date of the Used Car Rule, as it applied within the State of Wisconsin, for a period of 120 days, from May 9, 1985, to September 6, 1985.

¹ The Wisconsin Petition has been placed on the Commission's public record and is identified as Document 100-1 in FTC File No. 215-54. The Petition, and all other public documents referred to in this notice, are available for inspection at the Public Reference Room, Room 130, Federal Trade Commission, 6th & Pennsylvania Avenue, N.W., Washington, DC 20580 (202/523-2598).

² The Buyers Guide is the standard disclosure form which must be affixed to a side window of a used vehicle offered for sale by a dealer, under Section 455.2(a) of the Used Car Rule. In this notice, the Wisconsin disclosure label will be referred to as the "Wisconsin Label" or the "disclosure label." A copy of the recently revised Wisconsin Label accompanies this notice as Appendix A. A copy of the FTC Buyers Guide accompanies this notice as Appendix B.

50 FR 20094 (May 14, 1985). Shortly thereafter, the Commission published in the *Federal Register* a detailed request for public comment on the Petition. 50 FR 21269 (May 23, 1985). The period for public comments expired on June 24, 1985.

On September 5, 1985, the Commission extended the stay of the effective date of the Used Car Rule as it applied within the State of Wisconsin for a period of 90 days, until December 5, 1985, to allow the Commission's staff and opportunity to meet with Wisconsin officials and discuss the Petition. 50 FR 37345 (Sept. 13, 1985).

On September 27, 1985, the Commission's staff met with representatives of WisDOT and the Wisconsin Attorney General's office in Madison. At that meeting, WisDOT's representatives agreed to consider recommending several changes to the Wisconsin Regulation. In response to this meeting, WisDOT sent a letter to staff, which indicated that all of the changes tentatively agreed to at the September 27th meeting would be proposed as amendments to the regulations that form the basis for the Petition.³

To put these amendments into effect, WisDOT had to start a rulemaking process. In order to give WisDOT time during which to proceed with its regulatory process, the Commission extended the stay of the effective date of the Rule for an additional 180 days, until June 3, 1986. 50 FR 50162 (Sept. 13, 1985). On May 2, 1986, WisDOT informed the FTC's staff by letter that the proposed amendments had been adopted and would become effective on June 1, 1986 (hereinafter referred to as the "1986 Amendments").⁴

II. Exemption Standards and Procedures

Section 455.6 of the Rule sets forth the standard for state exemptions. This provision states that:

(a) If, upon application to the Commission by an appropriate state agency, the Commission determines, that—

(1) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(2) The state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that state to the extent specified by the Commission in its

³ This letter has been placed on the Commission's public record and is identified as Document 100-6 in FTC File 215-54. This letter outlines the substance of the proposed amendments. See also note 4, *infra*.

⁴ This letter (hereinafter referred to as the "WisDOT Letter") has been placed on the Commission's public record and is identified as Document 101-16 in FTC File No. 215-54.

determination for so long as the state administers and enforces effectively the state requirement.

(b) Applications for exemption under subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in Subsection (a), and will be conducted in accordance with Subpart C of Part 1 of the Commission's Rules of Practice.

The effect of an exemption is that the Used Car Rule will no longer be in effect in the petitioning state, to the extent indicated by the Commission, for so long as the state administers and enforces effectively its law.⁵ The Commission has stated that it intends to determine the appropriate relationship between the Used Car Rule and state law on a case-by-case basis in the context of an exemption proceeding conducted pursuant to § 1.16 of the Commission's Rules of Practice.⁶

Section 1.16 of the Commission's Rules of Practice is a general provision allowing any person to whom a trade regulation rule would otherwise apply to petition the Commission for an exemption.⁷ This provision provides no specific guidance to state agencies seeking statewide exemption from trade regulation rules. Final staff guidelines for state exemption petitions have, however, been developed for the Commission's Trade Regulation Rule Concerning Funeral Industry Practices, 16 CFR Part 453 (the "Funeral Rule").⁸ Because the Funeral Rule has an exemption provision that is virtually identical to the provision included in the Used Car Rule,⁹ the Commission previously announced that it would follow the Funeral Rule exemption guidelines in handling the Wisconsin Petition.¹⁰

⁵ 16 CFR 455.6. See also Statement of Basis and Purpose for the Used Car Rule, 49 FR 45692, 45711 (Nov. 19, 1984).

⁶ See Statement of Basis and Purpose at 45711. See also 16 CFR 1.16.

⁷ See also section 18(g) of the FTC Act, 15 U.S.C. 57a(g).

⁸ 50 FR 12521 (Mar. 29, 1985). Because these are staff's guidelines, they are in no way binding upon the Commission. The purpose of the guidelines is to give states and other interested parties as much guidance as possible when seeking to file an exemption.

⁹ Compare 16 CFR 453.9 with 16 CFR 455.6.

¹⁰ Request for Public Comments at 21270. The Commission's decision to follow the procedures set forth in staff's Funeral Rule state exemption guidelines, 50 FR 12521 (1985), was predicated upon two factors. First, as noted herein, the text of the Funeral Rule state exemption provision, 16 CFR 453.9, is virtually identical to the text of the Used Car Rule state exemption provision, 16 CFR 455.6. Second, in the Statement of Basis and Purpose, it was noted that the Used Car Rule state exemption provision "conform[s] to the congressional directive

Continued

The Petition and the comments received pursuant to the Request for Public Comments¹¹ are analyzed in the section that follows.

III. The Petition

A. Generally

As noted above, the State of Wisconsin filed its petition for statewide exemption on March 21, 1985. The application was filed by the Wisconsin Department of Transportation ("WisDOT"). WisDOT is the state agency charged with regulation of the used vehicle industry, and therefore is the appropriate state agency to file the Petition for statewide exemption.¹² The appendices submitted with the Petition include the following information: (1) a provision-by-provision comparison of the Used Car Rule with the Wisconsin Regulation and information concerning Wisconsin's willingness and ability to enforce its laws (Appendix A); (2) the text of the Wisconsin regulation (Appendix B); (3) a sample Wisconsin Label (Appendix C); (4) a sample Wisconsin purchase contract (Appendix D); (5) a sample Wisconsin dealer inspection report (Appendix E); and (6) a letter from the Wisconsin Attorney General regarding the Petition (Appendix F).

B. Does the Wisconsin Regulation Apply to the Same Transactions to Which the Used Car Rule Applies?

Wisconsin regulates the sale of used motor vehicles by statute and by administrative agency regulations. The administrative regulations that govern motor vehicle trade practices are

embodied in Chapter 139 of the Wisconsin Administrative Code.¹³ In this notice, the provisions contained in Chapter 139 of the Wisconsin Administrative Code will be referred to as the "Wisconsin Regulation."

The scope of the Used Car Rule is determined largely by the definitions of the key terms which are set out in § 455.1(d) of the Rule. The Used Car Rule applies to all dealers when they offer to sell used vehicles to anyone, except when they offer to sell a vehicle only to other dealers. Under § 455.1(d)(2) of the Rule, a "used vehicle" is one that has been driven more than the limited distance necessary to move it to a new car dealership or to test drive it prior to delivery. Therefore, "demonstrators" (or company cars) are covered; cars being sold as scrap are not.¹⁴

Specifically, the term "vehicle" covers all motorized vehicles that have a gross vehicle weight rating of less than 8,500 pounds, a curb weight of less than 6,000 pounds, and a frontal area of less than 46 square feet.¹⁵ This includes the sale of most automobiles, light-duty vans, and light-duty trucks.¹⁶ Motorcycles are specifically excluded.¹⁷

A "dealer" is defined in § 455.1(d)(3) of the Rule as any individual or business that offers five or more used vehicles for sale in a twelve month period. The Rule does not, however, cover banks and financial institutions offering used vehicles forfeited as collateral on consumer loans.¹⁸ The term "consumer" is broadly defined in § 455.1(d)(4) of the Rule to mean any purchaser (whether an individual or a business) that is not a used vehicle dealer.

The Wisconsin Regulation, on the other hand, applies to "dealer licensees."¹⁹ The term "licensee" is defined to mean "any motor vehicle manufacturer, distributor, dealer, or salesperson, or any combination thereof, licensed by the department."²⁰ In its comment, WisDOT clarified the definition of term "dealer licensee" by explaining that this term includes "those, who for anything of value, sell

three or more motor vehicles in a year."²¹ In practice, the definitions of the terms "used vehicle," "consumer"²² and "vehicle"²³ are essentially the same under both the Used Car Rule and the Wisconsin law. Thus, the Commission concludes that the Wisconsin Regulation applies to the same transactions as does the Used Car Rule.

C. Does the State Law Provide a Level of Protection to Consumers Which is as Great as or Greater Than That Provided by the Commission's Rule?

This section of this notice will summarize the provisions of state law that are relevant to the question of whether state law affords an overall level of protection to consumers that is as great or greater than that provided by the Used Car Rule. Accordingly, the state law is compared with the Used Car Rule on a provision-by-provision basis. Where appropriate, the similarities and differences between the state law and the Used Car Rule are noted.

1. Sections 455.1 (a) and (b)—General Duties of Used Vehicles Dealers

Sections 455.1 (a) and (b) of the Used Car Rule set out the acts or practices which are deceptive or unfair when committed by used vehicles dealers in or affecting commerce. These unfair or deceptive practices are listed in the Rule's text in order to meet the specificity requirement enunciated in *Katherine Gibbs School, Inc. v. FTC*, 612 F.2d 658, 662 (2d Cir. 1979). Because this portion of the Rule has been included only to meet the procedural requirements of *Katherine Gibbs*, these provisions of the Rule have not been part of the final analysis on the merits of the Petition.

2. Section 455.2—Buyers Guide

(a) *Format*. The Used Car Rule and the Wisconsin Regulation both require dealers to complete and display a disclosure form or each used vehicle offered for sale.²⁴ Both laws specify the

in the FTC Improvements Act of 1980 concerning state exemptions from the Funeral [Rule]. 49 FR at 45711.

¹¹ In response to the Commission's notice, eight parties commented on the Petition. These comments were placed on the Commission's public record in FTC File 215-54 and are identified with the document numbers indicated below. The following parties submitted comments: (1) The Hon. Jim Moody, U.S. House of Representatives (Document 105-1); (2) The National Independent Automobile Dealers Association (Document 105-2) (the "NIADA Comment"); (3) The Hon. Bronson C. LaFollette, Attorney General of Wisconsin (Document 105-3) (the "Attorney General's Comment"); (4) WisDOT (Document 105-4); (5) The Wisconsin Automobile and Truck Dealers Association (Document 105-5) (the "WATDA Comment"); (6) The Center for Auto Safety (Document 105-6); (7) The Wisconsin Department of Agriculture, Trade and Consumer Protection (Document 105-7) (the "DATCP Comment"); (8) The Center for Public Representation (Document 105-8). All expressed support for the Petition, except for the NIADA Comment, which opposed granting an exemption.

¹² The Attorney General of Wisconsin stated in a letter to the Commission's Secretary that the law of Wisconsin supports the enforcement of the Wisconsin used vehicle regulations by the Wisconsin Department of Transportation. See Petition, Appendix F.

¹³ Wis. Admin. Code Ch. Trans 139 (hereinafter cited as "Trans 139"). WisDOT has the authority to promulgate these regulations pursuant to Wis. Stat. §§ 110.06, 218.01(5) and 227.014.

¹⁴ See Statement of Basis and Purpose at 45707.
¹⁵ 16 CFR 455.1(d)(1). See also Final Staff Report on the Proposed Used Car Rule, at 397 (1978) (definitions of the terms "gross vehicle weight rating," "curb weight," and "frontal area").

¹⁶ Statement of Basis and Purpose at 45707.

¹⁷ 16 CFR 455.1(d)(1).

¹⁸ 16 CFR 455.1(d)(3). See Statement of Basis and Purpose at 45708.

¹⁹ Trans 139.05(6).

²⁰ Trans 139.02(6).

²¹ WisDOT Comment at 3 (citing Wis. Stat. § 218.01(3)(a)(29)).

²² Compare 16 CFR 455.1(d) with Trans 139.02.

²³ Compare 16 CFR 455.1(d)(1) with Wis. Stat. § 218.01(1)(m).

²⁴ Compare 16 CFR 455.2(a) with Trans 139.04(6)(a). The Wisconsin Label contains the information required on the FTC Buyers Guide, and in addition, requires disclosure of: (1) the prior use of the vehicle; (2) odometer information; (3) the asking price, identification number, and type of engine; (4) deductibles that apply to any warranty coverage offered; (5) the availability of mechanical breakdown insurance; and (6) the defects discovered by the dealer during a mandatory inspection of the general condition and safety systems of the vehicle. Trans 139.04(a)(6)(1)—(6).

exact format of the disclosure form. The FTC Buyers Guide is a two-sided form that must be displayed on a side window of the used vehicle so that the front side (with the caption "Buyers Guide") can be read from the outside.²⁵ The Wisconsin Label, however, is printed in a single-sided format.²⁶ The Petitioner acknowledges that the single-sided format necessitates the use of smaller print, but concludes that its disclosure form "is more effective [because] it reasonably contains all of the important provisions on the face of a single document" that is "directly exposed to the shopper."²⁷

The Request for Comments noted the difference between the type size on the FTC Buyers Guide and the Wisconsin Label.²⁸ In response to this concern on the part of the Commission and the Commission's staff, WisDOT amended its disclosure label to enlarge certain specific words and to make the label more "readable."²⁹

In the Request for Public Comments, it was also noted that there is no requirement in the Wisconsin Regulation that the disclosure label be displayed in a window.³⁰ Trans 139.04(6)(a) merely requires dealers to display the form "from within the vehicle [so it] shall be readable from the outside." In its comment, WisDOT acknowledges that although the Wisconsin Regulation does not require placement of the disclosure label in the window, it is WisDOT's policy to recommend that the label be placed in the window.³¹ WisDOT noted that "[t]he overwhelming majority of Wisconsin dealers affix the labels to a window, usually a rear side window . . . Placement on a seat or the floor is unacceptable."³²

In the Commission's opinion, the smaller size of the type used in the Wisconsin Label is somewhat offset by the recent changes to that form and the fact that the Wisconsin Label is in a single-sided format. However, the

format and type size used in the FTC Buyers Guide make the Buyers Guide easier to read than the Wisconsin Label. In the Commission's opinion, despite the changes to the Wisconsin Label and the fact that it is a single-sided form, the Wisconsin Label's format is not as readable as the FTC Buyers Guide. On balance, however, the Commission does not believe that this difference between the Used Car Rule and the Wisconsin Regulation warrants that the Petition be denied.

(b) *The "As Is" Disclosure.* Section 455.2(b)(1)(i) of the Used Car Rule requires dealers to check the large box on the Buyers Guide when a used vehicle is offered on an "as is" basis. The "as is" disclosure on the Buyers Guide is printed in conspicuously large type. The purpose of the "as is" disclosure is to inform consumers that the dealer will not be responsible for post-purchase repairs to the vehicle.³³ Moreover, as was noted in the Statement of Basis and Purpose, this disclosure on the Buyers Guide should ensure that consumers are made aware of this information at a time when "the information can influence their purchasing decision."³⁴

The Wisconsin Regulation has a corresponding disclosure requirement on its label. Dealers are required to check a box to indicate that the vehicle is offered "as is." The "as is" statement on the Wisconsin Label is lengthier and printed in smaller type than that on the FTC Buyers Guide. However, as a part of the 1986 Amendments, WisDOT enlarged the words "AS IS-NO WARRANTY" on its disclosure label, in response to concerns about the readability of this disclosure.³⁵ On balance, the Commission believes that the Wisconsin "as is" disclosure provides consumers with an overall level of protection equal to that provided by the FTC Buyers Guide.

(c) *The "Implied Warranties Only" Disclosure.* Section 455.2(b)(1)(ii) of the Used Car Rule addresses two issues. First, this provision informs dealers in those states that limit or prohibit "as is" sales that the FTC Used Car Rule does not override any such provision of state law. Second, this provision of the Rule requires that an "Implied Warranties Only" disclosure be used in place of the "as is" disclosure on the Buyers Guide,

(1) in those states that prohibit "as is" sales and (2) in those instances where a dealer chooses to sell a used vehicle with neither an express warranty nor an "as is" disclaimer. The "Implied Warranties Only" disclosure required under § 455.2(b)(1)(ii) of the Rule must read as follows:

Implied Warranties Only

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

Wisconsin law does not limit or prohibit "as is" sales of used vehicles.³⁶ Wisconsin has therefore chosen not to include an implied warranties disclosure in the applicable regulations, although Wisconsin dealers may choose to offer their vehicles with only implied warranties. Because a Wisconsin dealer not offering a written warranty is unlikely to advertise the car with just implied warranties, the Commission does not believe that this difference adversely affects the overall level of protection afforded to consumers under the Wisconsin Regulation.

(d) *Information About Express Warranties.* Section 455.2(b)(2) of the Used Car Rule requires dealers that offer an express warranty to describe the terms of the warranty on the Buyers Guide. This provision requires dealers to set out the following information: (1) Whether the warranty is full or limited;³⁷ (2) the specific systems that are covered by the warranty;³⁸ (3) the

³⁶ See Petition, Appendix A, at 3. See also Attorney General's Comment at 2: "We believe that it is extremely unlikely that a Wisconsin dealer would choose to sell a vehicle with neither an express warranty nor an 'as is' disclaimer. . . . If such a sale were made, there is an area on the purchase contract . . . in which the disclosure could be made."

³⁷ A "full" warranty is defined by the federal minimum standards as set forth in section 104 of the Magnuson Moss Warranty Act, 15 U.S.C. 2304. The Magnuson Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975. Therefore, in offering such vehicles for sale, dealers have the option to simply cross out the terms "full" and "limited" on the Buyers Guide, leaving just the term "warranty." 16 CFR 455.2(b)(2)(i) n.2. However, all other provisions of the Used Car Rule apply to sale of such vehicles.

³⁸ Section 455.2(b)(2)(ii) of the Rule prohibits the use of shorthand terms such as "drive train" or "power train" to describe covered systems. Dealers must name the specific systems covered (e.g., engine, transmission, differential). The Commission found that shorthand phrases such as "drive train" or "power train" are not understood by consumers and therefore do not facilitate assessment of the value of the warranty. Statement of Basis and Purpose at 45710. Additionally, these shorthand terms are not uniformly defined; they have different meanings for different people.

²⁵ 16 CFR 455.2(a)(1).

²⁶ Trans 139.04 (6)(a).

²⁷ Petition, Appendix A, at 2.

²⁸ Request for Public Comments at 21271-72, 21277 (Question 2(a)).

²⁹ See WisDOT letter at 2. But see NIADA Comment at 1-2: The Wisconsin Label "is exceedingly harder to read than the . . . [Buyers Guide] . . . and does not afford the consumer the protection intended."

³⁰ Request for Public Comments at 21271-72.

³¹ WisDOT Comment at 4.

³² *Id.* See also Attorney General's Comment at 2 ("[T]he Label is produced with adhesive and certainly in most cases will be attached to the window. . . ."); and WATDA Comment at 4 ("Dealers normally display the Wisconsin Label by affixing it to the window in the same manner required by the Used Car Rule.")

³³ Statement of Basis and Purpose at 45705.

³⁴ *Id.* at 45706. Most state laws simply require disclosure of such warranty information at the consumation of the deal, in the closing room. The Statement of Basis and Purpose observed that the "pressurized atmosphere of the 'closing room' thwarted consumers' full understanding of the warranty coverage." *Id.* at 45702.

³⁵ See WisDOT Letter at 2.

duration of the warranty; (4) the percentage of the labor and parts cost that the dealer agrees to pay; and (5) an optional disclosure that the vehicle is still under the manufacturer's warranty. In addition, Section 455.2(b)(2) requires dealers to describe in writing on the Buyers Guide any negotiated changes in warranty coverage.

The Wisconsin Regulation has a corresponding warranty disclosure requirement.³⁹ The Commission notes, however, that there are several distinctions between the Rule and the Wisconsin Regulation. First, the Wisconsin Label does not give the dealer the option of offering a "full" warranty. Rather, the required Wisconsin disclosure states that "[the] vehicle has a limited warranty as follows. . . ." (emphasis added).⁴⁰ Second, the Wisconsin Regulation does not require dealers to indicate negotiated changes in warranty coverage on the Wisconsin Label.⁴¹

In the Request for Public Comments, the Commission noted that under the then-existing Wisconsin Regulation, dealers "need not indicate all of the terms of the warranty."⁴² In response to the concern expressed by the Commission and the Commission's staff, the 1986 Amendments require the disclosure of warranty information in much the same manner as on the FTC Buyers Guide.⁴³ The 1986 Amendments ensure that Wisconsin consumers can determine the essential features of the warranty offered by the dealer simply by looking at the disclosure label. This is one of the most important purposes of the Used Car Rule. Therefore, in the Commission's opinion, the disclosure of express warranty terms on the Wisconsin Label provides an overall level of protection to consumers that is equal to that afforded by the FTC Buyers Guide.

(e) *Service Contract Availability.* Section 455.2(b)(3) of the Used Car Rule

³⁹ Trans 139.04(6)(a)(4) (as amended). See note 43, *infra*, for the text of this provision of the Wisconsin Regulation, as changed by the 1986 Amendments.

⁴⁰ Trans 139.04(6)(a) (part of required format). However, in a telephone conversation, WisDOT's staff said that a dealer that wished to offer a "full" warranty could cross out the word "limited" and write in the word "full."

⁴¹ See 16 CFR 455.2(b)(1)(i) and 455.2(b)(2)(v).

⁴² Request for Public Comments at 21273.

⁴³ See WisDOT Letter at 2. The amended provision requires disclosure of:

The basic terms and conditions of warranty, if offered, identifying the systems covered using such terms as engine, transmission, differential, cooling system or electrical system and specifying the duration of the warranty and the percentage of any repair costs to be paid by the consumer. Use of the terms "power train" or "drive train" to describe systems covered is prohibited.

Trans 139.04(6)(a)(4) (as amended).

requires used vehicle dealers to disclose the availability of service contracts (except in those states where service contracts are regulated as the business of insurance) by marking a small box on the Buyers Guide. In addition, the following disclosure is required, if service contracts are available:

Service Contract. A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.⁴⁴

The Wisconsin Label also discloses the availability of service contracts.⁴⁵ It does not, however, include the implied warranty information included in the service contract disclosure on the FTC Buyers Guide. However, the Wisconsin Label requires disclosure of the availability of mechanical breakdown insurance, which the Buyers Guide does not.⁴⁶

The Request for Public Comment set forth this distinction, and invited comment on the issue.⁴⁷ WisDOT acknowledged that its disclosure label did not contain a disclosure alerting consumers to their rights under Section 108 of the Magnuson Moss Warranty Act.⁴⁸ WisDOT's comment suggests that this difference is compensated for by the inclusion of a place on the disclosure label to disclose the availability of mechanical breakdown insurance.⁴⁹ In its comment, WATDA states that it "has advised Wisconsin dealers that any attempt to disclaim implied warranties in transactions involving written warranties or service contracts to which the dealer is a party is a potential unfair or deceptive practice under federal and state law."⁵⁰

In the Commission's opinion, the absence of a disclosure on the Wisconsin Label concerning consumers' rights under section 108 of the Magnuson Moss Warranty Act may not afford consumers an overall level of protection equal to that afforded by the FCT Buyers Guide. However, on balance, this distinction between the Used Car Rule and the Wisconsin Regulation does not warrant denial of the Petition.

(f) *Vehicle, Dealership and Complaint Information.* Section 455.2(c) of the Rule requires the dealer to fill in the name

⁴⁴ This disclosure alerts consumers to the automatic implied warranties which accompany a service contract, pursuant to Section 108 of the Magnuson Moss Warranty Act, 15 U.S.C. 2308.

⁴⁵ Trans 139.04(6)(1) (part of required format).

⁴⁶ *Id.*

⁴⁷ Request for Comments at 21173, 21277 (Question 2(f)).

⁴⁸ WisDOT Comment at 6.

⁴⁹ *Id.*

⁵⁰ WATDA COMMENT AT 2.

and address of the dealership (or the dealer's place of business or home address). This information is designed to enhance the value of the Buyers Guide as evidence of the agreement between the dealer and the consumer.⁵¹ The state law requires only the name of the dealership on the Wisconsin Label.⁵² WisDOT asserts that the address on the actual contract is sufficient, and thus, it contends that the absence of the dealer's address from the Wisconsin Label is not significant.⁵³

Section 455.2(d) of the Used Car Rule requires dealers to include certain vehicle information on the Buyers Guide, including the make, model, model year and vehicle identification number. Dealers may also include their stock number. These disclosures, like the dealership information discussed above, are designed to enhance the value of the Buyers Guide as evidence of the agreement between the dealer and the consumer.⁵⁴ The Wisconsin Label requires disclosure of the same information and, in addition, requires the dealer to indicate the asking price, the type of transmission and the type of engine.⁵⁵

Section 455.2(e) of the Used Car Rule requires dealers to disclose on the Buyers Guide the name and telephone number of the person to be contacted if a consumer complaint arises after the sale. This information helps the consumer identify the individual responsible for resolving disputes.⁵⁶ There is no similar requirement in the Wisconsin Regulation.

In the Commission's opinion, these differences between the FTC Buyers Guide and the Wisconsin disclosure label do not adversely affect the overall level of protection afforded consumers by the Wisconsin Regulation.⁵⁷

(g) *Disclosures Concerning Independent Inspections and Spoken Promises.* The FTC Buyers Guide includes a disclosure which suggests that consumers inquire about the availability of an independent pre-purchase inspection.⁵⁸ In addition, the

⁵¹ Statement of Basis and Purpose at 45710.

⁵² Trans 139.05(2)(1).

⁵³ Petition, Appendix A, at 7.

⁵⁴ Statement of Basis and Purpose at 45710.

⁵⁵ Trans 139.04(6)(a)(3).

⁵⁶ Statement of Basis and Purpose at 45710.

⁵⁷ See WATDA Comment at 9 ("There is virtually no possibility of a Wisconsin dealer escaping responsibility for the contents of the Wisconsin Label through a claim of 'mistaken identity.'").

⁵⁸ 16 CFR 455.2(a) (part of required format). This disclosure states:

"PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT."

Buyers Guide includes a disclosure to warn consumer that all oral promises should be reduced to writing.⁵⁹

In the Request for Public Comments, it was noted that the Wisconsin Regulation had no parallel provision for a pre-purchase inspection disclosure or for a spoken promises warning.⁶⁰ These issues were also raised when the Commission's staff met with WisDOT's staff on September 27, 1985. In response to the concern expressed by the Commission and Commission's staff, the 1986 Amendments include a disclosure concerning independent inspection and a disclosure concerning spoken promises.⁶¹ In light of these changes in the Wisconsin Regulation, the Commission concludes that the inspection disclosure and spoken promises warning on the Wisconsin Label afford consumers an overall level of protection equal to that afforded by the FTC Buyers Guide.

(h) *List of Major Vehicle Systems and Inspection Disclosure.* The back of the FTC Buyers Guide includes a list of the fourteen major mechanical and safety systems of an automobile and some of the major problems that can occur in these systems.⁶² The Wisconsin Regulation includes an inspection-disclosure provision which is somewhat analogous to this list.⁶³

The Commission included the list of potential problems on the Buyers Guide because the rulemaking record demonstrated dealer misrepresentations about the mechanical condition were often made on a system-by-system basis.⁶⁴ The components listed include those most likely to be represented by dealers as being in good condition without any confirmation of such representations in writing.⁶⁵ The list

also counters specific dealer misrepresentations that certain consumer-noted problems are minor.⁶⁶ Further, the Commission intended that the list be used by consumers as a means to identify the potential problems to be checked in an independent pre-purchase inspection.⁶⁷

The Wisconsin Label includes a list of several specific vehicle systems under the headings of "general condition" and "safety equipment condition."⁶⁸ Under the "general condition" category, dealers must mark a box for each of 31 specific mechanical conditions, indicating whether that condition exists in the vehicle.⁶⁹ In the "safety equipment condition" category, dealers must mark a box to indicate that each of the 30 listed components are "ok" or "not ok."⁷⁰ The Wisconsin Regulation requires that the dealer disclose the defects that can be determined through an inspection of "reasonable diligence, which shall consist of, but is not limited to, a walk-around and interior inspection, underhood inspection, under-vehicle inspection, and a test drive."⁷¹ The inspection disclosure requirement on the Wisconsin Label provides much of the same information about potential mechanical problems that is found on the FTC Buyers Guide.

In its Petition, WisDOT acknowledges that the Commission considered and rejected a proposal to include a defect disclosure provision in the Used Car Rule. Wisconsin contends that its mandatory inspection and inspection-disclosure requirement augments, rather than detracts, from the protection afforded by the other state law disclosure requirements.⁷²

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Trans 139.04(4), (5), and (6)(a)(6). See Petition, Appendix C. State law requires that safety equipment must be in good working order before a vehicle may be driven on Wisconsin highways. Therefore, one of the purposes of the disclosure of safety components is to inform consumers whether the vehicle can be legally operated.

⁶² Trans 139.04(4). Dealers must mark either a box on the window sticker labelled "yes" or "no" to indicate the existence of "all significant existing mechanical and structural defects and damage." *Id.*

⁶³ Trans 139.04(5). There are fourteen major vehicle systems listed on the FTC Buyers Guide. These same systems are included on the Wisconsin Label; seven under the category of "general condition" and seven under "safety equipment."

⁶⁴ Trans 139.04(4) and (5) and (6)(a) (part of required format).

⁶⁵ Petition, Appendix A, at 11-16. WisDOT also points out that its inspection-disclosure requirements have been changed since the Commission examined them. *Id.* at 16. WisDOT notes that its regulations were amended so that as of April, 1983, both warranty and inspection-disclosures are required to appear on the Wisconsin Label. *Id.* Prior to that time, inspection disclosures were included on a separate form provided to the

There are two significant differences between the current Wisconsin inspection disclosure scheme and the known defect proposal that the Commission considered and rejected in 1984. In first place, the Wisconsin inspection disclosure is predicated upon a mandatory inspection of the vehicle by the dealer.⁷³ While the inspection requirements in the Wisconsin Regulation are couched in general terms, in practice, dealers must inspect and disclose on the Wisconsin Label the condition of 61 items of specific information about the systems and components of the vehicle.⁷⁴ In contrast, the Commission is precluded from instituting a requirement that dealers conduct any inspection, because such a required inspection would create warranties under state law.⁷⁵ Section 102(b)(2) of the Magnuson Moss Warranty Act, 15 U.S.C. 2302(b)(2), explicitly prohibits the Commission from mandating warranties.⁷⁶ Although the Commission expressed its concern in the Statement of Basis and Purpose that a mandatory inspection requirement would serve to induce consumers' reliance on dealer-provided information about the vehicle,⁷⁷ WisDOT's substantial enforcement program tends to mitigate this possibility.

The second major difference between the Wisconsin inspection disclosure and the known defect provision rejected by the Commission concerns enforcement. WisDOT not only employs a general counsel's staff, but also has eleven field investigators who make about 1,500 inspections annually among Wisconsin's 3,000 dealers.⁷⁸ In 1983 and 1984,

purchaser at the time of sale. *Id.* See also Statement of Basis and Purpose at 45715 (discussion of Baseline Survey findings concerning Wisconsin inspection-disclosure requirement).

In the Request for Public Comments, the Commission recognized that the current Wisconsin inspection-disclosure requirement differs from the defect disclosure provision considered and rejected by the Commission in that the current Wisconsin provision requires dealers to disclose defects discovered during a mandatory inspection. 50 FR at 21275 n.85. See Trans 139.04(4) and (5). The Commission rejected a requirement for mandatory inspections. See Statement of Basis and Purpose at 45718-19.

⁷³ Trans 139.04(4) and (5).

⁷⁴ Trans 139.04(6)(a) (part of required format).

⁷⁵ See Statement of Basis and Purpose at 45718.

⁷⁶ *Id.*

⁷⁷ *Id.* at 45719.

⁷⁸ See Petition, Appendix A, at 17-18. In the Petition, WisDOT contended that "[d]ealers know WisDOT will pursue defect disclosure violations." *Id.* at 14. See also the discussion of WisDOT's enforcement history, *infra*. The automotive trade association's comment concurs: "[T]he Wisconsin DOT continues to be very aggressive in enforcing the Wisconsin Regulation . . . From the unfortunate experiences of some of its own

Continued

WisDOT obtained an average of 10 special orders (injunctions) annually.⁷⁹ In addition to WisDOT's enforcement presence, consumers in Wisconsin have a private right of action for violations of the Wisconsin Regulation that cause pecuniary injury (including a dealer's failure to disclose a defect discoverable during the required inspection).⁸⁰ The known defects proposal that the Commission considered did not include any provision for a private right of action. Taken as a whole, in the Commission's opinion, the Wisconsin inspection disclosure does not significantly detract from the overall level of protection afforded to consumers under the Wisconsin Regulation.

3. Section 455.3—Use of the Buyers Guide

Section 455.3(a) of the Used Car Rule directs dealers to give purchasers of used vehicles a Buyers Guide that includes any changes in warranty coverage agreed upon.⁸¹ Section 455.3(b) requires dealers to include the following disclosure, which incorporates the information on the completed Buyers Guide into each contract of sale:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Section 455.3 of the Rule serves several purposes. First, it ensures that the purchaser will obtain the disclosures required by the Rule, because the consumer will be given the Buyers Guide.⁸² Second, by incorporating the information into the contract of sale, the Commission intended that the Buyers Guide become part of the contract between the dealer and consumer.⁸³

Third, it permits consumers to rely on the information in the Guide because it invalidates contrary provisions in the contract. Fourth, this disclosure advises consumers to look to both the contract and the Buyers Guide for all of the terms of the sale.

Although the state law requires dealers to give consumers a copy of the Wisconsin Label, it does not automatically incorporate the warranty on the Wisconsin Label into the contract of sale.⁸⁴ The Commission's staff raised this issue with WisDOT's staff in the September 1985, meeting. In their comments, WisDOT and the Wisconsin Attorney General expressed the opinion that consumers are adequately protected by both their private right of action⁸⁵ and aggressive follow-up actions by WisDOT after consumer complaints.⁸⁶

In the September meeting with the Commission's staff, WisDOT's representatives stated that the parol evidence rule would not prevent consumers from using the Wisconsin Label to prove actual warranty terms, despite the fact that the form is not automatically incorporated into the contract. In *State v. Keehn*, 246 N.W.2d 547 (Wis. 1976), the Supreme Court of Wisconsin held that the parol evidence rule will not bar admission of evidence of a fraudulent misrepresentation to demonstrate that the written terms of contract are invalid because they were induced by fraud. 246 N.W.2d at 551. Having reviewed *Keehn*, the statutory private right of action, and after considering staff's discussions with the staff of WisDOT and the Wisconsin Attorney General's office, the Commission finds that the absence of a provision in the Wisconsin Regulation analogous to Section 455.3(b) of the Used Car Rule does not materially affect the overall level of protection afforded to consumers by the Wisconsin Regulation.

4. Section 455.4—Contrary Statements

Section 455.4 of the Used Car Rule prohibits dealers from making any statements, oral or written, or from taking other actions which alter or

contradict the disclosures required by the Rule. Further, it permits dealers to negotiate with consumers over warranty coverage, so long as the final warranty terms are identified in the contract of sale and summarized on the final Buyers Guide that is given to the consumer.

Although Wisconsin law prohibits the use of false, deceptive or misleading representations by dealers to induce the purchase of a motor vehicle,⁸⁷ it does not specifically prohibit dealers from taking other actions which alter or contradict the disclosures on the Wisconsin Label, and it does not specifically prohibit statements which alter or contradict the disclosures on the disclosure label.⁸⁸ Thus, this provision of the Wisconsin Regulation does not appear to be the practical equivalent of Section 455.4 of the Used Car Rule.

However, because of the private right of action under Wisconsin law and the enforcement posture of WisDOT,⁸⁹ the Commission does not believe that this difference between the Wisconsin Regulation and the Used Car Rule materially affects the overall level of protection afforded to consumers by the Wisconsin Regulation.

5. Section 455.5—Spanish Language Sales

The Used Car Rule requires that if a dealer conducts a sale in Spanish, the Buyers Guide and the contract disclosures must be written in Spanish.⁹⁰ It also permits dealers to display both a Spanish and an English window form on the same vehicle. The Spanish language requirement was added to the Rule because, after English, Spanish is the language used most frequently in used vehicle transactions.⁹¹ The Wisconsin law does not include a similar provision.⁹² WisDOT concluded that requiring Spanish language forms in Wisconsin would be both burdensome and a waste of resources.⁹³

In its Petition, WisDOT contrasted the Spanish-speaking population residing in Wisconsin and in the rest of the nation.⁹⁴ WisDOT contends that the Hispanic population in Wisconsin is more dispersed than it is throughout the

members, WATDA can vouch for the fact that the sanctions available and imposed under state law provide a sufficient deterrent against violations" WATDA Comment at 13.

⁷⁹ Petition, Appendix A, at 20.

⁸⁰ In pertinent part, the relevant Wisconsin statute provides that: "[A]ny retail buyer suffering loss because of a violation by a licensee of sub. (3) (a) 4. [wilful failure to comply with the Wisconsin Regulation] . . . may recover damages for the loss in any court of competent jurisdiction together with costs, including reasonable attorney fees." Wis. Stat. § 218.01(9) (b). WisDOT suggested that the "very existence [of the private right of action] can and does motivate Wisconsin dealers to comply with the applicable provisions of Wisconsin law." WisDOT Comment at 12.

⁸¹ The Rule permits the dealer to give consumers an accurate copy in place of the original Buyers Guide.

⁸² Statement of Basis and Purpose at 45710-11.

⁸³ *Id.* In the event of disputes between dealer and consumer, the information on the Buyers Guide will therefore not be subject to the parol evidence rule of contract law. *Id.*

⁸⁴ Trans 139.04(6)(a). See Petition, Appendix A, at 8.

⁸⁵ Wis. Stat. § 218.01(9)(b). See also WisDOT Comment at 11-12; Attorney General's Comment at 4.

⁸⁶ See e.g., WATDA Comment at 11: "A Wisconsin dealer who unilaterally alters or refuses to abide by the terms of warranty coverage disclosed on the Wisconsin Label faces severe sanctions for violating Trans 139, including the prohibition against false, deceptive or misleading representations under Trans 139.03(1)." See e.g., *Department of Transportation v. Transportation Commission*, 330 N.W.2d 159 (Wis. 1983).

⁸⁷ Trans 139.03(1).

⁸⁸ Compare Trans 139.03(1) with 16 CFR 455.4.

⁸⁹ See Section III(D), *Infra*.

⁹⁰ 16 CFR 455.5. In addition to a Spanish language disclosure requirement, the Rule provides a format for a Spanish language Buyers Guide. *Id.*

⁹¹ Statement of Basis and Purpose at 45711.

⁹² See Petition, Appendix A, at 9-10.

⁹³ *Id.*

⁹⁴ *Id.*

rest of the country.⁹⁵ The Petition suggests that in "regional centers," such as New York City, Miami, Chicago and the Southwest, the high concentration of Hispanic population makes it "likely that many Hispanics do not speak English and are accustomed to dealing exclusively in Spanish."⁹⁶ WisDOT concludes that a Spanish-language disclosure label, similar to that required under Section 455.5 of the Rule, is not necessary in Wisconsin due to the small percentage and concentration of non-English speaking Hispanic persons.⁹⁷

In the Request for Public Comments, the Commission sought comment on the absence of a requirement in the Wisconsin Regulation for a Spanish language disclosure label.⁹⁸ Two parties commented on this issue. WisDOT provided census figures to support its claim that a Spanish language disclosure label would be unnecessary. For example, WisDOT cites the 1980 Census of Population for the following statistics: "In 1980, Wisconsin's total Spanish origin population was 62,972. Of those persons with a Spanish origin, 54,123 lived in metropolitan areas, and 8,849 lived outside a metropolitan area . . . Milwaukee, with a total population of 636,212, was the area of residence for 34,343 of these persons of Spanish origin."⁹⁹ WATDA commented that it was "not aware of used car transactions involving Wisconsin dealers ever having been conducted in Spanish."¹⁰⁰ WATDA also noted that in Wisconsin's ethnic communities, "prospective buyers who do not speak English are accompanied by friends or family who do."¹⁰¹

WisDOT's contention is that outside of areas in which Hispanic population is very heavily concentrated, Hispanics do not necessarily conduct all of their business in the Spanish language. The Commission is uncomfortable with the failure of the Wisconsin Regulation to make provisions for consumers who speak only Spanish. However, viewing the Wisconsin Regulation in its entirety, the Commission does not believe that this omission represents a fatal flaw in the overall level of protection afforded to consumers under the Wisconsin Regulation.

⁹⁵ *Id.* WisDOT cites the 1980 census and states that the percentage of Hispanics in Wisconsin is 1.3% of the population, contrasted to a 6.4% figure nationwide. *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Request for Comments at 21275-76, 21277 (Question 2(i)).

⁹⁹ WisDOT Comment at 9.

¹⁰⁰ WATDA Comment at 12.

¹⁰¹ *Id.*

D. Does the State Evidence a Willingness and Ability To Enforce Its Laws?

The final requirement for obtaining and retaining a statewide exemption from the Rule, pursuant to § 455.6, is a showing that a state enforces effectively the state requirement that would replace the FTC Used Car Rule. Accordingly, the state exemption guidelines suggest that states submit certain materials and information to assist the Commission's determination on this issue.¹⁰² Specifically, the guidelines suggest that the elements of a complete application include the following:

(a) The fiscal arrangements and funding of the state agency (or agencies) which is charged with enforcing the state law, or other information showing that the state agency had adequate funding to properly enforce the law.

(b) The number and qualifications of persons engaged in the enforcement and administration of the state law, or other information indicating that the state has adequate qualified personnel to administer and enforce the law. . . .

(c) The state's enforcement procedures and policies. . . .

(d) The state's past history of enforcement of any statutes or regulations which are comparable to the Rule.

(e) The level of compliance with any state statutes or regulations governing [the practices covered by the Used Car] Rule, insofar as this information is relevant to the state's enforcement history.¹⁰³

1. The State Agency

As discussed earlier, the state agency responsible for enforcement of the Wisconsin Regulation is the Wisconsin Department of Transportation.¹⁰⁴ Within WisDOT, the "Dealer Inspection Unit" ("DIU") is responsible for both general enforcement of all motor vehicle dealer laws and for the investigation and resolution of all consumer complaints against dealers.¹⁰⁵ The funding, staffing, and procedures pertaining to WisDOT's enforcement program are set out below.¹⁰⁶

¹⁰² 50 FR at 12525 ("Elements of a Complete Application").

¹⁰³ *Id.*

¹⁰⁴ See generally Petition, Appendix F (letter from Attorney General of Wisconsin); Wis. Stat. §§ 218.01(1)(d), 218.01(1)(k), 218.01(1a).

¹⁰⁵ Petition, Appendix A, at 17.

¹⁰⁶ The main explanation of WisDOT's enforcement program is found in the Petition, Appendix A, at 12-20. No comments were received to suggest that this information is inaccurate.

2. Funding

In fiscal 1984, the DIU's expenditure was \$571,040.¹⁰⁷ Of this amount, \$426,500 was spent on employee salaries and benefits.¹⁰⁸ In the Petition, WisDOT noted that the expenditures for the DIU have "remained fairly constant over recent years," adjusted for inflation.¹⁰⁹

3. Staffing

The DIU employs at least 17 persons to carry out its enforcement activities.¹¹⁰ Of these, four are based at the DIU's central office in Madison: The field unit supervisor, two consumer specialists, and a program assistant. In addition, two area supervisors and eleven field investigators are based in different locations throughout the state.¹¹¹

The Petition states that most of the field investigators are former state troopers.¹¹² In addition, the Petition states that field investigators attend a one-week course focusing on civil investigation of motor vehicle dealerships.¹¹³

4. Enforcement Procedures

The eleven field inspectors make an average of about 135 inspections a year, for a total of approximately 1,500 inspections annually.¹¹⁴ Depending on the size of a dealership, an inspection takes from two hours to two days.¹¹⁵ During an inspection, investigators review all the dealer's records and disclosure statements, and they inspect a random sample of the used vehicles offered for sale to see if they correspond to the information on the applicable disclosure statements.¹¹⁶

DIU investigators are authorized to initiate and conduct investigations. These investigations can lead to suspension, revocation or denial of dealer licenses or to cease and desist orders.¹¹⁷ Generally, when a field

¹⁰⁷ WisDOT Comment at 9-10.

¹⁰⁸ *Id.* at 10.

¹⁰⁹ Petition, Appendix A, at 20.

¹¹⁰ *Id.* at 17.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 18. The Petition notes that "investigators spend more time inspecting dealers with a large number of complaints filed against them." *Id.* WisDOT estimates that there are approximately 3,000 dealers in Wisconsin. *Id.*

¹¹⁵ *Id.*

¹¹⁶ See Petition, Attachment E (the "Dealer Inspection Report"). This form shows the items that DIU investigators examine when they perform inspections. Items 23-25 are of particular relevance to the Petition. See also Petition, Appendix A, at 18-19.

¹¹⁷ *Id.*

investigator inspects a dealer and notes violations of law, [the inspector] warns the dealer on [the] inspection report to correct these violations:

Often a written letter of assurance is requested, and a follow-up inspection is made. If the misconduct is more serious, WisDOT pursues a licensing action before the Wisconsin Commissioner of Transportation. If civil or criminal violations occur, the DIU works with district attorneys in pursuing civil forfeitures or criminal actions against the violating dealer.¹¹⁸

There are various sanctions available against dealers that operate in violation of the Wisconsin Regulation. WisDOT is empowered to deny, suspend or revoke a dealer's license for any of 32 prohibited practices, including: wilful failure to comply with the Wisconsin Regulation, wilfully defrauding a retail buyer, wilful failure to perform any written agreement made with a retail buyer, and fraudulent misrepresentation or concealment of material facts.¹¹⁹ In addition, WisDOT can seek a "special order" (injunction) to prevent dealers from committing any of these practices.¹²⁰ WisDOT can also seek civil penalties of up to \$500 for each violation of the Wisconsin Regulation or the provisions of the Wisconsin law that prohibits certain practices by dealers in the sale of used motor vehicles.¹²¹

Consumers and competitors have private rights of action under state law. Consumers who have sustained pecuniary loss because of a dealer's violation of the Wisconsin Regulation may seek civil damages for the loss, together with costs and reasonable attorney's fees.¹²² Competitors who

have suffered pecuniary loss due to another licensee's failure to comply with the Wisconsin Regulation may recover three times the pecuniary loss, plus costs and reasonable attorney's fees.¹²³

5. Enforcement History

WisDOT received 1,915 consumer complaints about dealers in 1982, 2,585 in 1983, and 2,862 in 1984.¹²⁴ Of the 2,862 complaints received in 1984, 65%, or 1,849, dealt specifically with use vehicles.¹²⁵ In 1984, as a result of all 2,862 complaints, manufacturers and dealers returned \$654,000 to consumers, over \$500,000 of which was paid by Wisconsin dealers.¹²⁶ In addition, DIU investigations in 1984 resulted in 18 administrative hearings and 8 special orders against dealerships.¹²⁷

6. Compliance With State Law

Neither the Petition nor the public comments provide specific information as to the level of compliance with the Wisconsin Regulation among dealers. However, several of the comments generally address the issue. The Wisconsin Attorney General commented that "[o]f particular importance are the eleven field investigators employed by [WisDOT] When one contrasts the Wisconsin regulatory scheme with the federal one, effective enforcement against Wisconsin dealers appears much more likely on the state level than on the federal level. This office pledges its support and cooperation in assisting [WisDOT] in enforcing the Wisconsin [Regulation]."¹²⁸ The Attorney General's comments were echoed by several other commenters. The Center for Public Representation noted that the Wisconsin Regulation "has been in effect since the early 1970's, is a well administered and enforced program, and is known to consumers and dealers alike."¹²⁹

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") is the state agency responsible for enforcement of the Wisconsin Little FTC Act.¹³⁰

sale, wilful defrauding, or indulgence in an unconscionable practice. *Id.* See note 120, *supra*, for a discussion of the term "wilful."

¹¹⁸ Wis. Stat. § 218.01(9)(a).

¹¹⁹ Petition, Appendix A, at 20.

¹²⁰ *Id.*

¹²¹ *Id.* at 14.

¹²² *Id.* at 20. In 1983, DIU investigations resulted in 17 administrative hearings and 12 special orders against dealerships. See *supra* text accompanying note 121.

¹²³ Attorney General's Comment at 4-5.

¹²⁴ Center for Public Representation Comment at 1.

¹²⁵ DATCP Comment at 2.

DATCP commented that WisDOT "is doing a very adequate job of enforcing [the Wisconsin Regulation]."¹³¹ In its comment, the Wisconsin Automobile and Truck Dealers Association states that "incidents of non-compliance with the Wisconsin Regulation are infrequent and isolated."¹³² As discussed earlier in this memorandum, WATDA also commented that WisDOT "continues to be very aggressive in enforcing the Wisconsin Regulation."¹³³

7. Conclusion With Regard to Enforcement

In the Petition, WisDOT contends that it "has in place a comprehensive enforcement program addressing used motor vehicle trade practices in Wisconsin."¹³⁴ After reviewing the Petition and the public comments, the Commission has concluded that WisDOT has demonstrated the willingness and ability to enforce effectively the state requirements.

IV. Conclusion and Recommendations

A. General Conclusion

For the reasons set forth herein, the Commission determined that WisDOT has met the exemption standard set out in § 455.6 of the Used Car Rule. The Commission has determined: (1) That the Wisconsin Regulation applies to the same transactions to which the Used Car Rule applies; (2) that the Wisconsin Regulation affords an overall level of protection to consumers that is as great as, or greater than, that afforded by the Used Car Rule; and (3) that WisDOT administers and enforces the Wisconsin Regulation effectively. Accordingly, the Commission grants a statewide exemption, for so long as the State of Wisconsin administers and enforces effectively its law.

B. Reporting Requirements

Under § 455.6 of the Rule, any statewide exemption continues only "for as long as the State administers and enforces effectively the state requirement." To ensure that the standards for statewide exemption continue to be met, as a condition to the statewide exemption, the State of Wisconsin will be required to provide timely notice to the Commission of any changes in state law, policies or procedures, including court decisions, that significantly affect: (1) Whether state law continues to afford consumers an overall level of protection that is

¹³¹ *Id.*

¹³² WATDA Comment at 13.

¹³³ *Id.*

¹³⁴ Petition, Appendix A, at 20.

¹¹⁸ WisDot Comment at 10.

¹¹⁹ Wis. Stat. § 218.01(3)(a). In Wisconsin, the term "wilful" has been interpreted to mean "intentional," and proof is not required of fraudulent intent or motive. *Department of Transportation v. Transportation Commission*, 330 N.W.2d 159 (Wis. 1983). In *Transportation Committee*, WisDot sought, *inter alia*, a special order to enjoin a dealer from future violation of Wis. Stat. § 218.01(3)(a)(6) (revocation or suspension of license for wilful failure to perform any written agreement made with a retail buyer). The dealer had made a unilateral error in a purchase order, and declined to perform the written agreement. 330 N.W.2d at 161. The Wisconsin Supreme Court held that a dealer who has made a unilateral mistake in a written agreement may not refuse to perform the agreement with a customer. *Id.* at 166. The court also distinguished those sections of Chapter 218 referring to "wilful" conduct from those referring to "fraudulent" conduct. *Id.* at 165.

¹²⁰ Wis. Stat. § 218.01(3)(h). See note 128, *infra*.

¹²¹ Compare Wis. Stat. § 218.01(8) (\$25 to \$500 per violation) with 15 U.S.C. 45 (m)(1)(A) (up to \$10,000 per violation).

¹²² Wis. Stat. § 218.01(9)(b). Consumers can similarly recover for losses due to a dealer's wilful failure to perform any written agreement made with a retail buyer, fraudulent misrepresentation or concealment of a material particular, fraudulent

equal to or greater than that provided by the Used Car Rule, or (2) whether the state is administering and enforcing effectively its laws. The Commission reserves the right to revise this reporting requirement at a later date or to request additional information, should circumstances warrant such action. The Commission also specifically reserves the right to revise, modify, or revoke this statewide exemption, should the public interest so require.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

BILLING CODE 6750-01-M

USED VEHICLE DISCLOSURE LABEL Appendix A

| | | | | | |
|--------------|------|--------------------|--|--------------------|--------------|
| Dealer Name | | Vehicle Stock No. | | Asking Price \$ | |
| Vehicle Year | Make | Identification No. | | Engine Type | Transmission |

VEHICLE USE: This vehicle was previously used as a: (check all that apply)

- | | | | |
|---|---|--|---|
| <input type="checkbox"/> Privately Driven Vehicle | <input type="checkbox"/> Driver Education Vehicle | <input type="checkbox"/> Police Vehicle | <input type="checkbox"/> OTHER VEHICLE HISTORY: |
| <input type="checkbox"/> Leased Vehicle | <input type="checkbox"/> Business Vehicle | <input type="checkbox"/> Taxi-Driven Vehicle | <input type="checkbox"/> Flood Damaged Vehicle |
| <input type="checkbox"/> Demonstrator Vehicle | <input type="checkbox"/> Rental Vehicle | <input type="checkbox"/> Unknown | <input type="checkbox"/> Junked Vehicle |
| <input type="checkbox"/> Executive Driven Vehicle | <input type="checkbox"/> Government Owned Vehicle | | <input type="checkbox"/> Glider Kit |

WARRANTY - Subject to limitations and exclusions of the warranty document, vehicle has limited warranty as follows: (Ask salesperson for copy of warranty document):

Systems Covered:

Duration: _____ Percentage of Repair Costs Paid by Purchaser: _____ %
Deductible Paid by Purchaser: \$ _____

AS IS - NO WARRANTY - No warranty express or implied EXCEPT FOR ANY EXPRESS OR IMPLIED WARRANTY BY THE MANUFACTURER OR OTHER THIRD PARTY WHICH EXISTS ON THIS VEHICLE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE VEHICLE IS WITH THE BUYER, AND SHOULD THE VEHICLE PROVE DEFECTIVE FOLLOWING THE PURCHASE, THE BUYER WILL ASSUME THE ENTIRE COST OF ALL SERVICING AND REPAIR.

SERVICE AGREEMENT - A service agreement is available for purchase, ask salesperson for details.

MECHANICAL BREAKDOWN INSURANCE - MBI is available for purchase, ask salesperson for details.

ODOMETER read _____ miles/kilometers at the time of trade-in or purchase, which is corroborated by the prior owner's statement which will be shown to you, the purchaser, and to the best of dealer's knowledge: (CHECK ONE)

- The reading is actual mileage/km. The reading is not actual mileage/km.
 The odometer was repaired or replaced and calibrated to a reading identical to the odometer before service.
 The odometer was repaired or replaced and was reset or installed at zero and the original miles/km were _____
 The reading is in excess of 99,999 miles/km.
 See salesperson for name and address of prior owner.

DISCLOSURE STATEMENT - I have exercised reasonable diligence in inspecting this vehicle, including at least a review of my repair records, the prior owner's disclosure, a walk-around and interior inspection, an under-hood inspection, an under-vehicle inspection, and a test drive. On the basis of such inspection, I declare the apparent existing condition to be as indicated in the boxes below. (REQUIRED BY TRAN. 139.04(4), (5) WIS. ADMIN. CODE)

GENERAL CONDITION

Line out items that do not apply

- | | | |
|--------------------------|--------------------------|---|
| YES | NO | FRAME OR UNIBODY |
| <input type="checkbox"/> | <input type="checkbox"/> | Apparent cracks or corrective welds on frame or supportive portion of unibody |
| <input type="checkbox"/> | <input type="checkbox"/> | Dogtracks - bent or twisted frame or unibody |
| <input type="checkbox"/> | <input type="checkbox"/> | Apparent weakened frame or unibody due to damage or rust |
| | | ENGINE |
| <input type="checkbox"/> | <input type="checkbox"/> | Known or visible oil leakage, excluding normal seepage |
| <input type="checkbox"/> | <input type="checkbox"/> | Cracked block or head |
| <input type="checkbox"/> | <input type="checkbox"/> | Belts missing or inoperable |
| <input type="checkbox"/> | <input type="checkbox"/> | Knocks or misses |
| <input type="checkbox"/> | <input type="checkbox"/> | Abnormal visible exhaust discharge |
| <input type="checkbox"/> | <input type="checkbox"/> | Changed from manufacturer's original equipment specification |
| | | TRANSMISSION & DRIVE SHAFT |
| <input type="checkbox"/> | <input type="checkbox"/> | Improper fluid level or visible leakage, excluding normal seepage |
| <input type="checkbox"/> | <input type="checkbox"/> | Cracked or damaged case, which is visible |
| <input type="checkbox"/> | <input type="checkbox"/> | Abnormal noise or vibration |
| <input type="checkbox"/> | <input type="checkbox"/> | Improper shifting into or functioning in all gears |
| <input type="checkbox"/> | <input type="checkbox"/> | Manual clutch slip or chatters |
| | | DIFFERENTIAL |
| <input type="checkbox"/> | <input type="checkbox"/> | Improper fluid level or visible leakage, excluding normal seepage |
| <input type="checkbox"/> | <input type="checkbox"/> | Cracked or damaged housing, which is visible |
| <input type="checkbox"/> | <input type="checkbox"/> | Abnormal noise or vibration |
| | | COOLING SYSTEM |
| <input type="checkbox"/> | <input type="checkbox"/> | Improper fluid level or visible leakage |
| <input type="checkbox"/> | <input type="checkbox"/> | Leaky radiator |
| <input type="checkbox"/> | <input type="checkbox"/> | Improperly functioning water pump |
| <input type="checkbox"/> | <input type="checkbox"/> | Inadequate antifreeze strength for season of year |
| <input type="checkbox"/> | <input type="checkbox"/> | Improperly functioning cooling system - fan |
| | | ELECTRICAL SYSTEM |
| <input type="checkbox"/> | <input type="checkbox"/> | Improper fluid level or visible leakage of battery |
| <input type="checkbox"/> | <input type="checkbox"/> | Battery fails to start engine |
| <input type="checkbox"/> | <input type="checkbox"/> | Improperly functioning alternator, generator, starter or ignition system |
| | | ACCESSORIES - INOPERATIVE |
| <input type="checkbox"/> | <input type="checkbox"/> | Gauges and warning devices |
| <input type="checkbox"/> | <input type="checkbox"/> | Radio |
| <input type="checkbox"/> | <input type="checkbox"/> | Heater |
| <input type="checkbox"/> | <input type="checkbox"/> | Air Conditioner |
| <input type="checkbox"/> | <input type="checkbox"/> | Dash Lights |
| <input type="checkbox"/> | <input type="checkbox"/> | Windows |
| <input type="checkbox"/> | <input type="checkbox"/> | Spare tire, wheel and jack not furnished |

Explain probable cause for malfunction or defect on all items marked "Yes"

SAFETY EQUIPMENT CONDITION

ALL REQUIRED safety equipment items below, except those marked "Not OK", are in legal operating condition. WARNING: Until all "Not OK" items are corrected, this vehicle cannot be legally operated on Wisconsin highways and may not be safe.

- | | | |
|--------------------------|--------------------------|-------------------------------|
| NOT OK | OK | OK |
| <input type="checkbox"/> | <input type="checkbox"/> | Headlamps and Aim |
| <input type="checkbox"/> | <input type="checkbox"/> | Parking Lamps |
| <input type="checkbox"/> | <input type="checkbox"/> | Directional Lamps |
| <input type="checkbox"/> | <input type="checkbox"/> | Flashing Warning Lamps |
| <input type="checkbox"/> | <input type="checkbox"/> | Sidemark Lamps and Reflectors |
| <input type="checkbox"/> | <input type="checkbox"/> | Tail Lamps |
| <input type="checkbox"/> | <input type="checkbox"/> | Back Up Lamps |
| <input type="checkbox"/> | <input type="checkbox"/> | Brake Lamps |
| <input type="checkbox"/> | <input type="checkbox"/> | License Plate Lamps |
| <input type="checkbox"/> | <input type="checkbox"/> | Steering System |
| <input type="checkbox"/> | <input type="checkbox"/> | Suspension System |
| <input type="checkbox"/> | <input type="checkbox"/> | Bumpers and Fenders |
| <input type="checkbox"/> | <input type="checkbox"/> | Hood and Trunk Latches |
| <input type="checkbox"/> | <input type="checkbox"/> | Emission System |
| <input type="checkbox"/> | <input type="checkbox"/> | Door Latches and Locks |
| <input type="checkbox"/> | <input type="checkbox"/> | Tires |
| <input type="checkbox"/> | <input type="checkbox"/> | Exhaust System |
| <input type="checkbox"/> | <input type="checkbox"/> | Fuel System |
| <input type="checkbox"/> | <input type="checkbox"/> | Windshield |
| <input type="checkbox"/> | <input type="checkbox"/> | Windshield Vent, Side, Rear |
| <input type="checkbox"/> | <input type="checkbox"/> | Windshield Wipers and Washers |
| <input type="checkbox"/> | <input type="checkbox"/> | Windshield Defroster-Defogger |
| <input type="checkbox"/> | <input type="checkbox"/> | Horn |
| <input type="checkbox"/> | <input type="checkbox"/> | Mirror |
| <input type="checkbox"/> | <input type="checkbox"/> | Speed Indicator |
| <input type="checkbox"/> | <input type="checkbox"/> | Odometer |
| <input type="checkbox"/> | <input type="checkbox"/> | Restraining Devices and Seats |
| <input type="checkbox"/> | <input type="checkbox"/> | Service Brake System |
| <input type="checkbox"/> | <input type="checkbox"/> | Parking Brake |
| <input type="checkbox"/> | <input type="checkbox"/> | Floor and Trunk Pans |

Explain all items marked "Not OK"

NOTE: Unless otherwise agreed to in the written purchase contract, these inspection disclosures shall neither create any warranties, express or implied, nor affect warranty coverage provided for in the purchase contract.

INDEPENDENT INSPECTION: Advise the dealer if you may have a more detailed inspection of this vehicle done by your mechanic on or off the display lot

APPENDIX B

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (Optional) _____

WARRANTIES FOR THIS VEHICLE:

AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

WARRANTY

- FULL** **LIMITED WARRANTY.** The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:

DURATION:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

- SERVICE CONTRACT.** A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body

Frame-cracks, corrective welds, or rusted through
Dogtracks—bent or twisted frame

Engine

Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft lifters and
push rods
Abnormal exhaust discharge

Transmission & Drive Shaft

Improper fluid level or leakage, excluding normal
seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty
transmission or drive shaft
Improper shifting or functioning in any gear
Manual clutch slips or chatters

Differential

Improper fluid level or leakage excluding normal
seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty
differential

Cooling System

Leakage including radiator
Improperly functioning water pump

Electrical System

Battery leakage
Improperly functioning alternator, generator,
battery, or starter

Fuel System

Visible leakage

Inoperable Accessories

Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System

Failure warning light broken
Pedal not firm under pressure (DOT spec.)
Not enough pedal reserve (DOT spec.)
Does not stop vehicle in straight line (DOT spec.)
Hoses damaged
Drum or rotor too thin (Mfr. Specs)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Steering System

Too much free play at steering wheel (DOT specs.)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System

Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires

Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

Wheels

Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System

Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

September 21, 1984

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-12849 Filed 6-6-86; 8:45 am]

BILLING CODE 6750-01-M

EXHIBIT

AS 16

WARRANT

Department of Justice, Federal Bureau of Investigation, Washington, D.C. 20535

SEARCHED
SERIALIZED
INDEXED
FILED
FBI - [City]

Final Report Federal Reserve

Monday
June 9, 1986

Part V

Department of Agriculture

Animal and Plant Health Inspection
Service

Rangeland Grasshopper Cooperative
Management Program Environmental
Impact Statement; Notice

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service**

[Docket No. 86-323]

Rangeland Grasshopper Cooperative Management Program Environmental Impact Statement**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Notice.

SUMMARY: This document gives notice of the intent to prepare an environmental impact statement (EIS) for the Rangeland Grasshopper Cooperative Management Program. The Rangeland Grasshopper Cooperative Management Program EIS will discuss the potential environmental impacts for the control of grasshoppers and Mormon crickets.

This document also requests comments and gives notice of public meetings to provide the initial opportunity for involvement in the scoping process as the first step in the development of the EIS. Accordingly, comments at the public meetings and written comments to be submitted by mail are invited from all interested members of the public, from State and local agencies which administer plant pest control regulatory programs or are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any national program issue or environmental impact that should be discussed in the EIS.

DATES: Written comments concerning the development of the Rangeland Grasshopper Cooperative Control Program EIS must be received on or before July 11, 1986. Public meetings concerning issues affecting the development of the EIS will be held on July 8, 1986, in Denver, Colorado, and on July 10, 1986, in Boise, Idaho.

ADDRESSES: Written comments concerning issues affecting the development of the EIS should be submitted to Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-323. Written comments received may be inspected in Room 663 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The public meetings will be

held at the following locations: (1) on July 8, 1986, in the Auditorium, Denver Federal Center, Building 25, 6th and Kipling, Denver, CO, and (2) on July 10, 1986, in Room 523, Federal Building, 550 West Fort Street, Boise, ID.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:**Public Meetings**

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at the public meetings. Comments will be taken concerning any issues that would be relevant for discussion in the EIS. Any interested person may appear and be heard in person, by attorney, or by other representative.

Each meeting will begin at 9:30 a.m. and is scheduled to end at 4 p.m., local time. However, a meeting may be terminated at any time after it begins if all of those persons at the meeting who desire an opportunity to speak have been heard. Persons who wish to speak are requested to register with the presiding officer prior to the meeting. The premeeting registration will be conducted at the location of the meeting from 9 a.m. to 9:30 a.m. Registered persons will be heard in the order of their registration. However, any other person who wishes to speak at the meeting will be afforded such opportunity after the registered persons have been heard. It is requested that two copies of any written statements that are presented be provided to the presiding officer at the meeting. If the number of preregistered persons and other participants in attendance at the meeting warrants it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Background

Grasshoppers and Mormon crickets are destructive native pests on rangeland, forage, and crops, mainly in the States west of the Mississippi River. Infestations are often of such an extent as to be beyond the capability of individuals to handle. Additionally, the migratory and widespread nature of the pests makes coordination of cooperative control efforts across State boundaries essential. Therefore, the Department has, in conjunction with cooperating State Departments of Agriculture,

provided direct supervision and leadership of grasshopper and Mormon cricket control programs.

A notice was published in the *Federal Register* on April 4, 1986 (51 FR 11603), announcing the availability of a Supplement to the July 1980 Final Environmental Impact Statement (FEIS) for the Rangeland Grasshopper Cooperative Management Program. The FEIS, as Supplemented, was filed with the U.S. Environmental Protection Agency and made available to the public on April 11, 1986. The FEIS, as supplemented, was intended for the 1986 treatment program only. Before beginning a program in 1987, APHIS will be preparing a new programmatic environmental impact statement to assist APHIS officials in making plans and decisions about treatment programs in 1987 and subsequent years. The new EIS will be prepared in accordance with section 102 of the National Environmental Policy Act (42 U.S.C. 4321).

The potential environmental impact of a control program will be discussed in the EIS. The initial step in the process of developing the EIS is the scoping process. The scoping process is used for determining the scope of issues to be addressed and for identifying the significant issues related to the grasshopper and Mormon cricket control programs. The opportunity for involvement by the public and Federal, State, and local agencies in the scoping process will be provided at the public meetings to be held on July 8 and 10, 1986, and through written comments to be submitted by mail. The written comments must be received on or before July 11, 1986.

In order to facilitate discussion at these meetings, persons may wish to become familiar with the issues presented in the July 1980 FEIS for the Rangeland Grasshopper Cooperative Management Program and its April 1986 Supplement (these documents are available from the person identified under the heading "ADDRESSES"). The following issues are some of the major issues discussed in these documents:

1. Programs alternatives, e.g., no action, chemical controls, biological controls, integrated pest management,
2. The use of carbaryl bait,
3. The use of *Nosema locustae*,
4. The need for multiple applications of pesticides on a site within the same season,
5. The use of buffer strips to protect land adjacent to Federally-owned rangeland,

6. Compliance with all applicable Federal laws in conducting control programs,

7. Mitigating measures employed to protect the environment, and

8. Cost-benefit considerations for applying control measures.

The second step in the EIS process will be the development of a draft Rangeland Grasshopper Cooperative Management Program EIS. A "notice of availability" will be published in the **Federal Register** when the draft EIS has been prepared and is available for distribution.

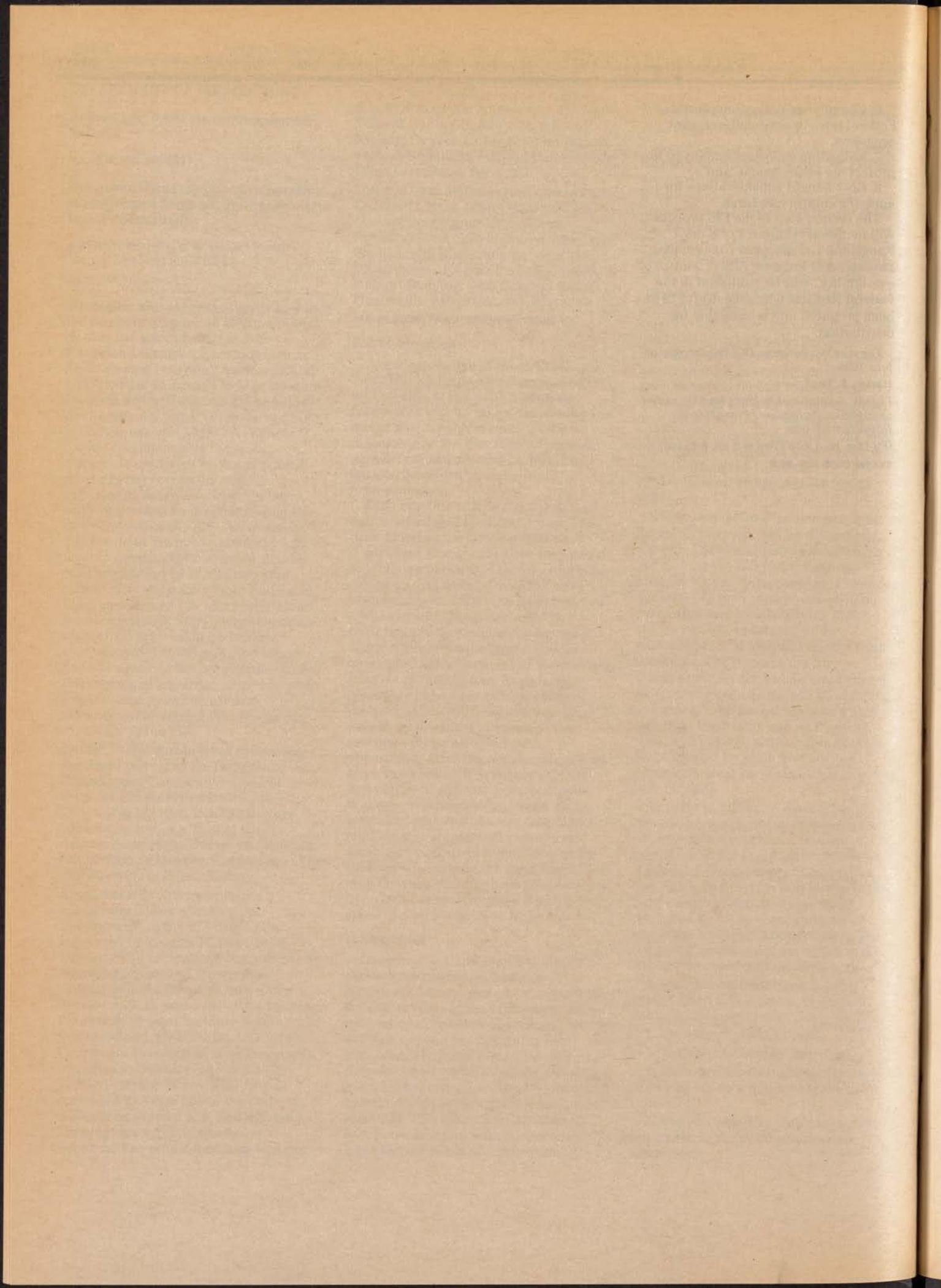
Done at Washington, DC, this 5th day of June 1986.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-13016 Filed 6-6-86; 8:45 am]

BILLING CODE 3410-34-M



Reader Aids

Federal Register

Vol. 51, No. 110

Monday, June 9, 1986

INFORMATION AND ASSISTANCE

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|-----------------------------------|--------------|
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PUBLICATIONS AND SERVICES

Daily Federal Register

| | |
|--|----------|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

Code of Federal Regulations

| | |
|--|----------|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

Laws

| | |
|--|----------|
| | 523-5230 |
|--|----------|

Presidential Documents

| | |
|--|----------|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

United States Government Manual

| | |
|--|----------|
| | 523-5230 |
|--|----------|

Other Services

| | |
|-------------------------|----------|
| Library | 523-4986 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

FEDERAL REGISTER PAGES AND DATES, JUNE

| | |
|-------------|---|
| 19747-19816 | 2 |
| 19817-20244 | 3 |
| 20245-20436 | 4 |
| 20437-20606 | 5 |
| 20607-20792 | 6 |
| 20793-20952 | 9 |

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

| | |
|----------------|-------|
| Proclamations: | |
| 5496 | 19817 |
| 5497 | 19819 |

5 CFR

| | |
|-----------------|-------|
| Proposed Rules: | |
| 294 | 20833 |

7 CFR

| | |
|------|-------|
| 26 | 20643 |
| 52 | 20437 |
| 272 | 20793 |
| 273 | 20793 |
| 400 | 20245 |
| 417 | 20246 |
| 908 | 20645 |
| 1006 | 20446 |
| 1007 | 20446 |
| 1011 | 20446 |
| 1012 | 20446 |
| 1013 | 20446 |
| 1046 | 20446 |
| 1093 | 20446 |
| 1094 | 20446 |
| 1096 | 20446 |
| 1098 | 20446 |
| 1099 | 20446 |
| 1136 | 19821 |
| 1772 | 19822 |
| 1951 | 20465 |

| | |
|-----------------|-------|
| Proposed Rules: | |
| 907 | 20664 |
| 908 | 20664 |
| 1065 | 19846 |

8 CFR

| | |
|-----|-------|
| 100 | 19824 |
| 103 | 19824 |
| 204 | 20794 |

9 CFR

| | |
|-----------------|-------|
| Proposed Rules: | |
| 92 | 20834 |
| 145 | 20790 |
| 147 | 20790 |
| 151 | 19846 |

12 CFR

| | |
|-----|-------|
| 265 | 19825 |
|-----|-------|

| | |
|-----------------|-------|
| Proposed Rules: | |
| 709 | 19848 |

13 CFR

| | |
|-----|--------------|
| 108 | 20764, 20781 |
| 111 | 20247 |
| 115 | 20922 |
| 121 | 20795 |
| 122 | 20248 |

14 CFR

| | |
|----|-------|
| 21 | 20797 |
|----|-------|

| | |
|----|---------------------|
| 25 | 20249 |
| 39 | 20249-20251 |
| 71 | 19825, 20801, 20802 |

| | |
|-----------------|----------------------------------|
| Proposed Rules: | |
| 21 | 20301 |
| 39 | 19848, 19849, 20304-20308, 20495 |
| 71 | 20834 |

15 CFR

| | |
|-----|--------------|
| 377 | 20252 |
| 385 | 20467, 20468 |
| 399 | 20467, 20468 |

16 CFR

| | |
|-----|--------------|
| 13 | 20469, 20803 |
| 303 | 20803, 20807 |
| 455 | 20936 |

| | |
|-----------------|---------------------|
| Proposed Rules: | |
| 13 | 20498, 20500, 20803 |

17 CFR

| | |
|-----|-------|
| 230 | 20254 |
|-----|-------|

| | |
|-----------------|-------|
| Proposed Rules: | |
| 240 | 20504 |

19 CFR

| | |
|-----|-------|
| 10 | 20810 |
| 178 | 20810 |

20 CFR

| | |
|-----|-------|
| 395 | 20470 |
|-----|-------|

| | |
|-----------------|-------|
| Proposed Rules: | |
| 10 | 20736 |
| 655 | 20516 |

21 CFR

| | |
|-----|--------------|
| 81 | 20786 |
| 82 | 20786 |
| 430 | 20262 |
| 442 | 20262 |
| 510 | 19826, 19828 |
| 522 | 20646 |
| 558 | 19828 |
| 740 | 20471 |

| | |
|-----------------|-------|
| Proposed Rules: | |
| 20 | 19851 |
| 182 | 19851 |
| 186 | 19851 |
| 201 | 19853 |
| 314 | 20310 |

22 CFR

| | |
|-----------------|-------|
| 51 | 20475 |
| Proposed Rules: | |
| 508 | 20524 |

23 CFR

| | |
|-----------------|-------|
| 658 | 20817 |
| Proposed Rules: | |
| 655 | 20840 |

24 CFR
 13..... 19829
 15..... 20476
 207..... 20264
 220..... 20264
 221..... 20264
 236..... 20264
 246..... 20264
 251..... 20264
 255..... 20264
 511..... 20220
Proposed Rules:
 510..... 20312
 570..... 20312

26 CFR
 1..... 20274, 20480
 602..... 20646

27 CFR
 4..... 20480
Proposed Rules:
 9..... 19853-19856

28 CFR
 16..... 20274, 20276

30 CFR
 935..... 20818
Proposed Rules:
 901..... 19858, 20841
 931..... 20843

32 CFR
 754..... 19830
 806b..... 20277

33 CFR
 81..... 20820
 100..... 20821
 117..... 20482
 162..... 20823
Proposed Rules:
 100..... 20534, 20844
 165..... 20845

34 CFR
 75..... 20823
 79..... 20823
 230..... 20825
 231..... 20825
 280..... 20414
 682..... 20422
 690..... 20422
Proposed Rules:
 76..... 20408
 653..... 20408

36 CFR
 211..... 19830
 228..... 20825
Proposed Rules:
 1..... 19858
 3..... 19858

38 CFR
 21..... 20827
Proposed Rules:
 17..... 20846
 21..... 20846

39 CFR
 111..... 19831

40 CFR
 52..... 19834-19836, 20284,
 20285, 20646
 60..... 20286, 20648
 61..... 20648
 81..... 20285
 122..... 20426, 20828
 280..... 20418
 403..... 20426, 20828
 704..... 19839

Proposed Rules:
 257..... 20671
 261..... 19859

41 CFR
 101-26..... 20828

42 CFR
Proposed Rules:
 405..... 19970, 20435
 412..... 19970, 20435

44 CFR
Proposed Rules:
 9..... 20535
 222..... 20315

45 CFR
 1177..... 20483
Proposed Rules:
 304..... 20673

46 CFR
 160..... 20650

Proposed Rules:
 31..... 20847
 61..... 20847
 71..... 20847
 91..... 20847
 167..... 20847
 169..... 20847
 189..... 20847
 572..... 20535

47 CFR
 0..... 20289
 1..... 20290
 21..... 19839, 20290
 73..... 19841, 19842, 20291,
 20292, 20650
 74..... 19839
 78..... 19839
 94..... 19839
Proposed Rules:
 73..... 19863, 19864, 20315-
 20317, 20674-20676
 97..... 20676

48 CFR
 Ch. 7 (App. B, C, F, G,
 H)..... 20651
 232..... 20651
 252..... 20651
 702..... 20651
 731..... 20651
 752..... 20651
 5242..... 19842
 5252..... 19842
 PHS 301..... 20485
 PHS 304..... 20485
 PHS 305..... 20485
 PHS 306..... 20485
 PHS 314..... 20485
 PHS 315..... 20485
 PHS 323..... 20485

PHS 333..... 20485
 PHS 335..... 20485
 PHS 336..... 20485
 PHS 352..... 20485
 PHS 380..... 20485

Proposed Rules:
 1..... 20238
 15..... 20238
 30..... 20238
 35..... 20238
 52..... 20238
 53..... 20238
 230..... 19864
 232..... 19865
 253..... 19864

49 CFR
 1..... 20831
 192..... 20294
 195..... 20294
 1241..... 19844

Proposed Rules:
 171..... 19866
 172..... 19866
 173..... 19866
 174..... 19866
 176..... 19866
 177..... 19866
 178..... 19866
 179..... 19866
 192..... 19878
 571..... 20536

50 CFR
 402..... 19926
 611..... 20297, 20652
 630..... 20297
 661..... 19844
 671..... 19845
 672..... 20659, 20832
 675..... 20652
Proposed Rules:
 20..... 20677
 642..... 20847
 651..... 20850

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List June 4, 1986

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| Title | Price | Revision Date |
|--|--------|---------------------------|
| 1, 2 (2 Reserved) | \$5.50 | Jan. 1, 1986 |
| 3 (1985 Compilation and Parts 100 and 101) | 14.00 | ⁶ Jan. 1, 1986 |
| 4 | 11.00 | Jan. 1, 1986 |
| 5 Parts: | | |
| 1-1199 | 18.00 | Jan. 1, 1986 |
| 1200-End, 6 (6 Reserved) | 6.50 | Jan. 1, 1986 |
| 7 Parts: | | |
| 0-45 | 24.00 | Jan. 1, 1986 |
| 46-51 | 16.00 | Jan. 1, 1986 |
| 52 | 18.00 | Jan. 1, 1986 |
| 53-209 | 14.00 | Jan. 1, 1986 |
| 210-299 | 21.00 | Jan. 1, 1986 |
| 300-399 | 11.00 | Jan. 1, 1986 |
| 400-699 | 19.00 | Jan. 1, 1986 |
| 700-899 | 17.00 | Jan. 1, 1986 |
| 900-999 | 20.00 | Jan. 1, 1986 |
| 1000-1059 | 12.00 | Jan. 1, 1986 |
| 1060-1119 | 9.50 | Jan. 1, 1986 |
| 1120-1199 | 8.50 | Jan. 1, 1986 |
| 1200-1499 | 13.00 | Jan. 1, 1986 |
| 1500-1899 | 7.00 | Jan. 1, 1986 |
| 1900-1944 | 23.00 | Jan. 1, 1986 |
| 1945-End | 23.00 | Jan. 1, 1986 |
| 8 | 7.00 | Jan. 1, 1986 |
| 9 Parts: | | |
| 1-199 | 14.00 | Jan. 1, 1986 |
| 200-End | 14.00 | Jan. 1, 1986 |
| 10 Parts: | | |
| 0-199 | 22.00 | Jan. 1, 1986 |
| 200-399 | 13.00 | Jan. 1, 1986 |
| 400-499 | 14.00 | Jan. 1, 1986 |
| 500-End | 23.00 | Jan. 1, 1986 |
| 11 | 7.00 | Jan. 1, 1986 |
| 12 Parts: | | |
| 1-199 | 8.50 | Jan. 1, 1986 |
| 200-299 | 22.00 | Jan. 1, 1986 |
| 300-499 | 13.00 | Jan. 1, 1986 |
| 500-End | 26.00 | Jan. 1, 1986 |
| 13 | 19.00 | Jan. 1, 1986 |
| 14 Parts: | | |
| 1-59 | 20.00 | Jan. 1, 1986 |
| 60-139 | 19.00 | Jan. 1, 1986 |
| 140-199 | 7.50 | Jan. 1, 1986 |
| 200-1199 | 14.00 | Jan. 1, 1986 |
| 1200-End | 8.00 | Jan. 1, 1986 |
| 15 Parts: | | |
| 0-299 | 7.00 | Jan. 1, 1986 |
| 300-399 | 20.00 | Jan. 1, 1986 |
| 400-End | 15.00 | Jan. 1, 1986 |

| Title | Price | Revision Date |
|------------------|-------|---------------------------|
| 16 Parts: | | |
| 0-149 | 9.00 | Jan. 1, 1986 |
| 150-999 | 10.00 | Jan. 1, 1986 |
| 1000-End | 18.00 | Jan. 1, 1986 |
| 17 Parts: | | |
| 1-239 | 20.00 | Apr. 1, 1985 |
| 240-End | 14.00 | Apr. 1, 1985 |
| 18 Parts: | | |
| 1-149 | 12.00 | Apr. 1, 1985 |
| 150-399 | 19.00 | Apr. 1, 1985 |
| 400-End | 7.00 | Apr. 1, 1985 |
| 19 | 21.00 | Apr. 1, 1985 |
| 20 Parts: | | |
| *1-399 | 10.00 | Apr. 1, 1986 |
| 400-499 | 16.00 | Apr. 1, 1985 |
| 500-End | 18.00 | Apr. 1, 1985 |
| 21 Parts: | | |
| 1-99 | 9.00 | Apr. 1, 1985 |
| 100-169 | 14.00 | Apr. 1, 1986 |
| *170-199 | 16.00 | Apr. 1, 1986 |
| 200-299 | 6.00 | Apr. 1, 1986 |
| 300-499 | 25.00 | Apr. 1, 1986 |
| 500-599 | 16.00 | Apr. 1, 1985 |
| 600-799 | 7.50 | Apr. 1, 1986 |
| 800-1299 | 10.00 | Apr. 1, 1985 |
| 1300-End | 5.50 | Apr. 1, 1985 |
| 22 | 21.00 | Apr. 1, 1985 |
| 23 | 14.00 | Apr. 1, 1985 |
| 24 Parts: | | |
| 0-199 | 11.00 | Apr. 1, 1985 |
| 200-499 | 19.00 | Apr. 1, 1985 |
| *500-699 | 8.50 | Apr. 1, 1986 |
| 700-1699 | 13.00 | Apr. 1, 1985 |
| 1700-End | 12.00 | Apr. 1, 1986 |
| 25 | 18.00 | Apr. 1, 1985 |
| 26 Parts: | | |
| §§ 1.0-1.169 | 21.00 | Apr. 1, 1985 |
| §§ 1.170-1.300 | 12.00 | Apr. 1, 1985 |
| *§§ 1.301-1.400 | 13.00 | Apr. 1, 1986 |
| §§ 1.401-1.500 | 15.00 | Apr. 1, 1985 |
| §§ 1.501-1.640 | 12.00 | ² Apr. 1, 1984 |
| §§ 1.641-1.850 | 11.00 | Apr. 1, 1985 |
| §§ 1.851-1.1200 | 22.00 | Apr. 1, 1985 |
| §§ 1.1201-End | 22.00 | Apr. 1, 1985 |
| 2-29 | 15.00 | Apr. 1, 1985 |
| *30-39 | 13.00 | Apr. 1, 1986 |
| 40-299 | 18.00 | Apr. 1, 1985 |
| 300-499 | 11.00 | Apr. 1, 1985 |
| 500-599 | 8.00 | ¹ Apr. 1, 1980 |
| 600-End | 4.75 | Apr. 1, 1986 |
| 27 Parts: | | |
| 1-199 | 18.00 | Apr. 1, 1985 |
| 200-End | 13.00 | Apr. 1, 1985 |
| 28 | 16.00 | July 1, 1985 |
| 29 Parts: | | |
| 0-99 | 11.00 | July 1, 1985 |
| 100-499 | 5.00 | July 1, 1985 |
| 500-899 | 19.00 | July 1, 1985 |
| 900-1899 | 7.00 | July 1, 1985 |
| 1900-1910 | 21.00 | July 1, 1985 |
| 1911-1919 | 5.50 | ³ July 1, 1984 |
| 1920-End | 20.00 | July 1, 1985 |
| 30 Parts: | | |
| 0-199 | 16.00 | July 1, 1985 |
| 200-699 | 6.00 | July 1, 1985 |
| 700-End | 13.00 | July 1, 1985 |
| 31 Parts: | | |
| 0-199 | 8.50 | July 1, 1985 |
| 200-End | 11.00 | July 1, 1985 |

| Title | Price | Revision Date | Title | Price | Revision Date |
|--|-------|---------------------------|--------------------------------------|--------|---------------|
| 32 Parts: | | | 1000-3999..... | 18.00 | Oct. 1, 1985 |
| 1-39, Vol. I..... | 15.00 | ⁴ July 1, 1984 | 4000-End..... | 8.50 | Oct. 1, 1985 |
| 1-39, Vol. II..... | 19.00 | ⁴ July 1, 1984 | 44..... | 13.00 | Oct. 1, 1985 |
| 1-39, Vol. III..... | 18.00 | ⁴ July 1, 1984 | 45 Parts: | | |
| 1-189..... | 13.00 | July 1, 1985 | 1-199..... | 10.00 | Oct. 1, 1985 |
| 190-399..... | 16.00 | July 1, 1985 | 200-499..... | 7.00 | Oct. 1, 1985 |
| 400-629..... | 15.00 | July 1, 1985 | 500-1199..... | 13.00 | Oct. 1, 1985 |
| 630-699..... | 12.00 | ³ July 1, 1984 | 1200-End..... | 9.00 | Oct. 1, 1985 |
| 700-799..... | 15.00 | July 1, 1985 | 46 Parts: | | |
| 800-999..... | 7.50 | July 1, 1985 | 1-40..... | 10.00 | Oct. 1, 1985 |
| 1000-End..... | 5.50 | July 1, 1985 | 41-69..... | 10.00 | Oct. 1, 1985 |
| 33 Parts: | | | 70-89..... | 5.50 | Oct. 1, 1985 |
| 1-199..... | 20.00 | July 1, 1985 | 90-139..... | 9.00 | Oct. 1, 1985 |
| 200-End..... | 14.00 | July 1, 1985 | 140-155..... | 8.50 | Oct. 1, 1985 |
| 34 Parts: | | | 156-165..... | 10.00 | Oct. 1, 1985 |
| 1-299..... | 15.00 | July 1, 1985 | 166-199..... | 9.00 | Oct. 1, 1985 |
| 300-399..... | 8.50 | July 1, 1985 | 200-499..... | 15.00 | Oct. 1, 1985 |
| 400-End..... | 18.00 | July 1, 1985 | 500-End..... | 7.50 | Oct. 1, 1985 |
| 35..... | 7.00 | July 1, 1985 | 47 Parts: | | |
| 36 Parts: | | | 0-19..... | 13.00 | Oct. 1, 1985 |
| 1-199..... | 9.00 | July 1, 1985 | 20-69..... | 21.00 | Oct. 1, 1985 |
| 200-End..... | 14.00 | July 1, 1985 | 70-79..... | 13.00 | Oct. 1, 1985 |
| 37..... | 9.00 | July 1, 1985 | 80-End..... | 18.00 | Oct. 1, 1985 |
| 38 Parts: | | | 48 Chapters: | | |
| 0-17..... | 16.00 | July 1, 1985 | 1 (Parts 1-51)..... | 16.00 | Oct. 1, 1985 |
| 18-End..... | 11.00 | July 1, 1985 | 1 (Parts 52-99)..... | 12.00 | Oct. 1, 1985 |
| 39..... | 9.50 | July 1, 1985 | 2..... | 15.00 | Oct. 1, 1985 |
| 40 Parts: | | | 3-6..... | 13.00 | Oct. 1, 1985 |
| 1-51..... | 16.00 | July 1, 1985 | 7-14..... | 17.00 | Oct. 1, 1985 |
| 52..... | 21.00 | July 1, 1985 | 15-End..... | 17.00 | Oct. 1, 1985 |
| 53-80..... | 23.00 | July 1, 1985 | 49 Parts: | | |
| 81-99..... | 18.00 | July 1, 1985 | 1-99..... | 7.00 | Oct. 1, 1985 |
| 100-149..... | 18.00 | July 1, 1985 | 100-177..... | 19.00 | Nov. 1, 1985 |
| 150-189..... | 13.00 | July 1, 1985 | 178-199..... | 15.00 | Nov. 1, 1985 |
| 190-399..... | 19.00 | July 1, 1985 | 200-399..... | 13.00 | Oct. 1, 1985 |
| 400-424..... | 14.00 | July 1, 1985 | 400-999..... | 16.00 | Oct. 1, 1985 |
| 425-699..... | 13.00 | July 1, 1985 | 1000-1199..... | 13.00 | Oct. 1, 1985 |
| 700-End..... | 8.00 | July 1, 1985 | 1200-1299..... | 13.00 | Oct. 1, 1985 |
| 41 Chapters: | | | 1300-End..... | 2.25 | Oct. 1, 1985 |
| 1, 1-1 to 1-10..... | 13.00 | ⁵ July 1, 1984 | 50 Parts: | | |
| 1, 1-11 to Appendix, 2 (2 Reserved)..... | 13.00 | ⁵ July 1, 1984 | 1-199..... | 11.00 | Oct. 1, 1985 |
| 3-6..... | 14.00 | ⁵ July 1, 1984 | 200-End..... | 19.00 | Oct. 1, 1985 |
| 7..... | 6.00 | ⁵ July 1, 1984 | CFR Index and Findings Aids..... | 21.00 | Jan. 1, 1986 |
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| 101..... | 19.00 | July 1, 1985 | | | |
| 102-200..... | 8.50 | July 1, 1985 | | | |
| 201-End..... | 5.50 | July 1, 1985 | | | |
| 42 Parts: | | | | | |
| 1-60..... | 12.00 | Oct. 1, 1985 | | | |
| 61-399..... | 7.00 | Oct. 1, 1985 | | | |
| 400-429..... | 16.00 | Oct. 1, 1985 | | | |
| 430-End..... | 11.00 | Oct. 1, 1985 | | | |
| 43 Parts: | | | | | |
| 1-999..... | 10.00 | Oct. 1, 1985 | | | |

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² No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

³ No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

⁴ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁵ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁶ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

