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# federal register

Tuesday
May 12, 1987

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

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## WHAT IT IS AND HOW TO USE IT

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

**WHO:** The Office of the Federal Register.

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

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

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

### WASHINGTON, DC

**WHEN:** June 9, at 9 a.m.
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
**RESERVATIONS:** Gertrude E. Belton, 202–523–5237

### CHICAGO, IL

**WHEN:** July 8, at 9 a.m.
**WHERE:** Rom 204A, Everett McKinley Dirksen Federal Building, 219 S. Dearborn Street, Chicago, IL.
**RESERVATIONS:** Call the Chicago Federal Information Center, 312–353–0339.

### BOSTON, MA

**WHEN:** July 15, at 9 a.m.
**WHERE:** Main Auditorium, Federal Building, 10 Causeway Street, Boston, MA.
**RESERVATIONS:** Call the Boston Federal Information Center, 617–565–8129

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1046

### Milk in the Louisville-Lexington-Evansville Marketing Area; Order Terminating a Provision of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Termination of rule.

**SUMMARY:** This action permits a cooperative association to be the responsible handler for milk of nonmembers that is delivered for the cooperative's account to pool plants of other handlers under the Louisville-Lexington-Evansville order. The action was requested by Dairymen, Inc., a cooperative association that represents a large number of producers supplying plants in the market. Interested parties were invited to comment on the proposed action. Three other handlers in the market responded and supported the proposed termination. The termination order adapts the order to a recent change in milk assembly practices in the market whereby a cooperative is handling the milk of some nonmember producers.

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 9, 1987 (52 FR 11475) concerning this termination of a provision of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon. Three handlers in the market responded and supported the proposed action.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that the following provision of the order does not tend to effectuate the declared policy of the Act:

1. In § 1046.9(c), the provision "of its producer members".

#### Statement of Consideration

This action allows a cooperative association to be the responsible handler on milk of producers who are not members of the cooperative when such milk is delivered to pool plants of other handlers for the account of the cooperative association. The order now limits the cooperative to being the responsible handler on milk of its producer members.

The request for termination action was submitted by Dairymen, Inc., a cooperative association representing producers who deliver milk to pool plants in the market. The cooperative requested that the termination action be effective March 1987.

Interested parties were invited to submit comments on the proposed termination. Three handlers in the market submitted comments in support of the proposed action: Bel Cheese, Inc., Southeastern Dairies, Inc., and Kraft, Inc. Each of the handlers indicated that the termination action would facilitate the handling of milk at their plant operations. In addition, they indicated that this action would eliminate the need for the plant operators to make duplicate reports involving nonmember milk that is commingled with member milk on farm-to-market routes and is delivered for the account of the cooperative association.

The termination action is warranted and should be made effective upon publication in the **Federal Register.** The termination order would apply to milk marketed after March 1987. Although the cooperative requesting the action asked that the termination order be effective for the month of March, there was not sufficient time to ask for comments from interested parties and complete the amendatory procedure in time to include milk marketed during March 1987. The termination order will result in the bulk-tank handler provision of the Louisville-Lexington-Evansville order conforming with such provision in most other Federal milk orders. The action will facilitate the handling of milk of nonmembers in those instances in which the nonmembers elect to have a cooperative association market their milk. One of the advantages of the change in the handler definition is that the milk of members and nonmembers can be commingled on the same farm-to-market routes, thereby resulting in greater efficiency in the farm-to-market delivery of milk. The action also eliminates the need for the duplicate reports now required of plants for nonmember milk that is delivered for the account of a cooperative association. In addition, the change will facilitate the pooling of nonmember milk that has been associated with this market for some time.

It is hereby found and determined that thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will tend to lessen the reporting requirements of certain handlers who operate plants under the Louisville-Lexington-Evansville order and to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

(b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination. Three responses in support of the proposed action and no comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register** for milk marketed under the Louisville-Lexington-Evansville order after March 1987.

**List of Subjects in 7 CFR Part 1046**

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provision in § 1046.9(c) of the Louisville-Lexington-Evansville order is hereby terminated.

## PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. The authority citation for 7 CFR Part 1046 continues to read as follows:

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

**§ 1046.9 [Amended]**

2. In § 1046.9(c), the provision "of its producer members" is terminated.

Signed at Washington, DC, on: May 7, 1987.

**Kenneth A. Gilles,**

*Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 87–10822 Filed 5–11–87; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 87–ANE–10; Amdt. 39–5603]**

### Airworthiness Directives; Alexander Schleicher Model ASK 21

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to Alexander Schleicher Model ASK 21 gliders which requires an initial visual inspection and replacement of the rudder pedal support fitting. This action was prompted by the determination that the rudder pedal support fitting can fail from cracks caused by fatigue damage. This condition, if not corrected, could result in the glider becoming uncontrollable.

**DATE:** Effective May 13, 1987.

Compliance schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on May 13, 1987.

**ADDRESSES:** The technical information and modification parts specified in this AD may be obtained from Eastern Sailplane, Heath Stage Route, Shelburne Falls, Massachusetts 01370; telephone number 413–625–6059. A copy of the technical note is contained in Rules Docket Number 87–ANE–10, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium; telephone 513.38.30, ext. 2710, or John Maher, New York Aircraft Certification Office, Federal Aviation Administration, Aircraft Certification Division, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone number 516–791–6221.

**SUPPLEMENTARY INFORMATION:** Alexander Schleicher has determined that failure may occur in the rudder pedal support fitting from cracks caused by fatigue damage. The manufacturer has issued ASK 21 Technical Note No. 19, dated October 22, 1986, which requires inspection and replacement of the rudder pedal support fitting. The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of ASK 21 Technical Note No. 19 on gliders operated under Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Alexander Schleicher ASK 21 Technical Note No. 19 and the issuance of AD 86–236 Schleicher by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Alexander Schleicher ASK 21 Technical Note No. 19 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Applicability information is provided because not all aircraft serial numbers of the named model are affected by the AD.

Therefore, an AD is being issued to require an initial visual inspection and replacement of the rudder pedal support fitting on certain serial numbered Alexander Schleicher Model ASK 21 gliders. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

*Conclusion:* The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

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

2. By adding to Part 39 the following new airworthiness directive (AD):

**Alexander Schleicher:** Applies to Model ASK 21 gliders serial numbers 21001 through 21312 certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent the failure of the rudder pedal support fitting P/N 99.000.2173 which could result in the glider becoming uncontrollable, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD unless compliance with paragraph (c) has been accomplished, visually inspect the rudder pedal support fitting P/N 99.000.2173 using a 10 power or greater magnifying glass, for cracks.

(b) If a cracked fitting is found during the inspection required by paragraph (a) of this AD, before further flight, replace the rudder pedal support fitting with a serviceable fitting, P/N 99.000.2174, in accordance with the action instructions of Alexander Schleicher ASK 21 Technical Note No. 19, dated October 22, 1986.

(c) Prior to July 15, 1987, replace any rudder pedal support fitting not replaced in accordance with paragraph (b) of this AD, with a serviceable fitting, P/N 99.000.2174, in accordance with Alexander Schleicher ASK 21 Technical Note No. 19, dated October 22, 1986.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone number 513.38.30 ext. 2710 or the Manager, New York Aircraft Certification Office, Federal Aviation Administration, New England Region, Aircraft Certification Division, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone number 516-791-6680.

Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office or Manager, New York Aircraft Certification Office may adjust the compliance time specified in this AD.

Alexander Schleicher ASK 21 Technical Note No. 19, dated October 22, 1986, identified and described in this document is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. All persons affected by this directive who have not already received this document from the manufacturer may obtain a copy upon request to Eastern Sailplanes, Heath Stage Route, Shelburne Falls, Massachusetts 01370.

This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective May 13, 1987.

Issued in Burlington, Massachusetts on April 6, 1987.

**Clyde DeHart, Jr.,**

*Acting Director, New England Region.*

[FR Doc. 87-10600 Filed 5-11-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 86-ANE-48; Amdt. 39-5604]**

## Airworthiness Directives; AVCO Lycoming Textron

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires inspection for, and rework or replacement of, defective rocker arm assemblies. It has been found that a number of rocker arm assemblies were improperly manufactured and are susceptible to fatigue failures. This AD is necessary to prevent failure and consequent loss of engine power.

**DATES:** Effective May 13, 1987.

Compliance schedule—As indicated in the body of the AD.

Comments for inclusion in the docket must be received on or before July 13, 1987.

Incorporation by Reference—Approved by the Director of the **Federal Register** on May 13, 1987.

**ADDRESSES:** Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-48, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket Number 86-ANE-48.

Comments may be inspected at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin may be obtained from AVCO Lycoming Textron, 652 Oliver Street, Williamsport, Pennsylvania 17701, Attention: Customer Support. A copy of the service bulletin is contained in Rules Docket Number 86-ANE-48 at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Roy Hettenbach, ANE-174, Federal Aviation Administration, Aircraft Certification Division, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-7421.

**SUPPLEMENTARY INFORMATION:** Recent reports have been received involving failure of the exhaust position rocker arm, P/N LW-18790. In several instances, the aircraft experienced roughness and loss of engine power. There have been at least 10 occurrences of failures, some of which resulted in incidents involving emergency landings.

The failure has generally occurred through the bushings area as the result of fatigue cracks which originate and progress from the lubricating oil port. Investigation revealed the conditions contributing to the failure are that the oil hole in the rocker arm casting was drilled slightly off-center and was not deburred. The number of defective rocker arms in service is unknown although the period of time in which these defective rocker arms were manufactured is known to be between July 1985 and October 1986.

Since this condition is likely to exist or develop on other engine models incorporating the same type design rocker arm assembly, an AD is being issued which will require inspection for, and rework or replacement of, defective rocker arm assemblies.

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

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted

will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-48." The postcard will be date/time stamped and returned to the commenter.

**Conclusion**

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, as evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

**List of Subjects in 14 CFR Part 39**

Engines, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

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

**§ 39.13 [Amended]**

2. By adding to § 39.13 the following new airworthiness directive (AD):

**Avco Lycoming Textron:** Applies to AVCO Lycoming Textron reciprocating engine series having serial numbers as listed herein; parallel valve-type engines remanufactured or overhauled between July 1, 1985, and October 8, 1986, inclusive; any engine that had an AVCO Lycoming Textron P/N LW-18790 rocker arm assembly installed during this same time period, and any P/N LW-18790 rocker arm assembly that was shipped from AVCO Lycoming Textron during this same time period but not already installed in an engine. O-320-A and -E Series engines with serial numbers L-50154-27A thru L-50175-27A, L-50177-27A thru L-50188-27A.

O-320-B and D Series engines with serial numbers L-13971-39A, L-13972-39A, L-13975-39A, L-13976-39A, L-13980-39A, L-13983-39A thru L-14045-39A, L-14048-39A thru L-14053-39A, L-14055-39A thru L-14057-39A, L-14060-39A thru L-14067-39A, L-14069-39A thru L-14235-39A, L-14242-39A, L-14243-39A, L-14249-39A thru L-14415-39A, L-14421-39A, L-14428-39A.

IO-320 Series engines with serial numbers L-5890-55A thru L-5897-55A. O-360 Series engines with serial numbers L-31144-36A thru L-31146-36A, L-31150-36A thru L-31184-36A, L-31194-36A, L-31195-36A, L-31198-36A thru L-31357-36A, L-31363-36A thru L-31507-36A.

IO-360-B Series engines with serial numbers L-24152-51A, L-24163-51A, L-24170-51A, L-24248-51A, L-24337-51A thru L-24344-51A, L-24352-51A. AEIO-360-B Series engines with serial numbers L-24168-51A, L-24195-51A, L-24337-51A thru L-24344-51A, L-24357-51A.

The O-540 serial numbers that follow may or may not have the letter "A" as part of the suffix of the serial number on the engine dataplate

O-540 Series engines with serial numbers L-23946-40A, L-23949-40A thru L-24059-40, L-24061-40A.

IO-540-C4B5 engines with serial numbers L-22974-48A, L-22975-48A, L-23010-48A thru L-23016-48A, L-23038-48A, L-23039-48A, L-23050-48A thru L-23052-48A, L-23118-48A, L-23138-48A, L-23193-48A, L-23195-48A, L-23196-48A, L-23328-48A, L-23331-48A, L-23348-48A, L-23349-48A, L-23352-48A, L-23353-48A, L-23372-48A, L-23375-48A, L-23376-48A.

IO-540-C4D5D engines with serial numbers L-22920-48A thru L-22924-48A, L-22958-48A thru L-22963-48A, L-23022-48A thru L-23027-48A, L-23079-48A thru L-23082-48A, L-23088-48A, L-23095-48A thru L-23099-48A, L-23148-48A thru L-23153-48A, L-23165-48A thru L-23180-48A, L-23237-48A thru L-23239-48A, L-23264-48A thru L-23273-48A, L-23307-48A thru L-23316-48A, L-23358-48A, L-23359-48A.

IO-540-D4A5 engine with serial number L-23089-48.

IO-540-V4A5D engines with serial numbers L-22943-48A thru L-22945-48A, L-22953-48A thru L-22957-48A, L-23061-48A thru L-23063-48A.

IO-540-W1A5D engines serial numbers L-22964-48A, L-22965-48A, L-22976-48A thru L-22979-48A, L-23020-48A, L-23021-48A, L-23034-48A, L-23036-48A, L-23040-48A thru L-23042-48A, L-23056-48A, L-23057-48A, L-23067-48A, L-23074-48A, L-23090-48A thru L-23094-48A, L-23139-48A, L-23154-48A, L-23181-48A, L-23192-48A, L-23197-48A thru L-23199-48A, L-23223-48A, L-23326-48A, L-23327-48A, L-23346-48A, L-23347-48A.

IO-540-W3A5D engines with serial numbers L-22918-48A, L-22966-48A, L-22967-48A, L-23350-48A, L-23351-48A.

AEIO-540-D Series engines with serial numbers L-22927-48A, L-22994-48A, L-22994-48A, L-23035-48A, L-23037-48A, L-23043-48A, L-23044-48A, L-23065-48A, L-23066-48A, L-23075-48A thru L-23077-48A, L-23100-48A, L-23101-48A, L-23108-48A thru L-23110-48A, L-23114-48A, L-23127-48A, L-23135-48A, L-23143-48A thru L-23147-48A, L-23159-48 thru L-23164-48A, L-23189-48A thru L-23191-48A, L-23200-48A, L-23201-48A, L-23232-48A, L-23233-48A, L-23245-48A, L-23259-48A, L-23260-48A, L-23274-48A thru L-23294-48A, L-23329-48A, L-23330-48A, L-23343-48A, L-23344-48A, L-23368-48A, L-23369-48A, L-23373-48. TIO-540-AA1AD engines with serial numbers L-8753-61A, L-8782-61A, L-8783-61A, L-8837-61A, L-8845-61A.

TIO-540-AB1AD engines with serial numbers L-8751-61A, L-8752-61A, L-8758-61A, L-8763-61A thru L-8765-61A, L-8777-61A thru L-8779-61A, L-8784-61A, L-8785-61A, L-8788-61A thru L-8790-61A, L-8798-61A thru L-8800-61A, L-8803-61A thru L-8806-61A, L-8813-61A thru L-8816-61A, L-8821-61A thru L-8824-61A, L-8833-61A thru L-8836-61A.

Any of the following parallel valve-type engines that were remanufactured or overhauled between July 1, 1985, and October 8, 1986, inclusive. Any applicable engine that has had a P/N LW-18790 rocker arm assembly installed if the assembly was shipped from AVCO Lycoming Textron Williamsport Division during this same time period.

Engine Models: O-320 Series except O-320-H; IO-320 Series; AIO-320 Series; AEIO-320 Series; LIO-320 Series; O-340 Series; O-360 Series except O-360-E; IO-360-B, -E, -F Series; AEIO-360-B, -H Series; HO-360 Series; HIO-360-B Series; VO-360 Series; IVO-360 Series; O-540 Series; IO-540-C, -D, -J, -N, -R, -T, -V, -W Series; AEIO-540-D Series; TIO-540-C, -E, -G, -H, -K, -AA, -AB Series, LTIO-540-K.

Compliance required (1) within the next 25 hours in service after the effective date of this AD for all applicable engines, and (2) prior to installation, for all P/N LW-18790 rocker arm assemblies not installed in engines, unless already accomplished.

**Note.**—Rocker arm assemblies complying with this AD are identified by a letter "B" per AVCO Lycoming Textron Service Bulletin (SB) No. 477A, page 4, paragraph 6. All new and remanufactured engines shipped from the AVCO Lycoming Textron Williamsport Division Factory, and all overhauled engines

shipped from the AVCO Lycoming Textron Service Center at Montoursville, Pennsylvania, after October 8, 1986, are in compliance with this AD.

To prevent possible rocker arm failure and loss of engine power, inspect and rework or replace rocker arm assembly P/N LW-18790, as necessary, in accordance with Sections 1 through 9 of AVCO Lycoming Textron SB No. 477A, dated February 16, 1987.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

Upon submission of substantiating data by an owner or operator through a FAA maintenance inspector, the Manager of the New York Aircraft Certification Office, Valley Streams, New York, may adjust the compliance time specified in this AD.

AVCO Lycoming Textron SB No. 477A, dated February 16, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Customer Support, AVCO Lycoming Textron, 652 Oliver Street, Williamsport, Pennsylvania 17701.

This document also may be examined at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 86-ANE-48, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on May 13, 1987.

Issued in Burlington, Massachusetts, on April 6, 1987.

**Clyde DeHart, Jr.,**

*Acting Director, New England Region.*

[FR Doc. 87-10601 Filed 5-11-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Parts 232 and 235

**[Docket No. R-87-1335; FR-2358]**

### Mortgage Insurance; Changes in Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This change in the regulations increases the maximum allowable interest rate on certain section 232 (Mortgage Insurance for Nursing Homes) loans and on all section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

**EFFECTIVE DATE:** April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The following amendments to 24 CFR Chapter II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been raised from 8.50 percent to 9.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectivenes of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Polcy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect 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.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

**List of Subjects**

*24 CFR Part 235*

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

*24 CFR Part 232*

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

## PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR Part 232 continues to read as follows:

**Authority:** Sections 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); Section 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

**§ 232.560 Maximum interest rate.**

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum with respect to

mortgages insured on or after April 27, 1987.

* * * * *

## PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

**Authority:** Sections 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

**§ 235.9 Maximum interest rate.**

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum with respect to mortgages insured on or after April 27, 1987.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

**§ 235.540 Maximum interest rate.**

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum with respect to mortgages insured after April 27, 1987.

* * * * *

Dated: April 30, 1987.

**Thomas T. Demery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 87-10736 Filed 5-11-87; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF JUSTICE

### 28 CFR Part 17

**[Order No. 1187-87]**

### Membership of the Department Review Committee

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This Order revises Part 17 of Title 28, Code of Federal Regulations, to change the security regulations of the Department of Justice for the purpose of providing a Civil Division representative to the Department Review Committee.

**EFFECTIVE DATE:** April 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** D. Jerry Rubino, Department Security Officer, Department of Justice, Washington, DC 20530 (202) (633-2094). This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** This regulation is exempt from the requirements of Executive Order 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have a significant impact on a substantial number of small entities because its effect is internal to the Department of Justice and is therefore exempt from the Regulatory Flexibility Act.

**List of Subjects in 28 CFR Part 17**

Classified information, Foreign relations.

By virtue of the authority vested in me by E.O. 12356, 5 U.S.C. 301 and 28 U.S.C. 509, 510, § 17.135 of Part 17 of Title 28, Code of Federal Regulations is revised as set forth below.

## PART 17—[AMENDED]

1. The authority citatation for Part 17 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510; E.O. 12356.

**§ 17.135 [Amended]**

2. Section 17.135 is amended by redesignating paragraphs (b) (4), (5), and (6) as paragraphs (b) (5), (6), and (7), and by adding a new paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4) Civil Division

* * * * *

Dated: April 24, 1987.

**Edwin Meese III,**

*Attorney General.*

[FR Doc. 87-10756 Filed 5-11-87; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Parts 1910 and 1926

### Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Corrections and Information Collection Requirements Approval

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Final rules; corrections, technical amendments and information collection requirements approval.

**SUMMARY:** This document makes corrections to the preamble of the final rules for Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite which appeared in the Federal Register on June 20, 1986 (51 FR 22612) and technical amendments to 29 CFR Parts 1910 and 1926.

**EFFECTIVE DATES:** May 12, 1987. 29 CFR 1910.1001 (d)(2), (d)(3), (d)(5), (d)(7), (f)(2), (g)(3)(i), (j)(5), (l), and (m) became effective on October 2, 1986. 29 CFR 1926.58 (f)(2), (f)(3), (f)(6), (h)(3)(i), (k)(3), (k)(4), (m), and (n) became effective on November 14, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, OSHA Office of Information and Consumer Affairs, Room N3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8148.

**SUPPLEMENTARY INFORMATION:** On June 20, 1986 (51 FR 22612) OSHA published a document titled "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Final Rules". At the time of publication the information collection requirements of those rules had not been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

On October 2, 1986, the Office of Management and Budget approved the information collection requirements for 29 CFR 1910.1001 and has assigned them Control No. 1218-0133. Accordingly, the information collection requirements of the asbestos, tremolite, anthophyllite, and actinolite final rule (§ 1910.1001) published June 20, 1986 became effective on October 2, 1986.

On November 14, 1986, the Office of Management and Budget approved the information collection requirements for 29 CFR 1926.58 and has assigned them Control No. 1218-0134. Accordingly, the information collection requirements of the construction industry standard for asbestos, tremolite, anthophyllite, and actinolite (§ 1926.58) published June 20, 1986 became effective on November 14, 1986.

There were a number of typographic errors in the June 20, 1986 document preamble as well as in the codified standards 29 CFR 1910.1001 and 29 CFR 1926.58. This document amends and corrects all the substantive and typographic errors in the regulatory text and those in the preamble where correction is needed to make the meaning clearer.

One of the amendments being made is to the respirator selection tables codified at 29 CFR 1910.1001, Table 1, and § 1926.58, Table D-4. These tables are being amended by adding the phrase "other than a disposable respirator" to the description of the class of respirator allowed to be worn in airborne

concentrations not in excess of 2 f/cc. While this explicit prohibition on the use of disposable respirators was not included in the regulatory text issued on June 20, 1986.

OSHA intended to prohibit their use. OSHA indicated in the preamble to the standards that disposable respirators were not allowed (51 FR 22718), and had stated in the appendices to the standards that "disposable respirators or dust masks are not permitted to be used for asbestos, tremolite, anthophyllite and actinolite work." (App. G. (III)A, 51 FR 22754, App. H. (III)A, 51 FR 22788).

OSHA omitted the clarifying phrase, "other than a disposable respirator," from the tables because the purpose of the respirator selection tables is primarily to state which respirators are permitted in specific air concentrations, not to list explicitly those which are not allowed. As explained above, the **Federal Register** document, read as a whole, clearly indicated OSHA's decision to prohibit disposable respirators. However, to ensure that the respirator selection tables, when read alone, are clear, they are being amended to specifically state that disposable respirators are not permitted. Since these technical amendments do not substantively change the requirements of the standards, they were made effective immediately and without opportunity for advance notice and comment which OSHA finds "unnecessary and impracticable" within the meaning of 5 U.S.C. 553(b).

## PART 1910—[CORRECTED]

## PART 1926—[CORRECTED]

Accordingly, the preamble to FR Doc. 86–13674 published in 51 FR 22612–22790, June 20, 1986, is corrected to read as follows:

Corrections to the preamble:

1. On page 22629, column 1, line 5, "[Platek et al., Ex. 84–240]" is corrected to read "[Platek et al., Ex. 84–230]".

2. On page 22631, column 1, last paragraph, line 12, "or" is corrected to read "of".

3. On page 22651, Table 7, line entry for A/C pipe under column 5, "0.01–1.21" is corrected to read "0.01–1.81".

4. On page 22655, Table 12, line entry for total under column 2, "764,228" is corrected to read "746,228".

5. On page 22666, column 1, Table 24, is corrected to read:

| Industry | Total cancer deaths |
|---|---|
| Primary Manufacturing: | |
| A/C Pipe | 0.06 |
| A/C Sheet | 0.14 |
| Friction Materials | 3.39 |
| Textiles | 0.16 |
| Floor Tile | <0.01 |
| Gaskets and Packings | 0.12 |
| Paper | 0.04 |
| Coatings and Sealants | 0.39 |
| Plastics | 0.09 |
| Secondary Manufacturing: | |
| A/C Sheet | 0.16 |
| Friction Materials | 0.48 |
| Gaskets and Packings | 0.70 |
| Textiles | 0.11 |
| Plastics | 0.17 |
| Automotive Remanufacturing | 0.74 |
| Services: | |
| Automotive Repair | 30.15 |
| Ship Repair | 4.28 |
| Construction: | |
| New Construction | 0.36 |
| Asbestos Abatement | 0.66 |
| Demolition | 0.23 |
| Building Renovation | 22.15 |
| Routine Maintenance in Commercial and Residential Buildings | 9.80 |
| Routine Maintenance in General Industry | 0.34 |
| Total | 74.72 |

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

6. On page 22666, column 2, Table 25, is corrected to read:

| Industry | Total cancer deaths avoided |
|---|---|
| Primary Manufacturing: | |
| A/C Pipe | 0.07 |
| A/C Sheet | 0.16 |
| Friction Materials | 4.00 |
| Textiles | 0.18 |
| Floor Tile | 0.02 |
| Gaskets and Packings | 0.13 |
| Paper | 0.06 |
| Coatings and Sealants | 0.48 |
| Plastics | 0.11 |
| Secondary Manufacturing: | |
| A/C Sheet | 0.18 |
| Friction Materials | 0.65 |
| Gaskets and Packings | 0.88 |
| Textiles | 0.12 |
| Plastics | 0.29 |
| Automotive Remanufacturing | 0.90 |
| Services: | |
| Automotive Repair | 39.25 |
| Ship Repair | 4.61 |
| Construction: | |
| New Construction | 0.61 |
| Asbestos Abatement | 0.76 |
| Demolition | 0.23 |
| Building Renovation | 22.49 |
| Routine Maintenance in Commercial and Residential Buildings | 11.23 |
| Routine Maintenance in General Industry | 0.39 |
| Total | 87.80 |

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

7. On page 22668, Table 27, line entry for A/C sheet under column 2, "1,260.6" is corrected to read "1,260.0".

8. On page 22668, Table 28, line entry for ship repair under column 2, "3918.5" is corrected to read "3.919".

9. On page 22676, column 2, second complete paragraph, lines 16 and 17, delete "disposable protective clothing".

10. On page 22685, column 3, line 1, "50 mm—long cowl extension" is corrected to read "50 mm electrically conductive extension cowl".

11. On Page 22685, column 3, lines 5 and 6, "1pm" signifying liters per minute, is corrected to read "lpm".

12. On page 22686, column 1, third paragraph, lines 4 and 5, "50 mm extension cowl" is corrected to read "50mm electrically conductive extension cowl".

13. On page 22686, column 1, fourth paragraph, lines 4, 7, 10 and 18, "1pm" signifying liters per minute is corrected to read "lpm".

14. On page 22688, column 2, line 25, "importane" is corrected to read "importance".

15. On page 22702, column 3, line 17, "felf" is corrected to read "felt".

16. On page 22706, column 2, second complete paragraph, lines 13 and 14, "[e.g., paragraphs (e)(6), (i)(4), and (j)(1)(i)" is corrected to read "[e.g., paragraphs (e)(6), (j)(1)(i), and (j)(2)(i)]".

17. On page 22706, column 3, second complete paragraph, the last sentence is corrected to read "These employers are also required to ensure that these employees observe strict decontamination procedures before they leave the worksite".

18. On page 22713, column 3, line 8 from bottom of page, "quarterly" is corrected to read "semi-annual".

19. On page 22715, column 2, line 12, "paragraph (g)(l)(i)" is corrected to read "paragraph (g)(1)(i)".

20. On page 22715, column 2, line 18, "Paragraph (g)(l)(i)(G)" is corrected to read "Paragraph (g)(1)(i)(G)".

21. On page 22715, column 2, second complete paragraph, line 1, "paragraph

(g)(l)(ii)" is corrected to read "paragraph (g)(1)(ii)".

22. On page 22717, column 1, line 13, "paragarph" is corrected to read "paragraph".

23. On page 22717, column 1, second complete paragraph, lines 2 and 3, "Respiratory Protection" is corrected to read "respiratory protection".

24. On page 22721, column 1, first complete paragraph, line 1, "Primary" is corrected to read "primary".

25. On page 22725, column 3, line 14, "paragraph (1)(i)" is corrected to read "paragraph (l)(1)".

26. On page 22725, column 3, second complete paragraph, line 2, "paragraph (1)(2)" is corrected to read "paragraph (l)(2)".

27. On page 22726, column 1, line 5, "paragraph (1)(2)" is corrected to read "paragraph (l)(2)".

28. On page 22726, column 2, line 18, "appropriations" is corrected to read "appropriateness".

29. On page 22726, column 3, first complete paragraph, line 1, "Paragraph (m)(l)(i)" is corrected to read "Paragraph (m)(1)(i)".

30. On page 22730, column 3, third complete paragraph, lines 1 through 5, are corrected to read "The time period required for retention of exposure records is 30 years and for medical records, duration of employment plus 30 years. These retention periods are consistent with those in the OSHA records access rule § 1910.20 (m)(1)(iii) and (m)(2)(iii)".

Accordingly, Parts 1910 and 1926 are amended as set forth below:

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act. 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 et seq.; Service Contract Act of 1965, 41 U.S.C. 351 et seq.; Pub. L. 91–54, 40 U.S.C. 333; Pub. L. 85–742, 33 U.S.C. 941; National Foundation on Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736); and 29 CFR Part 1911.

2. 29 CFR 1910.1001 is amended as follows:

a. In paragraph (g)(2)(ii)(B), Table 1, the first entry in the right hand column which reads, "Half-mask air-purifying respirator equipped with high-efficiency filters.". is revised to read "Half-mask air-purifying respirator, other than a disposable respirator, equipped with high-efficiency filters.".

b. In paragraph (j)(5)(i), the language following the last comma is revised to read "or a combination of these minerals at or above the action level and ensure their participation in the program.".

c. In paragraph (j)(5)(iii)(G), "paragraph (1)" is revised to read "paragraph (l)".

d. In paragraph (j)(5)(iii)(H), "A review" is revised to read "The content".

e. In paragraph (o)(2)(vi), "paragraph (1)" is revised to read "paragraph (l)".

**Appendix A to § 1910.1001—[Amended]**

f. In Appendix A, in the first paragraph, "paragraph (f)" is revised to read "paragraph (d)".

g. In Appendix A, under "*Sampling and Analytical Procedure*", item 2., "50-mm extension cowl" is revised to read "50-mm electrically conductive extension cowl".

h. In Appendix A, under "*Sampling and Analytical Procedure*", item 13.b., "Count all particles as asbestos, tremolite," is revised to read "In the absence of other information, count all particles as asbestos, tremolite,".

**Appendix B to § 1910.1001—[Amended]**

i. In Appendix B, under "*Asbestos, Tremolite, Anthophyllite, and Actinolite Sampling and Analysis Method*", in the "Flow rate" paragraph, "l/min" signifying liters per minute, is revised to read "L/min", the four times it appears.

j. In Appendix B, under "*Asbestos, Tremolite, Anthophyllite, and Actinolite Sampling and Analysis Method*", in the "Equipment" section, item 1., "50-mm extension cowl" is revised to read "50-mm electrically conductive extension cowl".

k. In Appendix B, under "*Sampling*", item 4., the left side of the equation "$t_{min}$" is revised to read "$t_{minimum}$".

l. In Appendix B, under "*Sampling*", in the *Note*, "sampler" is revised to read "sample".

m. In Appendix B, under "*Calculations*", item 21., the equation is revised to read:

$$E = \frac{(F/n_f)-(B/n_b)}{A_f} \text{ fibers/mm}^2$$

where:
$n_f$=number of fields in submission sample
$n_b$=number of fields in blank sample

**Appendix C to § 1910.1001—[Amended]**

n. In Appendix C, under "I. *Isoamyl Acetate Protocol*", item I.C.15., remove the last two sentences.

o. In Appendix C, under "II. *Saccharin Solution Aerosol Protocol*", item II.C.10.v., "loudly" is revised to read "aloud".

p. In Appendix C, under "II. *Saccharin Solution Areosol Protocol*", item II.C.14., "IAA" is revised to read "saccharin solution aerosol".

q. In Appendix C, under "III. *Irritant Fume Protocol*", item III.A., "combination of high-efficiency and acid-gas cartridges" is revised to read "high-efficiency cartridge".

r. In Appendix C, under "III. *Irritant Fume Protocol*", item III.B.8.v., "Reading it" is revised to read "Repeating it after the test conductor (keeping eyes closed)".

s. In Appendix C, under "III. *Irritant Fume Protocol*", item III.B.12., "IAA" is revised to read "irritant fume".

t. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.3.c., "particular" is revised to read "particulate".

u. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.4.a., "Norton" is revised to read "North".

v. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.5.e., is revised to read "*Reading (R).* The test subject (keeping eyes closed) shall repeat after the test conductor the 'rainbow passage' at the end of this section. The subject shall talk slowly and aloud so as to be heard clearly by the test conductor or monitor.".

w. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.6., delete "(See paragraph 4.h.)".

x. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.11., in the first sentence, delete "in".

**Appendix E to § 1910.1001—[Amended]**

y. In Appendix E, under "Interpretation and Classification of Chest Roentgenograms—Mandatory", item (a) is revised to read "(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted Classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH.".

**Appendix F to § 1910.1001—[Amended]**

z. In Appendix F, under "A. *Enclosed Cylinder/HEPA Vacuum System Method*", second paragraph, third sentence, "The brake assembly isolation cylinder is available from Nilfisk Company and comes", is revised to read

"One company manufactures the brake assembly isolation cylinder".

aa. In Appendix F, under "A. *Enclosed Cylinder/HEPA Vacuum System Method*", footnote 1, is deleted.

bb. In Appendix F, under "C. *Information on the Effectiveness of Various Control Measures*", in the preferred methods" section, first paragraph, the word "below" which ends the second sentence, is revised to read "above".

**Appendix G to § 1910.1001—[Amended]**

cc. In Appendix G, under "IV. *Disposal Procedures and Cleanup*", item IV.A., the word "is" after actinolite is revised to read "are".

dd. In Appendix G, under "IV. *Disposal Procedures and Cleanup*", item IV.C., "logs" is revised to read "bags".

**Appendix H to § 1910.1001—[Amended]**

ee. In Appendix H, under "IV. *Surveillance and Preventive Considerations*", the first sentence in the second paragraph, is revised to read "The employer is required to institute a medical surveillance program for all employees who are or will be exposed to asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals at or above the action level (0.1 fiber per cubic centimeter of air).".

**§ 1910.1001 [Amended]**

ff. The OMB Control Number is added at end of § 1910.1001 to read as follows:

(Information collection requirements contained in paragraphs § 1910.1001 (d)(2), (d)(3), (d)(5), (d)(7), (f)(2), (g)(3) (i), (j)(5), (l), and (m) were approved by the Office of Management and Budget under Control No. 1218–0133)

## PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

3. The authority citation for Part 1926 continues to read as follows:

**Authority:** Secs. 4, 6, 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR 1911.

4. 29 CFR 1926.58 is amended as follows:

a. In paragraph (b), under "Renovation", insert "or" after "anthophyllite,".

b. In paragraph (e)(6)(iv), add "(Refer to Appendix G.)" after the last sentence.

c. In paragraph (f)(2)(i), insert "or" after the first time "anthophyllite," appears.

d. In paragraph (h)(2)(iii)(B), Table D–4, the first entry in the right hand column which reads "Half-mask air-purifying respirator equipped with high-efficiency filters." is revised to read "Half-mask air-purifying respirator, other than a disposable respirator, equipped with high efficiency filters.".

e. In paragraph (h)(4)(ii), "Table 1" is revised to read "Table D–4".

f. In paragraph (k)(3)(i), "minerals in excess of the action level" is revised to read "minerals at or above the action level".

g. Paragraph (k)(3)(ii) is revised to read "Training shall be provided prior to or at the time of initial assignment [unless the employee has received equivalent training within the previous 12 months] and at least annually thereafter".

h. In paragraph (k)(3)(iii)(F), delete "and".

i. In paragraph (k)(3)(iii)(G), "requirements." is revised to read "requirements; and".

j. In paragraph (k)(3)(iii)(H), "A review" is revised to read "The content".

k. In paragraph (o)(1), change "[insert date 30 days from publication in the **Federal Register** ]" to "July 21, 1986".

l. In paragraph (o)(2)(i), change "[insert date 210 days from publication in the **Federal Register**]" to "January 16, 1987".

**Appendix A to § 1926.58—[Amended]**

m. In Appendix A, under *"Sampling and Analytical Procedure"*, item 2., "50-mm extension cowl" is revised to read "50-mm electrically conductive extension cowl".

n. In Appendix A, under *"Sampling and Analytical Procedure"*, item 13.b., "Count all particles as asbestos, tremolite," is revised to read, "In the absence of other information, count all particles as asbestos, tremolite,".

o. In Appendix A, under *"Quality Control Procedures"*, item 2., in the first sentence, "that as a minimum includes participation of" is revised to read "that, as a minimum, includes participation of".

**Appendix B to § 1926.58—[Amended]**

p. In Appendix B, under *"Asbestos, Tremolite, Anthophyllite, and Actinolite Sampling and Analysis Method"*, in the "Flow rate" paragraph "l/min" signifying liters per minute , is revised to read "L/min" the four times it appears.

q. In Appendix B, under *Asbestos, Temolite, Anthophyllite, and Actinolite Sampling and Analysis Method"*, in the "Equipment" section, item 1., "50-mm extension cowl" is revised to read "50-mm electrically conductive extension cowl".

r. In Appendix B, under *"Sampling"*, item 4., the left side of the equation "$t_{min}$" is revised to read "$t_{minimum}$".

s. In Appendix B, under *"Sampling"*, item 6., "sampler" is revised to read "sample".

t. In Appendix B, under *"Sample Preparation"*, item 10.d., "in unsufficient" is revised to read "is insufficient".

u. In Appendix B, under *"Calculations"*, item 21., the equation is revised to read:

$$E = \frac{(F/n_f)-(B/n_b)}{A_f} \text{ fibers/mm}^2$$

where:
$n_f$ = number of fields in submission sample
$n_b$ = number of fields in blank sample

**Appendix C to § 1926.58—[Amended]**

v. In Appendix C, under "I. *Isoamy [Acetate Protocol]*", item I.C.15., remove the last two sentences.

w. In Appendix C, under "II. *Saccharin Solution Aerosol Protocol,*" item II.C.14., "IAA" is revised to read "saccharin solution aerosol".

x. In Appendix C, under "III. *Irritant Fume Protocol*", item III.A., "combination of high-efficiency and acid-gas cartridges", is revised to read "high-efficiency cartridge".

y. In Appendix C, under "III. *Irritant Fume Protocol*", item III.B.8.v., "Reading it" is revised to read "Repeating it after the test conductor (keeping eyes closed)".

z. In Appendix C, under "III. *Irritant Fume Protocol*", item III.B.12., "IAA" is revised to read "irritant fume".

aa. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.3.c., "particular" is revised to read particulate".

bb. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.4.a., "Norton" is revised to read "North".

cc. In Appendix C, under "III. *Irritant Fume Protocol*", item III. C.4.a.(2), insert "of" after "pressure".

dd. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.5.e., are revised to read "Reading (R). The test subject (keeping eyes closed) shall repeat after the test conductor the 'rainbow passage' at the end of this section. The subject shall talk slowly and aloud so as to be heard clearly by the test conductor or monitor.".

ee. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.6., delete "(See paragraph 4.h.)".

**Appendix E to § 1926.58—[Amended]**

ff. In Appendix E, under *"Interpretation and Classification of Chest Roentgenograms—Mandatory"*, item (a) is revised to read "(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 through 4) shall be included. This form is not be submitted to NIOSH.".

gg. In Appendix F, under *"HEPA-Filtered Vacuum"*, fourth sentence, delete "Nilfisk of America, Inc. * ," and the corresponding footnote.

hh. In Appendix F, under *"Exhaust Air Filtration System"*, fourth sentence, delete "Micro Trap, Inc., * ".

ii. In Appendix F, under *"Exhaust Air Filtration System"*, fifth sentence, "Micro-Trap * " is revised to read "these".

**Appendix G to § 1926.58—[Amended]**

jj. In Appendix G, in the first paragraph, reference to "paragraphs (e)(6) and (f)(2)(ii)(B) of § 1926.58" is revised to read "paragraphs (e)(6), (j)(1)(i) and (j)(2)(i) of § 1926.58".

kk. In Appendix G, under *"Glove Bag Equipment and Supplies"*, item 7, delete "dust".

**Appendix H to § 1926.58—[Amended]**

ll. In Appendix H, under "IV. *Disposal Procedures and Cleanup*", item IV.C., "logs" is revised to read "bags".

**§ 1926.58 [Amended]**

mm. The OMB Control Number is added at the end of § 1926.58 to read as follows:

(Information collection requirements contained in paragraphs § 1926.58 (f)(2), (f)(3), (f)(6), (h)(3)(i), (k)(3), (k)(4), (m), and (n) were approved by the Office of Management and Budget under Control No. 1218–0134)

Signed at Washington, DC, this 5th day of May, 1987.

**John A. Pendergrass,**

*Assistant Secretary of Labor, Occupational Safety and Health.*

[FR Doc. 87–10652 Filed 5–11–87; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF DEFENSE

## Department of the Air Force

## 32 CFR Part 818a

## Personal Commercial Affairs

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force has revised its rule on Personal Commercial Affairs to implement Department of Defense (DOD) Directive 1344.7, February 13, 1986 (32 CFR Part 43). This revision updates DOD policies covering the conduct of private commercial solicitation and sales on Air Force installations.

**EFFECTIVE DATE:** June 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** MSgt Richard R. Hollett, HQ AFMPC/DPMASC, Randolph AFB, TX 78150–6001, telephone (512) 652–3996.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force published a notice of proposed rulemaking on personal commercial affairs in the **Federal Register** on March 25, 1987 (52 FR 9499). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

**List of Subjects in 32 CFR Part 818a**

Federal buildings and facilities, Life insurance, Military personnel.

Therefore, 32 CFR Part 818a is revised to read as follows:

## PART 818A—PERSONAL COMMERCIAL AFFAIRS

**Subpart A—Introduction**



**Subpart B—Life Insurance Products and Securities**



**Subpart C—Private Commercial Solicitation on Air Force Installation**



**Subpart D—Personal Commercial Affairs Training**



**Authority:** 10 U.S.C. 8012.

**Note.**—This part is derived from Air Force Regulation 211–16.

### Subpart A—Introduction

**§ 818a.0 Purpose.**

This part sets policy for private commercial solicitation and sales on Air Force installations. It is designed to safeguard and promote the welfare and interests of military personnel as consumers. It requires commanders to be sure that all commercial soliciting and selling of all types of insurance, securities, and other goods, services, and commodities are monitored and controlled. This rule applies to all Air Force installations. It does not apply to the USAF Reserve or the Air National Guard. It implements 32 CFR Part 43 (Department of Defense (DOD) Directive 1344.7, February 13, 1986).

**§ 818a.1 References.**

(a) Part 806 of this chapter.

(b) AFR 34–4, Morale, Welfare, and Recreation (MWR) Basic Responsibilities, Policies, and Practices-Private Organizations.

(c) Part 818 of this chapter.

(d) AFR 40–735, Civilian Conduct and Responsibility.

(e) Part 818b of this chapter.

(f) AFR 110–27, Preventive Law Program.

(g) AFR 145–15, Air Force Commissary Store Regulation.

(h) AFR 147–7, Army and Air Force Exchange Service (AAFES) General Policies.

(i) AFR 170–32, Personal Financial Management Program (PFMP).

(j) Federal Reserve Board Regulation Z.

(k) Federal Personnel Manual.

**Note.**—Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

**§ 818a.2 Terms explained.**

(a) *Agent.* An individual who receives pay as a salesperson or whose pay is dependent on volume of sales of a product or products.

(b) *Association.* Any organization, whether or not the word "association" appears in its title, composed of and serving exclusively members of the military services on active duty, in a Reserve status, in a retired status, and their dependents, that offers its members life insurance coverage, either as part of the membership dues, or as a separately purchased plan made available through an insurance carrier or the association as a self-insurer, or a combination of both.

(c) *DOD installation.* Any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which DOD personnel are assigned for duty, including barracks, transient housing, and family quarters.

(d) *DOD personnel.* All active duty officers (commissioned and warrant) and enlisted members of the military services and all civilian employees, including nonappropriated fund employees and special government employees of all offices, agencies, and departments carrying on functions on DOD installations.

(e) *General agent.* A person who has a legal contract to represent a company solely and exclusively.

(f) *Insurance carrier.* An insurance company issuing insurance through an association or reinsuring or coinsuring such insurance.

(g) *Insurance product.* A policy, annuity, or certificate of insurance issued by an insurer or evidence of insurance coverage issued by a self-insured association.

(h) *Insurer.* Any company or association engaged in the business of selling insurance policies.

(i) *Normal home enterprises.* Sales or services that are customarily conducted in a domestic setting and do not compete with an installation's officially sanctioned commerce.

(j) *Securities.* Mutual funds, stocks, bonds, or any product registered with the Securities and Exchange Commission except for any insurance or annuity product issued by a corporation subject to supervision by state insurance authorities.

(k) *Solicitation.* The conduct of any private business, including the offering and sale of insurance, securities, and other goods, services and commodities on a military installation. Solicitation on installations is a privilege as distinguished from a right, and its control is a responsibility of the installation commander.

## Subpart B—Life Insurance Products and Securities

### § 818a.3 Life insurance.

(a) Life insurance products, other than certificates or other evidence of insurance issued by a self-insured association, offered and sold worldwide to personnel on Air Force installations, must:

(1) Comply with the insurance laws of the state or country in which the installation is located.

(2) Contain no restrictions by reason of military service or military occupational specialty of the insured, unless such restrictions are clearly indicated on the face of the contract.

(3) Plainly indicate any extra premium charges imposed by reason of military service or military occupational specialty.

(4) Contain no variation in the amount of death benefit or premium based on the length of time the contract has been in force, unless all such variations are clearly described in the content.

(b) To comply with paragraph (a) of this section, an appropriate reference stamped on the face of the contract shall draw the attention of the policyholder to any extra premium charges and any variations in the amount of death benefit or premium based on the length of time the contract has been in force.

(c) Variable life insurance products may be offered if they meet the criteria of the appropriate insurance regulatory agency and the Securities and Exchange Commission.

(d) Premiums shall reflect only the actual premiums payable for the life insurance product.

### § 818a.4 Securities.

(a) The following information pertains to the sale of securities:

(1) All securities must be registered with the Securities and Exchange Commission.

(2) All sales of securities must comply with existing and appropriate Securities and Exchange Commission regulations.

(3) All securities representatives must apply directly to the commander of the installation on which they desire to solicit the sale of securities.

(b) Where the accredited insurer's policy permits, an oversea accredited life insurance agent—if duly qualified to engage in security activities either as a registered representative of the National Association of Securities and Exchange Commission may offer life insurance and securities for sale simultaneously. In cases of commingled sales, the allotment of pay for the purchase of securities cannot be made to the insurer.

### § 818a.5 The accreditation program.

(a) Any life insurance company is automatically accredited in the state if it is licensed under the laws of the state where the installation is located.

(b) The recent growth and general acceptability of quasi-military associations offering various insurance plans to military personnel is acknowledged. Some associations are not organized within the supervision of insurance laws of either a state or the federal government. While some are organized for profit, others function as nonprofit associations under Internal Revenue Service (IRS) regulations. Regardless of the manner in which insurance plans are offered to members, the management of the association is responsible for complying fully with the instructions contained in this rule.

### § 818a.6 Use of the allotment system for paying life insurance premiums.

(a) Allotments of military pay for life insurance products shall be made according to AFM 177–373, Volume I, Joint Uniform Pay System-JUMPS AFO Procedures. Allotments are not made out to an insurer for a commingled sale such as retirement plans or securities.

(b) For personnel in pay grades E–1, E–2, and E–3, at least 7 days shall elapse for counseling between the signing of a life insurance application and the certification of an allotment. The purchaser's commanding officer may grant a waiver of this requirement for good cause, such as the purchaser's imminent permanent change of station (PCS). Subpart C—Private Commercial Solicitation on an Air Force Installation.

## Subpart C—Private Commercial Solicitation on Air Force Installation

### § 818a.7 Policy on soliciting.

(a) No person has authority to enter an Air Force installation and transact personal commercial solicitation as a matter of right. Personal commercial solicitation will be permitted only if the following requirements are met:

(1) The solicitor is duly licensed under applicable federal, state, or municipal laws and has complied with this rule.

(2) Personal commercial solicitation is permitted by the local installation commander.

(3) A specific appointment has been made with the invididual concerned and conducted in family quarters or in other areas designated by the installation commander.

(b) Those seeking to transact personal commercial solicitation on oversea installations shall be required to observe, in addition to the above, the applicable laws of the host country and, on demand, present documentary evidence to the installation commander.

or designee, that the company they represent, and its agents, meet the licensing requirements of the host country.

(c) Organizations involved in sales are permitted to display literature on Air Force installations in locations selected by the commander.

(d) All pertinent installation regulations shall be posted in a place easily accessible to those conducting personal solicitation activities on the installation.

(e) When practicable, as determined by the installation commander, a copy of the applicable regulations shall be given to those conducting on-base commercial activities with the warning that any infractions of the regulations will result in the withdrawal of solicitation privileges.

(f) Canvassing, soliciting, and peddling to Air Force civilian employees is governed by AFR 40–735.

(g) Nothing in this rule should be construed to preclude private, nonprofit, tax-exempt organizations composed of active and retired members of military services from holding membership meetings that do not involve commercial solicitation on Air Force installations. Attendance at these meetings shall be voluntary and the time and place of such meetings are subject to the discretion of the installation commander.

(h) Insurers and their agents are authorized to solicit on Air Force installations if they are licensed under the insurance laws of the state in which the installation is located. In oversea areas, installations shall limit this authorization to those insurers accredited under regulations issued by the unified or specified command having authority in the area.

(i) The conduct of all insurance and securities business on Air Force installations shall be by specific appointment. When establishing the appointment, agents must identify themselves to the prospective purchaser as an agent for a specific company.

(j) Installation commanders shall designate areas where insurance and securities interviews by appointment may be conducted. Invitations to conduct interviews shall be extended to all agents on an equitable basis. Where space and other considerations limit the number of agents using the interviewing area, the installation commander may develop and publish local policy.

(k) Installation commanders shall make disinterested third-party counseling available to Air Force personnel desiring counseling.

(l) In addition to the solicitation prohibition in § 818a.8, the following prohibitions also apply to insurance and securities sales:

(1) DOD personnel from representing any insurer or broker, or dealing directly or indirectly with any insurer or broker, or any recognized representative of any insurer or broker on the installation, as an agent or in any official or business capacity with or without compensation.

(2) The use of an agent as a participant in any military services-sponsored insurance education or orientation program.

(3) The designation of any agent or the use by any agent of titles such as Unit Insurance Advisor, Servicemen's Group Life Insurance Conversion Consultant, and so forth.

(4) The assignment of desk space for interviews for other than a specific prearranged appointment. During such appointment, the agent shall not be permitted to display desk or other signs announcing his or her name or company affiliation.

(5) The use of the base bulletin or any other notice, official or unofficial, announcing the presence of an agent and this agent's availability.

**§ 818a.8 Solicitation practices that are prohibited.**

(a) Solicitation of recruits, trainees, and transient personnel in a mass or captive audience.

(b) Making appointments with or soliciting military personnel who are in an on-duty status.

(c) Soliciting without appointment in areas utilized for the housing or processing of transient personnel, in barracks areas, in family quarters areas, in open mess facilities, in cafeterias, and in areas provided by installation commanders for interviews by appointment.

(d) Use of official identification cards by retired or Reserve members of the military services to gain access to Air Force installations for the purpose of soliciting.

(e) Procuring, or attempting to procure, or supplying roster lists of DOD personnel for purposes of commercial solicitation, except for releases granted according to Part 806 of this chapter.

(f) Offering unfair, improper, and deceptive inducements to purchase or trade.

(g) Using rebates to facilitate transactions or to eliminate competition.

(h) Using manipulative, deceptive, or fraudulent devices, schemes, or artifices, including misleading advertising and sales literature.

(i) Using oral or written representations to suggest or give the appearance that the Department of Defense sponsors or endorses any particular company, its agents, or the goods, services, and commodities it sells.

(j) Full-time DOD personnel making personal commercial solicitations or sales to DOD personnel who are junior in grade.

(k) Entering into any unauthorized or restricted area.

(l) Using any portion of installation facilities, including quarters, as a showroom or store for the sale of goods or services, except as specifically authorized by:

(1) AFR 34–4.

(2) AFR 145–15.

(3) AFR 147–7.

Note.—This is not intended to preclude normal home enterprises, providing applicable state and local laws are complied with.

(m) Soliciting door to door.

(n) Advertising addresses or telephone number of commercial sales activities conducted on the installation. EXCEPTION: Authorized activities conducted by members of military families residing in family housing.

**§ 818a.9 Denial, suspension, and revocation of on-base solicitation privileges.**

(a) The installation commander shall deny, suspend, or revoke permission to a company and its agents to conduct commercial activities on the base if such action is in the best interests of the Air Force. The grounds for taking this action shall include, but not be limited to, the following:

(1) Failure to meet the licensing and other regulatory requirements that are prescribed.

(2) Commission of any solicitation practices that are prohibited.

(3) Substantiated complaints or adverse reports regarding quality of goods, services, and commodities and the manner in which they are offered for sale.

(4) Knowing and willful violations of Pub. L. 90–321, the Truth in Lending Act.

(5) Personal misconduct by a company's agent or representative while on the installation.

(6) The possession of or any attempt to obtain supplies of allotment forms used by the military departments, or possession or use of their facsimiles.

(7) Failure to incorporate and abide by the Standards of Fairness Act in sales contracts as required by Part 818 of this chapter.

(b) Individuals having any information that might be grounds for suspending or revoking soliciting privileges should report it to the consolidated base personnel office (CBPO/DPMAP), who

will notify the base commander through personnel channels. (If there is no CBPO, the base commander will designate an office or officer to do this.)

**§ 818a.10 Action by the installation commander to suspend or revoke privileges.**

(a) The installation commander may, if circumstances dictate, immediately suspend solicitation privileges for up to 30 days while an investigation is conducted. Requests for extension beyond 30 days, up to a limit of 90 days, are forwarded through major command (MAJCOM) to Headquarters Air Force Military Personnel Center, Directorate of Personnel Program Management, Personal Programs Branch (HQ AFMPC/DPMASC), Randolph AFB TX 78150-6001, for approval. Upon suspending solicitation privileges, the installation commander shall promptly inform the agent and the company the agent represents, in writing.

(b) In denying or revoking solicitation privileges, the installation commander shall determine whether to limit the action to the agent alone or extend it to the company the agent represents. This decision shall be communicated to the agent and to the company the agent represents, in writing, and shall be based on the circumstances of the particular case, including, among others, the nature of the violations, frequency of violations, the extent to which other agents of the company have engaged in such practices, and any other matters tending to show the company's culpability.

(1) If the grounds for the action involve the eligibility of the agent or company to hold a state license or to meet other regulatory requirements, the appropriate authorities will be notified.

(2) The installation commander shall afford the individual or company an opportunity to show cause why the action should not be taken. To show cause means an opportunity must be given for the grieved party to present facts on his or her behalf on an informal basis for the consideration of the installation commander. If the alleged offender fails to respond, rebut, or mitigate the alleged violation, the installation commander will advise the agent, in writing, that his or her privilege to solicit on the installation has been revoked.

(3) All denials or revocation of privileges will be for a minimum of 6 months and a maximum of 12 months, at the end of which the individual may reapply for permission to solicit. Denial or revocation of privileges may or may not be continued, as warranted.

(4) Notices of revocation of solicitation privileges are published in the base bulletin periodically during the revocation period.

(5) If the installation commander believes the offender may be soliciting on other military installations, the commander should notify MAJCOM and recommend that the action taken be extended to other installations. If warranted, the MAJCOM recommends to HQ AFMPC/DPMASC that the action be extended to additional Air Force installations. If appropriate, the order may be extended to the other military departments by the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)).

## Subpart D—Personal Commercial Affairs Training

**§ 818a.11 Training provided by Air Training Command (ATC).**

HQ ATC, and those other activities that provide initial active duty indoctrination (for example, USAF Academy, AF Reserve Officer Training Corps and so forth), will make sure that a comprehensive block of instruction on personal commercial affairs is included in their teaching guides or course curriculums, as appropriate.

**§ 818a.12 Training provided by installation commanders.**

Installation commanders must provide education and information programs to help members conduct their personal commercial matters.

(a) These programs should include information about the protection and remedies offered under the Truth in Lending Act and the Federal Reserve Board Regulation Z. They may be incorporated into training covering savings, budgeting, commercial insurance, personal financial responsibilities, legal assistance, and similar subjects.

(b) At the request of the installation commander, representatives of the following agencies may be used to help set up the program.

(1) Base credit unions.

(2) Base banks.

(3) Nonprofit military associations that are:

(i) Not underwritten by a commercial life insurance company, and

(ii) Are approved by HQ AFMPC/DPMASC.

(c) Under no circumstances may the services of commercial agents, including loan, finance, insurance, or investment companies, be used for this purpose. Educational materials prepared or presented by outside organizations may be adapted or used if they: are solely educational (free of advertising, applications, contracts, and so forth) and are approved by HQ AFMPC/DPMASC.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-10719 Filed 5-11-87; 8:45 am]

BILLING CODE 3910-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 65

**[A-7-FRL-3198-5]**

### Approval of a Delayed Compliance Order Issued by the Missouri Air Conservation Commission to the American Can Co., St. Louis, MO

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Administrator of EPA hereby *approves* a Delayed Compliance Order issued by The Missouri Air Conservation Commission to the American Can Company. The Order requires the company to bring air emissions from its three-piece can coating and end seal operations in St. Louis, Missouri, into compliance with certain regulations contained in the federally approved Missouri State Implementation Plan (SIP). Because of the Administrator's approval, the American Can Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

**EFFECTIVE DATE:** This rule takes effect on May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Anne W. Rowland at 913-236-2853 (FTS 757-2853) or Anthony P. Wayne At 913-236-2896 (FTS 757-2896), Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas, 66101.

**ADDRESSES:** A copy of the delayed Compliance Order, any supporting material, and any comments received in response to the prior **Federal Register** notice proposing *approval* of the Order are available for public inspection and copying during normal business hours at: U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**SUPPLEMENTARY INFORMATION:** On January 7, 1987, the Regional Administrator of EPA's Region VII Office published in the **Federal Register**,

Vol. 52, No 4, pgs 562 through 563, Wednesday, January 7, 1987, a notice proposing *approval* of a delayed compliance order issued by the Missouri Air Conservation Commission to the American Can Company. The notice notified the source that approval of the Missouri Order does not preclude assessment of compliance penalties under section 120 of the Act, and asked for public comments by February 6, 1987, on EPA's proposed *approval* of the Order. No comments were received during the comment period.

Therefore, the delayed compliance order issued to the American Can Company is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the American Can Company on a schedule to bring its three-piece can coating and end seal operations in St. Louis, Missouri, into compliance as expeditiously as practicable with Missouri Regulation 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, a part of the federally-approved Missouri State Implementation Plan. The Order also imposes increments of progress which must be achieved for the installation of control equipment and reporting on compliance progress. If the conditions of the Order are met, it will permit the American Can Company to delay compliance with the SIP regulations covered by the Order until December 31, 1986, for installation of low solvent technology or November 15, 1987, for installation of control equipment. The company is unable to immediately comply with these regulations.

EPA has determined that its *approval* of the Order shall be effective upon publication of this notice because of the need to immediately place the American Can Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Missouri State Implementation Plan.

**List of Subjects in 40 CFR Part 65**

Air pollution control.

Dated: May 5, 1987.

**Lee Thomas,**

*Administrator.*

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

## PART 65—DELAYED COMPLIANCE ORDERS

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413, 7601.

2. Section 65.301 is amended by adding the following entry to the table to read as follows:

**§ 65.301 EPA Approval of State delayed compliance orders issued to major stationary sources.**

* * * * *

| Source | Location | Order Number | SIP regulation(s) involved | Date of FR proposal | Final compliance date |
|---|---|---|---|---|---|
| American Can Co.. | St. Louis, MO .... | DCO–V11–026..... | 10CSR10–5.330..... | Jan. 7, 1987.... | Dec. 31, 1986, Nov. 15, 1987. |

[FR Doc. 87–10782 Filed 5–11–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[Gen. Docket No. 83–989; FCC 87–143]**

### Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials

**AGENCY:** Federal Communications Commission.

**ACTION:** Third Report and Order.

**SUMMARY:** The Commission has amended § 64.201 of the Commission's rules, 47 CFR 64.201, to provide that as an alternative to requiring prepayment by credit card, or, establishing an access code system, persons may restrict access by minors to adult message services provided by telephone by scrambling the message. Use of one of these methods to restrict access by minors to adult message services will establish the defense to prosecution created under section 223(b), 47 U.S.C. 223(b), which makes it unlawful to transmit to minors by telephone obscene or indecent communications. The Commission additionally required that in order to obtain the defense to prosecution of section 223(b) adult message providers on public announcement services tariffed at the Commission must request from the carrier offering the service that calls to their service be subject to billing notification as an adult message service.

**EFFECTIVE DATE:** June 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patrick Donovan, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1832.

**SUPPLEMENTARY INFORMATION:**

This is a summary of the Commission's Third Report and Order adopted April 16, 1987, and released May 4, 1987, Gen Docket 83–989 amending § 64.201 of the Commission's rules.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Commission Decision**

In *Carlin Communications v. FCC*, 787 F.2d 846 (2d Cir. 1986) the court invalidated § 64.201 of the Commission's rules, 47 CFR 64.201, insofar as it applied to areas served by the New York Telephone Company. Section 64.201 provided that requiring prepayment by credit card or use of an access code system were acceptable methods by which telephone adult message services may restrict access by minors. Compliance with § 64.201 by adult message providers establishes a defense to prosecution under section 223(b) of the Communications Act, 47 U.S.C. 223(b), regarding transmission of obscene or indecent materials to minors. The court found that the public announcement service offered by the New York Telephone Company was non-interactive in that it was not possible for message providers to transmit access codes to the message provider. The court additionally found that the Commission had not adequately explored whether use of customer premises equipment by parents might not be a less burdensome method for adult message sponsors to restrict access by minors.

In its *Third Report and Order*, summarized here, the Commission reestablished access codes as an acceptable method to restrict access by minors to adult message services in areas served by the New York Telephone Company. The Commission clarified that with purchase of additional communications services from the telephone company the message provider could obtain an

interactive capability enabling it to implement an access code system. The Commission additionally identified scrambling as an acceptable method to restrict access by minors to adult message services. Under this approach the message would be scrambled so that it would be unintelligible without use of a descrambler by adult callers. The Commission stated that it would consider exercising its authority if necessary to prohibit sale of descramblers to minors. As a result of the Commission's decision in the *Third Report and Order* adult message providers, in areas served by the New York Telephone Company as well as all other parts of the country, may comply with § 64.201 by either requiring prepayment by credit card, establishing an access code system, or scrambling the message.

The Commission further found that billing notification would be a significant enhancement to the effectiveness of access codes or scrambling where a minor is able to obtain an access code or a descrambler. Under billing notification, calls to adult message numbers would be labeled as such on telephone bills. The Commission requested that AT&T amend its tariff within 30 days to provide such notification for calls to adult message services on its Dial-It 900 service. In order to comply with § 64.201 adult message providers on public announcement services tariffed at the Commission, such as AT&T's Dial-It 900 service, are required to request from the carrier that calls to their services be subject to billing notification. This latter requirement, applicable only to message sponsors on public announcement services tariffed at the Commission, applies in addition to the requirement that such message sponsors use either prepayment by credit card, access codes or scrambling in order to restrict access by minors. However, the Commission declined to order billing notification for interstate calls to locally tariffed adult message services, because it was not clear on the present record this would be economically feasible. With respect to the issue of using customer premises equipment as a method of restricting access by minors to adult message services, the Commission found that use of such devices would be ineffective in that they can be easily disabled by minors, and could be prohibitively expensive if message providers were required to pay for some of the cost of providing such equipment to parents.

**Ordering clauses**

50. Accordingly, it is ordered, that Part 64 of the Commission's rules and regulations is amended as set forth in the attached Appendix effective June 15, 1987.

51. It is further ordered, that the American Telephone and Telegraph Co. shall submit to the Commission within fifteen days from the release date of this item complete technical specifications on the scrambling techniques described by it in this proceedings.

52. It is further ordered, that the Secretary shall cause a summary of this decision to be printed in the **Federal Register** and shall send a copy to the Chief Counsel for the Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a) (1980).

53. Authority for this action is contained in section 8(c) of the Federal Communications Authorization Act of 1983, Pub. L. No. 98-214, December 8, 1983.

**List of Subjects in 47 CFR Part 64**

Communications common carriers, Communications equipment, Telephone, Obscene or indecent communications.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

## PART 64—[AMENDED]

Part 64, Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation from Part 64 continues to read:

**Authority:** Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

2. Section 64.201 is revised in its entirety as follows:

**§ 64.201 Restrictions on obscene or indecent telephone message services.**

It is a defense to prosecution under section 223(b) of the Communications Act of 1934, as amended, 47 U.S.C. 223(b), that the defendant has taken one of the actions set forth in paragraph (a), (b), or (c) of this section to restrict access to prohibited communications to persons eighteen years of age or older, and has additionally complied with paragraph (d) of this section, where applicable:

(a) Requires payment by credit card before transmission of the message; or

(b) Requires an authorized access or identification code before transmission of the message, and where the defendant has:

(1) Issued the code by mailing it to the applicant after reasonably ascertaining through receipt of a written application that the applicant is not under eighteen years of age; and

(2) Established a procedure to cancel immediately the code of any person upon written, telephonic or other notice to the defendant's business office that such code has been lost, stolen, or used by a person or persons under the age of eighteen, or that such code is no longer desired; or

(c) Scrambles the message using frequency inversion techniques so that it is unintelligible and incomprehensible to the calling party without use of a descrambler by the calling party; and

(d) Where the defendant is a message sponsor or subscriber to mass announcement services tariffed at this Commission and such defendant prior to the transmission of the message has requested in writing to the carrier providing the public announcement service that calls to his message service be subject to billing notification as an adult telephone message service.

[FR Doc. 87-10739 Filed 5-11-87; 8:45 am]

BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 52, No. 91
Tuesday, May 12, 1987

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 550

### Pay Administraton (General)

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to revise its regulations for computing overtime pay. This change is necessary to clarify language in our regulations that has been subject to differing interpretations. The proposed revision would prevent inconsistent application of Government-wide pay administration policies with respect to employees on certain unusual work schedules.

**DATE:** Comments must be submitted on or before July 13, 1987.

**ADDRESS:** Send or deliver written comments to Barry E. Shapiro, Deputy Assistant Director for Pay Programs, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 3353, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Edward I. Magee, (202) 632–5056.

**SUPPLEMENTARY INFORMATION:** A recent opinion of the Comptroller General of the United States (*John Nyberg, et al.* (B–212699, February 10, 1986)), has raised some technical questions about the computation of overtime pay for employees on certain unusual work schedules. The employees in the *Nyberg* case had a work schedule that consisted of four 10-hour shifts in 3 days and an additional 8 hours of work on a fourth day. (This work schedule was not established under the Alternative Work Schedules authority, and the employees are entitled to overtime pay for work in excess of 8 hours in a day *or* 40 hours in a week under 5 U.S.C. 5542(a).)

The problem that has surfaced as a result of the recent Comptroller General opinion is that there are two distinct types of overtime work that are performed on a daily basis: (1) Overtime work in excess of 8 hours in a day *outside* the basic 40-hour workweek; and (2) overtime work in excess of 8 hours in a day *within* the basic 40-hour workweek. For employees on normal work schedules (five 8-hour days), daily overtime work is outside the basic 8-hour workday and also outside the basic 40-hour workweek and is paid at the overtime rates specified in 5 U.S.C. 5542(a)—normally, one and one-half times the hourly rate of basic pay. Furthermore, OPM regulations provide that hours of work over 8 in a day will *not* be counted in calculating hours of work over 40 in the administrative workweek. (See 5 CFR 550.111.) The purpose of this regulation is to avoid paying an employee twice for overtime work that is outside the basic workday and also outside the basic workweek.

For employees on the unusual work schedule in the *Nyberg* case (four 10-hour shifts in 3 days and 8 hours of work on a fourth day), the daily overtime work is within the basic 40-hour workweek. In addition to basic pay for these basic work hours, the Comptroller General held that such employees normally must be paid at an overtime rate of one-half times the hourly rate of basic pay. OPM concurs with this overtime rate for overtime work within the basic 40-hour workweek. However, the Comptroller General cites the same OPM regulation (5 CFR 550.111) as the basis to exclude the daily overtime hours in calculating hours of work in excess of 40 in the administrative workweek. OPM does not concur with this latter determination.

Employees who work certain unusual schedules, in which daily overtime hours are within the basic 40-hour workweek, are first entitled to basic pay for the hours that are a part of their basic 40-hour workweek. Further, if these basic hours are also in excess of the daily overtime standard established by law, the employees are entitled to additional overtime pay computed at "one-half" again for these same hours. It follows that the hours that constitute the basic 40-hour workweek (whether basic hours or overtime hours) should be included in calculating hours of work in excess of the basic 40-hour workweek. The payment of "one-half" overtime pay for these basic hours should not exclude them from being counted in the determination of an employee's entitlement to overtime pay on a weekly basis at one and one-half times the hourly rate of basic pay. To exclude these hours from the determination of an employee's entitlement to overtime pay is contrary to the result intended by 5 CFR 550.111.

The proposed regulations would clearly distinguish between the two types of overtime work identified above and would provide that only the daily overtime hours that are outside the basic workweek are to be excluded in the calculation of weekly overtime hours.

Finally, we note that the Comptroller General has recommended that we revise the regulations on the computation of overtime pay under the Fair Labor Standards Act (FLSA) to provide that the comparison of overtime pay entitlements under title 5, United States Code, and the FLSA must be made on a total pay to total pay basis, rather than on an overtime pay to overtime pay basis, as required by 5 CFR 551.513. For the reasons explained above, we have determined that it would be more appropriate to revise our regulations in Part 550 of Title 5, Code of Federal Regulations, to ensure consistent application of the rules for calculating overtime pay in this unusual situation.

### E.O. 12291, Federal Regulation

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

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices that affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director,*

Accordingly, OPM proposes to amend 5 CFR Part 550 as follows:

## PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for Subpart A of Part 550 is revised as set forth below

and the authority citations following all the sections in Subpart A are removed:

Authority: 5 U.S.C. 5548 and 6101(c).

2. In § 550.111, paragraph (a) is revised as set forth below; paragraphs (b) through (e) are redesignated as paragraphs (c) through (f), respectively; a new paragraph (b) is added to read as set forth below; and the newly redesignated paragraph (f) is revised as set forth below:

**§ 550.111 Authorization of overtime pay.**

(a) Except as provided in paragraph (e) of this section, overtime work means work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is—

(1) Officially ordered or approved; and

(2) Performed by an employee.

(b) Except as provided in paragraph (f) of this section, hours of work in excess of 8 in a day are not included in computing hours of work in excess of 40 in an administrative workweek.

* * * * *

(f) Notwithstanding paragraphs (a) and (e) of this section, when an employee's basic workweek includes a daily tour of duty of more than 8 hours, the department shall pay the employee at the houly rate of basic pay, plus the difference between the overtime rate and hourly rate of basic pay, for each overtime hour of the daily tour of duty within the basic workweek. These overtime hours are included in calculating hours of work in excess of 40 in an administrative workweek.

[FR Doc. 87-10735 Filed 5-11-87; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 59

### Importation of Egg Products

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is proposing to amend the regulations for the mandatory inspection of eggs and egg products to add The Netherlands to the list of countries from which egg products are eligible to be imported into the United States. Reviews of the Netherlands' laws, regulations, and other materials, and onsite reviews of its inspection system indicate that the system is acceptable pursuant to the Egg Products Inspection Act (EPIA) and regulations thereunder. This action will enable egg products from approved plants in The Netherlands to be imported into the United States.

**DATE:** Comments must be received on or before July 13, 1987.

**ADDRESS:** Written comments may be mailed to D.M. Holbrook, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, Room 3944, South Agriculture Building, Washington, DC 20250. (For further information regarding comments, see "Comments" under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Howard M. Magwire, Assistant Chief, Grading Branch (202/447-3272).

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291

An initial determination has been made that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have 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. This proposed regulation has been reviewed for cost effectiveness under U.S. Department of Agriculture (USDA) Secretary's procedures established in Departmental Regulation 1512-1 implementing Executive Order 12291. The proposal would add The Netherlands as a country from which egg products are eligible to be imported into the United States. However, it is estimated that only a small volume of egg products in comparison with domestic production will be imported annually.

#### Effect on Small Entities

The Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the amount of egg products estimated to be imported would represent a relatively small volume compared to domestic production, based on fiscal year 1986 data.

#### Comments

Interested persons are invited to submit written comments concerning these proposed revisions. Comments must be sent in duplicate to the Standardization Branch and should bear a reference to the date and page number of this issue of the Federal Register. Comments submitted on these proposed revisions will be made available for public inspection in the Washington, DC, Standardization Branch office during regular business hours.

#### Background

Section 17 of the EPIA (21 U.S.C. 1046) prohibits the importation into the United States of egg products, unless they are processed under an approved continuous inspection system of the government of the foreign country of origin and are labeled and packaged in accordance with the standards of the Act and regulations issued thereunder. The regulations addressing imported egg products are contained in 7 CFR Part 59. In these regulations, the Administrator has established procedures by which foreign countries desiring to export egg products to the United States may become eligible to do so.

Section 59.910 of the egg products inspection regulations (7 CFR 59.910) provides that an egg products inspection system maintained by a foreign country, with respect to plants preparing products in that country for export to the United States, must ensure compliance of such plants and their egg products with requirements meeting the applicable provisions of the EPIA and the regulations that are applied to official plants in the United States and their egg products.

Before eligibility is granted, a complete evaluation of the country's inspection system is made by USDA personnel. This evaluation consists of two processes—document reviews and onsite reviews of system operations. The document review process involves a review of the laws, regulations, and other written materials used by the country to operate the inspection program. Each point of the country's laws, regulations, and other material is compared with United States requirements.

If the document review proves to be satisfactory, onsite reviews are scheduled to evaluate applicable aspects of the country's program. When all requirements of the EPIA and regulations thereunder are satisfied, the country is considered eligible to import products into the United States.

#### The Netherlands—Review Results

After reviewing all of the documents submitted by The Netherlands and evaluating the findings of the onsite

reviews, the egg products inspection system of The Netherlands has been judged by AMS to be adequate to assure, with respect to plants within The Netherlands preparing product for export to the United States, compliance with requirements applicable to official plants within the United States which prepare egg products.

**Proposed Revisions**

The Agency is proposing to amend the Regulations Governing the Inspection of Eggs and Egg Products in 7 CFR Part 59 to provide for the eligibility of egg products produced in certain approved Dutch plants to be imported into the United States.

Accordingly, AMS is proposing to amend § 59.910 of the egg products inspection regulations (7 CFR 59.910(b)) to add The Netherlands to the list of countries from which egg products may be eligible for import into the United States.

**Paperwork Reduction Act**

This proposed rule would not change or require any additional collection of information from the public under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Existing information collection requirements in 7 CFR Part 59 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and assigned OMB Control Number 0581–0113.

**List of Subjects in 7 CFR Part 59**

Shell eggs, Egg products, Mandatory inspection service.

For reasons set out in the preamble and under authority contained in the EPIA (21 U.S.C. 1031–1056), it is proposed to amend Title 7, Part 59 of the Code of Federal Regulations as follows:

## PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation of Part 59 continues to read as follows:

**Authority:** Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

**§ 59.910 [Amended]**

2. Paragraph (b) of § 59.910 (7 CFR 59.910(b)) is amended by adding alphabetically the following country to the list of countries from which egg products are eligible to be imported into the United States: The Netherlands.

Done at Washington, DC, on: April 22, 1987.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 87–10821 Filed 5–11–87; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Parts 907 and 908**

## Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Withdrawal of Proposed Amendment Specifying Requirements Regarding Continuance Referendum Petitions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This document withdraws a proposed rule to amend the administrative rules and regulations under the marketing orders covering California-Arizona navel and Valencia oranges specifying requirements for continuance referendum petitions. After a review of the comments received on the proposal, it has been determined that there is an inadequate basis for the requirements proposed regarding continuance referendum petitions.

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C., 20250 (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This action withdraws a proposed rule to amend the administrative rules and regulations established under Marketing Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and a designated part of California and Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and a designated part of California. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Marketing Orders Nos. 907 and 908 were amended effective January 11, 1985, to revise §§ 907.83(d) and 908.83(d), respectively, to specify that continuance referenda be conducted when recommended by the Navel Orange Administrative Committee or the Valencia Orange Administrative Committee (hereinafter referred to as the "committees"). These committees administer their respective marketing orders locally.

Section 907.83(d) and 908.83(d) further specify that the committees should develop such rules and regulations as are necessary to establish the basis for recommendations to conduct such referenda. The committees recommended requirements for continuance referendum petitions, and a proposed rule was published in the July 19, 1985, issue of the **Federal Register** (50 FR 29405) to add new §§ 907.183 and 908.183 entitled "Referenda" to the administrative rules and regulations established under the orders.

The July 19, 1985, proposal contained the following recommendations: (1) A continuance referendum should be requested whenever the committee is petitioned, in writing, by at least 25 percent of the producers who produced navel or Valencia oranges for market within the production area during the previous year; (2) the petitioning producers must have produced for market at least 22 percent of the volume of oranges produced during that fiscal year within the production area; and (3) all signatures shall be inscribed on the petition during a six-week period.

A comment on that proposal was submitted on behalf of Sequoia Orange Company, Inc., in opposition to several aspects of the proposed rule. The commenter's objections included the following: (1) The 25 percent signature requirement was too high; (2) the six-week signature period was too short; and (3) the producers' volume of production is irrelevant.

It is the Department's view that the committee's recommendation requiring 25 percent participation for producer petitions significantly exceeds the level of producer support reasonably necessary for the Secretary to consider holding a continuance referendum. In fact, given that producer participation in such referenda averages only 50–60 percent of all eligible producers, 25 percent of all producers would represent 40–50 percent of the total number of producers expected to vote in a referendum. The Department also felt that the six-week period proposed for inscribing signatures on the petition was too short.

As a result of further USDA review and evaluation of the original proposal and the comment received from Sequoia Oranges Company, Inc., the proposed rule for continuance referendum petitions was revised and published in the **Federal Register** on April 8, 1986 (51 FR 11931). This proposal recommended the following revisions to the July 19, 1985, proposed rule: (1) The prerequisite percentage of producers needed to sign a petition requesting a continuance referendum was reduced from 25 percent to 10 percent; (2) a requirement that petitioning orange producers

represent a specified percentage of the volume of oranges produced under the appropriate marketing order was eliminated; and (3) the six-week period proposed for gathering signatures on the petition was revised to specify a 12-week or three-month period to ensure that producers would be provided ample opportunity to sign such a petition.

A total of 48 comments were received on the revised proposal. Forty-seven comments opposing the proposed requirements regarding continuance referendum petitions were received from growers and handlers of California-Arizona navel and Valencia oranges and other industry members. One comment supporting the proposal was received from Sequoia Orange Company, Inc.

The principal argument advanced in opposition to the modified proposal was that the 10 percent grower requirement was too low and could enable a small minority of growers to keep the navel and Valencia orange industries involved in one continuance referendum after another. The commenters stated that this would be time-consuming, expensive, and could seriously reduce the effectiveness of the marketing orders. The commenters were also opposed to the 12-week petition period and the deletion of the original volume requirement. The commenters opposed to the proposed modified recommendations fully supported the initial recommendations published in the July 19, 1985 issue of the **Federal Register** (50 FR 29405).

The lone proponent of the modified proposal supported the recommendations with some modifications, including lowering the 10 percent requirement to 5 percent and extending the petition period to one year.

It is the Department's position, based upon a thorough review of the comments received on the two proposals and other available information that the record does not at this time support establishing the proposed requirements for petitioning the Navel Orange Administrative Committee and Valencia Orange Administrative Committee to recommend that the Secretary conduct a continuance referendum because: (1) The committees' proposed requirements for the percentage of petitioning producers and the volume of production they should represent significantly exceeds the levels reasonably necessary to indicate producer support for a continuance referendum; and (2) the April 8, 1986, proposal, which contained less rigorous requirements for petitioners, was not supported by the majority of the industry.

Therefore, the proposed amendment published in the **Federal Register** on April 8, 1986, (51 FR 11931) is hereby withdrawn.

**List of Subjects in 7 CFR Parts 907 and 908**

Marketing agreements and orders, California, Arizona, Oranges (Navel and Valencia).

Dated: May 6, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 87-10820 Filed 5-11-87; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF ENERGY

### Office of General Counsel

### 10 CFR Part 1010

### Conduct of Employees; Statements of Employment and Financial Interest, and Interests in Energy Concerns

**AGENCY:** General Counsel Office, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy proposes to amend the Department's Conduct of Employees regulations (10 CFR Part 1010) by revising the provisions on exemption of Department of Energy employees at or below GS-12 from the financial reporting requirements of section 603 of the Department of Energy Organization Act (Pub. L. 95-91).

**DATES:** Comments must be received not later than June 11, 1987.

**ADDRESS:** Address comments to the Office of Assistant General Counsel for General Law, GC-43, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The envelope must also display the following designation: "Revision of Appendix I—Conduct of Employees Regulations."

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Buchanan, Attorney-Advisor, Office of Assistant General Counsel for General Law, GC-43, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1522.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 603(a) of the Department of Energy Organization Act (Pub. L. 95-91) requires all employees of the Department of Energy to file a report disclosing their energy concern interests with the Secretary of Energy not later than May 15 of each year. Such reports are also required to be filed within 30 days of commencement and termination of employment with the Department. Section 603(c) of the Act requires the Secretary to identify, by rule, specific positions, or classes thereof, which are of a nonregulatory or nonpolicymaking nature at or below grade GS-12, and to exempt such positions and the individuals occupying those positions from the filing requirements.

The requirement for identification of exempt positions is implemented by § 1010.403(a) of the Department of Energy Conduct of Employees regulations (10 CFR Part 1010), which provides for a listing of exempt positions in Appendix I of the regulations. Currently, such exempt positions are listed in Appendix I by position title, series, and grade, and there is a different listing for each Departmental element. This has proved to be an inefficient method of identification.

The proposed rule would amend § 1010.403(a) and Appendix I to provide for identification of exempt positions on a Department-wide basis, rather than by Departmental element, and by series and grade only, rather than by individual position titles. In addition, the proposed rule would permit the Counsel (defined in § 1010.103(f) of the Conduct of Employees regulations to mean the General Counsel of the Department or the General Counsel of the Federal Energy Regulatory Commission, as appropriate, or their delegates) to identify, from time to time, specific positions with duties and responsibilities substantially similar to those already covered by Appendix I, and to exempt such specific positions from the filing requirements. A list of such exempt positions will be maintained by the Counselor. The list of specific positions will be published at intervals established by the Counselor.

#### II. Opportunity for Public Comment

Section 501 of the Department of Energy Organization Act provides that if the Secretary determines that a substantial issue of fact or law exists or that a proposed rule is likely to have a substantial impact on the Nation's economy or on large numbers of individuals or businesses, an opportunity for oral presentation of views, data and arguments shall be provided. The Department of Energy has concluded that this proposed regulation does not involve a substantial issue of fact or law and that it will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, the Department does not plan to hold a

public hearing. Interested persons are invited to submit written comments with respect to the proposed regulation set forth in this notice. Three copies of written comments should be submitted by June 11, 1987, as indicated in the "Address" section of this preamble.

### III. Review Under Executive Order 12291

It has been determined that the proposed regulation is not a "major rule" within the meaning of Executive Order 12291 (February 17, 1981) because the amendment will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

### IV. Review Under the Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (Pub. L. 96–354), it is hereby certified that the proposed regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. It is related solely to internal agency organization, management, or personnel.

### V. Review Under the National Environmental Policy Act

DOE has determined that this proposal does not constitute a major Federal action significantly affecting the quality of the human environment.

### VI. Review Under the Paperwork Reduction Act

This proposal does not impose a "collection of information" requirement, as defined in 44 U.S.C. 3502(4).

### List of Subjects in 10 CFR Part 1010

Conflict of interest; Conduct of employees.

In consideration of the foregoing, it is proposed to amend Part 1010 of Title 10 of the *Code of Federal Regulations*, as set for below:

Issued in Washington, DC., on April 30, 1987.

**John S. Herrington,**

*Secretary of Energy.*

## PART 1010—CONDUCT OF EMPLOYEES

1.The authority citation for Part 1010 is revised to read as follows:

**Authority:** Sec. 601–608, 644, Pub. L. 95–91, 91 Stat. 591–596, 599 (42 U.S.C. 7211–7218, 7254); Sec. 522, Pub. L. 94–163, 89 Stat. 961 (42 U.S.C. 6392); Sec. 308 Pub. L. 95–39, 91 Stat. 189 (42 U.S.C. 5816a); 5 U.S.C. (app. 4) 207(a); 18 U.S.C. 201–209; E.O. 11222, as amended by E.O. 12565.

2. Section 1010.403 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

**§ 1010.403 Statement of employment and financial interest, and interests in energy concerns.**

(a) (Applicable to FERC) The filing requirements of this section are applicable to all DOE employees, except those whose positions are exempt pursuant to paragraph (f) of this section.

* * * * *

(f) (Applicable to FERC) (1) Section 603(c) of Pub. L. 95–91 (42 U.S.C. 7213) requires the Secretary to identify specific positions, or classes thereof, within the Department which are of a nonregulatory or nonpolicymaking nature at or below GS–12 of the General Schedule, and to exempt such positions or classes and the individuals occupying those positions from the reporting requirements of section 603 of the Act. Pursuant to section 603(c), the following positions are exempt from the filing requirements of this section:

(i) All positions in the classes, identified by series and grade, listed in Appendix I, except those occupied by individuals described in paragraph (f)(2) of this section; and

(ii) Any specific position at or below GS–12 of the General Schedule, or the equivalent, the duties and responsibilities of which are found by the Counselor to be substantially similar to those included in the classes listed in Appendix I to this part. A list of specific positions that have been exempted from the filing requirements of this section pursuant to this paragraph shall be maintained by the Counselor. The list shall be published at intervals established by the Counselor.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, an individual who is a supervisory employee (see § 1010.103(t) for definition of "supervisory employee"), a member of an award fee board, or a contracting officer's technical representative, is not exempt from the reporting requirements of section 603 of Pub. L. 95–91.

3. Appendix I to Part 1010 is revised to read as follows:

**Note.**—Appendix I, as originally published at 44 FR 24709 *et seq.* (April 6, 1979), did not appear in the Code of Federal Regulations. The revised Appendix I will appear in the Code of Federal Regulations.

**Appendix I—List of Classes of Positions Exempt From the Disclosure Requirements of Section 603 of the DOE Organization Act**

The following is a list of classes of DOE positions (identified by series and grade) within the Department of Energy that are of a nonregulatory or nonpolicymaking nature at or below GS–12 of the General Schedule or the equivalent. The individuals who occupy positions that are within these classes (except individuals described in § 1010.403(f)(2)) have been exempted from the financial disclosure requirements of section 603 of the Department of Energy Organization Act (Pub. L. 95–91). (Individuals in certain confidential positions in the excepted service who fall within these classes may, nevertheless, be required to file a financial disclosure report under the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended).)

All positions at GS–12 or below in the following occupational series:

| | | |
|---|---|---|
| 018 | 346 | 1016 |
| 019 | 350 | 1020 |
| 020 | 351 | 1035 |
| 023 | 356 | 1060 |
| 028 | 361 | 1071 |
| 080 | 385 | 1082 |
| 081 | 388 | 1083 |
| 084 | 390 | 1084 |
| 085 | 391 | 1087 |
| 090 | 392 | [1]1101 |
| 099 | 393 | 1103 |
| 110 | 394 | 1104 |
| 130 | 401 | 1105 |
| 131 | 403 | 1106 |
| 132 | 404 | 1107 |
| 134 | 408 | 1150 |
| 140 | 430 | 1160 |
| 150 | 460 | 1202 |
| 160 | 462 | 1301 |
| 170 | 482 | 1306 |
| 180 | 486 | 1410 |
| 199 | 499 | 1311 |
| 201 | 501 | 1320 |
| 203 | 503 | 1321 |
| 212 | 525 | 1340 |
| 221 | 530 | 1341 |
| 230 | 540 | 1350 |
| 233 | 544 | 1370 |
| 235 | 560 | 1371 |
| 246 | 561 | 1372 |
| 260 | 590 | 1373 |
| 301 | 599 | 1374 |
| 302 | 602 | 1399 |
| 303 | 610 | 1410 |
| 304 | 690 | 1411 |
| 305 | 802 | 1412 |
| 309 | 806 | 1421 |
| 312 | 807 | 1510 |
| 313 | 808 | 1515 |
| 318 | 809 | 1520 |

| | | |
|---|---|---|
| 322 | 817 | 1521 |
| 332 | 818 | 1529 |
| 334 | 856 | 1530 |
| 335 | 899 | 1531 |
| 341 | 904 | 1550 |
| 342 | 950 | 1599 |
| 343 | 963 | 1601 |
| 344 | 986 | |
| 345 | 1001 | |

[1] Except Office of Hearings and Appeals.—For Office of Hearings and Appeals, exemption for series 1101 positions is at GS-9 and below.

All positions at GS–12 or below in the following occupational series:

| | |
|---|---|
| 1640 | 2030 |
| 1654 | 2050 |
| 1670 | 2101 |
| 1701 | 2102 |
| 1712 | 2130 |
| 1910 | 2131 |
| 2001 | 2132 |
| 2003 | 2134 |
| 2005 | 2151 |
| 2010 | 2181 |

All positions at GS–11 or below in the following occupational series:

510

All positions at GS–9 or below in the following occupational series:

| | |
|---|---|
| 801 | 893 |
| 803 | [2]896 |
| 804 | 1101 |
| 810 | 1102 |
| 819 | 1130 |
| 830 | 1170 |
| 840 | 1171 |
| 850 | 1220 |
| 855 | 1221 |
| 880 | 1222 |
| 811 | |

[2] Office of Hearings and Appeals.—For all other, exemption for series 1101 is at GS–12 and below.

[FR Doc. 87–10796 Filed 5–11–87; 8:45 am]
BILLING CODE 6450–01

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1015

### Freedom of Information Act Regulations; Proposed Amendments on Fees

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed amendments.

**SUMMARY:** When members of the public are provided documents under the Freedom of Information Act, the Commission may impose fees for such services as duplication and searching. The Commission is proposing to amend its regulations so that (1) the fees will reflect more accurately the Commission's direct (actual) costs of providing the services and (2) the fees will conform to the Freedom of Information Reform Act of 1986.

**DATES:** Comments on the proposals are due no later than June 11, 1987. The amendments are proposed to become effective 30 days after they are issued in final form.

**ADDRESS:** Comments should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Alan Shakin, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6980.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

The Commission's existing regulations on Freedom of Information Act (FOIA) fees appear at 16 CFR 1015.9. They provide, in essence, that fees will be charged for FOIA services, but "certain information provided routinely in the normal course of doing business will be provided at no charge" (§ 1015.9(a)); that the Commission's Secretary determines and levies fees and may waive or reduce them "when the furnishing of the information can be considered as primarily benefiting the general public or when special circumstances warrant" (§ 1015.9(b)); that the Secretary's determination of fees may be appealed to the Commission (§ 1015.9(b)); that the first $25 of fees will be waived (§ 1015.9(c)); and that fees are not levied where the requested documents are not provided or made available (§ 1015.9(d)).

The existing regulations also direct that payment should be by check or money order payable to the Consumer Product Safety Commission (§ 1015.9(e)). Finally, they set forth the schedule of charges for FOIA services: Searches, computer time, reproduction, postage, microfiche, and microfilm (§ 1015.9(f)).

In October 1986 the Commission voted to propose certain changes to these FOIA fee regulations. Before it did so, however, the Freedom of Information Reform Act of 1986 ("Reform Act," at sections 1802–04 of Pub. L. 99–570, the Anti-Drug Abuse Act of 1986) was enacted.

The Commission's reasons for wanting to amend its FOIA fee provisions were to make the fees better reflect the direct (actual) costs of responding to FOIA requests and to clarify some provisions. The Reform Act addresses the direct-costs issue and other issues that require changes to the Commission's fee provisions.

On March 27, 1987 the Office of Management and Budget issued its final Fee Schedule and Guidelines ("OMB Guidelines") which the Reform Act required OMB to issue. 52 FR 10011. On April 2, 1987 the Department of Justice's Office of Legal Policy issued a memorandum on New FOIA Fee Waiver Policy Guidance ("DOJ Memorandum"). In preparing its proposed amendments, the Commission has closely followed the guidance provided in these two documents.

#### B. Proposed amendments

The following paragraphs summarize the proposed amendments and discuss the rationales for them (the citations are to the provisions proposed below, not to the existing provisions):

1. The Commission would provide certain routine information at no charge; otherwise, the Secretary would determine and levy FOIA fees in accordance with the regulations (§ 1015.9(a)). This provision shortens, but does not change, existing provisions.

2. Checks and money orders would be payable to the Treasury of the United States, instead of to the CPSC, but would continue to be sent to the CPSC (§ 1015.9(b)). This would make fee collection administratively easier because the U.S. Treasury eventually receives funds collected for FOIA responses.

3. Under the Reform Act and OMB Guidelines, different categories of requesters are to be charged differently for costs. The four types of requesters are: (a) Commercial use requesters; (b) educational and non-commercial scientific institution requesters; (c) requesters who are representatives of the news media; and (d) all other requesters. The three types of costs are duplication, search, and review.

The Commission's proposed amendments adopt the specific definitions contained in the OMB Guidelines for the terms "commercial use request," "educational institution," "non-commercial scientific institution," "representative of the news media," "duplication," "search," and "review," as well as "direct costs" (§ 1015.9(c)).

4. Commercial use requesters may be charged for duplication, search, and review costs; educational institution and non-commercial scientific institution requesters and representatives of the news media may be charged for duplication costs; and all other requesters may be charged for duplication and search costs (§ 1015.9(d)). In addition, the following discussion illustrates how the Commission would impose fees under the proposed amendments:

Section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) requires the Commission to give manufacturing and private labeling firms the opportunity to comment on documents in which they are identified. The Commission then reviews those comments and decides whether to withhold the documents. If so, the documents are often withheld because of a specific statutory provision, section 6(b), which makes them exempt from disclosure under Exemption 3 of the FOIA (5 U.S.C. 552(b)(3)).

The time spent processing documents under section 6(b) of the CPSA would be a "review" cost under the proposed amendments, since "review" is defined to include the examination of documents to determine whether they are permitted to be withheld. Depending on the nature and length of the firms' comments, such review time is sometimes considerable.

The Commission's experience is that the vast majority of FOIA requests from law firms are seeking information for use in product liability matters. Although product liability lawsuits are designed to reimburse victims for injuries suffered, requests from the lawyers who represent them may fall within the proposed definition of "commercial use requests." The Commission is especially interested in receiving public comments on the question of whether such requests should generally be treated as commercial ones, or under the category of "other."

5. Some changes would be made to the fee structure (§ 1015.9(e)), to make fees reflect direct (actual) costs more closely than the existing fees do:

(a) The cost of a search does not now depend on what type of employee conducted it. Under the proposed amendments, clerical personnel would be "billed out" at one rate ($3.00 for each 15-minute period), while non-clerical and professional and managerial personnel would be billed out at a higher rate ($4.90 for each 15-minute period). In addition, any special costs of sending records from field locations to headquarters for review would be included in search fees, at the clerical rate.

(b) Computer time rates would be revised. Postage would be charged, on a direct-cost basis, only for special handling. The rates for materials and services not specified in the regulations would be on direct-cost bases, as determined by the Secretary.

(c) The costs of review, which are not currently charged, would be billed at $4.90 for each 15-minute period, since lawyers and other professionals perform this work.

6. The Reform Act, OMB Guidelines, and DOJ Memorandum address the circumstances under which agencies must waive FOIA fees. First, 100 pages of duplication and two hours of search time must be waived, except for commercial users. Second, fees must be waived (or, in rare cases, reduced) if disclosure of the requested information is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

The Commission currently waives the first $25 of fees for all requests. It also directs the Secretary to waive or reduce fees when the disclosure would primarily benefit the general public or when special circumstances warrant. These provisions must be amended, and the proposed amendments would do so as follows:

For commercial use requests, there would be no automatic waiver (§ 1015.9(f)(1)). For educational institutions, non-commercial scientific institutions, and representatives of the media (for which the Commission only imposes duplication costs), there would be a $10 waiver for duplication costs (at $.10/page, 100 pages of duplication would cost $10) (§ 1015.9(f)(2)). For any other requester (for which the Commission imposes duplication and search costs), the waiver would be $10 for duplication costs and $40 for search costs (§ 1015.9(f)(3)). The cost of a two-hour search would vary, depending on the status of the employee searcher, from $24.00 to $39.20 (computer searches are excluded). For administrative convenience, the Commission would waive the highest possible figure for a two-hour search, $39.20, rounded off to $40.

Under the proposed amendments, the Secretary would consider all "public interest" waiver requests under the six factors outlined in the DOJ Memorandum (§ 1015.9(f) (4) and (5)). The Secretary's decisions on waivers would be appealable to the General Counsel (§ 1015.9(f)(6)).

7. Other proposed amendments concerning the assessment and collection of fees follow the OMB Guidelines:

(a) The Commission would assess interest charges on an unpaid bill, starting on the 31st day on which the billing was sent (§ 1015.9(g)(1).

(b) The Commission would assess charges for time spent searching, even if responsive documents are not located or located documents are exempt from disclosure (§ 1015.9(g)(2)). Such charges shall not exceed $25, unless the requester has authorized a higher amount.

(c) The Commission would require advance payment if (1) charges are estimated to exceed $250 and the requester has no history of payment and cannot provide satisfactory assurance of payment, or if (2) a requester has previously failed to pay within 30 days of the billing date (§ 1015.9(g)(3).

(d) The Commission would aggregate requests for billing purposes when it reasonably believes that one request has been "broken down" into a series of requests for the purpose of evading fees (§ 1015.9(g)(4).

(e) The OMB Guidelines prohibit agencies from charging a fee if the cost of collecting the fee would be equal to or greater than the fee itself. Therefore, the Commission will not charge for any request in which the total bill is less than $9.00 (§ 1015.9(g)(5)), an amount that the Commission estimates would be the average cost of processing one fee collection.

The Commission proposes to make the amendments effective 30 days after they are issued in the **Federal Register** in final form. Please note that the proposals are not Commission action within the categories listed at 16 CFR 1021.5(b) having a potential for producing environmental effects; therefore, neither an environmental assessment nor an environmental impact statement is required. In addition, because any changes in the numbers of firms affected or the amounts of fees collected under the FOIA are not expected to be substantial, the Commission certifies that the proposed amendments, if issued in final form, would not have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act. 5 U.S.C. 603(3).

**List of Subjects in 16 CFR Part 1015**

Freedom of information.

Pursuant to 5 U.S.C. 552(a)(4)(A), as amended, the Commission hereby proposes to amend 16 CFR Part 1015 as follows:

1. The authority citation for Part 1015 continues to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(i), as amended.

2. Section 1015.9 is revised to read as follows:

**§ 1015.9 Fees for production of records.**

(a) The Commission will provide, at no charge, certain routine information. For other Commission responses to information requests, the Secretary shall determine and levy fees for duplication,

search, review, and other services, in accordance with this section.

(b) Fees shall be paid by check or money order, payable to the Treasury of the United States and sent to the Commission.

(c) The following definitions shall apply under this section:

(1) "Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request.

(4) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis (see paragraph (c)(5) of this section) and which is operated solely for the purpose conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(d) A commercial use request may incur charges for duplication, search, and review. A request from an educational institution, a non-commercial scientific institution, or a representative of the news media may incur charges only for duplication. Any other request may incur charges for duplication and research.

(e) The following fee schedule will apply:

(1) Copies of documents reproduced on a standard photocopying machine: $0.10 per page.

(2) File searches conducted by clerical personnel: $3.00 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour). Any special costs of sending records from field locations to headquarters for review will be included in search fees, billed at the clerical personnel rate.

(3) File searches conducted by non-clerical or professional or managerial personnel: $4.90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(4) Review of records: $4.90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(5) Computerized records: for central processing, $0.32 per second of central processing unit (CPU) time; for printer, $10.00 per 1,000 lines; and for computer magnetic tapes or discs, direct costs.

(6) Postage: direct-cost basis for mailing requested materials, if the requester wants special handling or if the volume or dimensions of the materials requires special handling.

(7) Microfiche: $0.35 for each frame.

(8) Other charges for materials requiring special reproducing or handling, such as photographs, slides, blueprints, video and audio tape recordings, or other unusual materials: direct-cost basis.

(9) Any other service: an appropriate fee established by the Secretary, based on direct costs.

(f) Fee shall be waived as follows:

(1) No automatic fee waiver shall apply to commerical use requests.

(2) The first $10.00 of duplication costs shall be waived for requests from educational institutions, non-commercial scientific institutions, and representatives of the news media.

(3) For all other requests, the first $10.00 of duplication costs and the firsts $40 of search costs shall be waived.

(4) The Secretary shall waive or reduce fees whenever disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure of the requested information is not primarily in the commercial interest of the requester.

(5) In making a determination under paragraph (f)(4) of this section, the Secretary shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations of activities of the government.

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(v) The existence and magnitude of a commerical interest: Whether the requester has a commerical interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commerical interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commerical interest of the requester.

(6) Any determination may by the Secretary concerning fee waivers may be appealed by the requester to the Commission's General Counsel in the manner described at § 1015.7.

(g) Collection of fees shall be in accordance with the following:

(1) Interest will be charged on amounts billed, starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) Search fees wil be imposed (on requesters charged for search time) even if no responsive documents are located or if the search leads to responsive documents that are withheld under an exemption to the Freedom of Information Act. Such fees shall not exceed $25.00, unless the requester has authorized a higher amount.

(3) Before the Commission begins processing a request or discloses any information, it will require advance payment if:

(i) charges are estimated to exceed $250.00 and the requester has no history of payment and cannot provide satisfactory assurance that payment will be made; or

(ii) a requester failed to pay the Commission for a previous Freedom of Information Act request within 30 days of the billing date.

(4) The Commission will aggregate requests, for the purposes of billing, whenever it reasonably believes that a requester or group of requesters is attempting to separate a request into

more than one request for the purpose of evading fees.

(5) If a requester's total bill is less than $9.00, the Commission will not request payment.

Written comments on these proposed amendments should be submitted, preferably with four copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments are due on June 11, 1987, but late comments will be considered to the extent practicable. Received comments may be seen in the Office of the Secretary during normal business hours, in room 520, 5401 Westbard Avenue, Bethesda, Maryland.

Dated: May 6, 1987.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 87-10755 filed 5-11-87; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 101

### Proposed Amendment Relating to the Customs Service Field Organization—Port Huron, MI; Correction

**AGENCY:** Customs Service, Treasury.

**ACTION:** Proposed rule; solicitation of comments; correction.

**SUMMARY:** In Federal Register Document 87-9121, published on April 23, 1987 (52 FR 13473), it was proposed to amend the Customs Regulations to change the Customs field organization by extending the georgraphic limits of the port of entry of Port Huron, Michigan.

Before adopting the proposal, written comments were invited. It has now come to our attention that the description of the proposed expanded port limits would leave eight mile gaps between St. Clair and Marine City and between Marine City and Algonac, Michigan. The description of the corrected proposed expanded port limits is as follows:

All of the territory encompassing the cities of Port Huron, Marysville, St. Clair, Marine City and Algonac and the Townships of Port Huron, Fort Gratiot, Kimball, St. Clair, East China and the portion of Cottrellville and Clay Townships east of and including Highway M-29, all in the State of Michigan.

**DATE:** Comments must be received on or before June 22, 1987.

**ADDRESS:** Comments (perferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Richard Coleman, Office of Inspection and Control, (202-566-9425).

Dated: May 5, 1987.

**Marvin M. Amernick,**

*Acting Director, Regulations Control and Disclosure Law Division.*

[FR Doc. 87-10712 Filed 5-11-87; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 271

### Nondiscrimination in Employment in the Outer Continental Shelf

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement section 604 of the Outer Continental Shelf Lands Act Amendments (OCSLAA) of 1978 by prohibiting unlawful discrimination in employment in the OCS. This proposed rule addresses discrimination which is not otherwise prohibited by existing law and regulations.

**DATE:** Comments must be hand-delivered or postmarked no later than June 11, 1987.

**ADDRESS:** Written comments must be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091; Attention: John V. Mirabella.

**FOR FURTHER INFORMATION CONTACT:** John V. Mirabella or Mary McDonald, Telephone (703) 648-7816 or FTS 959-7816.

**SUPPLEMENTARY INFORMATION:** This proposed rule implements the policy of the Minerals Management Service (MMS) to ensure that no activity conducted pursuant to the provisions of the OCS Land Act (OCSLA) or the OCSLAA is excluded from regulations prohibiting discrimination in employment on the grounds of race, creed, color, national origin, or sex. In the OCSLAA, Congress specifically addressed the matter of discrimination in section 604 (43 U.S.C. 1863) which provides that the Secretary "shall take such affirmative action as deemed necessary . . . to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of . . . the Outer Continental Shelf Lands Act."

Subsequently, MMS initiated a rulemaking to prohibit unlawful discrimination in the award of contracts and subcontracts in activities related to the exploration for or development and production of oil, gas, or other minerals in the OCS. In response to this rule, proposed in October 1984 (49 FR 41077), comments were received from the Equal Employment Opportunity Commission (EEOC) recommending that the scope of the rule be broadened to include the prohibition of unlawful discrimination in employment by contractors and subcontractors in their contract activities related to the OCS. The MMS had previously addressed the matter of employment discrimination by incorporating into its lease certain provisions of section 202 of Executive Order 11246, as amended, and the implementing regulations of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). This Executive Order and the implementing regulations at 41 CFR 60-1 prohibit unlawful discrimination in employment in work performed under contracts with the Federal Government. The EEOC's comments were prompted by the Department of Labor's determination in a Decision on Appeal issued in 1984 that not all contractors and subcontractors of OCS lessees are subject to the OFCCP regulations because some may not meet certain criteria to qualify as contractors and subcontractors as these terms are defined in the OFCCP regulations.

After fully considering the EEOC recommendation and the pertinent laws and regulations, MMS decided to go forward with the final rule concerning discrimination in the award of contracts and subcontracts essentially as proposed and to undertake a separate rulemaking prohibiting discrimination in employment. The final rule prohibiting discrimination in the award of contracts and subcontracts at 30 CFR Part 270 was issued on May 22, 1985 (50 FR 21048).

In its review of existing legal instruments pertaining to discrimination in employment, MMS has reassessed their relevance to the mandates of the OCSLAA on this matter. The basic legislation generally prohibiting discrimination in employment in the United States on the grounds of race, creed, color, national origin, or sex is the Civil Rights Act of 1964 and its amendments. The implementing

regulations for this law are issued and enforced by the EEOC and are found at 20 CFR Chapter XIV. Executive Order 11246, as amended, incorporates the substantive legal standards of the Civil Rights Act of 1964 and pertains to matters involving the Federal Government. Regulations implementing this Order are found at 41 CFR Part 60–1 and are the responsiblity of the Department of Labor's OFCCP. In addition, many States and localities have similar laws prohibiting unlawful discrimination. In view of the numerous existing means for addressing cases of possible unlawful discrimination in employment, MMS believes that the great majority of potential instances of such discrimination involving OCS activities would be within the scope and jurisdicition of presently existing laws and regulations. We believe that replicating these is unwarranted and would create unnecesary and redundant regulations and procedures. We are, however, committed to assuring that MMS regulations are consistent with the requirement of the OCSLAA, cited above, that no person be excluded from participating in employment relative to OCS activities on the grounds of race, creed, color, national origin, or sex. After considering all aspects of the issue, we have concluded that the most appropriate and effective means of implementing our policy to bar unlawful discrimination in the OCS without exception is to develop a rule which would apply to only those circumstances and situations which are not otherwise covered.

As described above, OFCCP regulations at 41 CFR 60–1, although incorporated by reference in the MMS lease, may not apply to all contractors and subcontractors in the OCS at all times. Furthermore, contracts and subcontracts of $10,000 or less are exempt from the requirements of section 60–1. The Civil Rights Act of 1964 and the implementing EEOC regulations do not present the same type of limitations. Under the Civil Rights Act (42 U.S.C. 2000e–2), unlawful employment practices are prohibited as follows:

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

The definition in § 2000e of the term "employer" contains some limitations which are likely to be of relevance to work in the OCS. The limitaitons on the term "employer" could exclude some persons employed in activities pursuant to the OCSLA from coverage under the Civil Rights Act. The pertinent definition is as follows:

For the purposes of this subchapter—

* * * * *

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such terms does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

The limitation contained in the definition on the number of employees required to bring an employer under the jurisdiction of the Civil Rights Act is the only limitation preventing complete coverage of OCS-related employment activities under existing nondiscrimination rules of the EEOC.

The MMS has determined that it is appropriate to issue a further rule prohibiting unlawful discrimination in employment in the OCS. The proposed rule would apply only to those employers with fewer than 15 employees who are engaged in an industry affecting commerce. The rule would also be limited to employment-related activities conducted pursuant to the provisions of the OCSLA or the OCSLAA. In this way, the rule would not duplicate the already adequate protection provided to minority groups and women by the EEOC regulations.

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291 as the total cost is not expected to exceed $5,000 per year. The DOI has also 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.). The capital requirements and technical complexity of hydrocarbon and other mineral activities in the OCS are so great that small entities generally do not have these capabilities and do not conduct business in the OCS.

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 et seq.

**Author:** This document was prepared by Mary McDonald, Offshore Rules and Operations Division, Minerals Management Service.

**List of Subjects in 30 CFR Part 271**

Civil rights, Continental shelf, Government contracts, Investigations, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources.

Dated: December 8, 1986.

**William D. Bettenberg,**

*Director Minerals Management Service.*

For the reasons set forth above, Title 30 of the Code of Federal Regulations is proposed to be amended by adding Part 271 as follows:

## PART 271—NONDISCRIMINATION IN EMPLOYMENT IN THE OUTER CONTINENTAL SHELF (OCS)

Sec.



**Authority:** Sec. 604, Pub. L. 95–372, 92 Stat. 695 (43 U.S.C. 1863).

### § 271.1 Purpose.

The purpose of this part is to implement the provisions of section 604 of the OSCLAA which provide that "no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of . . . the Outer Continental Shelf Land Act."

### § 271.2 Application of this part.

This part applies to all employment and employment-related practices of employers as defined in § 271.3 which are concerned with any aspect of the exploration for or development and production of oil, gas, or other minerals or materials in the OCS under the OCSLA or OCSLAA.

### § 271.3 Definitions.

As used in this part, the following terms shall have the meanings given below:

"Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between a State and any place outside thereof or between points in the same State but through a point outside thereof.

"Employee" means an individual employed by an employer, except that the term employee shall not include any person elected to public office in any State or political subdivision of any State.

"Employer" means a person engaged in an industry affecting commerce who does not have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of such a person.

"Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.).

"OCSLA" means the Outer Continental Shelf Act, as amended (43 U.S.C. 1331 et seq).

"OCSLAA" means the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801 et seq.).

"Person" means a person or company, including but not limited to a corporation, partnership, association, joint stock venture, trust, mutual fund, or any receiver, trustee in bankruptcy, or other official acting in a similar capacity for such company.

**§ 271.4 Discrimination prohibited.**

No employer shall fail or refuse to hire any individual, discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such an individual's race, color, religion, national origin, or sex. No employer shall limit, segregate, or classify the employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such an individual's race, color, religion, national origin, or sex.

**§ 271.5 Complaint.**

Whenever any person believes that he or she has been discriminated against by an employer on the grounds of race, creed, color, national origin, or sex with respect to a circumstance of employment to which this part applies, such a person may complain of such discrimination to the Regional Director of the OCS Region in which such discrimination is alleged to have occurred. Any complaint filed under this part must be submitted in writing to the appropriate Regional Director not later than 180 days after the date of the alleged unlawful discrimination in employment which is the basis of the complaint.

**§ 271.6 Process.**

Whenever a Regional Director determines on the basis of any information, including that which may be obtained under § 271.5 of this title, that a violation of or failure to comply with any provision of this part probably occurred, the Regional Director shall undertake to afford the complainant and the person(s) alleged to have violated the provisions of this part an opportunity to engage in informal consultations, meetings, or any other form of communications for the purpose of resolving the complaint. In the event such communications or consultations result in a mutually satisfactory resolution of the complaint, the complainant and all persons cited in the complaint shall notify the Regional Director in writing of their agreement to such resolution. If either the complainant or the person(s) alleged to have wrongfully discriminated fail to provide such written notice within a reasonable period of time, the Regional Director shall proceed in accordance with the provisions of §§ 250.70, 250.71, 250.72, and 250.80 of this title.

**§ 271.7 Remedies.**

In addition to the penalties available under §§ 250.81–1 and 250.80–2 of this title, the Director may invoke any other remedies available to him or her for the employer's failure to comply with the provisions of this part.

[FR Doc. 87–10783 Filed 5–11–87; 8:45 am]
BILLING CODE 4310–MR–M

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## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 902

## Public Comment Period and Opportunity for Public Hearing on an Amendment to the Alaska 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 for a public hearing on the adequacy of an amendment submitted by the State of Alaska to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of modifications to eight Articles (chapters) of the Alaska regulations addressing Environmental Resource Information, Reclamation and Operation Plan, Performance Standards, Inspection and Enforcement, Conflict of Interest, Training, Examination and Certification of Blasters, Abandoned Mines and General Provisions.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and information pertinent to the public hearing, if one is held.

**DATES:** Written comments not received on or before 4:00 p.m. on June 11, 1987 will not necessarily be considered. If requested, a public hearing on the proposed program amendment will be on June 8, 1987, at the address listed below under "ADDRESSES". Any person interested in making an oral or written presentation at the hearing should contact Mr. Jerry R. Ennis at the OSMRE Casper Field Office by 4:00 p.m. on May 27, 1987. If no one has contacted Mr. Ennis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Ennis, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

**ADDRESSES:** Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918.

The public hearing, if requested, will be held at the following location: Alaska Department of Natural Resources, 2601 C Street, Frontier Building, P.O. Box 107–016, Anchorage, Alaska 99510–7106.

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the proposed Alaska program amendment, the approved Alaska program, and the administrative record on the Alaska program are available. Each requester may receive, free of charge, one single copy of the proposed program

amendment by contacting the OSMRE Casper Field Office listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry R. Ennis, Director, Casper Field Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

**SUPPLEMENTARY INFORMATION:** Copies of the proposed Alaska program amendment, the approved Alaska program, and the administrative record on the Alaska program are available for public review and copying at the OSMRE office and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 "L" Street NW., Room 5124, Washington DC 20240

Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper Wyoming 82601–1918

Alaska Department of Natural Resources, Division of Mining, 3601 C Street, Frontier Building, P.O. Box 107–016, Anchorage Alaska 99510–7106

### Background

Information concerning the general background on the permanent program, general background on the State program approval process, general background on the Alaska program submission, Secretary's findings, disposition of public comments, and Secretary's decision of approval can be found in the March 23, 1983 **Federal Register** (48 FR 12274).

On May 28, 1985, Alaska submitted to OSMRE, for informal review, a draft blaster certification program amendment. On August 1, 1985, Alaska notified OSMRE that the draft submission was to be considered a formal program amendment intended to implement the provisions of 30 CFR Part 850 relating to the training examination and certification of blasters.

On August 28, 1985, OSMRE acknowledged in the **Federal Register** (50 FR 34863) receipt of the program amendment and announced procedures for a public comment period. The comment period closed September 27, 1985.

On November 24, 1986, Alaska submitted modifications to its proposed blaster certification program amendment. The modifications addressed a cooperative agreement being developed between the Alaska Department of Natural Resources and the University of Alaska. Comments on the modifications were invited in the February 13, 1987 **Federal Register** (52 FR 4630). The comment period closed March 2, 1987.

Alaska submitted, as part of the March 2, 1987 program amendment, a revised Article 15 which addresses the training, examination and certification of blasters.

As a result, OSMRE has stopped processing the original blaster certification amendment and all related modifications to the original submission.

OSMRE has decided to substitute, for the sake of clarity, the revised blaster certification program amendment submitted March 2, 1987 for the original May 28, 1985 blaster certification program amendment.

OSMRE is opening the comment period on the March 2, 1987 blaster certification submission for 30 days. OSMRE will consider all comments received on the previous blaster certification submission and modification, as well as the signed cooperative agreement between the University of Alaska and the Department of Natural Resources regarding the blaster certification program submitted on November 24, 1986.

### Proposed Amendment

On March 2, 1987, OSMRE received from the State of Alaska an amendment to its permanent regulatory program. The amendment consists of revisions to the approved Alaska regulations. The amended portion of the regulations and a brief description of the subject area is as follows: Article 4—Environmental Resource Information Requirements, Section 11 AAC 90.065—cross sections, maps, and plan views; Article 5—Reclamation and Operation Plan, Section 11 AAC 90.077—operations maps, plan views, and cross sections; Article 11—Performance Standards, Sections 11 AAC 90.331—sedimentation ponds and 11 AAC 90.461—subsidence control; Article 12—Inspection and Enforcement, Sections 11 AAC 90.601—inspections, 11 AAC 90.625—penalty assessment and computation and 11 AAC 90.627—procedures for assessment; Article 14—Conflict of Interest, Section 11 AAC 90.751—report of financial interest; Article 15—Training, Examination, and Certification of Blasters; Article 16—Abandoned Mines; Article 17—General Provisions, section 11 AAC 90.907—public participation.

OSMRE is seeking comment on whether Alaska's proposed revisions to its regulations are no less stringent than the requirements of SMCRA and no less effective than the requirements of the revised Federal regulations and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the proposed program modifications submitted by Alaska for OSMRE's consideration is available for public review at the addresses listed under **"SUPPLEMENTARY INFORMATION."**

### 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 evironmental 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 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 of Alaska.

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

### List of Subjects in 30 CFR Part 902

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

Dated: May 1, 1987.

**Raymond L. Lowrie,**

*Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87–10791 Filed 5–11–87; 8:45 am]

BILLING CODE 4310–05–M

## VETERANS ADMINISTRATION

### 38 CFR Part 3

### Removal of Monetary Rates

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendments.

**SUMMARY:** The Veterans Administration (VA) is proposing to amend its adjudication regulations to remove references to monetary benefit rates and income limitations and to replace them with the statutory citations or methods of computation that are the basis for those monetary rates and income limitations. The amendments are necessary to eliminate the cost of annual regulatory amendments based solely on legislative rate changes or changes made by standardized computation methods. The effect of these amendments will be to reduce unnecessary regulatory burdens and publication costs while maintaining an adequate method of advising the public of periodic changes in benefit rates and income limitations through publication in the "Notices" section of the **Federal Register.**

**DATES:** Comments must be received on or before June 9, 1987. It is proposed to make these amendments effective 30 days after publication in final form.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to: Administrator of Veterans Affairs (271A), Veterans Administration, 8109 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** Many of the regulations in 38 CFR Part 3 contain actual monetary benefit rates and income limitation amounts that are delivered directly from changes in law and through standardized computation methods. Currently the VA must publish new regulations each time these rates or income limitations are changed by law or by a change in a computation variable such as the Consumer Price Index. By amending the regulations to provide the statutory citations or the standarized computation method for benefit rates and income limitations, the VA can avoid unnecessary regulatory amendments in the future. Actual changes in monetary rates and income limitations will continue to be published in the **Federal Register** in notice format. In this manner the VA will reduce regulatory costs, eliminate duplication of effort, and continue to provide the necessary public notice of changes in benefit rates and income limitations. The benefit rates and income limitations affected by these changes are the section 306 and old-law disability and death pension rates and income limitations (including the spouse income exclusions for section 306 disability pension), the maximum annual rates of improved pension, the monthly rates and income limitations applicable to parents' dependency and indemnity compensation, the Medal of Honor pension, the burial alowance, the plot or interment allowance, and the headstone or marker allowance. An editorial change is also being made to 38 CFR 3.1600(c) to clarify that certain transportation expenses are payable when a veteran who is properly hospitalized by the VA dies of service-connected causes.

The Administrator hereby certifies that these proposed 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. Therefore, pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulatory amendments impose no regulatory burdens on small entities, and there will be no direct affect on claimant for VA benefits.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that these proposed regulations are non-major for the folllowing reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have 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.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

The Catalog of Federal Domestic Assistance program numbers are: 64.101, 64.104, 64.105, and 64.110.

Approved: November 14, 1986.

**Thomas K. Turnage,**

*Administrator.*

**PART 3—[AMENDED]**

38 CFR Part 3, Adjudication, is proposed to be amended as follows:

1. In § 3.23, the heading and paragraphs (a) and (c) are revised to read as follows:

**§ 3.23 Improved pension rates—veterans and surviving spouses.**

(a) *Maximum annual rates of improved pension.* The maximum annual rates of improved pension for the following categories of beneficiaries shall be the amounts specified in 38 U.S.C. 521 and 541, as increased from time to time under 38 U.S.C. 3112. Each time there is an increase under 38 U.S.C. 3112, the actual rates will be published in the "Notice" section of the Federal **Register.**

(1) Veterans who are permanently and totally disabled. (38 U.S.C. 521 (b) or (c))

(2) Veterans in need of aid and attendance. (38 U.S.C. 521(d))

(3) Veterans who are housebound. (38 U.S.C. 521(e))

(4) Two veterans married to one another—combined rates. (38 U.S.C. 521(f))

(5) Surviving spouse alone or with a child or children of the deceased veteran in the custody of the surviving spouse. (38 U.S.C. 541 (b) or (c))

(6) Surviving spouses in need of aid and attendance. (38 U.S.C. 541(d))

(7) Surviving spouses who are housebound. (38 U.S.C. 541 (e))

* * * * *

(c) *Mexican border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by the amount specified in 38 U.S.C. 521(g), as increased from time to time under 38 U.S.C. 3112. Each time there is an increase under 38 U.S.C. 3112, the actual rate will be published in the "Notices" section of the **Federal Register.** (38 U.S.C. 521(g))

2. In § 3.24 paragraphs (b) and (c) are revised to read as follows:

**§ 3.24 Improved pension rates—surviving children.**

* * * * *

(b) *Child with no personal custodian or in the custody of an institution.* In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (see § 3.57(d)), or the child is in the custody of an institution, pension

shall be paid to the child at the annual rate specified in 38 U.S.C. 542, as increased from time to time under 38 U.S.C. 3112, reduced by the amount of the child's countable annual income. Each time there is an increase under 38 U.S.C. 3112, the actual rate will be published in the "Notices" section of the **Federal Register.**

(c) *Child in the custody of person legally responsible for support.*—(1) *Single child.* Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5), and the sum of the annual income of such child and the annual income of such person or, the maximum annual pension rate under paragraph (b) of this section, whichever is less.

(2) *More than one child.* Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than the maximum annual pension rate under paragraph (b) of this section) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than the maximum annual pension rate under paragraph (b) of this section, or the maximum annual pension rate under paragraph (b) of this section times the number of eligible children, whichever is less). (38 U.S.C. 542)

3. Section 3.25 is revised to read as follows:

**§ 3.25 Parents' dependency and indemnity compensation (DIC)—method of payment computation.**

Monthly payments of parents' DIC shall be computed in accordance with the following formulas:

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent, the monthly rate specified in 38 U.S.C. 415(b)(1), as increased from time to time under 38 U.S.C. 3112, reduced by $.08 for each dollar of such parent's countable annual income in excess of $800. No payments of DIC may be made under this paragraph, however, if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 415(b)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 a month.

(b) *One parent who has remarried.* If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under paragraph (a) or paragraph (d) of this section, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined countable annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(c) *Two parents not living together.* The rate computation method in this paragraph applies to two parents who are not living together, or an unremarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 415(c)(1), as increased from time to time under 38 U.S.C. 3112, reduced by an amount no greater than $.08 for each dollar of such parent's countable annual income in excess of $800, except that no payments of DIC may be made under this paragraph if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 415(c)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 3112, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the **Federal Register** as provided in paragraph (f) of this section.

(d) *Two parents living together or remarried parents living with spouse.* The rate computation method in this paragraph applies to each parent living with another parent and to each remarried parent when both parents are alive. The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 415(d)(1), as increased from time to time under 38 U.S.C. 3112, reduced to an amount no greater than $.08 for each dollar of such parent's and spouse's combined countable annual income in excess of $1,000, except that no payments of DIC may be made under this paragraph if such parent's and spouse's combined countable annual income exceeds the amount specified in 38 U.S.C. 415(d)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 3112, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the **Federal Register** as provided in paragraph (f) of this section.

(e) *Aid and attendance.* The monthly rate of DIC payable to a parent under this section shall be increased by the amount specified in 38 U.S.C. 415(g), as increased from time to time under 38 U.S.C. 3112, if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(f) *Rate publication.* Each time there is an increase under 38 U.S.C. 3112, the actual rates will be published in the "Notices" section of the **Federal Register.** (38 U.S.C. 210(c))

4. Section 3.26 is revised to read as follows:

**§ 3.26 Section 306 and old law pension annual income limitations.**

(a) The annual income limitations for section 306 pension shall be the amounts specified in section 306(a)(2)(A) of Pub. L. 95–588, as increased from time to time under section 306(a)(3) of Pub. L. 95–588.

(b) If a beneficiary under section 306 pension is in need of aid and attendance, the annual income limitation under paragraph (a) of this section shall be increased in accordance with 38 U.S.C. 521(d), as in effect on December 31, 1978.

(c) The annual income limitations for old-law pension shall be the amounts specified in section 306(b)(3) of Pub. L. 95–588, as increased from time to time under section 306(b)(4) of Pub. L. 95–588.

(d) Each time there is an increase under section 306(a)(3) or (b)(4) of Pub. L. 95–588, the actual income limitations will be published in the "Notices" section of the **Federal Register.** (38 U.S.C. 210(c))

5. In § 3.27 paragraphs (a) and (b) are revised to read as follows:

**§ 3.27 Automatic adjustment of benefit rates.**

(a) *Improved pension.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act, the VA shall, effective on the dates such increases become effective, increase by the same percentage each maximum annual rate of improved pension. (38 U.S.C. 3112(a))

(b) *Parent's dependency and indemnity compensation—maximum*

*annual income limitation and maximum monthly rates.* Whenever there is a cost-of-living increase in amounts payable under section 215(i) of title II of the Social Security Act, the VA shall, effective on the dates such increase become effective, increase by the same percentage the annual income limitations and the maximum monthly rates of dependency and indemnity compensation for parents. (38 U.S.C. 3112(b)(1))

* * * * *

6. Section 3.28 is revised to read as follows:

**§ 3.28 Automatic adjustment of section 306 and old-law pension income limitations.**

Whenever the maximum annual rates of imporved pension are increased by reason of the provisions of 38 U.S.C. 3112, the following will be increased by the same percentage effective the same date:

(a) The maximum annual income limitations applicable to continued receipt of section 306 and old-law pension; and

(b) The dollar amount of a veteran's spouse's income that is excludable in determining the income of a veteran for section 306 persion purposes. (See § 3.262(b)(2))

These increases shall be published in the **Federal Register** at the same time that increases under § 3.27 are published. (Sec. 306, Pub. L. 95–588)

7. In § 3.262 paragraph (b)(2) is revised to read as follows:

**§ 3.262 Evaluation of income.**

* * * * *

(b) * * *

(1) * * *

(2) *Veterans.* The separeate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95–588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, the amount of the spouse income exclusion specified in section 306(a)(2)(B) of Pub. L. 95–588 as increased from time to time under section 306(a)(3) of Pub. L. 95–588 or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. Each time there is an increase in the spouse income exclusion pursuant to section 306(a)(3) of Pub. L. 95–588, the actual amount of the exclusion will be published in the "Notices" section of the **Federal Register.** The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavilability or of expenses beyond the usual family requirements. (38 U.S.C. 521(f); sec. 306(a)(2)(B) of Pub. L. 95–588)

* * * * *

8. In § 3.802 the first sentence of paragraph (b) is revised to read as follows:

**§ 3.802 Medal of Honor.**

* * * * *

(b) An award of special pension at the monthly rate specified in 38 U.S.C. 562 will be made as of the date of filing of the application with the Secretary concerned. * * *

9. In § 3.1600 the first sentence of paragraphs (a) and (g); the first sentence of the introductory text of paragraphs (b) and (f); and paragraph (c) are revised to read as follows:

**§ 3.1600 Payment of burial expenses of deceased veterans.**

* * * * *

(a) *Service-connected death and burial allowance.* If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed the amount specified in 38 U.S.C. 907 (or if entitlement is under § 3.8(c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. * * *

(b) *Nonservice-connected death and burial allowance.* If a veteran's death is not service-connected, an amount not to exceed the amount specified in 38 U.S.C. 902 (or if entitlement is under § 3.8(c) or (d), an amount in Philippine pesos compued in accordance with the provisions of § 3.8(c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. * * *

* * * * *

(c) *Death while properly hospitalized.* If person dies from nonservice-connected causes while properly hospitalized by the VA, there is payable an allowance not to exceed the amount specified in 38 U.S.C. 903(a) for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. For burial allowance purposes, the term "hospitalized by the VA" means admission to a VA facility (as defined in 38 U.S.C. 601(4)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 610 or 611(a), or admission (transfer) to a nursing home under the authority of 38 U.S.C. 620 for nursing home care at the expense of the United States. (If the hospitalized person's death is service-connected, entitlement to the burial allowance and transportation expenses fall under paragraphs (a) and (g) of this section instead of this paragraph.) (38 U.S.C. 903(a))

* * * * *

(f) *Plot or interment allowance.* When a veteran dies from nonservice-connected causes, an amount not to exceed the amount specified in 38 U.S.C. 903(b) (or if the entitlement is under § 3.8(c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c) may be paid as a plot or interment allowance. * * *

* * * * *

(g) *Transportation expenses for burial in national cemetery.* Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or nonservice-connected disability pension would have been entitled to disability compensation at time of death), there is payable, in addition to the burial allowance (either the amount specified in 38 U.S.C. 902 or the amount specified in 38 U.S.C. 907 if the cause of death was service-connected), an additional amount for payment of the cost of transporting the body to the national cemetery for burial. * * *

10. In § 3.1601 paragraphs (a)(1)(i) and (a)(2)(i) and the last sentence of paragraph (a)(2)(iii) are revised to read as follows:

**§ 3.1601 Claims and evidence.**

(a) * * *

(1) * * *

(i) The funeral director, if the entire bill or any balance is unpaid (if the unpaid bill or the unpaid balance is less than the applicable statutory burial allowance, only the unpaid amount may be claimed by the funeral director); or

* * * * *

(2) * * *

(i) The funeral director, if he or she provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if the unpaid bill or the unpaid balance is less than the statutory plot or interment allowance, only the unpaid amount may be claimed by the funeral director); or

* * * * *

(iii) * * * Any remaining balance of the plot or interment allowance may then be applied to interment expenses; or

* * * * *

11. In § 3.1604 the introductory text of paragraph (a), the last sentence of paragraph (b)(2), and paragraphs (c) and (d)(3) are revised to read as follows:

**§ 3.1604 Payments from non-VA sources.**

(a) *Contributions or payments by public or private organizations.* When contributions or payments on the burial expenses have been made by a State, any agency or political subdivision of the United States or of a State, or the employer of the deceased veteran only the difference between the entire burial expenses and the amount paid thereon by any of these agencies or organizations, not to exceed the applicable statutory burial allowance, will be authorized. Contributions or payments by any other public or private organization such as a lodge, union, fraternal or beneficial organization, society, burial association or insurance company, will bar payment of the burial allowance if such allowance would revert to the funds of such organization or would discharge such organization's obligation without payment. (38 U.S.C. 902; 907)

* * * * *

(b) * * *

(1) * * *

(2) * * * In such cases only the difference between the total burial expense and the amount paid thereon under such provision, not to exceed the amount specified in 38 U.S.C. 902, will be authorized. (38 U.S.C. 902(b))

* * * * *

(c) *Payment of plot or interment allowance by public or private organization except as provided for by § 3.1604(d).* Where any part of the plot or interment expenses has been paid or assumed by a State, any agency or political subdivision of a State, or the employer of the deceased veteran, only the difference between the total amount of such expenses and the amount paid or assumed by any of these agencies or organizations, not to exceed the statutory plot or interment allowance, will be authorized (38 U.S.C. 903(b))

(d) * * *

* * * * *

(3) *Amount of the allowance.* A State or an agency or political subdivision of a State entitled to payment under this paragraph shall be paid the maximum statutory amount as a plot or interment allowance without regard to the actual cost of the plot or interment. (38 U.S.C. 903(b))

* * * * *

12. In § 3.1612 paragraph (e)(2)(ii) is revised and paragraph (e)(2)(iii) is added to read as follows:

**§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.**

* * * * *

(e) * * *

(2) * * *

(ii) The average actual cost, as determined by the VA, or headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased.

(iii) The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of the VA's costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by the VA during that fiscal year and rounding to the nearest whole dollar amount. The resulting average actual cost is published at the end of each fiscal year in the "Notices" section of the **Federal Register**. (38 U.S.C. 906(d))

* * * * *

[FR Doc. 87-10709 Filed 5-11-87; 8:45 am]
BILLING CODE 8320-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 405

**[HSQ-137-P]**

### Medicare Program—End Stage Renal Disease Program; Responsibilities of Network Organizations

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise final regulations published on August 26, 1986 (51 FR 30356) pertaining to the End Stage Renal Disease (ESRD) networks and organizations to reflect certain provisions of the ESRD program amendments contained in sections 9335(d) through (h) of the Omnibus Budget Reconciliation Act of 1986. These regulations would revise the responsibilities of network organizations.

**DATE:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 13, 1987.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-137-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-137-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

If you wish to submit comments on the information collection requirements contained in this final rule, you may submit comments to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION, CONTACT:** Spencer Colburn, (301) 594-3413.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Social Security Amendments of 1972 (Pub. L. 92-603) extended Medicare coverage to individuals with end stage renal disease (ESRD) who require dialysis or transplantation. At that time, the broad array of professionals and facilities involved in the treatment of persons with ESRD indicated the need for a system to promote effective coordination. We believed that the integration of hospitals and other health facilities into organized networks was the most effective way to assure the delivery of needed ESRD care. Therefore, on July 1, 1975, we established ESRD networks through final regulations published on June 3, 1976 (41 FR 22502).

Subsequently, the End-Stage Renal Disease Amendments of 1978 (Pub. L. 95-292) amended title XVIII of the Social Security Act (the Act) by adding section 1881. Section 1881(c) of the Act statutorily authorizes the establishment of ESRD network areas and network organizations, consistent with criteria the Secretary finds appropriate to assure the effective and efficient administration

of ESRD program benefits. The amendments made to section 1881(c) of the Act did not include all of the provisions related to networks which had been included in the final regulations published on June 3, 1976 (41 FR 22502). The regulations were more prescriptive than the statute.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272) was enacted. Section 9214 of Pub. L. 99–272 requires the Secretary to maintain renal disease network organizations as authorized under section 1881(c) of the Act and not merge the network organizations into other organizations or entities. The statute permits the Secretary to consolidate network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist.

Consistent with section 9214 of Pub. L. 99–272, we published a notice of proposed rulemaking on April 15, 1986 (51 FR 12714), and final regulations on August 26, 1986 (51 FR 30356). These regulations permit the Secretary to redesignate and reorganize the existing 32 ESRD networks administratively. At the same time we published the final rule, we also published a final notice (51 FR 30434) that provided for 14 networks and set forth the geographic areas of the new network organizations (area designations) under the ESRD program.

For more detailed explanations of each of the above **Federal Register** documents, refer to the preambles to those documents.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99–509) was enacted. Sections 9335 (d) through (h) of Pub. L. 99–509 amend, in several ways, section 1881(c) of the Act. The specific provisions that would be implemented by these regulations require ESRD network organizations to—

- Establish a network council of renal dialysis and transplant facilities located in each area and a medical review board (section 9335(d)(1)) with at least one patient representative as a member of each network council and each medical review board (section 9335(e));
- Encourage participation in vocational rehabilitation programs and develop criteria and standards relating to such encouragement (section 9335(f) (1), (2), and (4); and (h));
- Report to the Secretary on facilities and providers that are not providing appropriate medical care (section 9335(f)(3));
- Implement a procedure for evaluating and resolving patient grievances (section 9335(f)(5));
- Conduct onsite reviews of individuals ESRD facilities as directed by the Secretary or medical review board and utilize standards of care established by the network organization to assure proper medical care (section 9335(f)(5));
- Collect, validate, and analyze ESRD program data (section 9335(f)(5)); and
- Provide data to the national ESRD data registry established under section 1881(c)(7) of the Act (section 9335(f)(5)).

In addition, the statute requires that the medical review board include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and at least one patient representative (sections 9335(d) (1) and (e)). It also encourages facility cooperation with network organizations by requiring that ESRD facilities and providers follow the recommendations of the medical review board (section 9335(g)).

Section 9335(d) of Pub. L. 99–509 contains other provisions that amend section 1881(c) of the Act relating to the ESRD networks. We will implement these provisions through separate proposed and final notices in the **Federal Register**. Specifically, those provisions require the Secretary to—

- Establish at least 17 ESRD network areas not later than May 1, 1987.
- Designate, not later than July 1, 1987, a network administrative organization for each area that will establish a network council of renal dialysis and transplant facilities located in the area and a medical review board.
- Consult with professional and patient organizations regarding the redesignation of network areas and publish in the **Federal Register** a description of each network area and the criteria on the basis of which network determinations were made.
- Publish in the **Federal Register** the criteria, standards and procedures to evaluate an applicant organization's ability to perform or actual performance of required network functions.
- Evaluate each applicant network organization based on quality and scope of services and not accord more than 20 percent of the weight of the evaluation to the element of price.
- Terminate an agreement with a network administrative organization (network organization) only if he finds, after applying published standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If an agreement is to be terminated, the Secretary must select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

Additionally, if the Secretary designates a network organization for an area that was not previously designated for that area, the statute requires the Secretary to offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.

### II. Provisions of the Proposed Regulations

These proposed regulations would implement the provisions of section 9335 of Pub. L. 99–509 that are described in the "Background" section of this preamble. As a result of these statutory provisions, we would add the following requirements to the responsibilities of the network organizations:

- Relating to vocational rehabilitation programs, network organizations must encourage the participation of patients, providers of services, and renal disease facilities; develop criteria and standards relating to encouraging participation in vocational rehabilitation programs; and include in their reports to HCFA, the comparative performance of facilities regarding the placement of patients in appropriate settings for vocational rehabilitation programs.
- Network organizations must appoint a network council and a medical review board that each include at least one patient representative.
- Network organizations must conduct on-site reviews of facilities and providers as necessary, as determined by the medical review board or HCFA, using standards of care developed by the network organizations.
- Network organizations must identify in their annual reports to HCFA those facilities that consistently fail to follow the recommendations of the medical review board.
- Network organizations must collect, validate, and analyze all data needed to prepare their annual reports to HCFA, the Secretary's report to Congress on the ESRD program, and to assure the maintenance of the registry established under section 1881(c)(7) of the Act.

Also, these regulations would require that the medical review board, in addition to at least one patient representative, include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and qualified to evaluate the quality and appropriateness of care delivered to ESRD patients.

Section 405.2112(h) requires network organizations to appoint a network

coordinating council, executive committee, and medical review board for each network area. Section 9335(d)(1) of Pub. L. 99–509 specifies that network organizations must establish a network coordinating council and medical review board for each network area. The statute does not require an executive committee; therefore, we would remove the requirement for establishing an executive committee from § 405.2112(h). Also, we would revise the reference to a "network coordinating council" that appears in § 405.2112(h) to conform with the statutory language that refers to a "network council".

### III. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any "major rule" that is likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, government agencies or geographic regions, or meet other threshold criteria that are specified in that order. In addition, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. Although the network areas and organizations are a creation of the government and are funded by us solely to fulfill the requirements of the law, they are small organizational entities under the Regulatory Flexibility Act.

The Secretary, in consultation with OMB, has determined that this rule is not a major rule under the terms of E.O. 12291, therefore, a regulatory impact analysis is not required. In addition, the Secretary has determined that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

### IV. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

### V. Information Collection Requirements

Sections 405.2112 (f) and (j) of this proposed rule contain information collection requirements that are subject to review by the Executive Office of Management and Budget (EOMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Accordingly, we have submitted this proposed rule to EOMB for review.

Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble and to the—

Allison Herron, Desk Officer for HCFA, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503.

### VI. List of Subjects

The list of subjects in 42 CFR Part 405 is Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV would be amended as set forth below:

Part 405 is amended as follows:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for Part 405 Subpart U is revised to read as follows:

**Authority:** Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. Section 405.2112 is revised to read as follows:

**§ 405.2112 ESRD network organizations.**

HCFA will designate an administrative governing body (network organization) for each network. The functions of a network organization include but are not limited to the following:

(a) Developing network goals for placing pateints in settings for self-care and transplantation.

(b) Encouraging the use of medically appropriate treatment settings most compatible with patient rehabilitation and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs.

(c) Developing criteria and standards relating to the quality and appropriateness of patient care and, with respect to working with patients, facilities, and providers of services, for encouraging participation in vocational rehabilitation programs.

(d) Evaluating the procedures used by facilities in the network in assessing patients for placement in appropriate treatment modalities.

(e) Making recommendations to member facilities as needed to achieve network goals.

(f) On or before July 1 of each year, submitting to HCFA an annual report that contains the following information:

(1) A statement of the network goals.

(2) The comparative performance of facilities regarding the placement of patients in appropriate settings for—

(i) Self-care;

(ii) Transplants; and

(iii) Vocational rehabilitation programs.

(3) Identification of those facilities that consistently fail to cooperate with the goals specified under paragraph (f)(1) of this section or to follow the recommendations of the medical review board.

(4) Identification of facilities and providers that are not providing appropriate medical care.

(5) Recommendations with respect to the need for additional or alternative services in the network including self-dialysis training, transplantation and organ procurement.

(g) Evaluating and resolving patient grievances.

(h) Appointing a network council and a medical review board (each including at least one patient representative) and supporting and coordinating the activities of each.

(i) Conducting on-site reviews of facilities and providers as necessary, as determined by the medical review board or HCFA, using standards of care as specified under paragraph (c) of this section.

(j) Collecting, validating, and analyzing such data as necessary to prepare the reports required under paragraph (f) of this section and the Secretary's report to Congress on the ESRD program and to assure the maintenance of the registry established under section 1881(c)(7) of the Act.

3. Section 405.2113 is amended by revising paragraph (a) to read as follows:

**§ 405.2113 Medical review board.**

(a) *General.* The medical review board must be composed of physicians, nurses, and social workers engaged in treatment relating to ESRD and qualified to evaluate the quality and appropriateness of care delivered to

ESRD patients, and at least one patient representative.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: March 2, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved March 20, 1987.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 87-10810 Filed 5-11-87; 8:45 am]

BILLING CODE 4120-01-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 2

### Records and Testimony; Freedom of Information Act

**AGENCY:** Department of the Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Interior proposes to amend its Freedom of Information Act rules on fee charges, fee waivers and law enforcement records to reflect the Freedom of Information Reform Act of 1986. The Department also proposes to clarify its submitter notice procedures and to revise, update and simplify its procedures governing submission and consideration of FOIA requests.

**DATE:** Comments must be received on or before June 11, 1987.

**ADDRESS:** Comments are to be submitted to Director, Office of Information Resources Management, Mail Stop 7357-MIB, U.S. Department of the Interior, Washington, DC 20240. Comments received, as well as the rulemaking file, will be available for inspection during regular business hours in Room 7358 of the Main Interior Building, 18th and C Streets, NW., Washington, by telephoning the Division of Directives and Regulatory Management at 343-6191.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Stephan, Division of Directives and Regulatory Management, Office of Information Resources Management, (202) 343-6191, or John D. Trezise, Office of the Solicitor, (202) 343-5216.

**SUPPLEMENTARY INFORMATION:** The proposed amendments to 43 CFR Part 2 set forth below will, if adopted, make the following significant changes to the FOIA procedures of the Department of the Interior.

1. *Fee charges.* The Freedom of Information Reform Act of 1986 (Pub. L. 99-570 modifies the services for which user fees may be charged in processing FOIA requests. Requesters seeking records for commercial use may be now charged for the costs of reviewing records to determine whether they should be disclosed. On the other hand, requesters other than commercial requesters may no longer be charged for the first two hours spent searching for records or the first 100 pages of copies. Media requesters and representatives of educational and noncommercial scientific institutions may not be charged for any costs incurred in searching for documents. Limits are also placed on requiring the advance payment of fees. Proposed § 2.20 incorporates the Reform Act's fee changes. The section is based on the final Uniform Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987 (52 FR 10012-20).

2. *Fee levels.* The Reform Act mandates that agency fee schedules conform to guidelines promulgated by the Director of OMB. The Uniform Fee Schedule and Guidelines issued by OMB on March 27, 1987 contain criteria for establishing fee levels. The Department has carefully evaluated its current fee schedule against the OMB criteria and has concluded that no change is required in its fee levels for duplicating documents. The Department's fee schedule was thoroughly revised less than two years ago (50 FR 29230, July 18, 1985). The charge for photocopying reflects the reasonable direct cost of making copies, taking into account machine costs and the salary of machine operators. Charges for duplicating computerized records are based on direct costs, taking into account CPU time, operators' salaries and material costs. The fees for duplication are thus at levels consistent with the OMB guidance. Search fees are proposed to be increased from the level established in 1985 to reflect the 3 percent Federal pay increase effective in January, 1987. Appendix A to 43 CFR Part 2 is also proposed to be revised to include fees for costs incurred in reviewing documents. These fees are proposed at the same level as search fees. The revision to Appendix A incorporates OMB's definitions of "search" and "review."

3. *Fee waivers.* The Reform Act somewhat revised the language of the statutory "public interest" fee waiver provision contained in 5 U.S.C. 552(a)(4)(A) and required agencies to incorporate into their regulations guidelines for determining when fees should be waived or reduced under the statutory standard. Proposed § 2.21(a) incorporates the revised fee waiver standard and provides guidelines for its application. These guidelines are based on the language of the statute, the legislative history, the FOIA fee waiver policy guidance issued by the Department of Justice on April 2, 1987 and court decisions interpreting the former fee waiver standard that appear to have continued relevance.

The Department of Justice guidance identifies six factors relevant to the question of whether to waive fees. Four of these factors relate to whether disclosure of information "is likely to contribute significantly to public understanding of the operations or activities of the government." The other two consider whether disclosure "is primarily in the commercial interest of the requester." Proposed § 2.21(a) follows the outline of the Justice guidance. However, two of the first four factors have been combined as one for purposes of clarity. Additional discussion follows each factor in an attempt to define the terms used and to more clearly explicate the considerations that must go into a fee waiver determination.

Comment is specifically invited on the use made in § 2.21(a) of the Justice guidelines. Comment is also specifically sought on the supplementary discussion added by the Department. Does this discussion properly set out the range of relevant factors? Are inappropriate considerations included? Are relevant considerations omitted? If commenters have objections to some or all of § 2.21(a), they are asked, in addition to detailing their objections, to propose alternative language that they would include in § 2.21(a).

4. *Law enforcement records.* The Reform Act amended the FOIA's exemption from disclosure for law enforcement records and provided that certain law enforcement records may be considered as not subject to the FOIA in spcified situations. Proposed §§ 2.11(b) and 2.13(c)(7) incorporate these changes.

5. *Submitter notice.* Current 43 CFR 2.13(h) reflects a policy that persons or businesses submitting information to the Department should be notified if their records are requested under FOIA. It is also the practice of the Department to notify submitters when a decision has been made to disclose records in response to a FOIA request. However, the Department has not spelled out in detail its procedures for submitter notice. Proposed § 2.15(d) contains a

comprehensive procedure for notifying submitters of commercial information of FOIA requests seeking that information. It provides criteria defining when notice should be given and specifies what information should be requested of submitters. Proposed § 2.15(b)(2) contains an explanation of the notice to be provided to submitters when records are to be disclosed. These proposals are based on Departmental practice under the current rules, Administrative Conference Recommendation 82–1, and various legislative proposals for submitter notice, including S.774, 98th Cong., 1st Sess. (1983) and H.R. 4862, 99th Cong., 2d Sess. (1986).

6. *Other changes.* The current Department procedures governing submission and consideration of FOIA requests have been in effect without substantial change since February, 1975. Experience over the past twelve years has shown that provisions that seemed perfectly clear and workable in 1975 were not so when applied. Based on this experience, the Department proposes a number of modifications to clarify, update and simplify its procedures. Major modifications are the following:

a. Revised § 2.14(a) will more clearly specify where within the Department FOIA requests are to be submitted. New § 2.15(a) collects and clarifies provisions of the current rules that govern FOIA requests that are not submitted in accordance with § 2.14(a).

b. New § 2.14(b) will specify more clearly than current § 2.13(h) that FOIA requests may seek only records in existence on the date they are received. Requests may not seek records created after that date and may not ask that new records be compiled.

c. New § 2.15(b) will add procedures for intradepartmental consultation on FOIA requests. New § 2.15(c) will revise and clarify the procedures in current § 2.13(g) for consultation with other departments and agencies.

d. New § 2.16(c)(2) will revise and improve the notice that is required to be given when a request is denied for failure to reasonably describe requested records or for other procedural deficiences or because requested records can not be located. Proposed § 2.18(a) will make such denials subject to administrative appeal, codifying the practice that the Department has followed for many years. Proposed § 2.18(a) will also codify the Department's practice of accepting administrative appeals from fee waiver denials.

e. Proposed § 2.20(k) describes the notice of the Department's debt collection procedures that is to be included with FOIA fee billings.

f. To facilitate submission of FOIA requests, proposed § 2.11(b) suggests that requesters may find it useful to consult with the appropriate bureau public affairs or bureau FOIA officer. Current Appendix B to 43 CFR Part 2 contains a list of public affairs offices. When the proposed rule is published as a final rule, a list of bureau FOIA officers will be added to Appendix B.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The principal author of this document is John D. Trezise, Office of the Solicitor.

**List of Subjects in 43 CFR Part 2**

Administrative practice and procedure, Classified information, Freedom of Information Act, Privacy Act.

## PART 2—[AMENDED]

It is hereby proposed to amend 43 CFR Part 2 as set forth below.

1. The authority citation for 43 CFR Part 2 continues to read as follows:

**Authority:** 5 U.S.C 301, 552 and 552a; 31 U.S.C. 9701; and 43 U.S.C. 1460.

2. Subpart B of 43 CFR Part 2 is proposed to be revised by:

(a) Redesignating § 2.20 as § 2.22;

(b) Revising §§ 2.11 through 2.19; and

(c) Adding §§ 2.20 and 2.21.

As revised, Subpart B reads as follows:

### Subpart B—Requests for Records

Sec.



### Subpart B—Requests for Records

#### § 2.11 Purpose and scope.

(a) This subpart contains the procedures for submission to and consideration by the Department of the Interior of requests for records under the Freedom of Information Act.

(b) Before invoking the formal procedures set out below, persons seeking records from the Department may find it useful to consult with the appropriate bureau public affairs office or bureau FOIA officer. These offices are listed in Appendix B.

(c) The procedures in this subpart do not apply to:

(1) Records published in the **Federal Register** and opinions in the adjudication of cases, statements of policy and interpretations and administrative staff manuals that have been published or made available under Subpart A of this Part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 2.13(c)(7) if (i) the investigation or proceeding involves a possible violation of criminal law; and (ii) there is reason to believe that (A) the subject of the investigation or proceeding is not aware of its pendency, and (B) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by a criminal law enforcement component of the Department under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

#### § 2.12 Definitions.

(a) *Act* and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552.

(b) *Bureau* refers to all constituent bureaus of the Department of the Interior, the Office of the Secretary, and the other Departmental offices. A list of bureaus is contained in Appendix B.

(c) *Working day* means a regular Federal workday. It does not include Saturdays, Sundays or public legal holidays.

#### § 2.13 Records available.

(a) *Department policy.* It is the policy of the Department of the Interior to make the records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) *Statutory disclosure requirement.* The Act requires that the Department, on a request from a member of the public submitted in accordance with the procedures in this subpart, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from the Act's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (i) could reasonably be expected to interfere with enforcement proceedings, (ii) would deprive a person of a right to a fair or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (v) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geographical and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Department to withhold information falling within an exemption only if: (1) Disclosure is prohibited by statute or Executive order or (2) sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released.

**§ 2.14 Requests for records.**

(a) *Submission of requests.* (1) A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the requester, he or she may direct a request to the head of the appropriate bureau or to the bureau's FOIA officer. Addresses for bureau heads and FOIA officers are contained in Appendix B.

(2) *Exceptions.* (i) A request for records located in the Office of the Secretary shall be submitted to: Director, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240.

(ii) A request for records of the Office of Inspector General shall be submitted to: Inspector General, Office of the Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(b) *Form of requests.* (1) Requests under this subpart shall be in writing and must specifically invoke the Act.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Department familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall (A) specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requester claims the request to fall and the basis of this claim (see §§ 2.20(b)–(e) for definitions) and (B) state the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under §§ 2.20 (f) and (g), the time for responding to requests may be delayed (A) if a requester has not sufficiently identified the fee category applicable to the request, (B) if a requester has not stated a willingness to pay fees as high as anticipated by the Department or (C) if a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Department.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 2.21 are met.

(5) To ensure expeditious handling, requests should be prominently marked, both the envelope and on the face of the request, with the legend "FREEDOM OF INFORMATION REQUEST."

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not ask that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons.

**§ 2.15 Preliminary processing of requests.**

(a) *Scope of requests.* (1) Unless a request clearly specifies otherwise, requests to field installations of a bureau may be presumed to seek only records at that installation and requests to a bureau head or bureau FOIA officer may be presumed to seek only records of that bureau.

(2) If a request to a field installation of a bureau specifies that it seeks records located at other installations of the same bureau, the installation shall refer the request to the other installation(s) or the bureau FOIA officer for appropriate processing. The time limit provided in § 2.17(a) does not start until the request is received at the installation having the records or by the FOIA officer.

(3) If a request to a bureau specifies that it seeks records of another bureau, the bureau may return the request (or the relevant portion thereof) to the requester with instructions as to how the request may be resubmitted to the other bureau.

(b) *Intradepartmental consultation and referral.* (1) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that originated with or are of substantial concern to another bureau, it shall consult with that bureau before deciding whether to release or withhold the records.

(2) As an alternative to consultation, a bureau may refer the request (or the relevant portion thereof) to the bureau that originated or is substantially concerned with the records. Such referrals shall be made expeditiously and the requester shall be notified in writing that a referral has been made. A referral under this paragraph does not restart the time limit provided in § 2.17.

(c) *Records of other departments and agencies.* (1) If a requested record in the possession of the Department of the Interior originated with another Federal department or agency, the request shall be referred to that agency unless: (i) The record is of primary interest to the Department, (ii) the Department is in a better position than the originating agency to assess whether the record is exempt from disclosure, or (iii) the originating agency is not subject to the Act. The Department has primary interest in a record if it was developed or prepared pursuant to Department regulations, directives or request.

(2) In accordance with Executive Order 12356, a request for documents that were classified by another agency shall be referred to that agency.

(d) *Consultation with submitters of commercial and financial information.* (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the bureau processing the request shall provide the submitter with notice of the request whenever: (i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or (ii) the bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

(2) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(3) If a submitter's statement cannot be obtained within the time limit for processing the request under § 2.17, the requester shall be notified of the delay as provided in § 2.17(f).

(4) Notification to submitter is not required if:

(i) The bureau determines, prior to giving notice, that the request should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this subpart);

(iv) Disclosure is clearly prohibited by a statute, as described in § 2.13(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, if the submitter was specifically afforded an opportunity to make such a designation;

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Department more than 10 years prior to the date of the request, unless the bureau has reason to believe that it continues to be confidential.

**§ 2.16 Action on initial requests.**

(a) *Authority.* (1) Requests to field installations shall be decided by the head of the installation or by such higher authority as the head of the bureau may designate in writing.

(2) Requests to the headquarters of a bureau shall be decided only by the head of the bureau or an official whom the head of the bureau has in writing designated.

(3) Requests to the Office of the Secretary may be decided by the Director of Administrative Services, an Assistant Secretary or Assistant Secretary's designee, and any official whom the Secretary has in writing designated.

(4) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the office of the appropriate associate, regional, or field solicitor.

(b) *Form of Grant.* (1) When a requested record has been determined to be available, the official processing the request shall notify the requester as to when an where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the official shall state the amount of fees due and the procedure for payment, as described in § 2.20.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(c) *Form of Denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A reference to the specific exemption or exemptions authorizing the withholding;

(ii) If neither a statute or an Executive order requires withholding, the sound ground for withholding;

(iii) A listing of the names and titles or positions of each person responsible for the denial; and

(iv) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed to the Assistant Secretary—Policy, Budget and Administration and description of the procedures in § 2.18 for appeal.

**§ 2.17 Time limits for processing initial requests.**

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within one more

than 10 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basis time limit.* (1) The 10 working day time limit begins to run when a request meeting the requirements of § 2.14(b) is received at a field installation or bureau headquarters designated in § 2.14(a) to receive the request.

(2) The running of the basic time limit may be delayed or tolled as explained in §§ 2.20 (f), (g) and (h) if a requester (i) has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver, or (ii) has not made a required advance payment.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended for more than 10 working days:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the installation processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Department having substantial subject-matter interest therein.

(d) *Notice of extension.* A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made.

(e) *Treatment of delay as denial.* If no determination has been reached at the end of the 10 working day period for deciding an initial request, or an extension thereof under paragraph (c) of this section, the requester may deem the request denied and may exercise a right of appeal in accordance with § 2.18.

(f) *Notice of delay.* When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal to the Assistant Secretary—Policy, Budget and Administration, inlcuding a description of the procedures for filing an appeal in § 2.18.

**§ 2.18 Appeals.**

(a) *Right of appeal.* A requester may appeal to the Assistant Secretary—Policy, Budget and Administration when (1) records have been withheld, (2) a request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located, (3) a fee waiver has been denied, or (4) a request has not been decided within the time limits provided in § 2.17.

(b) *Time for appeal.* An appeal must be received no later than 20 working days after the date of the initial denial, in the case of denial of an entire request, or 20 working days after records have been made available, in the case of partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend "FREEDOM OF INFORMATION APPEAL."

**§ 2.19 Action on appeals.**

(a) *Authority.* Appeals shall be decided by the Assistant Secretary—Policy, Budget and Administration, or the Assistant Secretary's designee, after consultation with the Solicitor, the Director of Public Affairs and the appropriate program Assistant Secretary.

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 2.18(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 2.17(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 2.17(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States, as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched and of the right to seek judicial review.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Assistant Secretary—Policy, Budget and Administration shall immediately make the records available or instruct the appropriate bureau to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the United States District Court for the district in which the withheld records are located, or in which the requester resides or has his or her principal place of business or in the United States District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), the submitter shall be provided notice as described in § 2.16(b)(2).

**§ 2.20 Fees.**

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 2.21, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the

schedule of charges contained in Appendix A to this Part.

(2) Fees shall not be charged if the total amount chargeable does not exceed $15.00

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(b) *Commercial Use Requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search, duplication and review.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(3) A commercial use request is a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in futherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in (i) Searching for requested records, (ii) examining requested records to determine whether they are exempt from mandatory disclosure, (iii) deleting reasonably segregable exempt matter, (iv) monitoring the requesters' inspection of agency records, or (v) resolving legal and policy issues affecting access to requested records.

(3) An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(4) A "noncommercial scientific institution" is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) *News media requests.* (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in (i) Searching for requested records, (ii) examining requested records to determine whether thay are exempt from mandatory disclosure, (iii) deleting reasonably segregable exempt matter, (iv) monitoring the requester's inspection of agency records, or (v) resolving legal and policy issues affecting access to requested records.

(3)(i) A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category.

(ii) Freelance journalists may be considered "representatives of the news media" if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication may indicate a solid base for expecting publication.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c) or (d) of this section shall be charged fees for document search and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in (i) Examining requested records to determine whether they are exempt from disclosure, (ii) deleting reasonably segregable exempt matter, (iii) monitoring the requester's inspection of agency records, or (iv) resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient informaion to determine whether it is covered by paragraph (b), (c), (d) or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes for the time limits established in § 217 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Department, and the requester has not sought and been granted a full waiver of fees under § 2.21, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect the anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed $250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 calender days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request.

(3) Advance payment of fees may not be required except as described in paragraphs (h)(1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 2.17 until receipt of payment.

(i) *Form of payment.* Payments of fees should be made by check or money order payable to the Department of the Interior or the bureau furnishing the information. The term United States or the initials "U.S." should not be included on the check or money order. Where appropriate, the offical responsible for handling a request may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection, Form DI–1040, shall be prepared for each request that requires collection of fees. The requester shall be provided the first sheet of the DI–1040. The Accounting copy of the Form shall be transmitted to the agency's finance office for entry into accounts receivable records. Upon receipt of payment from the requester, the recipient shall forward the payment along with a copy of the DI–1040 to the finance office.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 calendar days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of state or local governement. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fee (see 4 CFR Parts 101–105).

**§ 2.21 Waiver of fees.**

(a) *Statutory fee waiver.* (1) Documents shall be furnished without charge or at a charge reduced below the fees chargeable under § 2.20 and Appendix A if disclosure of the information is in the public interest because it (i) Is likely to contribute significantly to public understanding of the operations or activities of the government and (ii) is not primarily in the commercial interest of the requester.

(2) Factors to be considered in determining whether disclosure of information "is likely to contribute significantly to public understanding of the operations or activities of the government" are the following:

(i) Does the record concern *the operations or activities of the government?* Records concern the operations or activities of the government if they relate to or will illuminate the manner in which the Department or a bureau is carrying out identifiable operations or activities or the manner in which an operation or activity affects the public. The connection between the records and the operations and activities to which they are said to relate should be clear and direct, not remote and attenuated. Records developed outside of the government and submitted to or obtained by the Department may relate to the operations and activities of the government if they are informative on how an agency is carrying out its regulatory, enforcement, procurement or other activities that involve private entities.

(ii) If a record concerns the operations or activities of the government, is its disclosure *likely to contribute to public understanding* of these operations and activities? The likelihood of a contribution to public understanding will depend on consideration of the content of the record, the identity of the requester, and the interrelationship between the two. Is there a logical connection between the content of the requested record and the operations or activities in which the requester is interested? Are the disclosable contents of the record meaningfully informative on the operations or activities? Is the focus of the requester on contribution to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? Does the requester have expertise in the subject area and the ability and intention to disseminate the information to the general public or otherwise use the information in a manner that will contribute to public understanding of government operations or activities? Is the requested information sought by the requester because it may be informative on government operations or activities or because of the intrinsic value of the information independent of the light that it may shed on government operations or activities?

(iii) If there is likely to be a contribution to public understanding, will that contribution be *significant?* A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Department operations, including the quality of Department activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department. A contribution will not be significant if disclosure will not have a positive impact on the level of public understanding of the operations or activities involved that existed prior to the disclosure. In particular, a significant contribution is not likely to arise from disclosure of information already in the public domain because it has, for example, previously been published or is routinely available to the general public in a public reading room.

(3) Factors to be considered in determining whether disclosure "is primarily in the commercial interest of the requester" are the following:

(i) Does the requester have a *commercial interest* that would be furthered by the requested disclosure? A commercial interest is a commercial, trade or profit interest as these terms are commonly understood. An entity's status is not determinative. Not only profit-making corporations, but also individuals or other organizations, may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(ii) If the requester has a commercial interest, will disclosure be *primarily* in that interest? The requester's commercial interest is the primary interest if the magnitude of that interest is greater than the public interest to be served by disclosure. Where a requester is a representative of a news media organization seeking information as part of the news gathering process, it may be presumed that the public interest outweighs the organization's commercial interest.

(4) *Notice of denial.* If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:

(i) A statement of the basis on which the waiver or reduction has been denied.

(ii) A listing of the names and titles or positions of each person responsible for the denial.

(iii) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(b) *Discretionary waivers.* Fees otherwise chargeable may be waived at the discretion of a bureau if a request involves:

(1) Furnishing unauthenticated copies of documents reproduced for gratuitous distribution;

(2) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held.

(4) Furnishing records to donors with respect to their gifts;

(5) Furnishing records to individuals or private non-profit organizations having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department;

(6) Furnishing records to state, local and foreign governments and public international organizations when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of

the Department and to do so will help to accomplish the work of the Department;

(7) Furnishing a record when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Department's fee for the service would be included in a billing against the Department);

(8) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees);

(9) Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he or she is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims or persons insured by the Government).

**Appendix A—[Amended]**

4. The introductory statement to Appendix A of 43 CFR, Part 2 is proposed to be revised to read:

The following uniform fee schedule is applicable to all constituent units of the Department. It states the fees to be charged to members of the public for services performed in searching for, reviewing and duplicating requested records in connection with FOIA requests made under Subpart B of this Part and to services performed in making documents available for inspection and copying under Subpart A of this Part. The duplicating fees stated in the schedule are also applicable to duplicating of records in response to requests made under the Privacy Act. The schedule also states the fee to be charged for certification of documents.

* * * * *

5. Paragraph (5) and (6) of Appendix A are proposed to be revised as follows:

* * * * *

(5) *Searches.* For each quarter hour, or portion thereof, spent by clerical personnel in manual searches to locate requested records: $2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in manual searches to locate requested records because the search cannot be performed by clerical personnel: $4.65.

Search time for which fees may be charged includes all time spent looking for material that is responsive to a request, including line-by-line or page-by-page search to determine whether a record is responsive, even if the search fails to locate records or the records located are determined to be exempt from disclosure. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester. Line-by-line or page-by-page identification should not be necessary if it is clear on the face of a document that it is covered by a request.

(6) *Review of records.* For each quarter hour, or portion thereof, spent by clerical personnel in reviewing records: $2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in reviewing records: $4.65.

Review is the examination of documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld and the subsequent processing of documents for disclosure by excising exempt material or otherwise preparing them for release. Review does not include time spent in resolving general legal or policy issues regarding the application of exemption.

* * * * *

6. Paragraph (10) of Appendix A is proposed to be revised by addition of a new paragraph (e) as follows:

* * * * *

(10) * * *

(e) Requesters entitled to free search time under 43 CFR § 2.20(e) shall not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.

* * * * *

7. Paragraph (11) of Appendix A is proposed to be revised as follows:

* * * * *

(11) *Postage/mailing costs.* Mailing charges may be added for services (such as express mail) that exceed the cost of first class postage.

* * * * *

**Joseph W. Gorrell,**

*Principal Deputy Assistant Secretary Policy, Budget and Administration.*

April 30, 1987.

[FR Doc. 87-10788 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-RK-M

## FEDERAL MARITIME COMMISSION

### 46 CFR Ch. IV

**[Docket No. 85-6]**

### Inquiry Concerning Interpretation of Section 8(a) and Section 8(c) of the Shipping Act of 1984

**AGENCY:** Federal Maritime Commission.

**ACTION:** Discontinuance of proceeding.

**SUMMARY:** The Federal Maritime Commission discontinues its inquiry concerning the interpretation of sections 8(a) and 8(c) of the Shipping Act of 1984 with regard to excepted commodities. The Commission determines that the issues raised are generally not subject to administrative resolution based on the record established in this proceeding. The Commission will include this record in the section 18 report to be submitted to Congress in 1989.

**DATE:** This proceeding is discontinued effective May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Commission initiated this proceeding by a Notice of Inquiry published in the **Federal Register** (50 FR 10807-10810, March 18, 1985) which solicited public comment on the interpretation to be given to section 8(a), 46 U.S.C. app. 1707(a), and section 8(c), 46 U.S.C. app. 1707(c), of the Shipping Act of 1984 (Act or 1984 Act) with regard to excepted commodities.[1] The purpose of this inquiry was to obtain the most complete information available regarding the proper interpretation of sections 8(a) and 8(c) of the 1984 Act, and to establish a record which would enable the Commission to determine whether the questions raised could be addressed administratively or whether they require legislative clarification.

Interested persons were invited to comment on the proper treatment of excepted commodities and to respond to the following specific questions:

A. Is it lawful for an ocean common carrier or a conference of such carriers voluntarily to file a tariff with the Federal Maritime Commission covering a commodity which is excepted from mandatory tariff filing under section 8(a) of the Shipping Act of 1984?

B. Is it lawful for a conference, whether or not it has express enabling authority in its agreement, to agree on a rate covering a commodity which is excepted from mandatory tariff filing under section 8(a) of the Shipping Act of 1984?

C. May the Federal Maritime Commission require that a conference, which has agreed to a rate and filed a tariff covering an excepted commodity, allow for a right of independent action as provided for under section 5(b)(8) of the Shipping Act of 1984?

D. Is it lawful for an ocean common carrier or a conference to voluntarily file a service contract which covers an excepted commodity?

A total of 20 comments were filed in response to this Notice of Inquiry.[2]

[1] Those commodities which are excepted from mandatory filing of tariffs or service contracts are: bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste. 46 U.S.C. app. 1707(a)(1).

[2] The California Association of Port Authorities submitted a letter, dated April 15, 1985, that declined comment inasmuch as the subject matter of the inquiry did not include terminal tariffs. Subsequently, the Association inadvertently submitted a letter, dated May 15, 1985, that did make a substantive comment on the issues in this proceeding. On May 20, 1985, the Commission

Continued

Comments were received from the following persons: (1) United States Department of Justice (DOJ); (2) Chemical Manufacturers Association (CMA); (3) American Paper Institute, Inc. (API); (4) National Association of Recycling Industries, Inc. (NARI); (5) Western Shippers Group (WSG); (6) Great Southern Paper; (7) Central National-Gottesman, Inc.; (8) Tampa Port Authority (Tampa); (9) Terminal Operators Conference of Hampton Roads (TOCHR); (10) The Pacific and Arctic Railway and Navigation Company and Skagway Terminal Company (PARN/STC); (11) Journal of Commerce; (12) Sea-Land Service, Inc. (Sea-Land); (13) U.S.-Flag Far East Discussion Agreement (Agreement No. 10050); (14) Inter-American Freight Conference (IAFC); (15) Transpacific Westbound Rate Agreement (TWRA); (16) "8900" Lines, U.S. Atlantic & Gulf Ports/Italy, France & Spain Freight Conference, and U.S. Atlantic Ports/Eastern Mediterranean & North African Freight Conference (Mediterranean Conferences); (17) Trans-Pacific Freight Conference of Japan/Korea and Japan/Korea-Atlantic and Gulf Freight Conference (Japan/Korea Conferences); (18) Atlantic and Gulf/West Coast of South America Conference, United States Atlantic and Gulf/Colombia Conference, United States Atlantic and Gulf/Ecuador Conference, United States Atlantic and Gulf/Venezuela Freight Association, United States Atlantic and Gulf/Southeastern Caribbean Conference, and United States Atlantic and Gulf/Hispaniola Steamship Freight Association (Latin American Conferences); (19) North Europe-U.S. Pacific Freight Conference, Pacific-Australia/New Zealand Conference, and Pacific Coast European Conference (Pacific Conferences); and (20) United States-European Carrier Associations (USECA).[3] A summary of the comments is attached as an Appendix to this Notice of Discontinuance.[4]

received a telex from the Association stating that the May 15, 1985 letter had been mistakenly filed and requesting that it be withdrawn. Accordingly, the May 15, 1985 letter of the California Association of Port Authorities is not part of the record in this proceeding.

[3] USECA consists of the following conferences: North Europe-U.S. Gulf Freight Association, Gulf-European Freight Association, North Europe-U.S. Atlantic Conference, U.S. Atlantic-North Europe Conference, and Pan-Atlantic Carrier Trade Agreement.

[4] The appendix is not included in the **Federal Register** publication of this notice. For copies of this Appendix, contact the Secretary, Federal Maritime Commission, (202) 523-5725.

## II. Discussion

### *A. Voluntary Tariff Filing*

The first question raised in the Notice of Inquiry is whether a common carrier or conference may voluntarily file a tariff on an excepted commodity. Section 8(a) of the 1984 Act requires common carriers and conferences to file tariffs with the Commission showing their rates and charges. Certain commodities, however, are expressly excepted from this mandatory tariff filing requirement. As relevant to this Inquiry, section 8(a)(1) provides that:

> Except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste, each common carrier and conference shall file with the Commission, and keep open to public inspection, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established.

Section 8(a) basically continues the tariff filing requirement of section 18 of the Shipping Act, 1916, 46 U.S.C. app. 817. The class of excepted commodities first created by Congress in 1961 has been further expanded by the 1984 Act to include recycled metal scrap, waste paper and paper waste. Section 8(a), like its predecessor section 18, does not expressly address the question of whether a common carrier or conference may voluntarily file a tariff on an excepted commodity.

The conferences' comments generally contend that there is no need to go beyond the plain language of the statute for an answer to this question. They argue that the statute merely excepts certain commodities from mandatory tariff filing and that nothing in the language of section 8(a) or any other section of the 1984 Act prohibits voluntary filing. In the absence of an express prohibition, they argue that voluntary filing is lawful and should be permitted. The conferences point out that nowhere in the legislative history is voluntary filing prohibited. Moreover, they note that voluntary filing is a long standing practice of which Congress was aware and which it had several opportunities to change. They argue that in the face of Congressional knowledge and inaction, it can be presumed that Congress has endorsed this practice.

The shipper groups and the Department of Justice recognize that the Act does not prohibit voluntary filing. They do not agree, however, that the analysis should be terminated at that point. Rather, they proceed to the legislative history of the 1984 Act, as well as amendments to the 1916 Act, to determine the underlying purpose for excepting certain commodities from filing and how that purpose is affected by allowing filing. They find in the legislative history of the 1984 Act, especially in the legislative history of the debate over whether to retain a tariff filing system, a Congressional intent not to expand that system. In the legislative history of the amendments to section 18 of the 1916 Act, they see a purpose to preserve an unregulated market for excepted commodities.

In 1961, Congress passed an amendment to the 1916 Act, Pub. L. 87-346, 75 Stat. 764 (1961) (1961 Amendment), which for the first time provided for the mandatory filing of tariffs with the Federal Maritime Commission. This same legislation, however, excepted from mandatory tariff filing "cargo loaded and carried in bulk without mark or count." [5] The Notice of Inquiry noted the benefits to shippers of bulk cargo in terms of greater pricing flexibility afforded by the 1961 Amendment. In addition, the conference comments draw attention to the fact that carriers and conferences were also intended beneficiaries of the 1961 Amendment.

In 1963, Congress further amended the 1916 Act, Pub. L. 88-103, Stat. 129 (1963 Amendment), to exclude lumber from the mandatory tariff filing requirement. Again, both carriers' and shippers' interests were apparently served by this expansion of the list of excepted commodities. Carriers in the Northwest found themselves in intense competition with Canadian carriers and desired an exception from tariff filing for lumber in order to meet the competitive conditions in this market. Lumber exporters also supported the exception in order to meet the strong competition of Canadian lumber interests.

In 1965, Congress passed yet another amendment to the 1916 Act, Pub. L. 89-303, 79 Stat. 1124 (1965) (1965 Amendment), which cut back on the lumber exception. It distinguished

[5] The comment filed by USECA identifies an earlier instance in which bulk cargo was excepted from a tariff filing requirement. In 1935, the Shipping Board undertook an investigation pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), into certain rate-cutting practices in the export trades of the United States. This investigation ultimately led to a rule which required common carriers in the export trade to file tariffs with the Board. The rule, however, expressly excepted "cargo loaded and carried in bulk without mark or count." The purpose of the bulk cargo exception was to exclude tramp operators from the rule because" . . . the evidence of record in this investigation does not show that competitive methods employed by such carriers in our export trades have produced conditions unfavorable to shipping." *Section 19 Investigation, 1935.* 1 U.S.S.B.B. 470, 499 (1935).

between softwood and hardwood lumber and restored mandatory tariff filing for hardwood lumber. This legislation was intended primarily to benefit the hardwood lumber industry which sought the more stable ocean transportation rates that could be achieved by tariff filing.

As is well known, the entire tariff filing regulatory regime was intensely debated during the legislative process that led to the passage of the 1984 Act. A number of legislative proposals would have eliminated tariff filing and enforcement by the Commission. Although Congress continued tariff filing, it specifically directed the Commission to report on the continuing need for the statutory requirement that tariffs be filed with and enforced by the Commission. Congress also expanded the list of excepted commodities by adding recycled materials. The purpose of this change was to enable recycled materials to compete with virgin commodities.

Having reviewed the legislative history of the 1916 Act and 1984 Act with regard to excepted commodities, it is difficult to give a definitive answer to the first question posed in the Notice of Inquiry, namely, whether voluntary filing of a tariff covering an excepted commodity is lawful. A simple answer may be that there is nothing in the language of the Act or the relevant legislative history which expressly prohibits it. Nevertheless, there remains an apparent contradiction in allowing voluntary filing. The fundamental purpose of excepting certain commodities, beginning with the 1961 Amendment, was to remove those commodities from the requirements of the tariff system. That purpose would appear to be undermined, if not defeated, by voluntary filing.

Voluntary filing appears to run counter to the apparent purpose of allowing excepted commodities to be priced in a free market. There is no indication, however, that Congress directly considered the impact of voluntary filing on the underlying policy of excepting certain commodities. Therefore any further action on this question appears problematic. There simply does not appear to be an adequate basis for resolving this question administratively. This is particularly so in light of the fact that voluntary tariff filing has been permitted since 1961. There would need to be a clearer basis for reversing this policy at this time.

Such a basis does not appear in the record established in this Notice of Inquiry. Although shippers opposed voluntary filing on legal grounds, none suggested the presence of any existing problems brought about by allowing voluntary filing. Carrier interests, on the other hand, did point out areas in which business operations or carrier-shipper relationships would be disrupted by a change in policy. The Commission therefore will continue its current polucy and maintain the status quo by continuing to accept tariffs on excepted commodities that are voluntarily filed and subjecting such filings to the same tariff regulations as apply to non-excepted commodities.

*B. Collective Ratemaking*

The second question raised in the Notice of Inquiry is whether collective ratemaking on excepted commodities is lawful. Section 4(a)(1) of the 1984 Act, 46 U.S.C. app. 1703(a)(1), establishes jurisdiction over agreements by or among ocean common carriers to "discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of services." Section 4(b)(1) of the 1984 Act, 46 U.S.C. app. 1703(b)(1), applies to marine terminal operator agreements to "discuss, fix, or regulate rates or other conditions of service." These provisions essentially continue in te 1984 Act similar provisions from the 1916 Act. See 46 U.S.C. app. 814.

Conferences contend that the language of section 4(a) confers general ratemaking authority upon conferences and does not in any way limit that authority with regard to particular commodities. They argue that this grant of authority is so clear that there is no need to resort to legislative history. The conference argue further that the legislative history does not reveal any intent to exclude excepted commodities from their ratemaking authority. In fact, they contend one of the purposes of the 1961 and 1963 Amendments was to enable conferences and carriers to compete with tramps for bulk and other excepted cargoes. They contend that Congress was aware of conference ratemaking on excepted commodities and may be presumed to have endorsed it.

The Department of Justice and shipper groups argue that section 4 must be read in light of the purpose of be achieved by excepting certain commodities from tariff filing. They contend that the legislative history of the excepted commodity amendments to the 1916 Act reveals an intent to preserve an unregulated market for rates on excepted commodities. That purpose is undermined, they contend, if collective ratemaking on excepted commodities is permitted. Moreover, they point out that with mandatory independent action, regular tariffed commodities are subject to more flexible pricing than excepted commodities. From their perspective, this is an ironic and incongruous result.

Prior to the 1961 Amendment, it appears that conferences fixed rates on all commodities including those which later were expected by subsequent amendments. It also appears that during the consideration of the 1961, 1963, and 1965 Amendments, Congress was aware that conferences exercised ratemaking authority over excepted commodities. Moreover, in the 1984 Act, Congress did not remove such commodities from the Commission's jurisdiction.

With regard to the question of collective ratemaking, further review and analysis of the legislative history clarifies a number of factors which support conference authority: (1) Both the 1916 Act and the 1984 Act in unambiguous and unqualified language provide for a grant of general ratemaking authority to conference; (2) the legislative history of the tariff filing amendments dealing with excepted commodities does not reveal any express intent to restrict conference ratemaking authority over those commodities; (3) the Commission in the past has not challenged conference ratemaking authority over excepted commodities; and (4) Congress was aware that conferences exercised collective ratemaking on excepted commodities prior to 1961 and expressed no intention to prohibit that practice. The record in this proceeding supports, rather than calls into question, the authority of a conference to fix rates covering a commodity that is excepted from mandatory tariff filing under section 8(a). Therefore, no change in current Commission policy, which recognizes that authority, is warranted.

*C. Independent Action*

The third question raised in the Notice of Inquiry is whether a conference, which has elected to agree upon a rate and file a tariff for an excepted commodity, may be required to allow its members a right of independent action on such a rate as provided for under section 5(b)(8) of the 1984 Act, 46 U.S.C. app. 1704(b)(8).

The conference comments argue that section 5(b)(8) of the 1984 Act mandates independent action only with respect to those commodities which are required to be filed in a tariff by section 8(a) of the Act. The conferences contend that the language of section 5(b)(8) is clear and that there is no need to examine legislative history. One conference argues that this construction of section 5(b)(8) does not lead to an illogical

result, but rather merely allows conferences to set rates on vital base cargo (*i.e.*, excepted commodities), but to provide for independent action on 8(a) tariff items.

Shipper comments generally dispute the premise assumed by this question, inasmuch as they argue that collective ratemaking is not permissible. Assuming *arguendo* that collective ratemaking is lawful, shippers contend that independent action should be permitted. Otherwise, according to the shipper comments, excepted commodities would enjoy less rate flexibility than commodities subject to mandatory tariff filing. These comments argue that the Commission could mandate a right of independent action on any tariff voluntarily filed for an excepted commodity. One comment states that the Commission could promulgate such a rule pursuant to its general rulemaking authority under section 17(a) of the Act, 46 U.S.C. app. 1716(a).

Section 5(b)(8) mandates that each conference agreement provide a right of independent action to its members with respect to any "rate or service item *required* to be filed in a tariff under section 8(a)." (Emphasis added). Section 5(b)(8) does not "require" independent action on rates on excepted commodities because such rates by definition are not subject to the section 8(a) tariff filing requirement. The introduction of a broad mandatory right of independent action into the scheme of the 1984 Act appears to have resulted in an anomaly with regard to the treatment of excepted commodities. A conference may fix rates and file tariffs covering these commodities but does not appear to be required by the act to allow members to take independent action. Thus, commodities subject to mandatory tariff filing may enjoy greater pricing flexibility than excepted commodities voluntarily filed in a tariff.

The Commission might attempt to address this dichotomy under its general rulemaking authority. However, given the unambiguous language of section 5(b)(8), the lack of legislative history indicating Congressional intent, the absence of a factual record upon which to base administrative action, and the unknown implications of any modification of the existing regulatory regime, it would appear at this time that the mattter is best left to resolution by Congress. Therefore, the Commission will continue the current policy which allows a conference to determine whether or not to allow its member lines to take independent action on excepted commodities.

*D. Service Contracts*

The fourth question raised in the Notice of Inquiry is whether an ocean common carrier or a conference may voluntarily file a service contract which covers an excepted commodity.

The conferences generally take the position that the Commission should continue to allow the voluntary filing of service contracts covering excepted commodities. A number of conferences point out that nothing in the 1984 Act prohibits such voluntary filing. One conference states that filing promotes competition by providing better information on market conditions to shippers. Other comments allege that certain adverse consequences would occur if voluntary filing were prohibited.

The Department of Justice and shipper groups oppose voluntary filing. One shipper group alleges that voluntary filing reduces rate flexibility on excepted commodities. Another argues that voluntary filing is contrary to the policy of the 1984 Act.

Voluntarily filing of service contracts covering excepted commodities does not appear to trigger the same concerns as arise in connection with the voluntary filing of tariffs. Service contracts are negotiated in an open maket between carrier and shipper. The stability established by the contract is mutually agreed to by both parties. Service contracts exist for an extended period of time. There is therefore less concern for speedy and flexible adjustments in terms. Moreover, the legislative history of the excepted commodity amendemnts to the 1916 Act does not have direct relevance to service contracts. Nevertheless, the question of service contracts on excepted commodities has been raised in Docket No. 86–6, *Service Contracts*, and appears to be more appropriately handled in that proceeding. *See* "Notice of Proposed Rulemaking," 51 FR 5734 (February 18, 1986).

**III. Conclusion**

The Notice of Inquiry focused on certain issues which arise in conforming the concept and treatment of an excepted commodity with the tariff filing, concerted ratemaking, independent action and service contract provisions of the 1984 Act. A fundamental tension occurs in the statutory scheme when an excepted commodity, which apparently is intended to be governed only by free market forces, is subjected to the additional regulatory restraints associated with tariff filing or the collective control of concerted ratemaking. This inherent tension existed under the 1916 Act. It continued under the 1984 Act and was complicated further by the Act's inclusion of a mandatory right of independent action on rate or service items required to be filed in a traiff.

The purpose of the Notice of Inquiry was to reconcile, if possible, apparently conflicting provisions of the 1984 Act and to better define the parameters of the regulatory scheme envisioned by Congress. In particular, the Notice raised certain issues to determine if there were areas where the apparent conflict could be resolved through rulemaking. The key to this effort is determining Congressional intent.

The language of the 1984 Act, as well as that of the predecessor 1916 Act, and relevant legislative history, does not always clearly reveal that intent. Moreover, one limitation of the legislative history is that it is now 25 years old and addresses a different statutory scheme. It would appear, therefore, that the broad policy issues raised in the Notice of Inquiry require legislative attention because there does not appear to be a clear enough basis for an administrative resolution through rulemaking. In this posture, the best course appears to be to maintain the status quo.

In summary, the Commission will continue to accept tariffs on excepted commodities filed on a voluntary basis. The longstanding authority of conferences to collectively set rates on excepted commodities will continue to be recognized. A right of independent action on excepted commodity rate or service items will remain a matter of conference discretion. And the issue of filing service contracts covering excepted commodities will be resolved in Docket No. 86–6, *Service Contracts*.

Although no change is being made in current policy, the Commission believes that the issues raised in the Notice of Inquiry are significant and are of continuing concern and should be included in the reports required by section 18 of the 1984 Act, 46 U.S.C. app. 1717, which, among other things, requires that the Commission report to the Congress on mandatory tariff filing. The issues raised in the Notice of Inquiry relate to tariff filing and the implications and consequences thereof. The Commission therefore will make the record established in this proceeding a part of its section 18 report.

*Therefore, It Is Ordered*, That the record in this proceeding, consisting of the Notice of Inquiry, the comments received, and this Notice of Discontinuance and Appendix summarizing the comments, shall be

included in the report prepared by the Commission pursuant to section 18 of the Shipping Act of 1984; and

*It Is Further Ordered*, That this proceeding is hereby discontinued.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-10809 Filed 5-11-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 87-100; FCC 87-112]**

### Broadcast Services; Retention of Broadcasters' Public File Documents

**AGENCY:** Federal Communications Commissions.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to modify §§ 73.3526(e)(2) and 73.3527(e)(2) of the Commission's Rules, to reduce the retention period for public file documents of commercial and noncommercial broadcast stations receiving regular renewals. The proposed action would relax the administrative burden on licensees, while still providing the public with access to sufficient information to evaluate the licensees.

**DATES:** Comments are due June 22, 1987; Reply comments are due July 7, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Louis C. Whitsett, Policy and Rules Division, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a summary of Commission's *Notice of Proposed Rule Making*, MM Docket No. 87-100, adopted April 7, 1987, and released April 29, 1987.

The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased form the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

#### Summary of Notice of Proposed Rule Making (NPRM)

1. This *NPRM* proposes to modify §§ 73.3526(e)(2) and 73.3527(e)(2) of the Commission's Rules. These rules currently require broadcast licensees to retain applications, ownership reports, and other supporting documents in its public files for two license terms or seven years, whichever is greater. This retention period was reasonable when license terms were only three years. However, in 1981, Congress extended the length of the license terms for television and radio station to five and seven years, respectively. As a result, licensees of television and radio stations who are receiving regular renewals are now required to keep such public file material for as long as ten and fourteen years, resepectively.

2. The proposed amendments would reduce that retention requirement to one license terms or the grant of renewal, whichever is greater. Thus, the proposed action would lessen the administrative burdens imposed on broadcast licensees by the current retention regulations. However, the public would still be provided with adequate access to licensee information.

#### Ex Parte Considerations

3. This is a non-restricted notice and comment rule making proceeding. *See* Section 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

#### Regulatory Flexibility Initial Analysis

4. Pursuant to the Regulatory Flexibiliy Act of 1980, 5 U.S.C. section 603, the amenements suggested in this proceeding would, if adopted, diminish the administrative burden on licensees by reducing the required public document retention requirement. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis.

5. The Secretary shall cause a copy of the *NPRM*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for advocacy of the Small Business Administration in accordance with section 603 (a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq., (1981)).*

#### Paperwork Reduction Act Statement

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. Implementation of any new or modified requirement will be suject to approval by the Office of Management and Budget as prescribed by the Act.

7. The Collection of information requirement contained in this proposed rule has been submitted to OMB of review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

#### Comment Information

8. Pursuant to application procedures set forth in §§ 1.415 and 1.419, of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 22, 1987, and reply comments on or before July 7, 1987. All relevent and timely comment will be considered by the Commission before final action is taken in this proceeding.

#### Authority

9. Authoirty for this proposed rule making is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-10741 Filed 5-11-87; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 86-1; Notice 2]**

### Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Termination of Rulemaking

**AGENCY:** National Highway Traffic Safety Admminstration (NHTSA), DOT.

**ACTION:** Termination of rulemaking.

**SUMMARY:** On January 24, 1986, NHTSA proposed amending Federal Motor Vehicle Safety Standard No. 108 to require marking and identification of replacement lighting equipment as to function and manufacturer, as well as requiring, rather than allowing, such

equipment to be marked with the DOT symbol to certify compliance. On the basis of comments to the docket, which indicated that implementation of the proposal would impose significant cost increases or a number of manufacturers who already mark their equipment, without a resulting benefit to safety, the agency is terminating rulemaking on this subject.

**FOR FURTHER INFORMATION CONTACT:** Kevin Cavey, Office of Rulemaking, NHTSA, 400 Seventh St. SW., Washington, DC 20590 (202–366–5271).

**SUPPLEMENTARY INFORMATION:** Implementing the grant of a petition for rulemaking submitted by a manufacturer of motor vehicle lighting equipment, Peterson Manufacturing Co. of Grandview, Mo., NHTSA proposed amendments to Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* (51 FR 3227). Under the proposal, replacement lighting equipment would be marked and identified as to function in a manner similar to that of SAE Recommended Practice J579 *Lighting Indentification Code* May 1983. The code would also idenfity the manufacturer (and importer, where applicable). Finally, the proposal would require affirmation of the DOT symbol as a certification of compliance, rather than leaving it as a manufacturer's option.

In support of its petition, Perterson argued that adoption of the SAE code would identify off-shore manufacturers who had been exporting counterfeit and noncomplying products to the United States. In NHTSA's view, its code would also accomplish this purpose, and it would facilitate the identification of defective or noncomplying equipment that came into the country through more than one importer. Extension of the DOT symbol of certification to mandatory status would remove a regulatory anomaly, as this method of certification is mandatory with respect to all other equipment items covered by the Federal safety standards.

Comments supported the intent of the proposal, but not its implementation. The consensus was that the SAE code and others in general use by U.S. manufacturers, were adequate, and that deviation from them would be costly without a resulting safety benefit. Similarly, altering molds to incorporate DOT symbols would be costly, with no benefit provided over other alternative means of certification. Further, a marking requirement would not deter a counterfeiter from applying the code of a reputable concern. No comments or data were received that would allow the agency to quantify the numbers and types of possibly noncompliant or illegal replacement lighting equipment and hence to establish the dimensions of a significant problem. Thus, apart from a few examples uncovered by the petitioner and the agency's enforcement testing, which the agency has been able to pursue with some but not great difficulty, NHTSA has been unable to establish that any significant benefits would be derived to offset the costs that would be incurred by reputable manufacturers, if they were required to use the agency's proposed code. Therefore, NHTSA is terminating rulemaking under this proposal.

The engineer and lawyer primarily responsible for this notice are Kevin Cavey and Taylor Venson respectively.

**Authority:** 15 U.S.C. 1392, 1407, delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 6, 1987.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 87–10827 Filed 5–11–87; 8:45 am]

**BILLING CODE 4910–59–M**

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1201

**[EX Parte No. 393 (Sub-No. 2)]**

### Railroad Annual Report (Form P–1); Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to revise its reporting requirements for Class I railroads to incorporate the changes adopted in Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy*. Included among the changes are consolidation of information for Class I railroads and their subsidiaries which are over 50% controlled and are integral to rail operations. The Commission also proposes to combine information of Class I railroads under common control that form a unified, jointly managed system. Interest income on the working capital allowance will be added to net railway operating income (NROI) in the Return on Investment (ROI) calculation for revenue adequacy and income taxes on nonoperating income will be excluded. The Commission proposes to accomplish these changes by adding a new schedule to railroad Annual Report Form R–1.

**DATE:** Comments are due on June 26, 1987.

**ADDRESS:** An original and 10 copies, if possible, of any comments should be sent to: Ex Parte No. 393 (Sub-No. 2), Office of the Secretary, Case Control Branch, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Brian A. Holmes, (202) 275–7510.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission Washington, DC 20423 or call (202) 275–7428.

This proposed rule will not have a significant economic impact on a substantial number of small entities. This proceeding relates to only the Class I Railroads. However, subsidiaries with rail related revenues may be required to include information in Class I railroad reports filed with the Commission. We request comments on this issue.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments on any paperwork burden to OMB by addressing them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Interstate Commerce Commission.

**List of Subjects in 49 CFR Part 1201**

Railroads, Uniform system of accounts.

Decided: May 5, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred with a separate expression. Commissioner Andre dissented in part with a separate expression.

**Noreta R. McGee,**

*Secretary.*

**Instructions Concerning Returns to be Made in Schedule 250**

1. This schedule is to be filled out by all railroads unless a combined schedule is filed.

2. When a combined schedule is filed, the reporting carrier shall indicate which carriers are included in the combined schedule. Nonreporting carriers should

indicate which affiliated railroad is reporting the combined schedule.

3. In consolidating integral subsidiary operations for purposes of this schedule, companies should include railroads (i.e., switching and terminal and other than Class I railroads). Consolidation procedures followed under generally accepted accounting principles (GAAP) should be followed for purposes of this schedule (i.e. elimination of any intercompany profits).

4. Revenues from rail related subsidiaries should be excluded.

5. Subsidiary expenses should only reflect expenses directly associated with the rail related revenues as well as common expenses apportioned on the basis of the percentage of rail related revenues to total revenues.

6. Interest income on working capital allowance is computed by applying the average interest rate defined as the first and last published Treasury bill rates for the calendar year times the average balance of cash working capital allowed. The average balance of cash working capital allowed would be the addition of the preceding year and current year balance of cash working capital allowed derived from line 24 of Schedule 245 of the Annual Report Form R–1 divided by 2. Includable interest would be the product of multiplying the average interest rate times the average balance of cash working capital allowed.

7. Income taxes associated with significant non-rail income would include items such as the tax impact of the sale of property or income from non-rail sources.

8. Leased property from subsidiaries integral to rail operations which is included in schedule 352A should be eliminated in order to avoid duplication.

9. List all qualifying subsidiaries alone with the nature of subsidiaries at the bottom of this schedule.

250 CALCULATION OF RETURN ON INVESTMENT FOR REVENUE ADEQUACY PURPOSES

[dollars in thousands]

| Line No. | Item (a) | Amount (b) |
|---|---|---|
| | Adjusted Net Railway Operating Income | |
| 1 | Consolidated Net Railway Operating Income | |
| 2 | Add Interest Income from Working Capital Allowance | |
| 3 | Income Taxes Associated with Significant Non-Rail Income | |
| 4 | Adjusted Net Railway Operating Income | |
| | Adjusted Investment in Railroad Property | |
| 5 | Combined Investment in Railroad Property Used in Transportation Service (Schedule 352A, Line 31, column (d) less column (e)) | |
| 6 | Less: Interest During Construction (Schedule 330, Line 40) | |
| 7 | Other Elements of Investment (if debit balance) (Schedule 330, Line 41) | |
| 8 | Add: Net Rail Assets of Rail Related Subsidiaries | |
| 9 | Working Capital Allowance (Schedule 245, Line 28) | |
| 10 | Net Investment Base before Adjustment for Deferred Taxes | |
| 11 | Less: Accumulated Deferred Income Tax Credits | |
| 12 | Net Investment Base | |
| | Return on Investment | |
| 13 | Adjusted Net Railway Operating Income (Line 4) divided by Net Investment Base (Line 12) carried out two decimal places | |
| | List of qualifying subsidiaries and nature of business | |

Part 1201 of Title 49 of the Code of Federal Regulations would be amended as follows:

## PART 1201—RAILROAD COMPANIES

### Subpart A—Uniform System of Accounts

1. The authority citation for Part 1201 would continue to read as follows:

**Authority:** 49 U.S.C. 11166 and 5 U.S.C. 553, unless otherwise noted.

2. Instruction 1–9, *Transactions with affiliated companies,* is amended by adding paragraph (f) as follows:

*1–9 Transactions with affiliated companies.*

* * * * *

(f) Carriers reporting information on a consolidated or combined basis in railroad Annual Report Form R–1 shall maintain a file with appropriate records and supporting data. This should include work sheets showing revenues, expenses, earnings, investment in assets and accumulated depreciation for all affiliated companies which are over 50% controlled. The work sheets should also disclose any eliminations. Carriers need to disclose the methodology used to support segregation of rail related or other items as appropriate.

[FR Doc. 87–10751 Filed 5–11–87; 8:45 am]

BILLING CODE 7035–01–M

# Notices

Federal Register
Vol. 52, No. 91
Tuesday, May 12, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Chinquapin Butte Multi-Timber Sale Project; Shasta-Trinity National Forests, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of a series of timber sales located 2 to 11 miles southeast of Forest Glen. The area is currently undeveloped and portions of these proposed sales are situated within the released Chinquapin Roadless Area on the Hayfork and Yolla Bolla Ranger Districts.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans. The analysis will set standards and guidelines for management activities, and provided a schedule of these activities. Alternative locations of timber harvest units and roads will be identified and evaluated.

A range of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will be No Action. Other alternatives will consider various prescriptions for harvest and access.

Federal, State, and local agencies, potential purchasers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process between now and June 19, 1987. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues, those which have been covered by a previous environmental analysis, and those issues not within the scope of this decision.

Public meetings are scheduled for the first week in June. The date, time and location of these meetings follows:

June 1, 1987; 7:00 PM; Redding, Forest Headquarters, 2400 Washington Ave.
June 2, 1987; 7:00 PM; Hayfork, Fairgrounds, Dining Hall
June 4, 1987; 7:00 PM; Weaverville, Civil Defense Hall Auditorium, Civil Defense Loop

The purpose of these meetings is to provide interested groups and individuals information and answer questions regarding the proposed activities within the affected area.

The analysis is expected to be completed in twelve months or less. The DEIS is scheduled to be available for public comment and review by early 1988. The final environmental impact statement should be completed by late spring or early summer 1988.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, is the responsible official. Written comments and suggestions concerning the analysis should be sent to Robert R. Tyrrel, Forest Supervisor, Chinquapin Butte Multi-Timber Sale, 2400 Washington Avenue, Redding, California 96001, by June 19, 1987.

Questions about the proposed action and environmental impact statement should be directed to Ken Smith, EIS Team Leader, Yolla Bolla Ranger District, U.S. Forest Service, Platina, California, 96076, phone (916) 352–4211.

Dated: May 1, 1987.

**Robert R. Tyrrel,**
*Forest Supervisor.*

[FR Doc. 87–10717 Filed 5–11–87; 8:45 am]
BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 3:00 p.m., on May 22, 1987, at the Pallas Suite Hotel, 1732 Canal Street, New Orleans, Louisiana. The purpose of the meeting is to conduct a community forum on the status of civil rights in Louisiana and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253 (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 1, 1987.

**Susan J. Prado,**
*Acting Staff Director.*

[FR Doc. 87–10718 Filed 5–11–87; 8:45 am]
BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget (OMB)

DOCO has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Request to Dispose of Commodities or Technical Data Previously Exported
Form Number: Agency—ITA–699P (EAR 376.12); OMB—0625–0009
Type of Request: Revision of currently approved collection
Burden: 17,137 respondents; 13,424, reporting/recordkeeping hours
Needs and Uses: In lieu of applying for a new validated export license, through this information collection U.S. exporters can request to reexport or sell their products to an ultimate consignee that was not named on the original export license request. The purpose of this form is to prevent shipments of commodities in violation of the Export Administration Act.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion/recordkeeping
Respondent's obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffin, 395–7340.

Agency: International Trade Adminstration
Title: Annual Report from Foreign Trade Zones
Form Number: Agency—ITA–359P; OMB—0625–0109
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 84 respondents; 5,136 reporting hours
Needs and Uses: Annual reports from foreign-trade zones are required by the Foreign Trade Zones Act. The reports summarize zone projects, operations and activities. The imformation provides the basis for the consolidated annual report to Congress as required by the Act.
Affected Public: State or local governments; businesses or other for-profit institutions; non-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffin, 395–7340.

Agency: International Trade Adminstration
Title: Project License Procedure
Form Number: Agency—EAR 373.2(c); OMB—0625–002
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 74 respondents; 223 reporting/recordkeepng hours
Needs and Uses: The Project License Procedure was established by the Department of Commerce to facilitate exports for substantial projects representing capital expansions. In lieu of requiring individual export licenses for each commodity shipped for such a project, one overall license is granted. The information provided is used to determine if a Project License should be approved.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion/recordkeeping
Respondent's obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffin, 395–7340.

Agency: Interntional Trade Adminstration
Title: Watch Duty Exemption Program
Form Number: Agency—ITA–321P, 360–P, 361–P (15 CFR 303.6–303.12); OMB—0625–0134
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 8 respondents; 203 reporting/recordkeeping hours
Needs and Uses: In January 1983 a law was passed (Pub. L. 97–446) to create production incentives for the territorial watch industry. The information gathered is for the administration and enforcement of this law.
Affected Public: Businesses or other-for profit institutions; small businesses or organizations
Frequency: On occasion, annually, recordkeeping
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: John Griffin, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6228, 14th and Constitution Avenue, NW., Washington, DC 20230.

Writen comments and recommendations for the proposed information collections should be sent to John Griffin, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: May 5, 1987.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–10745 Filed 5–11–87; 8:45 am]

BILLING CODE 3510–CW–M

## International Trade Administration

**[A–122–605, A–588–609, A–580–605, and A–559–601]**

## Postponement of Preliminary Antidumping Duty Determinations; Color Picture Tubes From Canada, Japan, Korea, and Singapore

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that we have received an additional request from the petitioners in these investigations to postpone the preliminary determinations as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determinations of whether sales of color picture tubes from Canada, Japan, Korea, and Singapore have occurred at less than fair value until not later than June 24, 1987.

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377–3965.

**SUPPLEMENTARY INFORMATION:** On December 22, 1986 (51 FR 45785, Canada; 51 FR 45786, Japan; 51 FR 45787, Korea; and 51 FR 45787, Singapore) we published the notices of initiation of antidumping duty investigations to determine whether color picture tubes from Canada, Japan, Korea, and Singapore are being, or are likely to be, sold in the United States at less than fair value. The notices stated that we would issue our preliminary determinations by May 5, 1987.

As detailed in the notices, the petition alleged that imports of color picture tubes from Canada, Japan, Korea, and Singapore are being, or are likely to be sold in the United States at less than fair value. On March 23, 1987, counsel for petitioners, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers (AFL–CIO/CLC), the United Steelworkers of America (AFL–CIO), and the Industrial Union Department (AFL–CIO), requested that the Department extend the period for the preliminary determinations until not later than 180 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Act. On April 1, 1987 (52 FR 10394) we published a notice postponing the preliminary determinations for an additional 20 days. The notice stated that we would issue our prelimary determinations by May 26, 1987.

On April 30, 1987, counsel for petitioners requested that the Department extend the period for the preliminary determinations until not later than 210 days after the date of receipt of the petitions in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for determinations in these cases is hereby extended. We intend to issue preliminary determinations not later than June 24, 1987.

This notice is published pursuant to section 733(c)(2) of the Act.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

May 6, 1987.

[FR Doc. 87–10837 Filed 5–11–87; 8:45 am]

BILLING CODE 3510–DS–M

## National Oceanic and Atmospheric Administration

**[Modification No. 2 To Permit No. 448]**

### Endangered Species; Permit Modification; Massachusetts Cooperative Fishery Research Unit

Notice is hereby given that Pursuant to the provisions of § 220.24 of the Regulations on endangered species (50 CFR Parts 217–227), Scientific Research Permit No. 448 issued to the Massachusetts Cooperative Fishery Research Unit, University of Massachusetts Amherst, Massachusetts 01003, on January 30, 1984 (49 FR 4541) as modified on January 2, 1987 (52 FR 126), is further modified as follows:

Section A.1 is replaced by:

"1. An uspecified number of shortnose sturgeon (*Acipenser brevirostrum*) may be captured, weighed, measured, tagged and released as specified in the application and modification request."

Section B.1 is replaced by:

"2. The animals shall be taken by the means, in the areas, and for the purposes set forth in the application and the modification request."

Section B.4 is replaced by:

"4. If the level of mortality of juvenile and older fish exceeds twenty-five (25) in any river system, sampling shall be suspended and the Northeast Regional Office, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, notified and consulted as to appropriate modifications to the sampling program."

The modification becomes effective upon publication in the **Fedeal Register.**

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submnitted in connection with the above modification and Permit are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW Rm. 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: May 7, 1987.

**Dr. Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87–10838 Filed 5–11–87; 8:45 am]

BILLING CODE 3510-22-M

**[P77 28]**

### Marine Mammals; Application for Permit: NMFS, Northwest and Alaska Fisheries Center

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Fur Seal Act of 1966 (16 U.S.C. 1151–1187), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

2. *Type of Permit:* Scientific Research.

3. *Species:* Northern fur seal (*Callorhinus ursinus*).

4. *Number and Type of Take:* To take annually for five (5) years up to 1,405 adult and/or juvenile females, 2400 adult and/or juvenile males and 32,500 pups of either sex. The proposed activities include marking using paint, bleach, shearing, branding, tattooing and injection of tetracycline; handling for weighing, examining, measuring, obtaining blood, milk, and swab samples, (e.g., vaginal smears, nasal swabs, and samples from wounds), identifing sex, and administering lavage and enema procedures. All animals will be released near the capture site. Capture will be by physical restraint. Capture and handling may occur up to five times per individual per year.

Of the above: Up to 215 may have instruments affixed which may include sensors, time-depth recorders, radio transmitters, satellite-linked instruments, and swim speed recorders. Take by instrumenting will involve a maximum of 5 recaptures per individual per year for instrument monitoring; up to 300 may be branded and tattooed using standard tatoo equipment, paste and ink. Tetracycline may be injected intramuscularly to mark hard tissue for future ageing and growth studies. This type of take will involve a maximum of 5 recaptures and processing per individual per year.

In addition, over a 5-year period, up to 590 animals may be taken by incidental killing associated with the research operations. An unspecified number may be taken by incidental harassment during ground surveys, aerial surveys, boat or ship surveys, and other activities supporting northern fur seal research. An unspecified amount of specimen materials will be collected from animals killed during harvest activities and found dead during the course of the research. The applicant is also requesting authorizatin to import specimen materials collected by official representatives of the governments of Canada, Japan, or the USSR for scientific research.

5. *Location of Activity:* Alaska, Pribilof Islands, Bering Sea, Bogoslof Island, Aleutian Islands; Channel Islands of California.

6. *Period of Activity:* 5 years.

Concurrent with the publication of this notice in the **Federal Register,** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publications of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resoruces and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805 Washington, DC 20235;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 7, 1987.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87-10839 Filed 5-11-87; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### 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 committee: Army Science Board (ASB)

Date of meeting: 28 May 1987

Time of meeting: 0900-1600 hours

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Summer Study Panel for Army Force Cost Drivers will meet with personnel from the Harry Diamond Laboratories for briefings and discussions on evaluation of susceptibility to microwaves and hardening of night vision devices to lasers. Briefings and discussions will also be held with representatives from the Air Force Foreign Technologies Division on Soviet laser threat. 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., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening and portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87-10720 Filed 5-11-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### National Advisory Board on International Education Programs; Meeting

**AGENCY:** National Advisory Board on International Education Programs.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

**DATE:** May 28, 1987—Orientation session for new members; May 29, 1987—A full board meeting.

**ADDRESS:** Rosslyn Westpark Hotel, The Club Room, 1900 N. Fort Myer Drive, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Harry M. Gardner, Postsecondary Relations Staff, ROB-3, Room 4082, 7th & D Streets SW., Washington, DC 20202 (202-732-1862).

**SUPPLEMENTARY INFORMATION:** The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education amendments of 1980 (Pub. L. 96-374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Educatioan Programs is open to the public.

The agenda will include oath of office ceremonies. The Board will discuss (1) the status of the new regulations for the Education Amendments of 1986; (2) the FY 1987 budget and program operations for the Center for International Education; (3) priorities and Board business for FY 1987; and (4) the Board will review the Federal role in international education.

Records are kept on the Board's proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 to 4:00 p.m., ROB-3, 7th & D Streets SW., Room 3082, Washington, DC.

Signed at Washington, DC, on May 7, 1987.

**C. Ronald Kimberling,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 87-10795 Filed 5-11-87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Number 3 of Proposed Establishment of Federally Funded Research and Development Center (FFRDC)

**AGENCY:** Department of Energy.

**ACTION:** Notice Number 3 of Proposed Establishment of Federally Funded Research and Development Center (FFRDC).

**SUMMARY:** In accordance with paragraph 6.b.(2) of the Office of Federal Procurement Policy, Policy Letter No. 84-1, the Department of Energy (DOE) announces its intention to establish the Continuous Electron Beam Accelerator Facility (CEBAF) located in Newport News, Virginia, as a Federally Funded Research and Development Center (FFRDC). The facility will include a continuous beam recirculating linear accelerator of approximately one mile circumference. The accelerator will be capable of providing high-duty-factor electron beams throughout the energy range from 0.5 to 4.0 billion electron volts. The CEBAF laboratory will be a center for basic research and training related to nuclear structure and the accelerator techniques utilized to carry out that research. Related theoretical studies will be conducted, and institutional relationships will be developed to assure strong involvement of the scientific community. The unique capabilities of CEBAF will serve as a focus for research programs of the U.S. and the international scientific community for many years. The CEBAF laboratory and accelerator construction project is the highest priority new research facility in the U.S. nuclear physics program. CEBAF will have the only accelerator facility in the world capable of producing electron beams which meet the criteria of energy, duty factor, and beam intensity necessary to study minute details of nuclear structure, and thus provide new scientific knowledge about the underlying quark-gluon substructure in nuclear matter. Based upon the research plans and scope of this laboratory, the DOE has determined that the CEBAF laboratory should be designated as FFRDC.

**FOR FURTHER INFORMATION CONTACT:** Dr. David L. Hendrie, Director, Division of Nuclear Physics, Office of Energy Research, ER-23, U.S. Department of Energy, Washington, DC 20545.

**DATES:** Any comments on this proposed action must be received within 30 days of publication of this notice in the **Federal Register.**

**ADDRESSES:** Address comments to Dr. David L. Hendrie at the address listed above.

Issued in Washington, DC, on May 1, 1987.

**Ira M. Adler,**

*Deputy Director for Management, Office of Energy Research.*

[FR Doc. 87-10748 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

## Office of Assistant Secretary for International Affairs and Energy Emergencies

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden 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 (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/EU (SW)–73, for the retransfer of 44 grams of uranium, enriched to 2.27 percent in the isotope uranium-235 from Sweden to the United Kingdom Atomic Energy Authority for analysis.

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 publication of this notice.

Dated: May 6, 1987.

For the Department of Energy.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 87–10802 Filed 5–11–87; 8:45 am]

BILLING CODE 6450–01–M

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM), as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: From Switzerland to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing, 108 irradiated fuel assemblies, containing 42,500 kilograms of uranium enriched to 0.83% in U–235 and 440 kilograms of plutonium from the Gosgen-Daniken power station. This subsequent arrangement is designed as RTD/EU (SD)–61. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

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 and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Dated: May 6, 1987.

For the Department of Energy.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 87–10801 Filed 5–11–87; 8:45 am]

BILLING CODE 6450–01–M

## Office of Conservation and Renewable Energy

**[CAC-003I]**

### Energy Conservation Program for Consumer Products; Granting of Interim Waiver of Central Air Conditioner Test Procedures From The Trane Co.

**AGENCY:** Conservation and Renewable Energy Office, DOE.

**ACTION:** Granting of Interim Waiver.

**SUMMARY:** Today's notice publishes an "Interim Waiver" for The Trane Company (Trane) of Tyler, Texas, granting the company's application of March 17, 1987, to use an alternate test procedure for its TWS model variable-speed heat pump from the existing Department of Energy (DOE) test procedures for central air conditioners. This Interim Waiver is for 180 days from issuance, or until the Department makes a decision on the petition for waiver, or until a Final Rule is published, whichever occurs first. The Interim Waiver grants relief from the test procedure as applied to the heating mode of Trane's TWS variable-speed model series central air conditioners (heat pumps). Trane has also filed a petition for waiver, dated March 10, 1987, from the existing DOE procedures for central air conditioners.

In accordance with paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter was issued to The Trane Company.

Issued in Washington, DC, April 24, 1987.

**Donna R. Fitzpatrick,**

*Assistant Secretary, Conservation and Renewable Energy.*

April 24, 1987

Mr. L.E. Chaump,

*Dealer Products Group, The Trane Company, Troup Highway, Tyler, TX 75711.*

Dear Mr. Chaump: This is in response to your March 17, 1987, Application for an Interim Waiver from the Department of Energy (DOE) test procedures for the heating mode of The Trane Company's (Trane) model TWS heat pump.

Pursuant to the Energy Policy and Conservation Act, as amended, the Department has prescribed test procedures to measure the energy consumption of certain major household appliances, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR Part 430, Subpart B.

DOE amended the test procedure waiver regulations on November 26, 1986, [51 FR 42823] by allowing an application for interim waiver. The amendments added provisions allowing the Assistant Secretary for Conservation to grant an interim waiver for a particular basic model when a petitioner demonstrates the likely success of the petition for waiver, if the applicant will experience economic hardship if the Application for Interim Waiver is denied, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Trane has demonstrated the likely success of its Application for Interim Waiver based upon the showing that DOE proposed amendments to existing test procedures to include variable-speed heat pumps on

October 7, 1986 [51 FR 35736] and that the Carrier Corporation (Carrier) was granted a waiver from the Department's central air conditioner test procedures for its variable-speed heat pump on October 3, 1986 [51 FR 35403]. DOE concludes that Trane has demonstrated a likelihood of success of its petition for waiver from the Department's central air conditioner test procedure on the basis that its TWS model heat pump includes design characteristics that prevent testing of the unit according to the prescribed test procedure.

Trane's Application for Interim Waiver does not provide sufficient information for the Department to evaluate what, if any, economic impact or competitive disadvantage Trane will likely experience absent a favorable determination on the Application for Interim Waiver. Trane merely claims that it "cannot complete the design until a definitive test and rating procedure has been approved. Further delay of the program would cause undue economic hardship." DOE concludes that Trane has not demonstrated that it will experience economic hardship if the Application for Interim Waiver is denied.

The Department finds that it would be desirable for public policy reasons to grant Trane's Application for Interim Waiver. Specifically, in those instances where the likely success of the petition for waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Therefore, Trane's Application for An Interim Waiver requesting relief from the DOE test procedures for the heating mode of its TWS line central air conditioning heat pumps is granted.

The Trane Company is authorized to use the enclosed alternate test procedure proposed by Trane in its correspondence (Attachment I) of March 10, 1987, for the heating mode of the TWS variable-speed heat pump. According to Trane's Application for Interim Waiver, the company's Petition for Waiver, incuding the alternate test procedure, was sent to all known domestic manufacturers of central air conditioners on March 17, 1987. In accordance with section 430.27(c)(2), DOE will consider timely written comments on Trane's Application for Interim Waiver.

This Interim Waiver shall remain in effect for 180 days from the date of issuance or until the Department of Energy issues a determination on Trane's Petition for Waiver or the issuance of a final test procedure, whichever ocurs first.

This Interim Waiver is based upon the prescribed validity of statements, allegations, and documentary materials submitted by the applicant. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Your truly,

Donna R. Fitzpatrick,

*Assistant Secretary, Conservation and Renewable Energy.*

**Attachment I: Details of Rating Method for Variable Speed Products in the Heating Mode**

This attachment is a revised version of DOE's Proposed Rulemaking for 10 CFR Part 430, published in the **Federal Register** October 7, 1986 and only addresses heating rating procedures for variable speed heat pumps. The changes herein are to adapt the proposed procedures to Trane's interim heating rating method until such time that a final ruling of DOE's procedures has been made.

*Air flow rates*

Proposed Rulemaking reference: Section 2.1.3, Appendix M1.

The air flow rate at fan speeds less than the maximum fan speed shall be determined by using the fan laws for a fixed resistance system. The air flow rate is then given by the ratio of the actual fan speed to the maximum fan speed multiplied by the air flow rate at the maximum fan speed. Minimum static pressure requirements only apply when the fam is running at the maximum speed.

**Test Procedures: Cycling**

Proposed Rulemaking reference: Section 3.1.1, Appendix M1.

Test procedures shall be as specified in section 5.0 of ARI Standard 210/240–84 and in section 8.1 ANSI/ASHRAE Standard 116–1983, with the inclusion of the following conditions.

Heating cyclic tests shall be conducted by cycling the compressor "on" for the greater of six (6) minutes or the minimum time allowed by the controls and "off" for four (4) times the "on" time. The method of test shall be the damper method, which is described in the current 10 CFR Part 430, Published December 27, 1979 in the **Federal Register.**

The indoor air moving equipment shall also cycle "off" as governed by any automatic controls normally installed with the unit. Both net capacity and power shall be integrated. The last requirement applies to units having an indoor fan time delay. Units not supplied with an indoor fan time delay shall have the indoor air moving equipment cycle "on" and "off" as the compressor cycles "on" and "off."

In lieu of conducting heating cyclic tests, an assigned value of 0.35 shall be used for the degradation coefficient.

*Test Procedures*

Intermediate Speed

Proposed Rulemaking Reference: Section 3.1.2.

The frost accumulation test shall be conducted at the temperature conditions in Appendix B of ARI 210/240–81.

The unit shall be operated at a constant, intermediate compressor speed (k=Vn). The intermediate compressor speed shall be within 5% of the intermediate speed measured during the intermediate speed test in the cooling mode.

Heating Seasonal Performance Factor

Proposed Rulemaking Reference: Section 4.2.

The heating seasonal performance factor (HSPF) shall be expressed in Btu per watt-hour. For each of the six regions specified in Table 2 of this appendix, a separate HSPF shall be determined for the standardized maximum DHR, the standardized minimum DHR and for all other standardized DHR's (See Table 3 of this Appendix) between the maximum and minimum values.

For air-source units that are equipped with "demand defrost control systems", the value for HSPF, as determined above shall be multiplied by an enhancement factor, $F_{def}$ to compensate for improved performance not measured in the Frost Accumulation Test.

The factor, $F_{def}$ depends on the number of defrost cycles in a 12-hour period (n) and should be calculated as follows:

The factor, $F_{def}$ depends on the length of the defrost cycle (t) from the frost accumulation test, and shall be calculated as follows:

$F_{def}=1.03+0.03^{*}(90-t)/630$ for $5>$ 90 minutes
$FF_{def}=1.03$ for $t < 90$ minutes
where t=lengh of the defrost accumulation period in minutes.

Reference Section 4.2.4

HSPF shall be defined as the heating seasonal performance factor (HSPF) as specified in 2.2 of Appendix B of ARI Standard 210/240–84 multiplied by 3.413 Btu/hr in which the number of hours in $J^{th}$ temperature bin ($n_j$) in the equations for HSPF and for supplementary resistance heat term (RH ($t_j$)) is defined in Table 2 of this appendix and in which the part-load factor (PLF) in the equation for power input (E($t_j$)) is defined in Section 2.2 of Appendix B of ARI 210/240–84.

The HSPF shall be determined by the method for two speed or two compressor units, as specified in ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84, and in accordance

with the following changes. The DHR shall be determined by heating capacity at 70–47/43, nominal compressor speed, using Table 6.2.6 in ARI 240–81 as defined in ARI 210/240–84 Appendix A. "Nominal" shall be defined as the lessor of the heating capacity at the maximum compresor speed allowed by the controls in the cooling mode or the maximum speed allowed by the controls in the heating mode.

The capacity for the unit modulating at the intermediate compressor speed (k=v) at any temperature ($t_j$) is determined by:

$$q^{k=v}(t_j) = q^{k=v}(35) + M_q (t_j - 35)$$

where: $q^{k=v}(35)$ = the capacity of the unit at 35°F determined at the intermediate compressor speed (k=v) in the frost accumulation test

$M_q$ = slope of the capacity curve for the intermediate compressor speed (k=v)

$$M_q = \frac{Q_{ss}^{k=1}(62) - Q_{ss}^{k=1}(47)}{62 - 47} * (1 - N_q) + N_q \frac{Q_{ss}^{k=2}(47) - Q_{ss}^{k=2}(17)}{47 - 17}$$

$$N_q = \frac{Q_{ss}^{k=v}(35) - Q_{ss}^{k=1}(35)}{Q_{ss}^{k=2}(35) - Q_{ss}^{k=1}(35)}$$

Once the equation for $q^{k=v}(t_j)$ has been determined, the temperature where $q^{k=v}(t_j)=BL(t_j)$ can be found. This temperature is designated as $t_{VH}$. A separate $t_{VH}$ shall be determined for each design heating requirement.

The electrical power for the unit operating at the intermediate compressor speed (k=v) and at the temperature ($t_{VH}$) is determined by:

$$E_{ss}^{k=v}(t_{VH}) = E_{ss}^{k=v}(35) + M_E(t_{VH} - 35)$$

where: $E_{ss}^{k=v}(35)$ = the electrical power input of the unit at 35°F determined at the intermediate compressor speed (k=v) in the frost accumulation test

$M_E$ = slope of the electrical power input curve for the intermediate compressor speed (k=v)

$$M_E = \frac{E_{ss}^{k=1}(62) - E_{ss}^{k=1}(47)}{62 - 47} * (1 - N_E) + N_E \frac{E_{ss}^{k=2}(47) - E_{ss}^{k=2}(17)}{47 - 17}$$

$$N_E = \frac{E_{ss}^{k=v}(35) - E_{ss}^{k=1}(35)}{E_{ss}^{k=2}(35) - E_{ss}^{k=1}(35)}$$

The following section replaces Case II in Section 2.2 of ARI 210/240-84.

Case II

When the compressor speed varies between maximum speed (k=2) and minimum speed (k=1) such that k=v to satisfy the building load at temperature $t_j$, evaluate the following equations:

$$q_{ss}^{k=v}(t_j) = BL(t_j)$$

where: $q_{ss}^{k=v}(t_j)$ = steady-state capacity delivered by the unit at any speed between the minimum and maximum compressor speeds at temperature $t_j$

when $t_j \geq t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=1}(t_3) - E_{ss}^{k=v}(t_{VH})}{t_3 - t_{VH}} * (t_j - t_{VH})$$

where: $E_{ss}^{k=v}(t_j)$ = the electrical power input required by the unit at temperature $t_j$ and at a variable compressor speed between the minimum and maximum compressor speeds

$E_{ss}^{k=v}(t_{VH})$ = the electrical power input required by the unit at temperature $t_{VH}$ and at the intermediate compressor speed (k=v), as determined above

$E_{ss}^{k=1}(t_3)$ = the electrical power input required by the unit at temperature $t_3$ and at the minimum compressor speed

$t_3$ = temperature at which $q_{ss}^{k=1}(t_j) = BL(t_j)$

when $t_j < t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=2}(t_4) - E_{ss}^{k=v}(t_{VH})}{t_{VH} - t_4} * (t_{VH} - t_j)$$

where: $E_{ss}^{k=2}(t_4)$ = the electrical power input required by the unit at temperature $t_4$ and at the maximum compressor speed

$t_4$ = temperature at which $q_{ss}^{k=2}(t_j) = BL(t_j)$

For units that are equipped with "demand defrost control systems," the value for HSPF, as determined above, shall be multiplied by an enhancement factor of $F_{def}$, as defined above, to compensate for improved performance not measured in the Frost Accumulation Test.

*Annual Performance Factor*

DOE Proposed Rulemaking: Section 4.3.

The annual performance factor (APF) shall be expressed in Btu per watt-hour. For each of the six regions in Table 2 of this appendix, a separate APF shall be determined for the standardized maximum DHR, the standardized minimum DHR and for all other standardized DHR's (See Table 3 of this appendix) between the maximum and minimum values. APF shall be defined as:

$$APF = \frac{[CLH * Q_{ss}(95)] + [HLH * DHR * C]}{\frac{CLH * Q_{ss}(95)}{SEER} + \frac{HLH * DHR * C}{HSPF}}$$

where:

CLH = cooling load hours for a specific location as reported in Figure 1 of this appendix

$Q_{ss}(95)$ = Steady state capacity as measured in Test A

HLH = heating load hours for a specific location as reported in Figure 2 of this appendix

DHR = standardized design heating requirement

C = adjustment factor which serves to adjust the calculated design heating load hours to the actual heating load hours experienced by a heating system and is 0.77

SEER = seasonal energy efficiency ratio as determined by 4.1 of this appendix

HSPF = heating seasonal performance factor as determined by 4.2 of this appendix

TABLE 2.—DISTRIBUTION OF TEMPERATURE BIN HOURS FOR COOLING

| Bin No. (j) | Representative bin temperature (Tj) | Temperature bin hours for each region | | | | | |
|---|---|---|---|---|---|---|---|
| | | I | II | III | IV | V | VI |
| 1 | 62 | 218 | 268 | 268 | 297 | 291 | 311 |
| 2 | 57 | 179 | 236 | 248 | 250 | 253 | 566 |
| 3 | 52 | 145 | 204 | 241 | 232 | 236 | 591 |
| 4 | 47 | 97 | 179 | 240 | 209 | 209 | 561 |
| 5 | 42 | 61 | 140 | 236 | 225 | 214 | 388 |
| 6 | 37 | 31 | 110 | 206 | 245 | 239 | 209 |
| 7 | 32 | 14 | 70 | 161 | 283 | 280 | 94 |
| 8 | 27 | 4 | 30 | 82 | 196 | 258 | 22 |
| 9 | 22 | 1 | 10 | 37 | 124 | 204 | 8 |
| 10 | 17 | 0 | 3 | 16 | 81 | 151 | 0 |
| 11 | 12 | 0 | 0 | 9 | 58 | 129 | 0 |
| 12 | 7 | 0 | 0 | 4 | 29 | 105 | 0 |
| 13 | 2 | 0 | 0 | 2 | 14 | 80 | 0 |
| 14 | −3 | 0 | 0 | 0 | 5 | 50 | 0 |
| 15 | −8 | 0 | 0 | 0 | 2 | 28 | 0 |
| 16 | −13 | 0 | 0 | 0 | 0 | 14 | 0 |
| 17 | −18 | 0 | 0 | 0 | 0 | 6 | 0 |
| 18 | −23 | 0 | 0 | 0 | 0 | 3 | 0 |

TABLE 4.—REGIONAL COOLING LOAD HOURS (CLH), HEATING LOAD HOURS (HLH), OUTDOOR DESIGN TEMPERATURE ($T_{OD}$) AND MEAN GROUND-WATER TEMPERATURE ($T_{TW}$)

| Region | CLH | HLH | $T_{OD}$ | $T_w$) |
|---|---|---|---|---|
| I | 2,400 | 750 | 37 | 72 |
| II | 1,800 | 1,250 | 27 | 68 |
| III | 1,200 | 1,750 | 17 | 62 |
| IV | 800 | 2,250 | 5 | 53 |
| V | 400 | 2,750 | −10 | 45 |
| VI | 200 | 2,750 | 30 | 55 |

[FR Doc. 87-10377 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

**[Docket No. ERA C&E-87-27; OFP Case No. 63031-9355-20, 21-24]**

## Acceptance of Petition for Exemption and Availability of Certification by Gentex/TSG Joint Venture

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of acceptance.

**SUMMARY:** On January 29, 1987, Gentex/TSG Joint Venture (Gentex) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a combined cycle cogeneration facility, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). The facility will generate approximately 100 MW of electrical power.

Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503.

Final rules governing the congeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination of the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holiday.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

**DATES:** Written comments are due on or before June 26, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000

Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–6947.

**SUPPLEMENTARY INFORMATION:** Gentex proposes to construct a combined cycle cogeneration facility at Bayport, Harris County, Texas. This proposed cogeneration facility called the Bayport Congeneration Facility, will consist of two natural gas-fired General Electric Frame 6 turbines, two unfired heat recovery steam generators, two supplementary firing HRSC duct burners, and one automatic extraction, condensing steam turbine. All of the electricity produced by the facility will be sold to Texas Utilities Electric Company.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Gentex has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calaculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Gentex has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by Gentex pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on Gentex's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that Gentex is entitled to the exemption requested. The determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 5, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–10805 Filed 5–11–87; 8:45 am]

**BILLING CODE 6450–01–M**

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**[Docket No. ERA C&E–87–45; OFP Case No. 64017–9365–20–24]**

## Acceptance of Petition for Exemption and Availability of Certification by L'Energia, Inc.

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of Acceptance.

**SUMMARY:** On March 20, 1987, L'Energia, Inc. (L'Energia or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for a combined-cycle, natural gas fired cogeneration plant to be located in Lowell, Massachusetts. Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any facility without the capability to use an alternate fuel as a primary energy sources. The exemption petition was based on cogeneration. Final rules containing the Criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** Section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 105.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

**DATES:** Written comments are due on or before June 26, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Program, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585

Docket No. ERA C&E–87–45 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW. Room GA–093, Washington, DC 20585, Telephone (202) 586–8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947

**SUPPLEMENTARY INFORMATION:** The congeneration equipment includes a gas turbine, a heat recovery boiler and a steam turbine. The unit will have a electrical generating capacity of 36.5 megawatts. Electricity will be sold to Boston Edison and steam will be used by the Prince Company in its manufacturing plant in Lowell, Massachusetts.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), the petitioner has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of cogeneration FUA permanent exemption, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioner has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Envoronment, in consultation with the Office of General Counsel, will review the completed envoronmental check-list submitted by the petitioner pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute the determination that the petitioner is entitled to the exemption requested. The determination will be based on the entire records of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 5, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-10804 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

## Final Consent Order With Pennzoil Company

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Final Action on Proposed Consent Order.

**SUMMARY:** The Administrator of the Economic Regulatory Administration ("ERA") has determined that a proposed consent order between the Department of Energy ("DOE") and Pennzoil Company ("Pennzoil") shall be made final as proposed. the Consent Order resolves matters relating to Pennzoil's compliance with the entitlements program of the federal price and allocation regulations regarding Pennzoil's transactions with small refiners during the period of July 1976 through December 1977. Pennzoil will pay to the DOE $1,335,000.00 plus interest from December 10, 1986, the date of execution of the proposed consent order. Any person claiming to have been harmed by Pennzoil's alleged violation will be afforded an opportunity to present a claim for a refund in an administrative claims proceeding before the Office of Hearings and Appeals ("OHA") of DOE. The decision to make the Pennzoil Consent Order final was made after a full review of the written comments submitted by the public.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Gibson, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8321.

**SUPPLEMENTARY INFORMATION:**



### Introduction

On January 26, 1987, the ERA, by a notice published in the **Federal Register** at 52 FR 2756, announced a proposed consent order between DOE and Pennzoil, which would resolve matters relating to Pennzoil's compliance with the entitlements program of the federal petroleum price and allocation regulations regarding Pennzoil's transactions with small refiners during the period of July 1976 through December 1977. The proposed consent order, which requires Pennzoil to pay $1,335,000.00, resolves only the second exception to the January 18, 1981 consent order between DOE and Pennzoil in case number PPNA0001 and also settles the Proposed Remedial Order issued on July 29, 1986, in case number NPNG00301. In that enforcement action, the ERA alleged that Pennzoil failed to pay the entitlements obligations on certain crude oil that Pennzoil processed for J&W Refining, Inc. and P&O Falco during the period of September 1976 through May 1977 and ERA sought restitution of approximately $9 million plus approximately $15.6 million of interest that could be assessed on the violation amount, or a total of approximately $24.6 million. The January 26 notice provided the basis for ERA's preliminary determination that the proposed settlement served the public interest and solicited written comments from the public regarding whether the settlement should be made final as proposed, modified, or rejected.

### II. Comments Received

ERA received one written comment which was submitted jointly by the Attorneys General of the Commonwealth of Pennsylvania and the State of Texas. ERA considered this written comment in making the decision as to whether to make the proposed consent order final.

The written comment pertained to two subject areas: The first area is the comment that the January 26 notice did not contain sufficient details, particularly the ERA's assessment of the various issues involved in the single related enforcement action, to permit the commenting parties to assess the adequacy of the settlement amount. The second area is the comment that the proposed consent order does not acknowledge that the funds to be paid by Pennzoil are subject to the terms of DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986) promulgated pursuant to the settlement agreement in the *Department of Energy Stripper Well Exception Litigation*, MDL-378 (D. Kan.); also the commenting parties urged that ERA make a distribution of these funds directly and immediately to the States, rather than refer the distribution to OHA.

### III. Analysis of Comments

The January 26 notice solicited written comments, in order that the public provide to the ERA information relevant to the decision of whether the proposed consent order should be made final as proposed, modified, or rejected. To ensure public understanding of the proposed settlement and generate probative comments, the notice explicitly disclosed the narrow scope of the proposed settlement and included the text of the proposed consent order. Further, the notice supplemented the information that has been and presently is available in the public record of the related enforcement action and the Proposed Remedial Order therein, by summarizing the enforcement action against Pennzoil and the other factors that the ERA considered in preliminarily accepting the proposed settlement terms. The Proposed Remedial Order set forth clearly and in detail the legal and factual issues raised by the allegations, that two other firms primarily profited from the alleged violations, that Pennzoil's profit was marginal, and other unique facts and circumstances which provided Pennzoil with potential defenses. The proposed settlement required Pennzoil to pay restitution of the entire amount of its marginal profit from the transactions in question.

Despite the amount of information in the January 26 notice and the public record, the commenting parties urged that without disclosure of the ERA's detailed assessment of the likely adjudication of the issues in the related enforcement action, the commenting parties lacked sufficient information to make their own judgment regarding the litigation and also the adequacy of the amount of the proposed settlement. The comment however, did not provide any specific or additional information regarding the proposed settlement or the related enforcement action or advance any legal, policy, or other reason for modifying or rejecting the proposed consent order.

In the January 26 notice, the ERA disclosed the maximum information consistent with the public interest and statutory constraints. Further disclosure of the ERA's detailed assessment of the issues in litigation would hinder the agency's prosecution of other actions which also involve entitlements program issues and also impair the agency's ability to negotiate reasonable settlements in other cases. As well, statutory limits on the agency's release of proprietary data place constraints on the disclosure of such information obtained from the firm in the course of the ERA audit and negotiations.

After further review of the information disclosed in the January 26 notice, the ERA has concluded that the information in the notice, together with the information in the public record of the related enforcement action, were sufficient to enable the public to comment on the proposed settlement and, further, that the notice is consistent with the public interest.

Regarding the distribution of funds, the two States commenting jointly on the proposed consent order urged that this proposed settlement is subject to DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil cases, thereby assuring that these States will receive a portion of the funds paid by Pennzoil in settlement. The two commenting States, however, seek to avoid the procedures established by the Modified Policy for making such distribution, particularly ERA's referral of the distribution to OHA. Arguing that this procedure is slow and that to date the States have not received any distribution from other enforcement actions or settlements, the two States urged that ERA make a direct and immediate distribution of a portion of these funds to the States, rather than refer the distribution of these funds to OHA. This comment does not pertain to the basis or adequacy of the proposed settlement, but rather only to any distribution of the funds received in settlement.

Concurring in part with the comment, the ERA affirms that this proposed settlement and the funds are subject to the Modified Policy: This proposed settlement resolves an alleged violation of the entitlements program, which was implemented to equalize the price of crude oil.

This policy was modified to be consistent with the settlement agreement approved by the court in *In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.) and particularly with Section IV.B.4 of that settlement agreement. In accordance with both the agency's Modified Policy and the Section IV.B.4 of the Stripper Well settlement, the ERA lacks authority to make a direct distribution of funds to the States or any other party, but rather, the ERA is required to petition OHA to implement refund procedures for all funds that come under the ERA's control. Further, both the Modified Policy and Section IV.B.6 of the Stripper Well settlement require that OHA reserve 20% of these funds for potential distribution to those parties who prove that the firm's conduct injured them and that OHA distribute the balance of the funds, 80%, on the basis of one-half to the States and one-half to the Federal Government.

Having confirmed that the proposed Pennzoil settlement is subject to the Modified Policy, assuring that a portion of the funds will be distributed to the States, the ERA is not free to disregard the procedures established by the Modified Policy for such distribution.

Also, the two commenting States are parties to the Stripper Well litigation; they are signatories to and bound by the settlement. They are aware of the distribution procedures, DOE's actions to implement the distribution procedures, and OHA's recent clarifications which are designed to accelerate the distribution of funds to the States, thereby addressing the concerns of the commenting parties.

After further review of the proposed settlement and the written comment, the ERA has concluded that the proposed consent order serves the public interest.

### IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the Consent Order between Pennzoil and DOE executed on December 10, 1986, is made a final order of the Department of Energy, effective the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC, on April 15, 1987.

**Marshall A. Staunton,**

*Administrator, Economic Regulatory Administration.*

[FR Doc. 87-10803 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

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## Energy Information Administration

## Agency Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for clearance to the Office of Management and Budget.

**SUMMARY:** The Department of Energy (DOE) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement

assistance requirements collected by DOE.

Each entry contains the following information: (1) The sponsor of the collection (DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) a brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed by June 11, 1987. Last notice issued Tuesday, April 21, 1987.

**ADDRESS:** Copies of the materials submitted to OMB may be obtained from Mr. Gross at the address below. Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. For comments relating to FERC data collections, send comments to the attention of Mr. Rick Otis. Comments on all other DOE data collections should be sent to the attention of Mr. Vartkes Broussalian. (Copies of your comments also should be addressed to Mr. Gross at the address below.)

**FOR FURTHER INFORMATION CONTACT:** John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2308.

**SUPPLEMENTARY INFORMATION:** If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB DOE desk officer of your intent as early as possible.

The energy information collection submitted to OMB for review was:

1. Economic Regulatory Administration,
2. ERA–424D,
3. 1903–0069,
4. Tertiary Incentive Annual Report of Prepaid Expenses,
5. Extension,
6. Annually,
7. Mandatory,
8. Businesses or other for profit,
9. 25 respondents,
10. 110 responses,
11. 330 hours,
12. ERA–424D collects data necessary for the Economic Regulatory Administration to review the use of prepaid goods or services previously reported as prepaid expenses. Data are used to monitor program participants. Respondents are operators of enhanced oil recovery projects.

**Statutory Authority:** Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, May 6, 1987.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 87–10807 Filed 5–11–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket No. CI87–489–000]**

### Citation Oil and Gas Corp.; Application for Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

May 6, 1987.

Take notice that on April 13, 1987, as supplemented April 23 and 24, 1987, Citation Oil & Gas Corp. (Citation), 168000 Greenspoint Park Drive, South Atrium, Suite 300, Houston, Texas 77060–2304, filed an application under section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules. Citation requests that the Commission issue an order granting abandonment of its sales of certain gas to El Paso Natural Gas Company with pregranted abandonment for a limited term of three years for any future sales of such gas under its small producer certificate in Docket No. CS86–92–000. The gas is produced from the Eunice North and Custer Fields, Lea County, New Mexico.

Citation states in support of its application that it is subject to sporadic and substantially reduced takes without payment. The deliverability involved is approximately 2,226 Mcf/d and the gas is NGPA section 106(a) gas. Citation proposes to sell instead of either the interstate or the intrastate market.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–10769 Filed 5–11–87; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CI85–692–003]**

### Cities Service Oil and Gas Corporation and CanadianOxy Offshore Production Co. and Oxy Cities Service NGL Inc.; Application

May 6, 1987.

Take notice that on April 27, 1987, Cities Service Oil and Gas Corporation, *et al.* (Cities), pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) Regulations promulgated thereunder, and in accordance with § 2.77(b) promulgated by Order No. 436, in Docket No. RM85–1–000, filed an application requesting that in Docket No. CI85–692–002, the Commission amend its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates issued October 29, 1985, as extended by Order issued March 31, 1987, by further expanding the abandonment and sales authority granted in that order to include gas qualifying as section 104, 106(a), and 109 of the NGPA, all as more fully described in the application which is on file with the Commission and open to public inspection.

Cities states that it is experiencing substantially reduced takes from several sources without payment, with much of the shut -in gas qualifying for NGPA

section 104, 106(a) and 109 and Cites, its existing pipeline purchasers, the customers to these pipeline purchasers and alternative purchasers will receive increased benefits from expanding authorization to include the gas qualifying under section 104, 106(a), and 109 of the NGPA.

Any person desiring to be heard or to make any protests with reference to said application should on or before May 19, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10770 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI87-536-000]**

## Diamond Shamrock Exploration Co.; Application for Abandonment

May 6, 1987.

Take notice that on April 27, 1987, Diamond Shamrock Exploration Company (referred to as "Diamond Shamrock") filed an Application pursuant to section 7 of the Natural Gas Act. Diamond Shamrock requests authorization to abandon sales to Transwestern Pipeline Company from Higgins North Atoka Formation, Lipscomb County, Texas.

The circumstances presented in the application meet the criteria for consideration on an expedited basis pursuant to § 2.77 of the Commission's rules as promulgated by Order 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, as more fully described in the application which is on file with the Commission and open to public inspection.

Diamond Shamrock states that the one well covered by the application has current daily deliverability of approximately 150 Mcf. Diamond Shamrock states that the well is a section 106(a) well (Post-1974 gas). It is further stated that upon receipt of abandonment authorization, Diamond Shamrock intends to use the gas internally for fuel. Diamond Shamrock finally states that the existing gas contract has been terminated by the parties effective April 30, 1987, and that upon such termination Diamond Shamrock will be subject to substantially reduced takes without payment.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10771 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-62-000]**

## Pacific Gas Transmission Co.; Proposed Changes

May 6, 1987.

Take notice that Pacific Gas Transmission Company (PGT), on April 30, 1987, tendered for filing a change in rates (and certain tariff provisions) for natural gas service rendered to jurisdictional customers pursuant to rate Schedules PL-1, T-1, T-2 and IT-1 contained in its First Revised Volume No. 1 of its FERC Gas Tariff.

These changes in rates are being filed pursuant to section 4 of the Natural Gas Act and § 154.4 of the regulation issued thereunder.

PGT is proposing a change in its currently authorized return from 14.5% to 12.75% on equity. Based on PGT's current capital structure, this change results in an overall rate of return of 11.56%. PGT is also proposing to change its depreciation methodology for its facilities from volumetric to straight-line remaining life. PGT has incorporated the new federal statutory tax rate of 34% in its rates.

PGT also tendered for filing, in conjunction with its initial Order No. 436 filing at Docket No. CP87-159-000, dated January 13, 1987, certain revised tariff sheets to its Original Volume No. 1-A for Rate Schedules ITS-1 and FTS-1, which sheets contain rates for Order No. 436 open access transportation which comport with the requirements set forth in § 284.7(d)(1) and (2) of the Commission's Regulations.

This filing is designed to bring PGT's rates for open access transportation into compliance with § 284.7(d) of the Commission's Regulations establishing rate criterial for Order No. 436 transportation.

PGT has requested that waiver be granted to all applicable rules and regulations of the Commission as may be necessary to implement this Notice of Change effective July 1, 1987.

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 the Commission's Regulations. All such motions or protests should be filed on or before May 13, 1987. 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. 87-10764 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-65-000]**

## Raton Gas Transmission Co.; Change in Rates

May 6, 1987.

Take notice that Raton Gas Transmission Company (Raton) on April 30, 1987, tendered for filing, proposed changes in its FERC Gas Tariff, Original Volume No. 1, consisting of Eighth Revised Sheet No. 4. The change in rate is for jurisdictional sales and service.

Raton states that the instant filing is a restatement of rates as required by 18 CFR 154.38 (d)(4)((vi)(a) of the Regulations and reallocates cost of service between Demand and Commodity. In addition it provides for adjusted rates from supplier filed in January 1987, and proposed and become effective July 14, 1987. Minor reduction

in demand quantities are included therein.

Copies of Raton's filing are on file with the Commission and are available for public inspection. In addition, copies have been served on Raton's Jurisdictional Customer and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, 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 May 13, 1987. 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.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10776 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI87-435-000]**

## D. Lyman Stubblefield; Application for Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

May 5, 1987.

Take notice that on April 7, as amended April 23, 1987, D. Lyman Stubblefield (Stubblefield) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules for abandonment of his sale of gas to El Paso Natural Gas Company from the Cheatwood #1 Well, Section 23, Block 13, H&GN RY Co. Survey, Panhandle East Field, Wheeler County, Texas, with pregranted abandonment for a limited-term of three years for sales of such gas under his small producer certificate in Docket No. CS72-233.

In support of his application Stubblefield states that no sales have been made for over two years and there is no prospect of any sales unless the gas is sold in the spot market. Stubblefield is subject to substantially reduced takes without payment. The estimated deliverability is 30 Mcf/d and the well produces NGPA section 108 gas.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10772 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-2-58-000, 001]**

## Texas Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

May 6, 1987.

Take notice that on April 30, 1987, Texas Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective June 1, 1987:

Third Substitute Seventeenth Revised Sheet No. 4a
Third Revised Sheet No. 21

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Third Substitute Seventeenth Revised Sheet No. 4a reflects a net decrease in the Rate After Current Adjustment to 142.96¢ per Mcf and a change in the rate Surcharge Adjustment to 5.44¢/Mcf yielding a proposed Current Effective Rate of 163.30¢/Mcf (at 14.65 psia) to be effective June 1, 1987.

In addition, TGPL has submitted Third Revised Sheet No. 21 which reflects a revision of section 12.8 of the General Terms and Conditions of its Tariff pursuant to suggestions made by the Commission's staff at informal discussions during TGPL's last PGA cycle. Copies of the filing were served upon TGPL's jurisdictional customers.

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 May 13, 1987. 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. 87-10765 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-15-009]**

## Truckline Gas Co.; Proposed Change in FERC Gas Tariff

May 6, 1987.

Take notice that on May 1, 1987, Trunkline Gas Company (Trunkline) tendered for filing, pursuant to the Commission's order of November 28, 1986, substitute tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2. The effective date for these sheets is May 1, 1987.

Trunkline states that the substitute tariff sheets give effect to all compliance requirements of the Commission's November 28, 1986 order, and in addition, adjust all of Trunkline's rates for the effect of the Commission's action authorizing MRT to abandon its purchases from Trunkline. Such action was taken at the Commission's regular meeting on April 29, 1987.

Trunkline requests the granting of waiver of any provisions or regulations, in order that this revision can be implemented as soon as possible. Copies of this filing were mailed to Trunkline's customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital 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 May 13, 1987. 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. 87-1076 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-64-000]**

### Truckline Gas Co.; Proposed Change

May 6, 1987.

Take notice that Trunkline Gas Company (Trunkline) on April 30, 1987, tendered for filing the revised tariff sheets listed below, which reflect a revision in the Availability provision of Trunkline's SG-1 and SG-2 Rate Schedules. Trunkline requests an effective date of June 1, 1987 for the traiff sheets.

*Original Volume No. 1*

Fifteenth Revised Sheet No. 7
Twelfth Revised Sheet No. 9-P

Trunkline states that the accompanying Statement of Nature, Reason and Basis for the Proposed Change explains the problem which has given rise to the proposed revision in the Availability provision of the Small General Service rate schedules. No change is proposed in rates or charges, nor in Trunkline's anticipated revenues or costs.

The purpose of the revision is to enable end users which are customers of Trunkline's SG-1 and SG-2 Buyers to have their gas transported by Trunkline under section 7(c) of the Natural Gas Act or section 311 of the Natural Gas Policy Act for delivery to such SG-1 and SG-2 Buyers without causing such Trunkline Buyers to shift to another rate schedule. This is accomplished by adding the words "or transported for customers of Buyer" to the definition of Availability in Rate Schedules SG-1 and SG-2.

Trunkline also states that it has agreed with Allied Corporation, an end user of natural gas that purchases from an SG-1 Buyer of Trunkline, that it will make the revision in order to facilitate availability of transportation to end users connected to Trunkline's SG Buyers.

Copies of this letter and enclosures are being served on all 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 a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10766 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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### Union Texas Petroleum Corp., Application

May 6, 1987.

Take notice that on April 17, 1987, Union Texas Petroleum Corporation (Union Texas) of P.O. Box 2120, Houston, Texas 77052-2120, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), 15 U.S.C. 717c, 717f, and the provisions of 18 CFR 2.77 and Parts 154 and 157, for an order (1) issuing a blanket limited-term certificate of public convenience and necessity to Union Texas authorizing the sale for resale of natural gas from High Island Block 154 Field, Offshore Texas, in interstate commerce for three years or otherwise consistent with abandonment granted in Docket No. CI77-337-000; and (2) authorizing blanket pregranted abandonment of any sales of resale of natural gas made under the requested certificte. Unon Texas also requests a waiver of certain Commission regulations, including those in Parts 154 and 271 of the Commission's regulations, including those in Parts 154 and 271 of the Commission's regulation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10773 Filed 5-11-87 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-2-56-000, 001]**

### Valero Interstate Transmission Co; Change in Rates Pursuant to Purchased Gas Cost Adjustment Provisions

May 6, 1987.

Take notice that on April 30, 1987, Valero Insterstate Transmission Company ("Vitco") tendered the following tariff sheets for filing containing changes in rates pursuant to purchased gas cost adjustment provisions:

9th Revised Sheet No. 6
Superseding 8th Revised Sheet No. 6
To FERC Gas Tariff,
Original Volume No. 2

4th Revised Sheet No. 14.2
Superseding 3rd Revised Sheet No. 14.2
To FERC Gas Tariff,
Original Volume No. 1

Vitco states that the rates stated on 9th Revised Sheet No. 6 and 4th Revised Sheet No. 14.2 reflect the change in purchased gas costs based on the six month ended February 28, 1987.

The change in rate of Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 2 includes an increase in purchased gas cost of 1.91¢ per MMBtu and a surcharge of 39.58¢ per MMBtu. The rate

for Rate Schedule S–2 includes an increase in purchased gas cost of 4.64¢ per MMBtu and no surcharge. The rate for Rate Schedule S–3 includes an increase in purchased gas cost of 11.77¢ per MMBtu and a negative surcharge of 59.05¢ per MMBtu. The surcharge in each Rate Schedule is designed to eliminate the balance in the deferred purchased gas cost account.

The proposed effective date for the above filings is June 1, 1987. Vitco requests a waiver of any Commission regulations or orders which would prohibit implementation by June 1, 1987.

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 May 13, 1987. 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. 87–10777 Filed 5–11–87; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP87–63–000]**

## Western Gas Interstate Co.; Restatement of Rates

May 6, 1987.

Take notice that on April 30, 1987, Western Gas Interstate Company ("Western"), whose mailing address is 9390 Research Blvd., Kaleido I, Suite 220, Austin, Texas 78759, tendered for filing, as part of its FERC Gas Tariff the following tariff sheet constituting a restatement of its sale for resale rates:

*First Revised Volume No. 1*
Seventh Revised Sheet No. 10

The proposed effective date for the tariff sheet is May 31, 1987.

Western states that its filing restates its sale for resale rates under its Rate Schedules G–N, G–R, and G–S pursuant to section 4 of the Natural Gas Act and § 154.38(d)(4)(vi)(a) of the Commission's Regulations.

Western further states that the restated rates are below-cost rates, thus constituting a continuation of the novel rate experiment adopted in Western's previous rate case in Docket No. RP84–77–000. The same economic and market factors which led to Western's acceptance of below cost rates in that case continue to exist. Western states that in order for it to remain competitive in its market area, it must continue to utilize the same methodology in setting its rates as was accepted by the Commission in Docket No. RP84–77–000.

Copies of the filing were served on Western's jurisdictional customers and appropriate 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. All such motions should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–10775 Filed 5–11–87; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TA87–2–57–001]**

## Western Transmission Corp.; Proposed Changes

May 6, 1987.

Take notice that Western Transmission Corporation (Western), on April 30, 1987, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheet:

Twenty Ninth Revised Sheet No. 3–A, superseding Twenty Eighth Revised Sheet No. 3–A.

The proposed changes would reduce the monthly charges for purchased gas to Colorado Interstate Gas Company, Western's sole jurisdictional customer, pursuant to the provisions of Section 18 of Western's FPC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is June 1, 1987.

Copies of the filing have been served upon Colorado Interstate Gas Company.

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. All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–10768 Filed 5–11–87; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP87–61–000]**

## Eastern Shore Natural Gas Co.; Tariff Filing

May 6, 1987.

Take notice that on April 23, 1987, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing the following revised tariff sheets for inclusion in its FERC Gas Tariff, Original Volume No. 1:

Thirty-Fourth Revised Sheet No. 5
Thirty-Fourth Revised Sheet No. 6
Thirty-Fourth Revised Sheet No. 10
Thirty-Fourth Revised Sheet No. 11
Thirty-Fourth Revised Sheet No. 12
Eleventh Revised Sheet No. 13
Fifth Revised Sheet No. 14

According § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until April 27, 1987.

Eastern Shore states that this filing reflects an increase in its rates to its jurisdictional customers. The increased rates are required to permit Eastern Shore to recoup its increased costs in operating and maintaining its pipeline system and to provide for an overall rate of return of 14.91 pervent and a return on equity of 15.00 percent.

The proposed effective date for the above-referenced tariff sheets is May 23, 1987. Copies of this filing have been mailed to each of Eastern Shore's jurisdictional customs 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 214 and 211 of the Commission's Rules of

Practice and Procedure. All such motions or protests should be filed on or before May 13, 1987. 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. 87-10780 Filed 5-11-87 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. GP87-37-000]

## Phillips Petroleum Co. v. Natural Gas Pipeline Co. of America; Filing of Complaint

May 6, 1987.

On March 9, 1987, as completed on March 11, 1987, Phillips Petroleum Company (Phillips) filed a complaint with the Federal Energy Regulatory Commission (Commission) against Natural Gas Pipeline Company of America (Natural) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. Phillips alleges that Natural has not complied with § 271.1104 of the Commission's regulations and consequently has underpaid Phillips for production-related costs incurred by Phillips between July 1980 through the present. Phillips' complaint covers ten separate contracts with Natural.

Phillips states that all of the gas covered by its complaint is NGPA section 102(d) gas or is otherwise subject to the jurisdiction of the Commission under the Natural Gas Act, and that the gas is sold and delivered to Natural on offshore platforms. Most of the gas is gas-well gas and to the extent that delivery allowances are sought as to casinghead or oil-well gas, the gas is commingled with other gas prior to the point of sale.

Phillips further states that it is seeking collection of delivery allowances applicable to delivery systems constructed prior to November 9, 1978, at the generic rate of five cents per MMBtu, through delivery systems constructed after November 9, 1978, at the generic rate of seven cents per MMBtu for the first mile or fraction thereof, and at twelve cents per MMBtu for the delivery through combined pre- and post-NGPA delivery systems of one mile or less.

According to Phillips, it has repeatedly billed Natural and requested payment at these rates, but Natural has paid Phillips only the five cent delivery rate for sales subject to this complaint. Phillips believes that Natural is refusing to pay any offshore platform delivery allowance in excess of five cents per MMBtu for post-NGPA wells on pre-NGPA platforms on the theory that the platform construction date controls in all cases.

Phillips seeks an order requiring Natural to pay the underpaid principal amount, which was $4,945,264.55 through December 31, 1986, plus applicable interest.

It is noted that the complaint requests that this matter not be referred to the Production-Related Costs Board (Board). The Board was established by the Commission under § 271.1105 to resolve disputes involving non-compliance with § 271.1104. Section 271.1105(d)(3) states "The Board will consider any complaint, filed by any party or person in accordance with § 385.206 of this chapter, * * *." This complaint was filed pursuant to § 385.206 alleging non-compliance with § 271.1104. Therefore, pursuant to the procedures established by the Commission, this complaint will be reviewed by the Board.

Under the Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Natural must file an answer to Phillips' complaint with the Commision unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Natural shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register.** 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 Phillips' complaint are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10779 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA87-3-38-000, 001]

## Ringwood Gathering Co.; Filing of Revised Tariff Sheets

May 6, 1987.

Take notice that on April 30, 1987, Ringwood Gathering Company (Ringwood) tendered for filing Fortieth Revised Sheet PGA-1 to its FERC Gas Tariff, Original Volume. Ringwood states that Fortieth Revised Sheet PGA-1 will become effective on June 1, 1987 and revise its Base Tariff Rate to reflect the decrease in the system cost of purchased gas and recover the balance accumulated in its unrecovered purchased gas cost account.

Ringwood further states that the projected cost of purchased gas, as computed in this filing, is based on the applicable NGPA rates that will be paid during the effective period of this PGA. In certain instances, Ringwood has renegotiated the price to be paid for certain gas at costs below the maximum lawful NGPA rates. In these cases the renegotiated prices have been used.

Ringwood states that copies of this filing were served upon Williams Natural Gas Company, Oklahoma Natural Gas Company 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 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 May 13, 1987. 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. 87-10778 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Hearings and Appeals

## Issuance of Proposed Decisions and Orders; Week of March 9, Through March 13, 1987

During the week of March 9 through March 13, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy

with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

May 5, 1987.

*B&R Oil Company, Inc., South Bend, IN; KEE–0108, Reporting Requirements*

B&R Oil Company, Inc. filed for relief from the requirement to submit Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." B&R sought relief because it allegedly is understaffed and cannot obtain necessary data from its accounting firm in time to prepare the Form. The OHA found that the small size of B&R's staff is an insufficient basis for exception relief. In addition, the OHA found that B&R could eliminate the difficulties in obtaining its data by devising a careful method of estimating the necessary figures. Consequently, on March 13, 1987 the OHA issued a Proposed Decision and Order tentatively denying B&R's request for exception relief.

*State of Hawaii, Honolulu, Hawaii; KEE–0102 Reporting Requirements*

The State of Hawaii filed an Application for Exception from the requirements of 10 CFR Parts 450 and 455. In the Application, Hawaii requested that the State be excepted from the regulatory requirement that buildings eligible for grants under the DOE's Institutional Conservation Program (ICP) be heated or cooled by mechanical means. On March 12, 1987, the DOE issued a Proposed Decision and Order which tentatively determined that Hawaii's Application for Exception be granted.

[FR Doc. 87–10797 Filed 5–11–87; 8:45 am]

BILLING CODE 6450–01–M

## Issuance of Decisions and Orders, Week of March 16 through March 20, 1987

During the week of March 16 through March 20, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Appeal

*Fulbright & Jaworski, 3/1/87; KFA–0080*

Fulbrignt & Jawaorski filed an Appeal from a partial denial by the DOE Deputy Assistant Secretry for Petroleum Reserves of a Request for Information which the firm had submitted under the Freedom of Information Act. The Deputy had denied access to two documents which were generated in connection with the Secretary of Energy's May 22, 1986 decision to reduce the crude production rates at he Naval Petroleum Reserves Numbered 1. In considering the Appeal, the DOE determined that both documents were properly withheld pursuant to 5 U.S.C. 552(b)(5) because they were predecisional, deliberative documents. Accordingly, the Appeal was denied.

### Request for Modification and/or Rescission

*Keystone Fuel Oil Co., 3/20/87; KER–0009*

This Decision and Order concerns a Motion for Reconsideration that Keystone Fuel Oil Company filed on April 1, 1986. In that Motion, Keystone requested reconsideration of a DOE determination issued on March 26, 1986, denying an exception request that Keystone previously filed. The exception request, if granted would have retroactively relieved Keystone of the obligation to refund overcharges that the firm obtained in its sales of covered petroleum products. Keystone, however, did not provide new information or arguments to demonstrate that it satisfied the retroactive exception relief standards. The firm's Motion for Reconsideration was therefore denied.

### Refund Applications

*Aminoil U.S.A., Inc./Behm Family Corp., 3/19/87; RF139–67*

The DOE issued a Decision and Order concerning an Application for Refund filed by the Behm Family Corporation for a portion of the fund obtained by the DOE through a consent order entered into with Aminoil U.S.A. Inc. The DOE reviwed the firm's submissions and, where appropriate, revised both its "approximated" banks of unrecouped increased product costs and the prices used in determining the firms's competitive disadvantage. Using the approximated banks as a ceiling for the appropriate refund amount, the DOE used the competitive disadvantage methodology to determine the Behm refund. The refund granted totaled $571,469, representing $340,142 in principal and $231,327 in accrued interest.

*AMVOY American Voyager Travel and VIP Coaches, Ace Travels, 3/16/87; RF270–1131, RF270–1138*

The Department of Energy (DOE) issued a Decision and Order analyzing Applications for Surface Transporter Refunds filed by two travel agencies. Each company based its claim on the operation of chartered tour buses during the Settlement Period. One of the companies also based its claim on operation of a charter airplane. The DOE approved both companies for refunds based on the buses and disapproved the airplane portion of the one company's claim. The DOE determined that airplanes are not eligible Surface Transportation vehicles.

*Beacon Oil Co./Buford Oil Co. et al., 3/18/87; RF238–4 et al.*

The DOE issued a Decision and Order concerning 10 Applications for Refund filed by purcahsers of Beacon Oil Company petroleum products. Each firm applied for a refund based on the procedures outlined in *Beacon Oil Company*, 14 DOE ¶ 85,011 (1986), as modified by *Beacon Oil Company*, 14 DOE ¶ 85,509 (1986), governing the disbursement of settlement funds received from Beacon pursant to a December 17, 1979 Consent Order. Since all of the applicants were resellers who claimed refunds of $5,000 or less, they were presumed to have been injured by Beacon's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $43,649, representing $22,727 in principal and $20,922 in accrued interest.

*City Service Cab, Inc., RF 270–591; Mobile Cab & Baggage Co., Inc., RF270–607; City Economy Cab, Inc., 3/19/87; RF270–712*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by three taxicab companies and will use those gallonages as a basis for the refund that will ultimately be issued to the three firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the three firms' refunds will be determined at a later date.

*Dahlonega Equipment & Supply, Inc., 3/18/87; RF270–1083*

The Department of Energy (DOE) issued a Decision and Order approving a refund from the Surface Transporters Escrow for a company that sells and distributes egg cartons. The company's claim was based on

its fleet of trucks and company sales cars. The OHA concluded that company cars used for sales purposes qualify as private fleets within the meaning of the Surface Transporter Escrow.

*Farm Service Cooperative, 3/20/87; RF270-1090*

The Department of Energy (DOE) issued a Decision and Order analyzing an Application for Surface Transporter Refunds filed by an agricultural cooperative. The cooperative based its claim on purchases of propane which it resold to its members for home heating purposes. The DOE denied the cooperative's claim because Surface Transporters are eligible to receive refunds based only on petroleum products purchased for vehicle use.

*Getty Oil Co./Al's Auto Service Station, Inc. et al., 3/18/87; RF265-119 et al.*

The DOE issued a Decision and Order granting 56 Applications for Refund from the Getty Oil Company deposit escrow fund filed by 41 reseller-retailers of Getty refined petroleum products. Thirty refund applicants documented purchases of Getty products for the period August 19, 1973 through December 31, 1978, and were eligible for 100 percent of their volumetric share based upon the small claims presumption of injury. The 11 remaining applicants documented purchases which qualified them for refunds above the $5,000 threshold, but chose to limit their claims to either $5,000 or a percentage of their volumetrically-allocated share, whichever produced the higher refund amount. The total amount of refunds granted is $336,286, representing $173,253 in principal and $163,033 in accrued interest.

*Gulf Oil Corp./Laurens Glass et al., 3/17/87; RF2689 et al.*

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. All of the applicants were end-users of petroleum products purchased directly from Gulf. In its Decision, the DOE granted the seven applications under the standards specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted total $47,152, representing $38,324 in principal and $8,828 in interest.

*Gulf Oil Corp. Layton Oil & Fuel Oil, Ronald H. Royer, 3/20/87; RF40-2757, RF40-3618*

The DOE issued a Decision and Order concerning the Applications for Refund filed on behalf of Layton Oil & Fuel Oil and Ronald H. Royer in the Gulf Oil Corporation refund proceeding. Each firm was a reseller of Gulf refined petroleum products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated that it purchased a certain volume of Gulf product and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. Accordingly, refunds totaling $4,021 in principal and $772 in interest were approved for the two claimants.

*King and King Enterprises, Inc./Highway Oil, Inc., 3/19/87; RF256-3*

The DOE issued a Decision and Order concerning an Application for Refund filed by Highway Oil, Inc. (Highway), a purchaser of motor gasoline from King and King Enterprises, Inc. (K&K). Highway applied for a refund based on the procedures outlined in *King and King Enterprises, Inc.*, 14 DOE ¶ 85,305 (1986), governing the disbursement of settlement funds received from K&K pursuant to an August 31, 1981 Consent Order. Since Highway is a reseller and did not claim a refund greater than $5,000, it was presumed to have been injured by K&K's alleged overcharges. After examining the application and supporting documentation submitted by Highway, the DOE concluded that it should be granted a refund of $7,328, representing $5,000 in principal and $2,238 in accrued interest. However, since Highway is currently a respondent in a DOE enforcement proceeding (Highway Oil, Inc., Case No. HRO-0123), the DOE decided that the firm's refund should be transferred to a separate, interest-bearing escrow account. When the enforcement proceeding is resolved, the DOE will issue a Supplemental Order governing the disbursement of the escrowed funds.

*Little America Refining Company/Ed's Sinclair Service, 3/19/87; RF112-202*

The DOE issued a Decision and Order granting a refund from the Little America Refining Company (Larco) deposit escrow account to Ed's Sinclair Service, a retailer of Larco gasoline. Since the applicant is a reseller who sought a refund below the $5,000 small claims threshold, the DOE did not require a detailed injury showing. The applicant was granted a refund of $137, representing $89 in principal and $48 in interest from the Larco deposit escrow account.

*Lowe Oil Company/G.E. Stockton, Inc., 3/17/87; RF206-3*

The DOE issued a Decision and Order concerning an Application for Refund filed by G.E. Stockton, Inc. (Stockton), a retailer. The applicant had purchased refined petroleum products from Lowe Oil Company, and sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Lowe. The applicant, who was identified in the DOE audit files as having been overcharged, was eligible to apply for a refund of $18,721. However, the applicant did not make the showing of injury required for reseller or retailer claims in excess of $5,000. Therefore, its claim was limited to the $5,000 threshold, plus accrued interest. After examining the application submitted by the firm, the DOE granted the applicant a refund of $8,250, representing $5,000 in principal, and $3,250 in accrued interest.

*Marathon Petroluem Company/ Duke's Marathon, 3/16/87; RF250-2718*

The DOE issued a Supplemental Decision and Order concerning a refund granted to Duke's Marathon in a Decision and Order, *Marathon Petroleum Co./CSC Oil Co.*, 15 DOE ¶ 85,373 (1987), issued on March 4, 1987. An arithmetic error in the March 4 Decision and Order understated the total refund due to Duke's Marathon by $100. The March 4 Decision and Order was amended to correct the error.

*Mobile Oil Corporation/Alfred Community Enterprises et al., 3/20/87; RF225-8027, et al.*

The DOE issued a Decision granting 50 Applications for Refund from the Mobil Oil Corporation escow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $16,856 ($13,887 principal plus $2,969 interest).

*Mobil Oil Corporation/Alumax Extrusions et al., 3/17/87; RF225-1764 et al.*

The DOE granted 28 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $8,166, representing $6,727 in principal plus $1,439 in interest.

*Mobil Oil Corporation/Ames & Pickens Service Station, 3/17/87; RF225-9170 et al.*

The DOE issued a Decision and Order granting 33 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount granted was $18,085.

*Mobil Oil Corporation, Buford M. Musser et al., 3/18/87; RF225-10029 et al.*

The DOE issued a Decision granting 34 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $88,403 ($72,828 in principal plus $15,575 in interest).

*Panhandle Eastern Pipeline Co./Western Petroleum Company, 3/20/87; RR15-1*

The DOE issued a Decision concerning a Motion for Modification filed by Western Petroleum Co. (Western) in the Panhandle Eastern Pipeline (Panhandle) refund proceeding. In 1983 Western received a refund of $32,970 from Panhandle pursuant to the procedure set forth in *Office of Enforcement*, 9 DOE ¶ 82,569 (1982) (*Panhandle*). In its current submission, Western requests a supplemental refund. Although the DOE determined that Western did not meet the strict criteria for granting a Motion for Modification set forth in 10 CFR 205.135(b)(2), the DOE decided to exercise its discretion to consider the merits of the Motion.

The DOE determined that Western had failed to demonstrate injury greater than the volumetric amount set forth in *Panhandle*. In making that determination, the DOE also

rejected Western's arguments that Panhandle's prices to Western should be compared with the low prices rather than the average prices in *Platt's Oil Price Handbook and Oilmanac* or the average prices of its other suppliers. However, the DOE determined that Western's Motion should be granted in part so that the firm will receive an additional refund for June and July of 1974 when Panhandle's prices were greater than market average and Western maintained positive banks. Western had previously been denied a refund for those two months because its banks declined during that period. The total additional refund approved for Western was $12,661 ($6,832 in principal and $5,829 in interest).

*Plateau, Inc./Kar Kwik, Inc., Stimson's, Inc., 3/20/87; RF204-9, FR204-10*

The DOE issued a Decision and Order concerning Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Plateau, Inc. The two applicants in this case were resellers who were related by common ownership and operated from the same location. The applicants requested a combined refund of $10,000 in principal, on the basis of the purchases of each firm considered under the small claims presumption of injury. The DOE determined that the two claims should be considered together for the purposes of analysis, and therefore granted the two firms a combined refund of $5,000 in principal, plus $3,176 in interest.

*Union Texas Petroleum Corp./Midwestern Butane Gas Co., Johnston's LP Gas, Home Gas Inc., 3/19/87; RF140-51, RF140-52, and RF140-53*

The DOE issued a Decision and Order concerning Applications for Refund filed by three resellers of propane purchased from Union Texas Petroleum Corporation (UTP). In considering the applications, the DOE applied the volumetric and small-claims presumptions applicable to resellers of UTP products. Under those presumptions, the DOE determined that each of the applicants was entitled to receive a refund below the threshold amount of $5,000, plus a proportionate share of the interest accrue on the UTP consent order funds. The refunds approved in the Decision totalled $8,376.

**Dismissals**

The following submissions were dismissed:

*Name and Case No.*

Anderson Amoco Service; RF40-3645
Appling County Board of Education; RF40-1938
Archer's Bros. Garage; RF40-3665
Arnold Barfield Dist. Co.; RF40-3666
Bennett's Gulf; RF40-3664
Blue Flame Gas Co, Inc.; RF40-3661
Bob and Tom's Conoco; RF220-485
Bob Davis Gulf; RF40-3668
Butter Krust Bakery Division of Beatrice Foods; RF40-252
Cashion Gulf Service; RF40-3663
Eddie's Gulf; RF40-3227
Grosse Pte. Yacht Club; RF40-1278
Gulf Service Station; RF40-3667
Keltner Enterprises; RF206-2
Mellon Enterprises, Inc.; RF40-3281
Pride Oil Company; RF7-135
R & P Olson, Inc.; RF225-10564
Scott Fuel, Inc.; RF40-3660
Valamont Gulf Service; RF40-3662
Western Petroleum, Inc.; RF220-486

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

May 5, 1987.

[FR Doc. 87-10798 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders, Week of March 23 Through March 27, 1987

During the week of March 23 through March 27, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

*General Electric Calma Co., 3/27/86; KFA-0082*

General Electric Calma Company (Calma) filed an Appeal from a partial denial by the Director of the Classification and Technical Information Division of the DOE's Albuquerque Operations Office (Authorizing Official), of a Request for Information which Calma had submitted under the Freedom of Information Act (the FOIA). Calma's request sought materials relating to a Request for Quotation for the purchase of computer equipment. In considering the Appeal, the DOE found that the Authorizing Official had properly withheld pursuant to Exemption 4 of the FOIA, certain pricing information contained in the responsive documents. The DOE determined that release of this material could result in substantial competitive harm to the company that had submitted this information to the DOE. Accordingly, the Appeal was denied.

*Pierson, Ball & Dowd, 3/27/87; KFA-0081*

Pierson, Ball & Dowd filed an Appeal from denial by the Authorizing Offical of the DOE Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the Authorizing Official had properly withheld the documents under Exemption 5 of the FOIA. The DOE further found, however, that blank copies of certain forms that were withheld should be released to the public. Important issues that were considered in the Decision and Order were (i) the segregability of non-deliberative material in the withheld documents, and (ii) whether the withheld material should be released in the public interest.

**Remedial Orders**

*Pel-Star Energy, Inc., 3/27/87; HRO-0175*

Pel-Star Energy, Inc. (Pel-Star) objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on July 6, 1983. In the Proposed Remedial Order, the ERA found that from June 1978 through December 1980, Pel-Star charged prices in its crude oil sales in excess of those permitted by § 212.186 of the DOE Mandatory Petroleum Price Regulations (the layering regulations). The DOE concluded that the allegations of layering should be upheld and the Proposed Remedial Order was therefore issued as a final Order. The important issues discussed in the Decision and Order include: (i) The procedural and subtantive validity of § 212.186, (ii) whether Pel-Star performed traditional and historical services and functions in its crude oil sales, and (iii) whether Pel-Star's officers should be held jointly and severally liable for the firm's violations.

*Texaco Inc., 3/25/87; HRO-0275*

Texaco Inc. objected to a Proposed Remedial Order which was issued to the firm on July 22, 1985. In the Proposed Remedial Order the ERA found that Texaco, a refiner, had used excessive May 15, 1973 prices in computing its maximum allowable prices (MAPs) for sales of propane for certain customers who had purchased propane in May 1973 pursuant to written variable-priced contracts. ERA also found that Texaco impermissibly charged certain propane customers prices that consisted of the MAP that Texaco had computed plus its current delivery costs. Consistent with the analysis used in *Texaco Inc.*, 14 DOE ¶ 83,034 (1986), and *Texaco Inc.*, 14 DOE ¶ 83,047 (1986), the DOE found that Texaco's use of excessive May 15, 1973 prices was a violation of the regulations for which refunds equal to the difference between the correct and incorrect May 15, 1973 selling prices could be ordered. Accordingly, Texaco was ordered to remit $1.1 million on overcharges. With regard to Texaco's recovery of tis current delivery costs, the DOE found that Texaco's contracts with the customers in question required delivery, and therefore, that Texaco had impermissibly failed to report its recovery of delivery costs. The DOE then considered ERA's subtraction of May 15, 1973 delivery costs from current costs in order to determine the unreported costs. The DOE accepted ERA's rationale that, because Texaco had erroneously used an undelivered, rather than a delivered, May 15, 1973 price in computing its MAP, Texaco had not recovered its May 15, 1973 delivery costs through its MAP, although it was entitled to do so. The DOE found, however, that this rationale did not

apply to the four customers for which ERA had imputed a May 15 delivered price of $.085 pursuant to 10 CFR 212.164(a). Based on the foregoing, the DOE required that Texaco recompute its cost recoveries based on DOE's amended calculation of the unreported recoveries. Finally, consistent with the two Remedial Orders cited above, the DOE modified the PRO to exclude the requirements that Texaco: (i) perform a self-audit with respect to customers not identified in the PRO, (ii) provide data and calculations for those customers and, (iii) upon ERA's approval, make refunds to those customers.

**Request for Exception**

*Webb Oil Company, 3/27/87; KEE-0085*

Webb Oil Company filed an Application for Exception on November 6, 1986. The firm sought relief from the reporting requirements of Form EIA-782B pursuant to 10 CFR 205.55(b)(2). In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the reporting requirements that would warrant approval of exception relief. Accordingly, exception relief was denied.

**Refund Applications**

*Fairfield Transport, Inc., et al., 3/25/87; RF270-818 et al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreeement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by five trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the five firms. The DOE stated that because the size of a surfact transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the five firms' refunds will be determined at a later date.

*Gary Energy Corporation/Vangas, Inc., 3/23/87; RF47-16*

Vangas, Inc., a reseller of propane, filed an Application for Refund in connection with the Gary Energy Corporation refund proceeding. Vangas demonstrated the volume of its propane purchases from Gary, and submitted evidence of cost banks which substantially exceeded its refund claim. From price information submitted by the applicant, the DOE applied the three step competitive disadvantage methodology, and determined that Vangas should receive 100 percent of its allocable share for its purchases from Gary. Accordingly, Vangas was granted a refund of $23,306, representing $18,534 in principal and $4,772 in interest.

*La Gloria Oil & Gas Co./Thomas P. Reidy, Inc., Inland Energy, Inc., 3/26/87; RF263-22, RF263-24*

The DOE issued a Decision and Order concerning Applications for Refund filed by Thomas P. Reidy, Inc. and Inland Energy, Inc., resellers of La Gloria Oil & Gas Co. refined petroleum products. Both applicants purchased petroleum products only on a sporadic basis from La Gloria, and were therefore considered spot purchasers. In *La Gloria Oil & Gas Co.*, 14 DOE ¶ 85,501 (1986), the DOE established the rebutted presumption that spot purchasers were generally not injured by the alleged La Gloria overcharges. Since neither of the applicants rebuttle this presumption, their Applications for Refund were denied.

*La Gloria Oil & Gas Co./Value Oil Company, Mid-South Sales, Inc., 3/25/87; RF263-31, RF263-32*

The DOE issued a Decision and Order granting Applications for Refund filed by two resellers of refined petroleum production products covered by a consent order which the agency entered into with La Gloria Oil & Gas Co. Both of the applicants presented evidence that they purchased refined petroleum products from La Gloria during the consent order period, and claimed refunds below the $5,000 small claims threshold for resellers. According to the methodology set forth in *La Gloria Oil & Gas Co.*, 14 DOE ¶ 85,501 (1986), each applicant was found eligible for a refund from the La Gloria consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved in this Decision totaled $10, 876.

*Marathon Petroleum Company/Frank Sales & Service, 3/23/87; RF250-111, RF250-112*

The DOE issued a Decision and Order granting an Application for Refund filed by Frank Sales & Service (Frank), an indirect purchaser of product covered by a consent order that the agency entered into with Marathon Petroleum Company. Frank provided evidence to demonstrate that the product for which it claimed a refund originated with Marathon. Since Frank did not request a refund greater than the $5,000 small claims refund amount, the DOE did not require a detailed demonstration of injury. Accordingly, the Applicant was granted a refund of $569 in principal and $48 in interest.

*Marathon Petroleum Company/H.C. Lewis Oil Co., 3/24/87; RF250-2714, RF 250-2715*

H.C. Lewis Oil Co. (Lewis), a reseller of petroleum products, filed two Applications for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). Lewis demonstrated that it purchased 5,659,109 gallons of refined petroleum covered products from Marathon during the consent order period. Using a volumetric methodology, the DOE determined that Lewis' claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Lewis a refund of $2,376.83 in principal and $162.16 in accrued interest for a total refund of $2,538.99.

*Marathon Petroleum Company/Hicks Oil and Hicksgas, Inc., 3/23/87; RF250-1238*

The DOE issued a Decision and Order concerning an Application for Refund filed by Hicks Oils and Hicksgas, Inc. (Hicks), a reseller of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Hicks established the volume of its Marathon purchases, and requested a refund of $5,000 in principal under the small claims presumption of injury. A subsidiary of Hicks had received a separate refund in the Marathon proceeding under the small claims presumption of injury. The DOE determined that Hicks and its subsidiary should be considered together in this proceeding, and therefore in calculating the amount of the refund to which Hicks was entitled, the DOE took into consideration the amount Hicks had already received on the basis of the purchases of its subsidiary. Although the applicant had failed to disclose that it had filed a refund claim on behalf of its subsidiary and that it was previously involved in an enforcement proceeding, the DOE determined that the applications had not been filed in bad faith. Hicks was granted a refund of $2,930, representing $2,705 in principal and $225 in interest.

*Marathon Petroleum Company/Hodges Development Corp. et al., 3/27/87; RF250-425 et al.*

The DOE issued a Decision and Order concerning 23 Applications for Refund filed by 13 resellers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant established the volume of its Marathon purchases, and each requested a refund of 35 percent of its allocable share under the medium range presumption of injury. The sum of the refunds approved in this Decision is $142,757 in principal and $12,239 in interest.

*Mobil Oil Corporation/Brentwood Union Free School et al., 3/27/87; RF225-9911 et al.*

The DOE granted 24 Applications for Refund from a fund obtained through a Consent Order that it entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric metholology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $25,138, representing $20,710 in principal plus $4,428 in interest.

*Mobil Oil Corporation/Bethlehem Steel Corp. et al., 3/25/87; RF225-7511 et al.*

The DOE granted 28 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. Twenty-seven of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable share based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*). One applicant was a retailer who purchased directly from Mobil and therefore was eligible for a refund based on 30% of the volumetric refund amount. *See Mobil.* The total amount of the refunds granted was $35,683, representing $29,395 in principal plus $6,288 in interest.

*Vangas, Inc./Blu-Gas Service, Inc., 3/24/87; RF68-23*

The DOE issued a Decision and Order concerning an Application for Refund filed by

a reseller of Vangas propane who rented propane storage tanks from Vangas. The firm applied for a refund based on the procedures outlined in *Vangas, Inc.*, 12 DOE ¶ 85,125 (1984). Blu-Gas filed its Application more than a year after the established filing deadline for receipt of refund applications. Moreover, after all timely claims were processed, the funds remaining in the Vangas consent order escrow account were used to satisfy the requirements of the Further Continuing Appropriations Act of 1983 (Warner Amendment). Consequently, at the time Blu-Gas filed its application, all Vangas consent order funds had been transferred from the account, and no money was available for distribution to claimants in this proceeding. Accordingly, the Application for Refund was denied.

*Ridgefield Park Transport Co. Inc. et al. 3/26/87: RF270-282 et al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by six trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the six firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the six firms' refunds will be determined at a later date.

*Staten Island Bus Co. Inc., RF270-741; Lakes Region Transit Co., Inc., RF270-750; Villani Bus Company., RF270-760; School Bus Services, Inc., 3/25/87; RF270-852*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refind petroleum products claimed by four private bus companies and will use those gallonages as a basis for the refund that will ultimately be issued to the four firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be determined at a later date. The DOE also determined that anti-freeze was not a product upon which an applicant could base a Surface Transporter claim but trransmission fluid could be the basis for a claim.

*Tenneco Oil Company/Blu-Gas Service, Inc., 3/26/87; RF7-138*

The Department of Energy issued a Decision and Order granting a refund to Blu-Gas Service, Inc. from the Tenneco Oil Company deposit fund escrow account. Because the volume schedule submitted by Blu-Gas showed purchases that were above threshold level for small claims by resellers, the OHA requested that Blu-Gas submit additional documentation concerning its purchase volumes and make a showing of injury. Blu-Gas was unable to submit that type of information. Therefore, it was granted a refund based on the threshold volume. The refund granted to Blu-Gas totaled $1,985 including interest.

**Dismissals**

The following submissions were dismissed:

*Name and Case No.*

Chevron U.S.A. Inc.—RF157-2
E.H. Pechan & Associates, Inc.—RF225-836
Endicott Oil Service—RF40-3678
Mid-State Oil, Inc.—RF225-9229
Mobil Oil Corp.—RF257-1
Mojave Petroleum Co., Inc.—KEE-0131
United Oil Marketers—RF7-168

Copies of the full text of these decisions and others are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

May 5, 1987.

[FR Doc. 87-10799 Filed 5-11-87 8:45 am]

**BILLING CODE 6450-01-M**

## Issuance of Proposed Decisions and Orders, Week of April 20 Through April 24, 1987

During the week of April 20 through April 24, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

**Gorge B. Breznay,**

*Director, Office of Hearings and Appeals.*

May 5, 1987.

*Fleming Bros. Oil Co., South Haven, MI; KEE-0130; Keneco, Littlestown, PA; KEE-0129*

Fleming Bros. Oil Co. & Keneco filed Applications for Exception with the Office of Hearings and Appeals of the Department of Energy. The exception requests, if granted, would remove the applicants from the list of firms that are required to file form EIA-782B. On April 20, 1987, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception requests be denied.

*Hy-Test Co., Inc., Johnston, RI; KEE-0114, Reporting Reqmts*

Hy-Test Co., Inc. filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Hy-Test argued that the monthly reporting requirement is burdensome because of the firm's personnel shortage. In evaluating the firm's request, the Department of Energy found that the cost to Hy-Test of filing the Form is no greater than the cost to other reporting firms. Consequently, on April 23, 1987, the DOE issued a Proposed Decision and Order which tentatively denied Hy-Test's request for exception relief.

*Keneco, Littlestown, PA; KEE-0091 Reporting Reqmts*

The DOE issued a Proposed Decision and Order concerning an Application for Exception filed by Keneco. Keneco requested relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering Keneco's request, the DOE found that the firm failed to demonstrate that it was affected in a particularly adverse manner by the filing requirement. Accordingly, on April 23, 1987 the DOE tentatively determined to deny the Application for Exception.

*Patton Oil Co., Ansted, WV KEE-0121 Reporting Reqmts*

Patton Oil Co. filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that

the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file the Form. On April 20, 1987, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

*Tex-Oil, Inc., Salem, IN; KEE-0115*

Tex-Oil, Inc. filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering Sweley's request, the DOE found that the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file the Form. On April 21, 1987, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

[FR Doc. 87-10800 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $10,916,587.92 plus accrued interest, in alleged crude oil overcharge funds obtained from nine firms. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

**DATE AND ADDRESS:** Applications for refund must be filed by December 31, 1987, and should be addressed to: Subpart V Crude Oil Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from nine firms, listed in the Appendix to the Decision, from judicial and administrative proceedings involving alleged crude oil violations. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by December 31, 1987 and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows.

Dated: May 4, 1987.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

May 4, 1987.

*Names of Firms:* O.B. Mobley, Jr. *et al.*
*Dates of Filing:* April 5, 1984 *et al.*
*Case Numbers:* HEF-0499 *et al.*

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. These procedures are used to refund monies to those injured by alleged violations of the DOE pricing regulations.

The ERA has filed nine Petitions for the Implementation of Special Refund Procedures with respect to funds obtained from the firms listed in the Appendix to this Decision and Order. To date, these firms have remitted to the DOE a total of $10,916,587.92 pursuant to DOE consent orders and, in the case of Marion Corporation (Case No. KEF-0030), pursuant to a Compromise Agreement approved by the United States Bankruptcy Court.[1] As of April 27, 1987, $1,287,298.09 in interest has accrued. This Decision and Order establishes final procedures by which the OHA will distribute those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or cannot ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, DOE ¶ 82,597 (1981).

We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the nine firms and have determined that such procedures are appropriate.

In three separate Proposed Decisions and Orders (PDOs) issued on November 4, 1986, December 1, 1986, and December 17, 1986, respectively, the OHA established tentative procedures to distribute the funds involved in these nine cases.[2] Because the procedures proposed and the issues raised in each case are identical, we are combining all nine cases into the present final Decision and Order.

The OHA tentatively concluded in these proceedings that because the funds that the firms remitted to the DOE settle alleged crude oil overcharges, the funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, issued on July 28, 1986, 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"). The MSRP was issued in conjunction with the approval by the United States District Court for the District of Kansas of a settlement agreement in *In Re: The DOE Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. July 7, 1986).[3] On August 8, 1986, the OHA announced its intention to follow the MSRP. 51 FR 29686 (August 20, 1986).

The MSRP provides that the DOE will employ a refund process for restitution of alleged crude oil violation amounts

[1] One of the firms, Kalama Chemical, Inc., is making quarterly payments to the DOE with a final payment due on October 1, 1988. As noted in the Appendix, Kalama has an outstanding liability of $179,532.93 plus interest. These funds, when remitted to the DOE, will be disbursed pursuant to the procedures in this Decision. The DOE will give notice when such additional funds are received.

[2] The three PDOs were published in the Federal Register on November 12, 1986 (51 FR 41001), December 19, 1986 (51 FR 45537), and December 24, 1986 (51 FR 46709), respectively.

[3] For a detailed discussion of the events in the Stripper Well Litigation which brought about the MSRP, see *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986).

held in escrow by the DOE or received in the future, using the special refund procedures codified at 10 CFR Part 205, Subpart V. Under that process, the OHA will accept and process refund applications from persons who claim they were injured by alleged crude oil violations. Up to 20 percent of the alleged crude oil violation amounts may be reserved initially to satisfy claims from injured parties. The MSRP calls for the remaining 80 percent of the funds to be disbursed to the state and federal governments for indirect restitution. After all valid claims are paid, any remaining funds from the reserve will also be divided between the state and federal governments. The federal government's share of the funds will ultimately be deposited into the general fund of the Treasury of the United States.

In the PDOs, the OHA proposed to reserve initially the full 20 percent of the alleged crude oil violation amounts for direct restitution to claimants. We also proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The PDOs stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need only submit documentation of their purchase volumes of refined petroleum products during the control period in order to be eligible for a refund. Finally, we proposed to calculate refunds on the basis of a per gallon refund amount derived by dividing the total amount of crude oil overcharge funds received from the nine firms by the total consumption of petroleum products in the United States during the period of price controls. Comments were solicited regarding the tentative distribution process set forth in the three PDOs.

*Discussion of Comments Received*

In response to the PDOs, we received comments from the following: a group of States of the United States, a group of nine ocean carriers which sail under foreign flags, a group of 32 foreign flag air carriers, and Philip Kalodner, counsel for potential claimants. However, rather than raising issues specific to the nine cases in the instant proceeding, the commenters adopted by reference the comments that they had already filed in A. Tarricone, Inc., Case No. KEF-0049. Because these comments were discussed at length in a Decision and Order recently issued in *A. Tarricone, Inc.*, 15 DOE ¶ ———, No. KEF-0049 (April 15, 1987) (*Tarricone*), we need not address them in detail here.[4]

In *Tarricone*, we noted that the comments addressed issues in four general areas: (i) Whether 20 percent of the Subpart V crude oil funds was necessary to satisfy crude oil refund claims; (ii) the timing of refund payments; (iii) the calculation of refund amounts in crude oil proceedings; and (iv) standards for showing injury.

As an initial matter, we determined that we would not adjust downward the 20 percent reserve at this early stage.[5] We also stated that, in the face of our lack of experience in the crude oil refund area under the MSRP, it was inappropriate at this early stage to make determinations regarding the logistics of the actual payment of refund claims when approved. We therefore stated that we were unable to accept the suggestion that a claimant's single application, if approved, should be deemed a continuing claim against all funds involving alleged crude oil violations, without the submission of additional information. We stated that we would notify claimants whose volumes are approved of any additional information needed in order to be considered for future refunds.

With regard to the calculation of refund amounts and the standards of injury, we decided that, in general, it was appropriate to apply precedents from Subpart V proceedings involving refined products. Most notably, we determined that because the alleged crude oil violations were presumed to have been spread equally, the volumetric approach is the most equitable and efficient method of apportioning crude oil overcharge funds. *Tarricone, slip. op.* at 11.

In regard to injury standards, we adopted the presumption that end-users of petroleum products whose businesses were unrelated to the petroleum industry absorbed the crude oil overcharges and would only be required to establish the volume of petroleum products they purchased during the controls period in order to be eligible for a refund. *Id.* at 7. However, because *all* resellers and retailers, regardless of their suppliers, were affected by crude oil overcharges through the operation of the crude oil allocation program, we determined that no presumptions of injury would be available to individual reseller or retailer claimants. Accordingly, a reseller or retailer claimant must submit evidence to show the extent to which it absorbed crude oil overcharges.

*Crude Oil Refund Procedures*

We have concluded that the $10,916,587.92 received in these nine proceedings shall be distributed in accordance with the procedures discussed in the PDOs and in *Tarricone*. We will reserve initially the full 20 percent—$2,183,317.58—of the alleged crude oil violation amounts for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons.

The remaining 80 percent of the funds—$8,733,270.34—will be disbursed to the state and federal governments for indirect restitution. We will direct the DOE's Office of the Controller to segregate this amount and distribute $6,549,952.76 plus appropriate interest immediately to the federal government. The sum of $2,183,317.58 plus appropriate interest will be placed in an interest-bearing escrow account and will be distributed to the states pursuant to a future directive by the OHA.[6] Thus, including interest accrued as of April 27, 1987, the total refund to the federal government is $7,322,331.64 and the total amount to be placed in escrow for the states is $2,440,777.20. The share or ratio of the funds in the state account which each state will receive is based on each state's consumption of petroleum products during the period of petroleum price controls. These funds are subject to the same limitations and reporting requirements as all other crude oil moneys received by the states under the settlement.

[4] These and other comments were also considered in a Notice recently published in the **Federal Register**. 52 FR 11737 (April 10, 1987)

[5] We also pointed out that the Settlement Agreement does not permit more than 20 percent to be set aside for individual claims.

[6] This distribution reflects a ratio of 25 percent to the state governments and 75 percent to the federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. This arrangement shall continue until the OHA has distributed the next $400 million under the 75/25 arrangement. Settlement Agreement, Paragraph II.B.3.c.ii. The first transfer of funds to the states by the OHA occurred on August 7, 1986, when the OHA transferred $104,061,950.61 to the state and federal governments. *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986). The $4 million in excess of $100 million was disbursed 75 percent to the federal government and 25 percent to the states. Under the Agreement, the next $396 million, including the $316 million disbursed to the states and federal government in *Tarricone* and the $9,763,108.84 allocated in this Decision and Order, will be disbursed using the 75/25 percent formula.

Refunds will be calculated on the basis of a per gallon refund amount derived by dividing the crude oil overcharge monies received to date in these nine cases by the total U.S. consumption of petroleum products during the period of federal petroleum price controls.[7] *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,867–68 (1986) (*Mountain Fuel*). The total principal volumetric refund amount for these proceedings is $0.00000540. Interest accrued on the funds through March 31, 1987 increases this amount to $0.00000604. The OHA will evaluate claims to refunds based upon alleged crude oil violations using methods similar to those which the OHA has used to evaluate claims based on refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel*, at 88,869. As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged overcharges (i.e., that they did not pass the overcharges on to their own customers). *Id.* However, end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need only document their refined petroleum product purchases to prove they were injured. *Greater Richmond Transit Company*, 15 DOE ¶ 85,028 (1986).[8] It is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. *Id.*

Reseller and retailer claimants of petroleum products must submit detailed evidence of injury, and may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type used in the OHA Report, *In Re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507. Furthermore, as noted in *Tarricone*, spot purchasers will not be subject to the presumption of non-injury applicable in refined product refund cases. Finally, as we stated in *Tarricone*, parties to M.D.L. 378 who claim refunds from one of the escrows established in the settlement cannot receive refunds here because they have waived their rights to apply for Subpart V crude oil refunds.

*Applications for Refund*

In order to receive a refund from the crude oil funds involved in this Decision, a claimant will be required to file an application for refund. No application forms will be provided. Instead, applicants should submit the material outlined below in the form of a letter. The letter should be clearly labelled "Application for Crude Oil Refund" and should include the following information:

(1) Identifying information including: (a) The applicant's name, (b) the applicant's address, (c) the applicant's social security number or employer identification number, (d) an indication whether the applicant is a corporation, (e) the name and telephone number of a person to contact for additional information, and (f) the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and use of petroleum products. If the applicant did business under more than one name or a different name during the period of price controls, the applicant should list these names;

(3) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons on which the applicant bases its claim;

(4) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(5) A statement that neither the applicant, its parents, subsidiaries, affiliates, successors nor assigns has waived any right it may have to receive a refund in these cases;

(6) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e., that the applicant did not pass the overcharges through to its own customers); and

(7) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refund received and that it will pass on the entirety of its refund to its customers.

The application should be typed or printed and mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Applicants may be required to submit additional information to document their refund claims. Any applicant that has already filed a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in these proceedings. The deadline for filing refund applications is December 31, 1987. Depending upon the type of refund applications received, we may establish a minimum refund amount for eligible claimants. *See Tarricone, slip op.* at 12.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil overcharge funds remitted by the firms identified in the Appendix to this Decision and Order may now be filed.

(2) All applications submitted pursuant to Paragraph (1) above must be filed no later than December 31, 1987.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer as provided in Paragraphs (4) and (6) below 80 percent of the total current net equity as of April 27, 1987, from each of the subaccounts (within the Deposit Fund Escrow Account maintained by the DOE at the Treasury of the United States) listed in the Appendix to this Decision and Order.

(4) The Director of Special Accounts and Payroll shall transfer $2,440,777.20 of the funds obtained pursuant to Paragraph (3) above into a subaccount denominated "Crude Tracking-States," Number 999DOE003W0. The Director of Special Accounts and Payroll shall disburse to each state, upon future directive by the OHA, its share of that amount, determined pursuant to the calculation of ratios for distribution to states and territories set forth in the Settlement Agreement, plus interest from April 27, 1987 to the date of disbursement. Those disbursements, when made, shall be accomplished pursuant to instructions previously received from each state in the Stripper Well Exemption Litigation refund proceeding.

(5) The funds distributed pursuant to Paragraph (4) above are subject to the same limitations and reporting requirements as are all other crude oil moneys received by the states under the Stripper Well Settlement Agreement.

(6) The Director of Special Accounts and Payroll shall transfer $7,322,331.64

[7] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,868 n.4. (1986).

[8] A regulated utility applicant must submit documentation that it will notify the appropriate regulatory authority of any refund received, and must provide an explanation of how the refund, when received, will be passed on to its customers. *Tarricone slip op.* at 9.

of the funds obtained pursuant to Paragraph (3) above into a subaccount denominated "Crude Tracking-Federal," Number 999DOE002W0.

(7) This is a final order of the Department of Energy.

Dated: May 4, 1987.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

APPENDIX

| OHA Cast No. | Name of firm | Consent order No. | Date of subpart V petition | Principal remitted |
|---|---|---|---|---|
| HEF-0499 | O.B. Mobley, Jr | 640C10000 | 4/5/84 | $1,095,622.15 |
| HEF-0507 | Kalama Chemical, Inc | NOOS90474 | 8/8/84 | [1] 820,467.07 |
| HEF-0568 | Gulf Energy Development Corp | 610C00418 | 3/7/85 | 316,695.15 |
| HEF-0573 | Landsea Holding Company | 940X00220 | 3/18/85 | 55,000.00 |
| HEF-0585 | Amcole Energy Corp | 600C20060 | 5/31/85 | 244,874.29 |
| KEF-0030 | Marion Corp | NOOS98136 | 4/14/86 | 8,183,929.26 |
| KEF-0036 | Texas, Arkansas, Colorado & Oklahoma Purchasing Corp | 6A0X00258 | 5/6/86 | 40,000.00 |
| KEF-0046 | Petroleum Supply, Inc. and Donald L. Ragland | 640X00434 | 7/10/86 | 100,000.00 |
| KEF-0082 | Oil-Tex Petroleum Co., Inc./David E. Myres | 6AOX00312 | 11/19/86 | 60,000.00 |
| Total | | | | 10,916,587.92 |

[1] Kalma's total consent order amount is $1,000,000.00. The amount still owed as of April 27, 1987 is $179,532.93 plus interest on the unpaid balances.

[FR Doc. 87-10806 Filed 5-11-87; 8:45 am]
BILLING CODE 6450-01-M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Notice of Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $135,000 (plus accrued interest) obtained from Thriftyman, Inc. The funds will be distributed in accordance with DOE's special refund procedures pursuant to 10 CFR Part 205, Subpart V.

**DATE AND ADDRESS:** Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the applicable Case Number KEF-0018.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2860.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. 10 CFR 205.282(b). The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Thriftyman, Inc. The firm remitted monies to the DOE to settle possible allocation violations with respect to its sale of motor gasoline. The firm's payments are being held in an interest-bearing escrow account pending distribution by the DOE.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 5, 1987.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

## Proposed Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

May 5, 1987.

*Name of Firm:* Thriftyman, Inc.

*Date of Filing:* March 25, 1986

*Case Number:* KEF-0018

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on March 25, 1986, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Thriftyman, Inc. (Thriftyman).

### I. Background

Thriftyman is a "wholesale purchaser-reseller" of motor gasoline as that term was defined in 10 CFR 211.51 and is located in Dallas, Texas. Under the authority of the Emergency Petroleum Allocation Act, as amended, 15 U.S.C. 751, *et seq.* (EPAA), the ERA conducted an audit of Thriftyman with respect to its compliance with the Mandatory Petroleum Allocation Regulations found in 10 CFR Part 211, Subparts A and F. As a result of that audit, the DOE alleged that during the period May through December 1979 (the audit period), Thriftyman violated the allocation regulations by failing to satisfy its motor gasoline supply obligations to its base period customers and by diverting motor

gasoline to non-base period purchasers on the spot market.[1]

On October 9, 1985, Thriftyman and the DOE entered into a consent order resolving all civil and administrative disputes concerning Thriftyman's compliance with the petroleum allocaton regulations. The consent order states that there was neither a formal finding by DOE nor an admission by Thriftyman that any violations of the regulations occurred. Under the terms of the consent order, Thriftyman was require to deposit $135,000 into an interest-bearing escrow account for ultimate distribution by the DOE.[2]

**II. Proposed Refund Procedures**

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged regulatory violations or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

This Decision and Order proposes procedures for considering claims from firms and individuals who may have been injured by Thriftyman's motor gasoline allocation practices during the consent order period May 1, 1979, through December 31, 1979.

*A. Refunds to Indentifiable Purchasers*

From our analysis of the ERA audit material and information provided to us by Thriftyman, we have determined that the eligible claimants in this proceeding will be independently operated wholesale purchaser-resellers (e.g., retail sales outlets), and wholesale purchaser-consumers to which Thriftyman sold motor gasoline during the months of November and December 1977 and May–October 1978 (the base period months for May–December 1979). With the assistance of Thriftyman, we have identified some of those customers. They are listed in the Appendix to this Proposed Decision and Order.[3]

In order to assess claims in this proceeding, we propose to adopt certain presmuptions. The two presumptions we plan to adopt are used to enable OHA to consider refund applications in the most efficient and equitable way possible in view of the limited resources available. First, we plan to adopt a presumption that a claimant was not injured by the alleged allocation violations unless it took some contemporaneous action to mitigate its injury. In addition, we plan to adopt a presumption that an applicant was not injured it if purchase a quantity of motor gasoline equivalent to is base period allocation of that product during the consent order period.

The basis of the first presumption is that any firm that was injured by an alleged allocation violation would have been immediately aware of its injury. Therefore, we would expect that a party which was injured by a supply disruption of an allocated product would immediately seek redress by (1) filing a compliant or allocation request with or othrwise notifying the appropriate agency officials, *see* 10 CFR § 205.201(a)(d), or (2) filing a private lawsuit under Section 210 of the Economic Stablization Act, or (3) taking some other action to mitigate its injury. Thus, we have concluded that while imposing this limitation would tend to prevent spurious claims and promote speed and efficiency in processing applications for refund, it would present no impediment to parties who were actually injured by thriftyman's alleged allocation violations. Accordingly, we will presume that a party which had not taken some action to mitigate the effects of alleged allocation violations by Thriftyman does not have a meritorious claim. *See Tenneco*, 9 DOE at 85,202, and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,243 (1982) (*Pennzoil*).

Secondly, we propose to adopt a presumption that if, during the course of the entire consent order period, a claimant received aggregate volumes of motor gasoline at least equal to its adjusted base period allocation for that period, it was not injured by Thriftyman's alleged failure to supply correct volumes during certain months. We believe that this presumption is justified in order to limit eligibility for refunds to only those firms that were most adversely affected by Thriftyman's alleged allocation violation. *Aztex Energy Company*, 12 DOE ¶ 85,116 at 88,356 (1984).

Each applicant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. In assessing the extent of any such injury, we will consider a number of equitable factors such as, for example, whether the alleged violation had a significant deleterious impact on the claimant, and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action. *Tenneco*, 9 DOE at 85,207; *Pennzoil*, 9 DOE at 85,246. In accordance with our prior decisions, claimants who make a reasonable demonstration of an allocation violation may receive a refund based on the net profits lost as a result of the failure to receive the allocated products. *Aztex Energy Company*, 12 DOE at 88,356 (1984).

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies to the present situation.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

*B. Applications for Refund*

Any purchaser claiming a portion of the consent order funds will be required to a file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include:

(1) A description of any contemporaneous actions taken during or immediately following the period May–December 1979 by which it attepted to mitigate the injury, resulting from Thriftyman's alleged allocation violations;

(2) Its adjusted base period allocation of motor gasoline from each of its suppliers for each month of the period May–December 1979 (its purchases during the months November and

[1] According to a Proposed Remedial Order issued to Thriftyman on July 8, 1985, approximately 98 percent of Thriftyman's base period customers were retail sales outlets owned and/or operated by Thriftyman itself. PRO at 15. The remainder of its base period customers were independent retail outlets and wholesale purchaser-consumers.

[2] On November 7, 1985, Thriftyman paid $135,000 into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Thriftyman account stood at $147,784.06, including accrued interest as of March 31, 1987.

[3] We solicit information regarding the current addresses of these purchasers. Claimants which were retail outlets operated by Thriftyman will be ineligible for refunds. Such affiliated claimants are barred by the equitable doctrine of unclean hands from seeking restitution in a refund proceeding. *See, Cosby Oil Company/Yucca Valley Liquor Store*, 13 DOE ¶ 85,402 (1986) (citing *Citronelle-Mobile Gathering, Inc. v. Edwards*, 669 F.2d 717, 723 (Temp. Emer. Ct. App. 1982)).

December 1977 and May through October 1978);

(3) Its actual purchases of motor gasoline from each supplier during each month of the period May–December 1979;

(4) A description of its efforts to locate alternative supplies of motor gasoline; and

(5) A computation of lost net profits sustained as a result of Thriftyman's alleged allocations violations.

A claimant must also state:

(6) Whether it has previously received a refund, from any source, with respect to the alleged allocation violations underlying these proceedings;

(7) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund; and

(8) Whether it is or has been involved as a party in any DOE enforcement or private section 210 actions. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

*C. Distribution of Remaining Consent Order Funds*

If any funds remain after all meritorious claims have been paid, they will be distributed to the state and federal governments in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, Title III, *reprinted in* Fed. Energy Guidelines ¶ 11,703.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Thriftyman, Inc. pursuant to the consent order executed on October 9, 1985 will be distributed in accordacne with the foregoing decision.

**Appendix**

| | |
|---|---|
| THRIFTYMAN, INC | ABEL VENDING |
| ABC AUTO PARTS | ABC AUTO PARTS |
| GUY BAGWELL | CHIP–CHRIST #3 |
| CHIP–CHRIST #4 | CHIP–CHRIS #5 |
| BASS CHEVROLET | BEN FRANKLIN #4822 |
| BEN FRANKLIN #4863–GILME. | BERRY–BARRNETT |
| BOBBY'S DISCOUNT AUTO. | GEORGE BRABUM |
| FARMERS LP GAS | BREAD BOX |
| BREAD BOX #1 | BREAD BOX #3 |
| SUSAN BURTON | CAPE OIL |
| CAPE–TYLER #2 | CLIFF'S #1 |
| COLUMBUS CLUB OF ET. | CROW–BURLINGAME |
| LARRY CUMMINGS | ECONOMY SUPPERETTE INC. |
| EAST COTTON AUTO PARTS. | BEN FRANKLIN |
| BEN FRANKLIN | GIANT PETROLEUM CO. |
| GIANT #8 | GIANT #9 |
| GIANT #10 | GIANT #12 |
| GIANT #13 | GIANT #18 |
| GIANT #22 | GIANT #23 |
| GIANT #25 | GIANT #27 |
| GIANT #28 | GIBSON'S DISCOUNT #186 |
| GIBSON'S DISCOUNT #83. | GIBSON'S DISCOUNT #535 |
| GIBSON'S DISCOUNT #221. | GIBSON'S DISCOUNT #387 |
| GIBSON'S DISCOUNT #688. | GIBSON'S DISCOUNT #273 |
| GIBSON'S DISCOUNT #693. | GIBSON'S DISCOUNT |
| GIBSON'S DISCOUNT #706. | GIBSON'S #199 |
| GIBSON PRODUCTS–BAY CITY. | GIBSON PRODUCTS–EL CAMPO |
| DANCELAND USA | GREGG LIQUOR #3–ACE |
| HUEY HANCOCK TAW WARE. | JERRY HARRIS |
| HERITAGE TOOL AND SUPPLY. | JACKSON SELF–SERVE |
| JIM'S MINI–MART #1. | JIM'S MINI MART |
| BOBBY JOHNSON | KWIK PHIL GASOLINE CO. |
| LARRY'S ABC AUTO PARTS. | LONE STAR PETERBILT INC. |
| LONGVIEW ROLLERCADES. | LOVE LADDY OIL CO. |
| M W OIL CO | MARTIN AND SONS, INC. |
| MARTIN SON TYLER. | MARTIN AND SON #1 |
| MARTIN AND SON #2. | LOUIS MORGAN #2 |
| J C PENNEY CO INC | PINE TREE |
| PINE TREE HIGH SCHOOL. | R & R VENDING |
| ELAINE RAINEY | RELIABLE SALES CO. |
| ROADRUNNERS | JOAN ROUSE |
| RED RUSHING | RUSH–IN FOOD MART |
| SAM'S CANDY CO | LARRY SANDERS |
| SERVICE CENTER | SECURITY ALARM SYSTEM |
| SHOP AND SAVE | SAV–KO BULK PLANT |
| SHAMROCK–BAY CITY. | SHAMROCK–EL CAMPO |
| SHAMROCK–PALACIOS. | SHAMROCK–WEST COLUMBIA |
| TEI PANTRY NO. 6 | TEI STATION NO. 7 |
| TEI STATION NO. 8 | TEI STATION NO. 9 |
| TEI PANTRY NO. 10 | TEI STATION NO. 11 |
| TEI STATION NO. 12. | TEI STATION NO. 13 |
| TEI STATION NO. 14. | TEI STATION NO. 15 |
| TEI STATION NO. 16. | TEI STATION NO. 17 |
| TEI STATION NO. 18. | TEI STATION NO. 19 |
| TEI STATION NO. 21. | TEI STATION NO. 22 |
| TEI STATION NO. 23. | TEI STATION NO. 24 |
| TEI STATION NO. 25. | TEI STATION NO. 26 |
| TEI STATION NO. 27. | TEI STATION NO. 28 |
| TEI STATION NO. 29. | TEI STATION NO. 30 |
| TEI PANTRY NO. 32 | TEI STATION NO. 33 |
| TEI STATION NO. 34. | TEI PANTRY NO. 35 |
| TEI STATION #36 | TEI STATION NO. 37 |
| TEI STATION NO. 38. | TEI STATION NO. 39 |
| TEI STATION NO. 40. | SPEEDY PACK #3 |
| TEI STATION NO. 42. | TEI STATION NO. 43 |
| TEI STATION NO. 44. | TEI STATION NO. 45 |
| TEI STATION NO. 46. | TEI STATION NO. 47 |
| TEI STATION #64 | TEI PANTRY NO. 65 |
| TEI STATION NO. 66. | TEI STATION NO. 67 |
| TEI STATION NO. 68. | TEI STATION NO. 70 |
| TEI PANTRY NO. 72 | TEI PANTRY NO. 73 |
| TEI STATION #77 | TEI STATION NO. 86 |
| TEI STATION NO. 87. | TEI STATION NO. 88 |
| TEI STATION NO. 89. | TOLEDO AUTOMOTIVE SUPPLY |
| TOLEDO AUTOMOTIVE. | TRIANGLE T. CORPORATION |
| WALLS VENDING SERVICE. | WAL–MART STORES |
| WAL–MART STORE #146. | WAL–MART |
| WAL–MART | WILEY COLLEGE |
| ALICE WILLIAMS | YOUNGBLOOD AND ASSOCIATE |
| A/N WHOLESALE | ALEXANDER'S GROCERY |
| BAILEY SALMONS EXXON. | WEST LOOP QUICK STOP |
| B J'S 2–MIZE | B J'S #1 |
| B J'S #3 | B J'S #4 |
| BILL'S SELF SERVICE. | BEARCAT SELF–SERVICE |
| BECKVILLE MARKET. | BOB'S PANTRY |
| BREAD BOX #1 | BLUE TOP FOOD STORE |
| JO BOYD'S STATION. | BROADWAY GULF |
| BULLY OF THE WOODS. | BURN'S SELF–SERVE |

| | |
|---|---|
| CARTHAGE SKATE PALACE. | CLIFF'S FOOD MARKET #1 |
| COLLEGE LANES | COPELAND'S SELF-SERVICE |
| COUNTRY CACHE | DON'S 7-11 |
| DOUG'S AUTOMOTIVE. | GARY DOW VENDING |
| DOWNING TEXACO | DUGGER GROCERY |
| DUKE'S GULF | EAST ERWIN SELF-SERVICE |
| EDMOND'S VENDING CO. | EL PATIO RESTAURANT |
| RICK'S W MAIN MINI-MART. | THE FARM CLUB |
| HICKORY HUT | FIGLEY'S AUTO SERVICE |
| GREGG LIQUOR #3 | J-1 |
| HAL'S GROCERY | HALEY'S CUT RATE LIQUOR |
| HARLEY'S #5 | HARLEY'S LIQUORS |
| H L #2 | HARLEY'S #2 |
| BILL HARPHER'S GULF. | HARTLEY'S OIL |
| HOLIDAY GULF | HUGHES GROCERY AND GAS |
| HUTTO-ROBERTS STATION. | I-20 LIQUOR STORE |
| JERRY'S GROCERY | JIM'S AUTO PARTS |
| JIM'S CITGO | JIM'S LIQUOR |
| JIM'S MIMI-MART #1. | JIM'S MINI MART |
| JERRY JONES | KWIK STOP |
| KIRBY OIL | AMES AUTOMOTICE SERVICE |
| LARRY'S COUNTRY BOY GRO. | LENARD'S SELF SERVICE |
| LEE GULF | LONDON'S SELF SERVICE |
| LONGVIEW CHRISTIAN ACAD. | LOUIS MORGAN #1 |
| LOUIS MORGAN #3. | LOVE'S PICK-N-PAY |
| JOE MALONEY | MARANTHA VENDING CO. |
| JERRY MARTIN EXXON. | MCREA'S TEXACO |
| LEE MELTON | MIKE'S GROCERY #2 |
| MIKE'S QUIK STOP | RONALD MOORE'S SERVICE ST |
| MORGAS-CASH ONLY. | NADAR CANDY COMPANY |
| NATIONAL TRUCK STOP. | NIPPER'S GROCERY |
| KATHY NORRIS | N MAIN 66 |
| GRADY NUTT GULF SERVICE. | DOOM'S GROCERY |
| DILWELL CLUB | OLDHAM PHILLIPS 66 |
| ORE CITY SELF-SERVICE. | PAR-MAR OIL CO |
| PETTY CAFE | PIDDLIN PEELER'S |
| PIRTLE BAR-BQUE | POLLY'S GROCERY FEED |
| GRAND GULF STATION. | CYNTHIA PRUITT |
| QUICK ZIP | QUILLIN GARAGE |
| R AND M GROCERY | RAY'S LIQUOR |
| ROGER'S LIQUOR | RUSH-IN FOOD MART |
| SHS VENDING | SABINE VALLEY MHMPC |
| SALYARD'S ENTERPRISES. | SHAMROCK-BAY CITY |
| SIGMORE CORP. #516. | SIGMORE CORP. #513 |
| SIGMORE CORP. #519. | LAVERNE WALKER |
| SKATELAND OF LONGVIEW. | SITTON'S CAPE-LINDALE |
| SKYWAY REST | SMITH'S 7-11 |
| SLOGAN'S GROCERY. | SMITH'S SELF SERVICE |
| STAN-GAS #5 | STOCKYARD RESTAURANT |
| TEXAS CITY WAREHOUSE. | TEXSUN GAS |
| TEXSUN GAS #2 | TIME SAVER MINI MART |
| LYNN TIMMONS FINA. | TOMBALL STATION #20 |
| TRIANGLE GROCERY STAT. | TURNER'S THRIFTYMAN |
| UNITED WELDING SPEC. | WALKER'S FINA |

[FR Doc. 87-10806 Filed 5-11-87; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3198-4]

### Privacy Act of 1974; System of Records

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Privacy Act of 1974; proposed new system of records.

**SUMMARY:** As required by the Privacy Act, 5 U.S.C. 552a, the U.S. Environmental Protection Agency is publishing for comment a system of records. This system is the "TSCA CBI Records Access System." The purpose of these records is to verify those persons with access to Toxic Substances Control Act Confidential Business Information (TSCA CBI).

**EFFECTIVE DATE:** The Environmental Protection Agency is requesting a waiver from the Office of Management and Budget of its sixty-day advance review period. If the Office of Management and Budget grants the waiver, this system shall become established formally thirty days after publication unless comments are received which would result in a contrary determination.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Linda Travers, Director, Information Management Division, Office of Toxic Substances (TS-793), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: April 29, 1987.

**C. Morgan Kinghorn,**

*Acting Assistant Administrator for Administration and Resources Management.*

**EPA-OTS-20**

**SYSTEM NAME:**

Toxic Substances Control Act Confidential Business Information Records Access System—EPA/OTS.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATIONS:**

Hard-copy files: Office of Toxic Substances, Information Management Division (TS-793), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Computer disks: EPA National Data Processing Division, Research Triangle Park, NC 27711.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

EPA and other Federal agency employees and Office of Toxic Substances (OTS) contractor employees who are or have ever been authorized for access to Toxic Substances Control Act Confidential Business Information (TSCA CBI).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains basic identification information such as name, social security number, EPA identification card number, date and place of birth, office of contractor for which the individual works and telephone number. In addition, the system contains information pertinent to TSCA CBI access such as security briefing date, date added to system, date deleted from system and type of access authorized.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

15 U.S.C. 2601 *et seq.* (Toxic Substances Control Act).

**PURPOSE(S):**

EPA uses this information to maintain a record of those persons cleared for access to TSCA CBI and to maintain the security of TSCA CBI.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Disclosure of information may be made:

1. To other Federal agencies when they possess TSCA CBI and need to verify clearance of EPA, other Federal agency and EPA contactor employees for access.

2. To EPA contractors who have been engaged to assist EPA in the performance of activities directly related to this system of records and who need to have access to the records in order to perform under the contract. Contractors are required to maintain the records in accordance with the requirements of the Privacy Act.

3. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

4. To a Federal agency which has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant or other benefit.

5. To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract; or the issuance of a security clearance, license, grant or other benefit.

6. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

7. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

8. In a proceeding before the court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

9. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Various portions of the system are maintained on computer disks and in hard copy files.

**RETRIEVABILITY:**

Information is retrieved from the computer database by addressing any type of data contained in the database, including individual names. An individual's name may be used to manually access materials in alphabetized hard copy files.

**SAFEGUARDS:**

Only authorized Federal and contractor employees have access to the system on a need-to-know basis. Records on the computer disks are protected from access by unique passwords and log-on procedures. Hard copy files are locked in Class 6 safes.

**RETENTION AND DISPOSAL:**

Information in this system is maintained and updated for so long as individuals identified in the system are authorized for access to TSCA CBI. Once authorization terminates, the information is maintained in accordance with EPA Records Control Schedules (pending).

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Information Management Division, Office of Toxic Substances (TS–793), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**NOTIFICATION PROCEDURES:**

Inquiries should be addressed to the System Manager. Additioanl information and requirements will be provided.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. In addition, the record contents being sought should be specified.

**CONTESTING RECORD PROCEDURES:**

Same as notification procedures. The record and the specific information being contested should be identified. The corrective action sought and supporting justification for the correction should be provided by the individual. Additional information and requirements will be provided as necessary.

**RECORD SOURCE CATEGORIES:**

1. Records furnished by individuals identified in the system.

2. Records developed by U.S. EPA personnel concerning information pertinent to TSCA CBI access such as security briefing date, date added to system, date deleted from system and type of access authorized.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 87–10785 Filed 5–11–87; 8:45 am]
BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Requirement Approval by Office of Management and Budget

April 30, 1987.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0062

Title: Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s)

Form No.: FCC 330 (Formerly FCC 330–L and FCC 330–P) A revised combined application form FCC 330 has been approved for use through 12/31/89. (A previous approval was granted in November 1986 but the combined form was not implemented pending further revision.) The current editions of the 330–L and 330–P will remain in use until the new FCC 330 forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*
[FR Doc. 87-10743 Filed 5-11-87; 8:45 am]
BILLING CODE 6712-01-M

### Advisory Committee for the ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Working Group Meetings

May 4, 1987.

*Working Group A:* Allotment Planning.
*Chairman:* Donald M. Jansky, (202) 467-6400.
*Vice Chairmen:* Jeffrey Binckes, (301) 428-4712; Michael W. Mitchell, (703) 938-9882.
*Date:* Monday, May 18, 1987.
*Time:* 1:30 p.m.
*Location:* Jansky Telecommunications, 1899 L Street NW., 10th Floor Conference Room, Washington, DC 20036.
*Agenda:* (1) Sharing Criteria; (2) Access to Orbit 2 Software; (3) Regulatory Proposals.

*Working Group B:* Improved Regulatory Procedures.
*Chairman:* R.A. Hedinger, (201) 949-5057.
*Vice Chairmen:* Hans J. Weiss, (301) 428-4777; Robert Mazer, (202) 289-3000.
*Date:* Friday, May 15, 1987.
*Time:* 9:30 a.m.
*Location:* Chadbourne and Parke, 1101 Vermont Avenue NW., Suite 900—Main Conference Room, Washington, DC 20005.
*Agenda:* Continue to Discuss Final Committee Report.

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*
[FR Doc. 87-10744 Filed 5-11-87; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA-789-DR]**

### New Hampshire; Amendment to Notice of a Major-Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of New Hampshire (FEMA-789-DR), dated April 16, 1987 and related determinations.

**DATED:** May 6, 1987.
**FOR FURTHER INFORMATION CONTACT:** Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of New Hampshire, dated April 16, 1987, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 16, 1987: Carroll County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Dave McLoughlin,**
*Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*
[FR Doc. 87-10752 Filed 5-11-87; 8:45 am]
BILLING CODE 6718-02-M

## FEDERAL HOME LOAN BANK BOARD

**[No. 87-542]**

### Notices of Inquiry Mortgage-Related Securities and Derivative Products

Dated: May 8, 1987.
**AGENCY:** Federal Home Loan Bank Board.
**ACTION:** Notice of inquiry, Mortgage-related securities.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") staff is holding an open staff conference on mortgage-related securities and derivative products, as well as risk-controlled arbitrate transactions involving such products, to further the staff's understanding of these products and associated risks. The conference's participants will address a variety of legal and financial issues related to these products and their associated risks to institutions whose deposit accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions"), as well as any potential risk to the FSLIC fund itself. This conference is intended to provide solid background information for Baord staff on these issues.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. McKenzie, Director, Policy Analysis Division, (202) 377-6763, or Jane W. Katz, Senior Policy Analyst, (202) 377-6782, or Edward A. Hjerpe III, Financial Economist, (202) 377-6976, Office of Policy and Economic Research; or John F. Connolly, Deputy Director for Capital and Finance, Office of General Counsel (202) 377-6465, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Edward J. Taubert, Associate Director for Policy, (202) 778-2511, Michael P. Scott, Policy Analyst, (202) 778-2516, Office of Regulatory Policy, Oversight and Supervision, 900 Nineteenth Street, NW., Washington, DC 20006.

**DATES:** May 20-21, 1987, 9:00 A.M.-5:00 P.M. Board Room (6th Floor), Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the staff of the Board is holding an open staff conference on May 20 and 21 (beginning at 9:00 AM and ending at or before 5:00 PM) to increase its understanding of certain legal, regulatory, and financial aspects of mortgage-related securities, particularly new derivative mortgage products. The purpose of the conference is to provide sound background information for future staff actions and pinions regarding mortgage-related securities and derivative products. Towards this goal, the staff will ask panels of participants representing varied disciplines to address the questions listed below.

Derivative mortgage-related securities are new types of securities created from traditional mortgage-backed securities. For purposes of discussion, the term mortgage-related securities is used to refer to guaranteed mortgage-backed pass-through securities. The term derivative mortgage-related securities, also referred to as derivative mortgage products, is used to refer to securities that are created as a result of the disaggregation and repackaging of the cash flows that are due as payments on mortgages or mortgage-backed securities. Thus, new derivative securities are created that entitle the holder to specific pre-defined cash flows from the underlying mortgages or mortgage-backed securities. Examples of derivative mortgage-backed securities are collateralized mortgage obligations ("CMOs") and real estate mortgage investment conduits ("REMICs"). These names refer to broad classes of derivative mortgage-related securities. Some of the specific securities that are created as derivatives of mortgage-related securities include owners trust residuals; floating rate, fixed rate, and inverse floating rate tranches of CMOs and REMICs, interest-only and principal-only stripped mortgage-related securities; and senior and subordinated interests in mortgage-related securities.

Some derivative mortgage-related securities can have less interest-rate risk

or less cash flow uncertainty than the underlying mortgages or mortgage-backed securities. In creating such securities, however, complementary securities are created that may have a greater amount of interest-rate risk or more cash flow uncertainty than the first group of derivative products. The total interest-rate, credit-risk, and cash flow uncertainty of all derivative mortgage-backed securities created from a single mortgage pool or mortgage-backed security pool cannot exceed the amount of these risks associated with the underlying mortgages or mortgage-backed securities. It is possible, however, that some of the specific derivative instruments created, when viewed individually, may have much riskier profiled than the underlying securities or mortgages. The staff recognizes that the use of these instruments must be viewed in a total portfolio context. The staff is concerned, however, that either the inherent risk characteristics of certain derivative mortgage-related securities or the potential lack of internal controls, excessive concentration, or inadequate hedging strategies that make use of these derivative securities potentially can be extremely dangerous for thrifts, depositors, and the FSLIC.

The staff does not seek to impede the development of such mortgage-related securities and derivative products or to inhibit thrifts' prudent participation in the markets for such securities. Rather, the staff merely seeks to identify the types of risk stemming from investment in or issuance of such securities. The staff is exploring means to facilitate the well conceived issuance of and investment in such mortgage-related securities and derivative mortgage products by well capitalized thrifts while protecting depositors and the FSLIC against undue risk stemming from the issuance of and investments in such securities by insured institutions.

**Procedure**

The conference will be conducted jointly by the staffs of the Board's Office of Policy and Economic Research ("OPER") and Office of General Counsel ("OGC"), and the Office of Regulatory Policy, Oversight and Supervision of the Federal Home Loan Bank System ("ORPOS"). The staff is seeking participation by four panels of individuals generally representing investment bankers, thrifts, legal counsel, accountants and regulators. Participants will choose which of the following topics to address in brief prepared remarks and will also participate in the general discussion of these issues at the conference.

The staff conference will be open to the public and a transcript of the meeting will be made available for public inspection. Furthermore, at the conclusion of each day's discussion, interested persons may make brief oral comments using an open microphone. Recognizing the short time frame and complexity of the issues raised below, the staff encourages any interested persons, as well as participants, to submit written comments to the staff before or within two weeks after the conference.

**Staff Inquiries**

The Board's staff seeks to elicit comment on the following substantive topics among others.

1. Federal associations are authorized by statute to invest in, sell, or otherwise deal with designated loans and investments, including interests in such loans or investments. What mortgage-related securities and derivative products constitute loans or investments authorized for federal associations under 12 U.S.C. 1464(c) or interests in such loans or investments pursuant to 12 U.S.C. 1464(c)(5)(B)? More specifically, what is the legal ownership interest or security interest of derivative product investors (*i.e.* residuals, strips) in the underlying assets (*i.e.* mortgages, guaranteed mortgage-backed securities)? What considerations support or disfavor characterization of such investments as investments made on the security of real estate? Do they meet the other requirements for real estate loans under 12 CFR 545.32?

2. How do such investors exercise, directly or through fiduciaries, their foreclosure and other rights in the underlying loans and assets? Do investors in such products have security interests enforceable separately from the legal actions of other parties? For example, do residual investors have an ownership or security interest in the underlying assets that can be enforced separately from similar action by CMO debtholders and their trustees? Is there a separate fiduciary responsibility on the part of trustees and paying agents to protect the residual interest holders' or other derivative interest holders' positions? What costs and obligations would derivative product investors have for servicing, collateral maintenance, and foreclosure actions with regard to the underlying assets? What liability could derivative product investors be subject to for fraud by third party participants or for trustee or paying agent negligence? What liability would thrifts issuing such securities jointly with other parties (perhaps unknown) have for the actions of such joint issuers or other third parties?

In the interest of the safety and soundness of insured institutions and the FSLIC, should the Board impose specific minimum legal safeguards that must be present for a derivative investment to be a permitted investment for insured institutions, perhaps restricting to investment grade securities? Are there certain types of derivative products whose legal characteristics pose such risk to insured institutions or to the FSLIC as receiver, that insured institutions should be prohibited from making such investments? For example, do residuals of owners trusts providing for partnership-type liability of residual investors and restrictions on the transferability of such interests, pose such risks to insured institutions and the FSLIC (when liquidating a thrift's assets) that such investments should be prohibited in the interest of safety and soundness?

3. How should the Board address the interest-rate and prepayment risk characteristics of various mortgage-related securities and derivative products? Should the Board require that institutions have documented analyses that examine the effect of a 300 basis point increase or decrease in interest rates on the value of each mortgage-backed security purchased. The concern here is the potential explosive price behavior of some mortgage-backed securities and derivative products. Should the analyses be based on even larger increases in interest rates? How could this provision be phrased to allow for rather generic information about standard mortgage-backed securities—GNMAs, FNMA PCs, and FHLMC PCs? How woud thrifts obtain this information when making secondary market purchases of mortgage-related securities and derivative products?

4. Is there any appropriate action for the Board to take to ensure that thirft investors receive full disclosure of interest-rate sensitivity, credit risk, and their legal rights and obligations when not otherwise required under the securities laws, such as in private placements of residual interests?

5. Should the Board's interest-rate risk management regulation, 12 CFR 571.3 (1986), be amended to require boards of directors to authorize investment programs in derivative mortgage-backed securities? Should such boards of directors be required to review periodically their investment programs and internal control systems for investment in mortgage related securities and derivative mortgage-

related securities? How should the Board ensure adequate internal control systems for portfolio risk management? What services should the Board or the FHLBank system offer to aid insured institutions in establishing such protective systems?

6. The low quality of some assets held by insured institutions is a major current concern of the FSLIC. How should the Board address the high credit-risk associated with certain derivative mortgage products, particularly those securities not eligible for investment pursuant to amendments to the Securities Exchange Act of 1934 made by the Secondary Mortgage Market Enhancement Act of 1984. 15 U.S.C. 78c(a)(41)(A) ("SMMEA")? Does an investment-grade regular interest reflect a higher credit quality residual? Should subordinated interests and other products with high credit risk be prohibited from investment by insured institutions or subject to special constraints. Should such investments be subject to higher capital requirements?

7. Although mortgage-relate securities and derivative products qualified as SMMEA securities or representing interests in real estate loans do not constitute equity securities for purposes of the direct investment regulation, should non-SMMEA securities be treated as equity risk investments. If treated in this manner, insured institutions' capital levels would determine (if the proposed regulation is adopted) the extent of their authorized investment in such assets under 12 CFR 563.9–8 with FHLBank approval needed for such investments by thrifts not meeting their capital requirements? Should insured institutions with less than 6 percent GAAP capital be prohibited from investing in non-SMMEA securities or using risk-controlled arbitrage strategies? Should an incremental capital requirement under the capital regulation be imposed on such non-SMMEA securities? Should the Board impose capital requirements and investsment limitations on insured institutions' consolidated, rather than unconsolidated, balance sheets to deal with highly leveraged risk posed by subsidiaries' transactions? Should the Board differentiate capital treatment among types of derivative mortgage products such as residual interests, subordinated interests, and interest-only and principal-only strips? Should the Board only impose an incremental capital requirement on unmatched or inadequately hedged positions in derivative mortgage products?

8. How should the Board treat mortgage-related securities and derivative mortgage products for purposes of its liquidity and loans-to-one borrower regulations? Diversification and liquidity enhance the safety and soundness of insured institutions investing in mortgage-related securities and derivative mortgage products. The lack of a broad, deep market for many new, and constantly changing, products is a major concern of the staff. The shallow, illiquid market could cause major problems if FSLIC seeks to liquidate such assets in a prompt manner and at a reasonable price. What protective measures can the Board enact to deal with the illiquidity of some derivative mortgage products? On the other hand, should highly liquid mortgage-related securities and derivative products be treated as liquid assets for liquidity purposes (regardless of their maturity dates)? What regulatory amendments are needed?

9. How should mortgage-related securities and derivative mortgage products that are not straight amortizing pass-throughs or straight coupon bonds be reported on Section H of the Bank Board's Quarterly Report?

10. A number of institutions are engaging in a strategy known as "controlled growth arbitrate" or "risk controlled arbitrate." Generally these strategies involve purchase of mortgage-backed securities funded by shorter-term wholesale funds and some form of hedging. Should the Board develop comprehensive regulations for such strategies? Should the Board adopt regulations on the leverage multiples used in such strategies? Should the Board require that such strategies be fully hedged?

11. With risk-controlled arbitrage generally being conducted through subsidiaries, what capital requirements should be imposed to counter the highly leveraged risk to a parent insured institution's portfolio? Should capital requirements be imposed on consolidated basis? What capital requirement should be imposed on residual interests of REMICS or owners trusts to compensate for the leveraged effects on thrifts' portfolios?

12. What type of evaluation measures should the Board's examiners adopt to examine the safety and soundness of derivative mortgage-backed securities in a portfolio context?

13. Should the finance subsidiary regulation be amended to facilitate issuance of mortgage-related securities and derivative products either directly by such subsidiaries or through trusts? Are finance subsidiaries still needed if, as anticipated, REMICs replace CMOs as the primary vehicles for the issuance of multi-class mortgage-backed securities? Should the third party intermediary language of the finance subsidiary regulation be interpreted or amended to include trusts and other affilitated structures? Are regulatory changes needed to deal with transactions by thrifts or their subsidiaries using REMICs, owners trusts, and similar vehicles in a holding company context?

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–10962 Filed 5–11–87; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agrement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011095.

Title: Terminal Revenue Sharing Agreement

Parties:

San Francisco Port Commission (Port)

Canadian Tropic Line S.A. (Carrier)

Synopsis: The proposed agreement provides that Carrier will utilize San Francisco as its published regularly scheduled Northern California port of call. As consideration, Carrier pays less than 100% of port tariff charges for wharfage, dockage and demurrage. The agreement would have a ten year term. The parties have requested a shortened review period.

Dated: May 7, 1987.

By order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-10808 Filed 5-11-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Commerce National Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may expess their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Commerce National Corporation*, Winter Park, Florida; to engage *de novo* through its subsidiary, Commerce National Mortgage Company, Winter Park, Florida, in residential mortgage loan activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. This activity will be conducted in the State of Florida.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, Illini Community Mortgage Co., Springfield, Illinois, in the origination of VA, FHA and conventional mortgage loans for resale to the secondary market; appraisal services; servicing of loans originated and sold; warehouse financing of mortgage loans; and other related services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-10715 Filed 5-11-87; 8:45 am]

BILLING CODE 8210-01-M

### Honat Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers, of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been acception for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 4, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Honat Bancorp, Inc.*, Honesdale, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Honesdale National Bank, Honesdale, Pennsylvania.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis Missouri 63166:

1. *Marrowbone Bancorp, Inc.*, Marrowbone, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Marrowbone, Marrowbone , Kentucky.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First National Corporation*, Grand Forks, North Dakota; to acquire 100 percent of the voting shares of West Fargo State Bank, West Fargo, North Dakota.

Board of Governors of the Federal Reserve System, May 6, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-10716 Filed 5-11-87; 8:45 am]

BILLING CODE 6210-01-M

### Marine Midland Banks, Inc.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Marine Midland Banks, Inc., Buffalo, New York, and parent bank holding companies: The Hongkong and shanghai Banking Corporation, Hong Kong; Kellett N.V., Curacao, The Netherlands Antilles; and HSBC Holdings B.V., Amsterdam, Holland; have applied, ("Applicants") pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through Marine Midland Capital Markets Corporation ("Company"), New York, New York, in the activities of underwriting and dealing in, to a limited extent, the following securities which are eligible for purchase by member banks for their own account but not eligible for member banks to underwrite and deal in (hereinafter "ineligible securities"):

(1) Municipal revenue obligations (including certain industrial development bonds);

(2) Mortgage-related securities (obligations secured by, or representing interests in, residential real estate mortgages);

(3) Consumer-receivable-related securities (obligations secured by, or

representing an interest in, loans or receivables of a type generally made to or due from consumers) (hereinafter "CRRs");

(4) Commercial paper;

Applicants have also applied for approval under § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)) to engage, *de novo*, through Company in underwriting and dealing in securities and money market instruments that state member banks are expressly authorized to underwrite and deal in under section 16 of the Glass-Steagall Act (12 U.S.C. 24 Seventh), including U.S. government obligations and general obligations of states and their political subdivisions. The foregoing activities are presently conducted by Applicants' principal banking subsidiary, Marine Midland Bank, N.A., and would be transferred to Company in connection with this proposal.

Upon approval of the proposal, Company would commence underwriting and dealing in ineligible securities through Company's offices in New York, New York, serving customers throughout the United States. Company may establish offices in other locations.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicants have applied to engage in the same activities with the same limitations as proposed in the applications of J.P. Morgan & Company Incorporated and Bankers Trust New York Corporation, previously approved conditionally by the Board on April 30, 1987. Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation (Order dated April 30, 1987). In its Order, the Board authorized Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation to engage through subsidiaries in underwriting commercial paper, 1–4 family mortgage-backed securities and municipal revenue bonds within a prudential framework of conditions and subject to 5 percent gross revenue and market limitations.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Marine Midland Bank, N.A., with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicants state that Company would not be "engaged principally" in such activities on the basis of restrictions that would limit the amount of the proposed activity relative to the total business conducted by Company and relative to the total market in such activity.

Any request for a hearing on these questions must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 1, 1987.

Board of Governors of the Federal Reserve System, May 6, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–10714 Filed 5–11–87; 8:45 am]

BILLING CODE 6210–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Federal Advisory Committee, Interagency Committee on Smoking and Health; Availability of 1986 Annual Report

**ACTION:** Notice of availability.

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463 (5 U.S.C. Appendix 2), the Fiscal Year 1986 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress:

**Interagency Committee on Smoking and Health**

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC (telephone 202/287–6310). Additionally, on weekdays between 9 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue SW., Washington, DC (telephone 202/245–6791).

Dated: May 6, 1987.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 87–10703 Filed 5–11–87; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

**[FDA 225–86–8251]**

### Memorandum of Understanding Between the Patent and Trademark Office and the Food and Drug Administration

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Patent and Trademark Office (PTO) and FDA. The MOU establishes procedures whereby FDA assists PTO in determining a product's eligibility for patent term restoration and procedures for exchanging information between FDA and PTO regarding regulatory review period determinations, due diligence petitions, and informal FDA hearings.

**DATE:** The memorandum of understanding became effective September 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20.108(c), which states that all agreements and memorandum of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: May 5, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

**Memorandum of Understanding Between the Patent and Trademark Office and the Food and Drug Administration**

*I. Purpose*

This agreement establishes the procedures whereby the Food and Drug Administration (FDA) assists the Patent and Trademark Office (PTO) in determining a product's eligibility for patent term restoration under 35 U.S.C. 156. It also establishes procedures for exchanging information between FDA and PTO regarding regulatory review period

determinations, due diligence petitions and informal FDA hearings under the law.

*II. Background*

The patent term restoration portion of the Drug Price Competition and Patent Term Restoration Act of 1987 (Pub. L. 98–417) was designed to create new incentives for research and development of certain products which are subject to premarket government approval. These provisions enable the owners of patents on certain human drugs, medical devices, and food or color additives to attempt to restore to the terms of those patents some of the patent time lost while awaiting premarket government approval.

Under the patent term restoration sections of the Act, a patent which claims a human drug product, medical device, food or color additive first approved for marketing after September 24, 1984 may qualify for patent term extension. Regardless of whether the patent claims a product, a method of using a product, or a method of manufacturing a product, the applicant for a patent term extension must establish that:

(1) The patent has not expired (35 U.S.C. 156(a)(1)),

(2) The patent has never been extended (35 U.S.C. 156(a)(2)),

(3) The applicant for extension is submitted by the owner of record of the patent or its agent and includes details relating to the patent and regulatory review time spent in securing FDA approval (35 U.S.C. 156(a)(3)),

(4) The product has been subject to a regulatory review period within the meaning of 35 U.S.C. 156(g) before its commercial marketing or use (35 U.S.C. 156(a)(4)),

(5) The approval:

(A) Is the first permitted commerical marketing or use of the product, or

(B) In the case of products manufactured using recombinant DNA technology, it is the first permitted commercial marketing or use of a product manufactured under the process claimed in the patent (35 U.S.C. 156(a)(5)), and

(6) The application for extension of the term of the patent was submitted to PTO within 60 days of FDA approval of the commercial marketing application (35 U.S.C. 156(d)(1)).

While it is the responsibility of the Commissioner of Patents and Trademarks to decide whether an applicant has satisfied these six conditions, FDA possesses expertise and records regarding the last four and has certain direct responsibilities under 35 U.S.C. 156 for determining the length of the regulatory review period. Consequently, to facilitate eligiblity decisions and permit FDA and PTO to carry out their responsibilities under 35 U.S.C. 156, the FDA and PTO have entered into this agreement. This agreement is consistent with the authority contained in section 702(d) of the Federal Food, Drug, and Cosmetic Act.

Under this agreement, FDA, upon receipt of a written request from PTO, will convey to PTO the following information regarding eligibility for extension: (1) Whether a product has undergone a regulatory review period within the meaning of 35 U.S.C. 156(g) prior to commercialization, (2) whether the marketing permission was for the first permitted commercial marketing or use of that product, or, in the case of recombinant marketing or use of that product, or, in the case of recombinant DNA technology, whether such commercial marketing or use was the first permitted under the process claimed in the patent, and (3) whether the patent term extension application, as well as any other relevant information. Similarly, upon a request by PTO and the receipt of a copy of the application for patent term extension, FDA will determine the application for patent term extension, FDA will determine the length of the regulatory review period for the approved product.

The procedures covered by this agreement extend from the date of PTO's request for information on eligibility to the resolution of due diligence petitions and information hearings. The regulatory review period determination is not final until due diligence petitions and informal hearings, if any, have been resolved. A certificate for extension of the term of a patent may not issue from PTO until the regulatory review period determination is final unless an interim extension appears warranted under 35 U.S.C. 156(e)(2).

*III. Substance of the Agreement: Patent Term Extension Applications Under 35 U.S.C. 156*

A. Eligibility Determination Assistance:

1. Upon deciding that a patent term extension application is complete and meets basic formal requirements, the PTO will send a written request to FDA requesting that FDA:

a. verify whether the product:

(1) Was subject to a regulatory review period within the meaning of 35 U.S.C. 156(g) prior to its commercial marketing or use, and

(2) Represents either the first permitted commercial marketing or use of that product, or, in the case of recombinant DNA technology, the first permitted commercial marketing or use of the product manufactured under the process claimed in the patent.

b. Inform PTO whether the patent term restoration application was submitted within 60 days after the product was approved.

2. Additionally, PTO, in its written request, shall clearly state that it is not requesting determination of the product's regulatory review period at this time.

3. FDA will consult its records and experts and, through the Director of the Health Assessment Policy Staff, Office of Health Affairs, issue a written response to the Director of Patent Examining Group 120, PTO, on each of these questions.

4. FDA, consistent with the authority contained in section 702(d) of the Federal Food, Drug, and Cosmetic Act with respect to drugs, will provide PTO with any other information relevant to the product's eligibility.

5. FDA, upon written request, will also provide assistance to PTO in petitions before the Commissioner of Patents and Trademarks regarding eligibility determinations.

B. Regulatory Review Period Determinations:

1. Should the PTO decide that the product is eligible for patent term restoration, it will send FDA a copy of the application for patent term restoration and a written request to determine the length of the product's regulatory review period. The copy and request will be sent to FDA within 60 days of the application's receipt by PTO.

2. FDA will consult its records, determine the entire length of the regulatory review period, and, through the Associate Commissioner for Health Affairs, issue a written statement of that determination to the Commissioner of Patents and Trademarks. The determination will be made within 30 days after the receipt of the application and written request from PTO. Additionally, FDA will publish its determination in the **Federal Register.**

C. Due Diligence Petitions and Hearing Requests:

1. Due diligence petitions must be filed at FDA within 180 days of the publication of a product's regulatory review period in the **Federal Register.**

a. If no due diligence petition is received by FDA within the 180-day filing period, FDA will promptly notify PTO in writing that the regulatory review period determination is final.

b. If a due diligence petition which satisfies statutory and regulatory requirements is received by FDA,

(1) FDA will promptly notify PTO in writing of the receipt of the petition,

(2) PTO will refrain from issuing a certificate of extension pending a final determination of the regulatory review period unless an interim extension appears warranted under 35 U.S.C. 156(e)(2),

(3) FDA will determine whether the applicant acted with due diligence within 90 days after receipt of such a petition and will send written notification to the Commissioner of Patents and Trademarks as to any modification in the length of the regulatory review period, and

(4) FDA will also publish its due diligence determination, together with the full factual and legal bases for FDA's decision, in the **Federal Register.**

2. Requests for an informal hearing on FDA's due diligence determination must be received by FDA within 60 days of the publication of the due diligence determination in the **Federal Register.**

a. If FDA does not receive any request for an informal hearing within the 60 filing period, FDA will notify PTO in writing that the regulatory review period determination, as modified, if at all, by the due diligence determination, is final.

b. If FDA receives a request for an informal hearing within the 60 day filing period,

(1) FDA will notify PTO in writing of the hearing request,

(2) PTO will refrain from issuing a certificate of extension pending final determination of the regulatory review period unless an interim extension appears warranted under 35 U.S.C. 156(e)(2), and

(3) FDA will affirm or revise the determination that was the subject of the hearing within 30 days after completion of the hearing and will notify the Commissioner of Patents and Trademarks in writing of its decision and whether the determination of the regulatory review period is now final.

Additionally, FDA will publish its findings in the Federal Register.

D. Supplemental Information:

Should either agency receive information which is relevant to the patent term restoration of a patent during any stage of these eligibility or regulatory review period determinations, that agency will promptly notify the other and provide documentation as available.

E. Availabilty of Information:

Copies of all letters required by this agreement and exchanged between PTO and FDA will be placed in the file for each product subject to patent term restoration. These files are available for review at FDA's Dockets Management Branch (HFA-305), Room 4-62 5600 Fishers Lane, Rockville, Maryland 20857 and at the Patent and Trademark Office, Crystal Plaza Building 2-9A09, 2011 Jefferson Davis Highway, Arlington, Virginia 22202.

*IV Names and Addresses of Participating Parties*

A. Patent and Trademark Office, Washington, DC 20231.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville Maryland 20857.

*V. Liaison Officers*

A. *Liaison Officer for the Patent and Trademark Office:* Director, Patent Examining Group 120, (currently Charles E. Van Horn, Esq.), Patent and Trademark Office, Washington, DC 20231, (703-557-3637).

B. *Liaison Officer for the Food and Drug Administration:* Director, Health Assessment Policy Staff (HFY-20), (currently Ronald L. Wilson), Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, (301-443-1382).

*VI. Period of Agreement*

This agreement, when accepted by both parties, will be effective indefinitely. It may be modified by mutual written consent or terminated by either party upon a thirty day advance written notice to the other party.

APPROVED AND ACCEPTED FOR THE PATENT AND TRADEMARK OFFICE.

By: Donald J. Quigg.

*Title: Assistant Secretary and Commissioner of Patents and Trademarks.*

Dated: September 17, 1986.

APPROVED AND ACCEPTED FOR FOOD AND DRUG ADMINISTRATION.

By: John M. Taylor,

*Title: Acting Associate Commissioner for Regulatory Affairs.*

Dated: September 3, 1986.

[FR Doc. 87-10713 Filed 5-11-87; 8:45 am]

BILLING CODE 4160-01-M

## Health Care Financing Administration

## Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) **Federal Register** Vol. 51, No. 191, pp. 35288-35291, dated Thursday, October 2, 1986) is amended to reflect a reorganization within the Office of the Associate Administrator for Management and Support Services (OAAMSS). The reorganization of the Office of Health Program Systems in the Bureau of Data Management and Strategy will consolidate and centralize responsibility for the Group Health Plan System into one division, the Division of Capitation Systems, as well as provide a focus for development of systems in support of the private health plan option initiatives.

The specific changes to Part F. are as follows:

- Section FH.20.E.5., Office of Health Program Systems is deleted in its entirety and replaced by an updated functional statement to read as follows:

**8. Office of Health Program Systems (FHE8)**

Designs, develops, implements and maintains Automated Data Processing (ADP) and telecommunications systems and software, data files and formats, and manual procedures required to support the Agency's programmatic mission from operational, program management, and quality control aspects. Establishes and maintains a national file of eligible Medicare beneficiaries. Establishes and maintains a history of Medicare benefit utilization. Integrates entitlement data and information from other programs (e.g., Medicaid, Veterans Administration) into Medicare files. Receives and responds to queries regarding beneficiary entitlement and benefit and deductible status from a nationwide network of Medicare fiscal agents. Provides program data and related information to authorized requestors. Maintains systems that support certification of providers of service in the Medicare and Medicaid programs. Determines and reconciles payment liability for group health organizations. Maintains systems that support certification of health maintenance organizations and capitation demonstration projects. Prepares billings for and receives and processes ADP records for Medicare premium remittances from third party payors and beneficiaries. Prepares a variety of program management reports (e.g., workloads, processing times) for distribution throughout the Agency, Department, and Medicare fiscal agents. Provides ADP support to the Agency for quality control systems and beneficiary and provider overpayment systems. Consults with central and regional office components and other government agencies to define programmatic ADP system performance requirements. Negotiates, reviews, and approves systems designs. Consults with Bureau of Data Management and Strategy components to define ADP and teleprocessing resource requirements and provides input to the budget planning and procurement processes.

Insures awareness of and compliance with government-wide and local security and privacy requirements within the Office. Directs and coordinates implementation of PRISM Redesign Process for Office. Serves as Data Base Administrator for the Office. Provides technical support to Office programmers. Provides office focus for Systems Security, Standards and Documentation.

*A. PRISM/Redesign Staff (FHE8-1)*

Plans, organizes, coordinates, and controls the activities required to assure the timely, accurate, cost-effective, and successful completion of the Health Insurance/Supplementary Medical Insurance (HI/SMI) and Program Management (PM) Logical Application Groups (LAG) development, conversion and implementation under the Project to Redesign Information Systems Management (PRISM). Advises the Director, Office of Health Program Systems, and executives of various HCFA components in the preparation of short, intermediate and long-range plans for the improvement of the HCFA information systems. Keeps informed of organizational, legislative, administrative and technological changes that affect the PRISM LAG processes and impact upon future planning. Works continuously with the appropriate levels of management and with members of the staff in the Bureaus and Offices to provide liaison and assistance with respect to Agency-wide planning and participates in planning activities to ensure that the Agency's ADP systems meet the needs of the user community for high quality, reliable data. Develops and designs methods and processes which assure the quality of the enhancements to existing systems and the development of new systems for PRISM LAGs. Plans and conducts comprehensive analysis of complex and diversified areas such as system analysis and design methodologies, computer programming methods and techniques, software testing, validation and systems acceptance, configuration of HCFA ADP/TC resources, and data base security and integrity. Develops ADP systems quality assurance and software testing standards and

guidelines for the Agency's ADP systems which ensure that they meet the requirements of the Agency components and support Agency goals and objectives. Responsible for implementing, monitoring and enforcing appropriate security measures for the Office. Plans the integration and validation of the current and future development of all PRISM LAG systems. Formulates contracting strategies and prepares procurement packages for major contractual agreements to support the PRISM systems design, development and implementation. Coordinates project management for long-range system design plans. Serves as data base administrator for the HI/SMI and PM LAGs. Provides technical support to Office programmer and analyst staff. Provides an Office focus for ADP Systems standards and documentation.

*B. Division of Beneficiary and Utilization Systems (FHE82)*

Designs and implements Automated Data Processing (ADP) systems, manual processes and procedural instructions for: development and maintenance of a master file of all individuals eligible for Medicare benefits (including Railroad Retirement annuitants); enrollment of beneficiaries and issuance of identification cards; posting of benefit utilization data and responding to utilization queries from intermediaries and carriers; issuance of notices of benefit utilization; maintenance of controls for reconciliation and audit of providers and carriers; and determination, billing and collection of Medicare premium liability from third party entities and direct paying beneficiaries. Furnishes a variety of management data for review, appraisal, and planning purposes and assists other HCFA systems components in developing and interpreting the data. Provides systems support and technical expertise to the Office of Management and Budget in resolving electronic exceptions and processing correspondence.

*C. Division of Capitation Systems (FHE83)*

Designs and implements Automated Data Processing (ADP) systems and operating instructions for: Development and maintenance of a master file of all individuals enrolled in group health plans; preparation of beneficiary mailings for beneficiaries enrolling in "lock-in" Health Maintenance Organizations (HMO) and certain HMO solicitation projects; determination and reconciliation of payment liability for group health plans; development and maintenance of certification and financial systems for all HMOs; and development and maintenance of systems to support demonstration projects on Private Health Plan Options (PHPO). Furnishes a variety of management data for review, appraisal, and planning purposes and assists other HCFA systems components in developing and interpreting the data. Provides systems support and technical expertise to the Office of Prepaid Health Care in payment, audit, reconciliation, certification, and quality assurance of PHPO systems.

*D. Division of Program Management Systems (FHE84)*

Designs, develops and implements a wide variety of Automated Data Processing (ADP) and telecommunications systems in support of HCFA program management functions including: Workload and operating systems, Supplemental Medical Insurance physician and laboratory payment information systems, management support systems, beneficiary and provider overpayment systems, provider certification and billing data including an online query and reply subsystem, accounting controls for reconciliation and audit of providers and carriers, and Medicare Quality Control systems. Provides technical support to HCFA's Regional Offices in program management systems areas. Provides technical and state-of-the-art expertise in the use of current program data bases for the design and development of new systems which support HCFA's program management objectives.

Dated: April 27, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 87-10750 Filed 5-11-87; 8:45 am]

BILLING CODE 4120-03-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N-87-1699]**

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** 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: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR 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 proposal 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 Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submission will be required: (7) an estimated of the total number of hours needed to prepare the information submission (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) 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 Managment Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

### Notice of Submission of Proposed Information Collection to OMB

Proposal: Rental Rehabilitation Program
Office: Community Planning and Development
Description of the Need for the Information and its Proposed Use: The Rental Rehabilitation Program requires the Department and grantees to collect data relating to properties rehabilitated and tenants assisted under the Program. The information collected will be used by HUD

personnel to account for program grant funds and to satisfy statutory reporting requirements
Form Number: HUD–40014, 40014–B, 40018, 40020, 40021, and 40022
Respondents: State or Local Governments
Frequency of Respondents: On Occasion and Annually
Estimated Burden Hours: 43,520
Status: Extension
Contact: Frances W. Bush, HUD, (202) 755–6296; John Allison, 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).

Proposal: Criteria for Acceptability of Insured 10-Year Protection Plans
Office: housing
Description of the Need for the Information and its Proposed Use: This information is needed for HUD to identify criteria for acceptance of insured housing performance warranties. It is used to protect HUD and homeowners with HUD-insured financing against major dwelling defects
Form Number: None
Respondents: Businesses or Other For-Profit
Frequency of Response: Biennially
Estimated Burden Hours: 260
Status: Revision
Contact: D. Earl Jones, Jr., HUD, (202) 755–6720 John Allison, 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).

Proposal: Request for Insurance Endorsement under the Direct Endorsement Program
Office: Housing
Description of the Need for the Information and its Proposed Use: The Direct Endorsement Program permits mortgage lenders to underwrite the applications for mortgage insurance and close mortgage loans without prior HUD review. Lenders then submit the closing package to HUD with a request for insurance endorsement
Form Number: None
Respondents: Businesses or Other For-Profit
Frequency of Response: On Occasion
Estimated Burden Hours: 100,000
Status: New
Contact: Morris E. Carter, HUD, (202) 755–6720; John Allison, 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 5, 1987.

**John T. Murphy,**

*Director Information Policy and Management Division.*

[FR Doc. 87–10790 Filed 5–11–87; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Office of Inspector General

### Organization, Functions, and Authority Delegations; Inspector General Office

**AGENCY:** Office of Inspector General, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is published in accordance with the provisions of 5 U.S.C. 552 (a)(1) and (a)(2). It provides a brief history of the Office of Inspector General (OIG), identifies primary responsibilities, describes the central and field organization, provides a source for obtaining specific information, and an index on the Office of Inspector General Manual in which the public may have an interest. This notice updates information previously published in the **Federal Register** by the Department of the Interior (50 FR 51455, December 17, 1985) regarding the OIG.

#### History

The OIG was established by the Inspector General Act of 1978 (the IG Act), 92 Stat. 1101, as amended. Pursuant to section 9(a)(1)(D) of the IG Act, the functions, powers, and duties of the former Office of Audit and Investigation were transferred to the OIG.

In addition to the authorities conferred upon the Inspection General of the Department of the Interior by the IG Act, the Inspector General was given statutory responsibilities pursuant to Pub. L. 97–357, dated October 19, 1982, (96 Stat. 1705) concerning the United States territories, including Guam, Palau, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

#### Primary Responsibilities

The OIG provided policy direction and conducts, supervises, and coordinates all Department of the Interior audits and investigations; recommends policies for and conducts, supervises, or coordinates other activities in the Department designed to promote economy and efficiency or prevent and detect fraud and abuse. The Inspector General recommends policies for and conducts, supervises, or coordinates relations between the Department and othe Federal, State and local government agencies concerning (a) promoting economy and efficiency, (b) preventing and detecting fraud and abuse, and (c) identifying and prosecuting people involved in fraud or abuse.

The OIG also reviews existing and proposed legislation and regulations and makes recommendations to the Secretary and Congress regarding the impact such initiatives will have on the economy and efficiency of the Department's programs and operations and the prevention and detection of fraud and abuse in such programs; keeps the Secretary and the Congress fully informed about fraud, abuses, and deficiencies in Department programs and operations, and other serious problems; recommends corrective action and reports on the progress made in correcting the problem.

#### Description of Organization

The headquarters office (Office of Inspector General, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240) provides overall direction to the OIG Regional offices listed below:

*Eastern Region.* States served: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hamphsire, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Ohio, Pennsylvania, Tennessee, Vermont, Virginia, West Virginia and Wisconsin.

A. Audits: Region Audit Manager, Eastern Region, Office of Inspector General, Ballston Tower #1, Room 401, 800 North Quincy Street, Arlington, Virginia 22217.

B. Investigations: *Special Agent-in-Charge, Eastern Region, Office of Inspector General, Ballston Towers #3, Room 1105, 4015 Wilson Boulevard, Arlington, Virginia 22203.

*Central Region.* States served: Arkansas, Colorado, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming.

A. Audits: Region Audit Manager, Central Region, Office of Inspector General, 134 Union Boulevard, Suite 510, Lakewood, Colorado 80228.

*Also includes Puerto Rico and the Virgin Islands.

B. Investigations: Special Agent-in-Charge, Central Region, Office of Inspector General, 134 Union Boulevard, Suite 540, Lakewood, Colorado 80228.

*Western Region.* States served: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington and American Samoa.

A. Audits: Regional Audit Manager, Western Region, Office of Inspector General, Room W2400, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

B. Investigations: *Special Agent-in-Charge, Wesern Region, Office of Inspector General, Room W2326, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

*Caribbean Region.* Geographic area served: Virgin Islands and Puerto Rico.

Audits: Regional Audit Manager, Caribbean Region, Office of Inspector General, Federal Building, Room 207, St. Thomas, Virgin Islands 00801.

*North Pacific Region.* Geographic area served: Guam, Saipan, Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands.

Audits: Regional Audit Manager, North Pacific Region, Office of Inspector General, 238 O'Hara Street, Suite 807, Agana, Guam 96910.

*Availability of Indexes*

By notice in the **Federal Register** (published simultaneously in today's **Federal Register**) the Office of Inspector General is exempt from the quarterly or more frequent publication and dissemination of indexes to its OIG Manual. Notice of the availability of the index of the OIG Manual is published in the **Federal Register's** "Availability of Agency Index Material."

**FOR FURTHER INFORMATION CONTACT:** The Assistant Inspector General for Administration, Department of the Interior, Washington, DC 20240. Phone: 202-343-8231.

James R. Richards,

*Inspector General.*

[FR Doc. 87-10787 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-WB-M

## Freedom of Information; Indexes of Administrative Staff Manuals Administrative Determination

**AGENCY:** Office of Inspector General, Interior.

**ACTION:** Notice Concerning Requirement to Publish Indexes of Administrative Staff Manuals.

**SUMMARY:** Under section (a)(2) of the public information section of the Administrative Procedure Act (5 U.S.C. 552), commonly known as the Freedom of Information Act, each agency is required to make available for public inspection and copying indexes to administrative staff manuals that affect any member of the public. Also, each agency is required to promptly publish, quarterly or more frequently, and distribute (by sale or otherwise), copies of the indexes or supplements thereto unless it determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable in which case the agency shall nonetheless provide copies of such indexes on request at a cost not to exceed the direct cost of duplication.

Upon examination of the index contained in the Office of Inspector General Manual it was determined that the majority of the directives prescribe policies and procedures that are primarily for internal use and do not affect the public. This manual provides guidelines or procedures necessary for the accomplishment of required day-to-day operations or detailed instructions on limited technical subjects. Additionally, the contents of the index change infrequently and requests for copies are extremely rate, reflecting negligible interest in the index.

It has been long standing policy of the Department of the Interior that any policies and procedures which affect the public must be promulgated and published in the **Federal Register** and incorporated in the Code of Federal Regulations, when appropriate. Both of these documents are offered for sale by Superintendent of Documents, Government Printing Office, Washington, DC 20402.

After full consideration of the provisions of 5 U.S.C. 552(a)(2)(C), for the foregoing reasons and in consideration of economy, it is determined administratively unnecessary and impractical to publish the manual index identified in the appendix of this Notice quarterly or more frequently and distribute (by sale or otherwise) copies of the index or supplements thereto. Copies of the index will nonetheless be provided upon request at a cost not to exceed the direct cost of duplication by contacting the Office of Inspector General at telephone number 202/343-4356 or addressing a written request to the Inspector General, U.S. Department of the Interior, 18th & C Streets, NW., Room 5346, Washington, DC 20240.

James R. Richards,

*Inspector General.*

[FR Doc. 87-10786 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-WB-M

## Bureau of Land Management

**[CO-070-07-4212-13; C-43108]**

## Exchange of Lands in Pitkin, Grand, Eagle, and Garfield Counties, Colorado

**AGENCY:** Bureau of Land Management, Inteiror.

**ACTION:** Notice of Exchange of Lands.

**SUMMARY:** Pursuant to section 205, 206, 302(b) and 310 of the Federal Land Policy and Managemnt Act of 1976 (43 U.S.C. 1716), the Bureau of Land Managemnt, Glenwood Springs Resource Area has identified parcels of public and private land as preliminary suitable for exchange.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, Colorado 81602, or the Kremmling Resource Area Office, 116 Park Avenue, P.O. Box 68, Kremmling, Colorado 80459.

Comments should be submitted to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506, or to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

**SUPPLEMENTARY INFORMATION:** The following-described lands have been determined to be preliminary suitable for exchange under section 205, 206, 302(b) and 310 of the Federal Land Policy and Management At of 1976, 43 U.S.C. 1716:

**Disposal Parcel 113—183.76 Acres—Eagle County**

T. 5 S., R. 83 W., 6th P.M.
Section 1: lots 5, 6, 7, 8, 12 and 13

**Disposal Parcel 112—17.19 Acres—Eagle County**

T 5 S., R. 83 W., 6th P.M.
Section 2: lots 10 and 11
Section 11: lot 1

*Also includes Guam, Saipan, Marshall Islands, the Federated States of Micronesia, Palau, Northern Mariana Islands and American Somoa.

**Disposal Parcel 310—259.09 Acres—Garfield County**

T 6 S., R. 87 W., 6th P.M.
Section 30: lots 3, 4, 5 and 6
T 6 S., R. 88 W., 6th P.M.
Section 25: SE¼NE¼, NW¼SE¼

**Disposal Parcel 92—7.88 Acres—Pitkin County**

T. 10 S., R. 85 W., 6th P.M.
Section 4: lot 19
Section 5: lot 29

**Tyler Mountain Disposal Parcel—80.00 Acres—Grand County**

T 3 N., R. 76 W., 6th P.M.
Section 29: NE¼SE¼
Section 17: SE¼NW¼

Offered Private Lands:

**Parcel A—68.00 Acres—Grand County**

T. 1 S., R. 82 W., 6th P.M.
Section 27: All that portion in the W½NE¼ and E½NW¼ as described by metes and bounds description

**Parcel B—630.64 Acres—Garfield County**

T 4 S., R. 92 W., 6th P.M.
Section 30: lots 5, 6, 7, 8, 9, 10, 11 and 12
Section 31: lots 3, 4, and the NW¼NE¼
T 4 S., R. 93 W., 6th P.M.
Section 25: SE¼SE¼

These 547.81 acres of public land under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Shepard & Associates.

In the proposal, 698.64 acres of offered private land with public values would be exchanged for 547.81 acres of public land which have been identified for disposal. The exchange proposal has been made to facilitate the consolidation of public land holdings. The consolidation would increase managerial efficiency and provide public access to natural resources on public lands being managed by the Bureau.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values.

*Terms and Conditions*

The following reservations would be made in a patent issued for public land:

For All Parcels

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation for all existing and valid land uses, including grazing leasaes, unless waived.

For Parcel 112

1. A reservation of rights-of-way for access road C–34055.

For Parcel 113

1. A reservation for state highway authorized under D–053471.

For Parcel 310

1. A reservation of rights-of-way for access road C–40251.

2. A reservation for water facilities GS–023441 and D–050714.

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. as provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

**Barry C. Cushing,**

*Acting, District Manager, Grand Junction District.*

[FR Doc. 87–10727 Filed 5–11–87; 8:45 am]

BILLING CODE 4310–JB–M

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**[ES–940–07–4520–13; ES–037341, Group 3]**

## Maine; Filing of Plat of Dependent Resurvey

May 4, 1987.

1. The plat, in two sheets, of the dependent resurvey of the boundaries of the land held in trust for the Passamaquoddy Tribe in Township 5, Range 1, North of Bingham's Penobscot Purchase, Penobscot County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 18, 1987.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 18, 1987.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Lane J. Bouman,**

*Deputy State Director for Cadastral Survey and Support Services.*

[FR Doc. 87–10730 Filed 5–11–87; 8:45 am]

BILLING CODE 4310–GJ–M

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**[AZ–020–41–5410–10–ZADE; A–22652 A–22652]**

## Receipt of Conveyance of Mineral Interest Application; Gila and Salt River Meridian, AZ

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Hunt Highway Property has applied to purchase the mineral estate described as follows:

**Gila and Salt River Meridian, AZ**

T. 3 S., R. 7 E.,
Sec. 3, Lot 1, N½SE¼, SW¼SE¼;
Sec. 11, All;
Sec. 12, Lots 3, 4, W½SE¼;
Sec. 13, Lots 1–6, NW¼;
Sec. 14, NE¼NE¼.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice is the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, March 19, 1987, whichever occurs first.

Dated April 30, 1987.

**Henri R. Bisson,**

*District Manager.*

[FR Doc. 87–10721 Filed 5–11–87; 8:45 am]

BILLING CODE 4310–32–M

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**[AZ–020–41–5410–10 ZADF; A–22657 A–22657]**

## Receipt of Conveyance of Mineral Interest Application; Gila and Salt River Meredian, AZ

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, William and Susan Humphreys have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, AZ

T. 19 S., R. 7 E.,
Sec. 24, W½, SE¼;
Sec. 25, NW¼.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public lands laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, March 25, 1987, whichever occurs first.

Dated: May 4, 1987.

**Henri R. Bisson,**

*District Manager.*

[FR Doc. 87-10722 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-32-M

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[WY-920-07-4111-15; W-59941]

## Proposed Reinstatement of Terminated; Oil and Gas Lease; Campbell County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-59941 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-59941 effective September 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 87-10726 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-22-M

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[WY-920-07-4111-15; W-78137]

## Proposed Reinstatement of Terminated; Oil and Gas Lease; Natrona County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-78137 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-78137 effective September 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 87-10723 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-22-M

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[WY-920-07-4111-15; W-59552]

## Proposed Reinstatement of Terminated Oil and Gas Lease; Niobrara County, WY

May 5, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-59552 for lands in Niobrara County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-59552 effective August 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 87-10724 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-22-M

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[WY-920-07-4111-15; W-97355]

## Proposed Reinstatement of Terminated; Oil and Gas Lease; Natrona County, WY

May 5, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-97355 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-97355 effective November 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 87-10725 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-22-M

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[AZ-940-07-4212-12; PHX-080747]

## Reconveyed Land Opened to Entry in Mohave County, AZ

May 4, 1987.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of reconveyed land opened to entry in Mohave County, Arizona.

**SUMMARY:** This action will open 640.24 acres of reconveyed land in Mohave County to State Exchange Applications.

**DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Angela Henry, Arizona State Office, (602) 241–5534.

On December 21, 1948, as authorized under Section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended, the United States acquired the following land:

**Gila and Salt River Meridian, AZ**

T. 18 N., R. 13 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½.
Containing 640.24 acres in Mohave County.

The land described above has been determined suitable for disposal by State exchange, as provided by section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716). The land will continue to be segregated from settlement, sale, location, or entries under the public land laws. The mineral estate was not reconveyed with the surface estate and, therefore, will not be subject to entry under the United States Mining or Mineral Leasing Laws.

**John T. Mezes,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87–10728 Filed 5–11–87; 8:45 am]

BILLING CODE 4310–32–M

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**[NV–930–07–3110–10–7050; N–46463]**

## Realty Action; Exchange of Public and Private Lands in Clark County, NV

The following described Federal land in Clark County, Nevada has been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The lands will not be offered for exchange until 60 days after the date of publication of this Notice in the **Federal Register.**

The following described Federal lands will serve as a "pool" to consumate an exchange.

**Mount Diablo Meridian**

T. 21 S., R. 59 E.,
Section 11, lots 1, 2, N½, E½SW¼, SE¼.
Section 13; S½N½, S½.
Section 14; S½N½, S½.
Section 23; all.
Section 24; all.
Section 25; all.
Section 36; N½,SE¼.
Comprising 4,00 acres, more or less.

In exchange for the lands from the "pool" of Federal lands, the United States will acquire lands from a "pool" of private lands also in Clark County from Howard Hughes Properties (Summa Corporation). These private lands are described as follows:

**Mount Diablo Meridian**

T. 20 S., R. 59 E.,
Section 19; lots 3, 4, E½SW½,SE¼.
Section 30; lots 1, 2, 3, 4, E½, E½W½.
Section 31; lots 1, 2, 3, 4, E½, E½, W½.
Section 32; S½ (within).
Section 33; SW¼ (within).
T. 21 S., R. 59 E.,
Section 4; lots 3, 4, S½NW¼, SW¼.
Section 5; lots 1, 2, 3, 4, S½N½, S½.
Section 6; lots 1, 2, S½NE¼, E½SE¼.
Section 7; E½.
Section 8; all.
Section 9; all.
Section 16; N½NW¼.
Section 17; N½N½.
Section 18 N½NE¼, NE¼NW¼.
Comprising 5,008 acres, more or less

The purpose of the exchange is to acquire private lands which are immediately adjacent to the Bureau of Land Management administered Red Rock Canyon Recreation Lands. These private lands countain the same significant geologic, floral, fauna and scenic features as the Recreation Lands. Acquisition of these lands would enable the Bureau to better manage the uses which occur within Red Rock Canyon as the lands contain the same ecological processes. The lands to be transferred from the United States to Howard Hughes Properties will help to meet the needs of community expansion. The public interest will be served by completing this exchange.

The pubic lands determined to be potentially suitable for disposal are not required for any Federal purpose. The exchange of these lands would not conflict with the land use plan.

The values of the land to be exchanged are approximately equal with the final determiaton to be made by appraisals of both parcels. Full equalization of values, if not equal, will be achieved by an adjustment in acres and/or payment to the United States by Howard Hughes properties of funds in an amount not to exceed 25% of the total value of the land to be transferred out of Federal ownership.

Patent, when issued, will contain reservations to the United States, will be subject to valid existing rights, and will be subject to reservations for future streets and public utilities.

Upon publication of this Notice of Realty Action in the **Federal Register,** the above described public land will be segregated from all forms of appropriation under the public land laws, and the general mining laws, except for land exchange and mineral leasing, for a period of two (2) years or upon issuance of patent whichever occurs first.

For a period of 45 days from the date of publication, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126. Any comments received will be utilized in the preparation of the Environmental Assessment/Land Report. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determintion of the Department of the Interior.

Dated: May 1, 1987.

**Ben F. Collins,**

*District Manager.*

[FR Doc. 87–10729 Filed 5–11–87; 8:45 am]

BILLING CODE 4310–HC–M

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**[CO–942–06–4520–12]**

## Colorado; Filing of Plats of Survey

April 30, 1987.

This plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., June 22, 1987.

The plat, in four sheets, representing the dependent resurvey of a portion of the Tenth Guide Meridian West (east boundary, T. 5 S., R. 81 W.), a portion of east boundary, and a portion of the subdivisional lines, the completion survey of section 12, and the survey of the subdivision of certain sections, T. 5 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 768, was accepted April 13, 1987.

This plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., April 30, 1987.

The plat, representing the dependent resurvey of a portion of the Twelfth Standard Parallel North (south boundary, T. 49 N., R. 11 W.), portions of the east boundary and subdivisional lines, and the survey of the subdivision of certain sections, T. 48 N., R. 12 W., New Mexico Principal Meridian, Colorado, Group No. 787, was accepted April 17, 1987.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850

Youngfield Street, Lakewood, Colorado 80215.

**Jack A. Eaves,**

*Chief, Cadastral Surveyor for Colorado.*

[FR Doc. 87-10731 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-JB-M

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[NM 940-07-4520-12-0851]

### New Mexico; Filing of Plat of Survey

April 30, 1987.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on April 30, 1987.

A survey representing the dependent resurvey of the north boundary of T. 30 N., R. 14 W., portions of the west boundaries of Tps. 31 and 32 N., R. 13 West, and the survey of the west and north boundaries and subdivisional lines, T. 31 N., R. 14 W., New Mexico Principal Meridian, New Mexico, under Group 851.

The survey was requested by the Bureau of Indian Affairs, Ute Mountain Agency, by memorandum dated January 21, 1985.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

**William S. DeGroot,**

*Acting Chief, Branch of Cadastral Survey.*

[FR Doc. 87-10732 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-FB-M

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## Bureau of Reclamation

### Proposed Irrigation Ratesetting Policy Approval, Information Workshops, Public Hearing, and Availability of the Policy Document; Central Valley Project (CVP), California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Proposed CVP Ratesetting Policy Approval, Public Workshops and Hearing, and Availability of Policy Document.

**SUMMARY:** On May 4, 1987, the Department of the Interior proposed a new irrigation water ratesetting policy for the CVP. The proposed policy was developed pursuant to the Reclamation Act of 1902 (32 Stat. 388), as amended and supplemented, particularly by section 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196), as amended by the Act of July 2, 1956 (70 Stat. 483), the Reclamation Reform Act of 1982 (96 Stat. 1263), and by sections 105 and 106 of the Act of October 27, 1986 (Public Law 99-546).

The proposed CVP ratesetting policy will become final 120 calendar days following the date of this notice, unless public comment justifies reconsideration of the proposed policy. The final policy will be published in the **Federal Register** and will include responses to comments made during the public review and comment period.

Two informal public workshops are scheduled to provide interested parties with information about the provisions and the potential impacts of the proposed policy. The workshops will be followed by a public hearing to receive public comments on the proposed ratesetting policy. Copies of the policy document describing the options considered and the potential water service rates that could be expected in certain years under certain conditions for each contracting entity will be mailed to all CVP water users prior to the scheduled workshops. Also, copies may be obtained upon request.

*Workshops and Hearing Schedule:* The workshops will be held at the following locations on the specified dates:

Willows, CA—Monday, June 1, 1987, at the Memorial Hall, 525 W. Sycamore Street

Fresno, CA—Thursday, June 4, 1987, at the Fresno Hilton, 1055 Van Ness Street

The public hearing will be held on Tuesday, June 16, 1987, at the Sacramento Convention Center, 14th and K Streets, Sacramento, California. The workshops and public hearing will be held between 1:00 p.m. and 5:00 p.m.

*Hearing Rules:* Written comments for the record will be accepted for 60 days following the date of this notice. Requests to speak at the public hearing may be made at the workshops, or at the hearing. Those individuals or organizations that wish to speak at a specified time should send a written request to the address listed below. Oral comments will be limited to 10 minutes.

*Reclamation Contacts:* Written requests or comments should be addressed to the Regional Director, Bureau of Reclamation, Attention: Code MP-440 (IRP), 2800 Cottage Way, Sacramento, California 95825. Telephone inquiries may be made to Donna Tegleman at (916) 978-5035 in Sacramento, California, or to Donald Walker at (202) 343-5671 in Washington, DC.

Dated: May 4, 1987.

**James M. Ziglar,**

*Assistant Secretary—Water and Science.*

[FR Doc. 87-10896 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-09-M

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## Minerals Management Service

### Development Operations Coordination, Document; Corpus Christi Oil and Gas Co.

**AGENCY:** Minerals management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5293, Block 226, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and produciton of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 1, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton, Rouge, Louisiana (Office Hours: 8 a.m. to 4:40 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OSC Plans, Post Office Box 44487, Baton,Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Service/Louisana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executive of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 1, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-10733 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

## National Register of Historic Places; Notice of Proposed NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Attention: Chief of Registration (202) 343-9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

**William B. Bushong,**

*Acting Chief of Registration, National Register of Historic Places, Interagency Resources Division.*

### City of Rocks National Historic Landmark, Cassia County, Idaho

*Verbal Boundary Description*

Commencing at a ¼ corner, Section 19, T16S, R24E, and Section 24, T16S, R23E; continuing due west ½ mile and north about ½ mile to a ¼ corner, Sections 13 and 24, T16S, R 23E; continuing east about ½ mile to section corner, 18 and 19, T16S, R24E and 13, 24, T16S, R23E; continuing due north ¾ mile, due east ¼ mile, and due north about 1¼ miles to a line between Section 6-7, T16S, R24E; continuing due east ½ mile, due south ¼ mile, due east ½ mile, and due north almost ½ mile to a township line between Section 32, T15S, R24E and 5, T16s, R24E; continuing about ¾ mile east to a section corner, 5-4, T16S, R24E, and 32-33, T15S, R24E; continuing north 2¼ miles along a section line, due east ¾ mile, due north ¼ mile, and west about ¼ mile to a ¼ corner, Sections 19-20, T15S, R24E; continuing north ¼ mile along a section line, due west ½ mile, and north about ¼ mile to a ¼ corner, Sections 18-19, T15S, R24E; continuing west about ½ mile to a section corner, 18-19, T15S, R24E, and 13, 24, T15S, R23E; continuing north about 1 mile to a section corner, 7, 18, T15S, R24E and 12-13, T15S, R23E; continuing east about 1 mile to a section corner, 7-8 and 17-18, T15S, R24E; continuing north about ½ mile to ¼ corner, Sections 7-8, T15S, R24E; continuing due east ½ mile, due south ¾ mile, due east about ½ mile to a section line, and north about 1¼ miles to a section corner, 4-5 and 8-9, T15S, R24E; continuing west about 3 miles to a section corner, 1-2 and 11-12, T15S, R23E; continuing south 1½ miles to a ¼ corner, Sections 13-14, T15S, R23E; continuing due west ½ mile and due south ½ mile to a ¼ corner, Sections 14, 23, T15S, R23E; continuing west about ½ mile to a section corner, 14-15 and 22-23, T15S, R23E; continuing south 3½ miles along a section line, due east ¼ mile and due south about ¾ mile to a section-line, 11, 14, T16S, R23E; continuing about ¾ mile east to a section corner, 11, 12, 13, 14, T16S, R23E; continuing 1¾ miles south along a section line, about 1 mile due east to a township line, and north about ¼ mile to a ¼ corner Section 19, T16S, R24E and 24, T16S, R23E.

### Taos Pueblo National Historic Landmark, Taos (Taos County), New Mexico

The boundary of the Taos Pueblo National Historic Landmark encloses an irregular tear-drop shaped area which is approximately 2900 feet (883.9 m) long, southwest to northeast, and approximately 1200 feet (365.75 m) wide, southeast to northwest, at its widest part.

The boundary may be defined by six corner points. Point A is located just east of the fork in the road which follows the Rio Pueblo east of the village. Point B is located immediately southeast of the intersection of the road leading to the Pueblo School and the road which encircles the village, in the center of the former road. It is approximately 2240 feet (682.75 m), S49.5°W, of Point A. Point C is located approximately 700 feet (213.3 m), S86°W, of Point B and is approximately 500 feet (152.4 m), S29°E, of the Taos Pueblo Visitor Center. Point D is located immediately south of the intersection of the modern road to Taos and the road which encircles the village. It is approximately 400 feet (121.9 m), N29°W, of Point C and 100 feet (30.5 m), S29°E, of the Visitor Center. Point E is located immediately west of the ruin of the mission of San Geronimo de Taos between the road which encircles the village and an adjacent corral. It is approximately 450 feet (137.1 m), N2°E, of Point D. Point F is located immediately north of the westernmost of the two trash middens on the north side of the village. It is approximately 660 feet (201.1 m), N42°E, of Point E and approximately 2240 feet (682.75 m), S81.5°W, of Point A.

The Taos Pueblo National Historic Landmark is located predominantly in the south half of the southwest quarter of Section 34, Township 26 North, Range 13 East. The legal descriptions of the six boundary corner points are as follows:

Point A—T26N R13E SE¼, NW¼, SE¼, Section 34

Point B—T25N R13E NW¼, NE¼, NW¼, Section 3

Point C—T25N R13E NE¼, NW¼, NW¼, Section 3

Point D—T26N R13E SE¼, SW¼, SW¼, Section 34

Point E—T26N R13E SE¼, SW¼, SW¼, Section 34

Point F—T26N R13E NE¼, SW¼, SW¼, Section 34

### Manuelito Complex, McKinley County, New Mexico

The archeological district is delineated as a 7413 acre polygon.

drawn on the USGS 7.5 minute Manuelito, New Mexico, and Jones Ranch School, New Mexico, Quadrangles, near Manuelito Canyon. This geographic description is deliberately general in order to protect the integrity of the archeolgical resources, as required by law.

**Old Economy Historic District, Ambridge, (Beaver County) Pennsylvania**

Beginning on the west side of the district at the northeast corner of Route 65 and 13th Street, proceed east along the north side of 13th Street to a point opposite 98 13th Street. Crossing the street due south, follow the west and south property lines of 98 13th Street, continuing east in a straight line across Church Street to a point on the east side of the street. Proceed south to the southeast corner of 12th and Church Streets. Proceed due west across Church Street, and follow the south side of 12th Street to its intersection with Route 65. Follow the west and south property lines of 70 12th Street, and continue east along the south property lines of all the properties facing 12th Street, continuing to a point on the west side of Merchant Street. Proceed north along Merchant Street to a point opposite the south property line of 1198 Merchant Street. Crossing Merchant Street in a straight line, follow the south, east, and north property lines of 1198 Merchant Street, continuing west across Merchant Street to the northwest corner of Merchant and 12th Streets. Proceed north along the west side of Merchant Street to Wagner Street. Here the boundary crosses Wagner Street to include the Harmonist building at 1221 Merchant Street, and returns to the south side of Wagner Street. Proceed west along Wagner Street to a point opposite the east property line of 1216 Church Street. Crossing the street due north, follow the east property line of 1216 Church Street to the south property line of 272 13th Street. Proceed east along the south property lines of all the properties facing 13th Street, continuing east across Merchant Street, following the south property lines of all of the properties facing 13th Street to the southeast corner of the property of 336 13th Street. Follow the east side of this property north to 13th Street. Proceed west on the south side of 13th Street, crossing Merchant Street and then Church Street, to the southwest corner of 13th and Church Streets. Proceed north in a straight line across 13th Street, continuing north to a point opposite the north side of Creese Street. Here the boundary turns due east to include the property of St. John's Lutheran Church, with a jog to the south to include the Harmonist building at 273 13th Street. The boundary follows the east property line of the church to the south property line of 274 and 280 14th Street. Following their south and east property lines, continue north in a straight line across 14th Street to a point. Proceed east along the north side of 14th Street, crossing Merchant Street, to a point opposite 312 14th Street. Proceed due south across 14th Street and follow the west and south property lines of 312 14th Street, continuing east along the south property lines of those buildings facing 14th Street to the southeast corner of 324 14th Street. Follow the east and north property lines of this parcel, continuing west on 14th Street to a point opposite 317 14th Street. Proceed due north across 14th Street and follow the east and north property lines of 317 14th Street, continuing west along the south side of Boyleston Street, crossing Merchant and Church Streets, to the west side of Church Street. Proceed north along the west side of Church Street to a point opposite the south property line of 100 15th Street. Proceed east across Church Street in a straight line, continuing east along the south property lines of all the properties facing 15th Street to the southeast corner of 286 15th Street. Proceed north along its east property line, continuing north across 15th Street in a straight line to a point on the north side of the street. Proceed east along the north side of 15th Street, crossing Merchant Street, to the northeast corner of 15th and Merchant Streets. Proceed south across 15th Street in a straight line, continuing south along the east side of Merchant Street to the southwest corner of the property of 1412 Merchant Street. Follow the south and then the east property lines, continuing north along the east property lines of all of the properties facing Merchant Street, continuing across 15th Street in a straight line to the northeast corner of 1500 Merchant Street. Proceed due west, crossing Merchant Street, and follow the south side of Laughlin Street to a point opposite the west property line of 289 Laughlin Street. Proceed west in a straight line to the southwest corner of the property of 288 16th Street. Proceed east in a straight line along the south property lines of 288 and 296 16th Street to the west side of Merchant Street and proceed north to the corner of Merchant and 16th Streets. Here the boundary jogs north to include parcel #12–05–516 (no address), returns to the south side of 16th Street, and proceeds west along 16th Street across Church Street to the northwest corner of the property of 68 and 70 16th Street. Follow the west and south property lines of this parcel, continuing east along the south property lines of all of the properties facing 16th Street, crossing Church Street in a straight line to the east side of the street. Here the boundary follows the east side of Church Street to the southeast corner of Church and Laughlin Streets, with a jog to the west to include 1515 Church Street on the west side of the street. From the corner, proceed west across Church Street in a straight line, continuing west along the south side of Laughlin Street to the northwest corner of 75 15th Street. Follow the west property line south, continuing across 15th Street to a point on the south side of the street. Proceed west along 15th Street to the northwest corner of 70 15th Street. Follow the west property line to the north edge of the Old Economy Village property (parcel #12–01–301). Follow the property line west and then south to the point of origin.

**Haskell Institute, Lawrence, (Douglas County) Kansas**

*The district is composed of twelve noncontiguous parcels*

1. Pocahontas Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306840/4312350.

Located approximately 65 feet south of Creek Drive on the west side of the campus. The boundary comprises an area measuring 145 by 190 feet centered around the rectangular building which is 119 by 163 feet.

2. Pushmahata Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306720/4312480.

Located approximately 20 feet south of Indian Avenue and approximately 50 feet west of Barker Avenue. The boundary comprises an area measuring 70 by 90 feet centered around the rectangular building which is 44 by 67 feet.

3. Bandstand, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM References: 15/306830/4312540.

Located approximately 110 feet east of Barker Avenue in the center of a grassy open area. The boundary comprises an area measuring 50 by 50 feet centered around the square structure which is 25 by 25 feet.

4. Tecumseh Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306800/4312610.

Located approximately 25 feet west of Choctaw Avenue. The boundary comprises are area measuring 100 by 170 feet centered around the rectangular building which is 75 by 144 feet.

5. Hiawatha Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306760/43126000.

Located approximately 38 feet west of Choctaw Avenue and adjacent to Tecumseh Hall and the Auditorium. The boundary comprises an area measuring 80 by 160 feet centered around the rectangular building which is 57 by 132 feet.

6. Auditorium, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306710/4312600.

Located approximately 50 feet west of Choctaw Avenue and due north of Hiawatha Hall. The boundary comprises and area measuring 100 by 150 feet centered around the rectangular building which is 75 by 125 feet.

7. The Arch, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306620/4312600.

Located approximately 200 feet north of Indian Avenue at the west end of the Haskell Stadium. The boundary comprises an area measuring 50 by 110 feet centered around the rectangular structure which is 25 by 82 feet.

8. Haskell Stadium, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306640/4312700.

Located approximately 125 feet north of Indian Avenue and 325 feet west of East Perimeter Road on the north side of the campus. The boundary comprises an area measuring 315 by 675 feet centered around the stadium stands and playing field which measures 288 by 650 feet.

9. Indian Cemetery, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306290/4311870.

Located approximately 18 feet south of Kiowa Avenue and 440 east of East Perimeter Road. The boundary comprises an area measuring 150 by 300 feet centered around the cemetery whcih is 100 by 250 feet.

10. Old Dairy, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306010/4311730.

Located approximately 44 feet east of East Mills Street and 150 feet north of North Mills Street. The boundary comprises an area measuring 110 by 150 feet centered around the rectangular building which is 82 by 125 feet.

11. Powhattan Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306010/4311510.

Located approximately 25 feet south of Oneida Avenue and 38 feet east of Barker Avenue. The boundary comprises an area measuring 70 by 125 feet centered around by rectangular building which is 44 by 100 feet.

12. Kiva Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306910/4312420.

Located approximately 10 feet west of Chickasaw Avenue and 400 feet east of Massachusetts Avenue. The boundary comprises an area measuring 75 by 115 feet centered around the building which is 50 by 88 feet.

[FR Doc. 87-10692 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-70-M

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 2, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 27, 1987.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**ALABAMA**

*Mobile County*

Mobile, *Emmanuel AME Church*, 656 St. Michael St.

*Monroe County*

Beatrice, *Robbins Hotel*, AL 265

**ARIZONA**

*Gila County*

Globe, *Elks Building (Globe Commercial and Civic MRA)*, 155 W. Mesquite

Globe, *Gila Valley Bank & Trust Building (Globe Commercial and Civic MRA)*, 292 N. Broad St.

Globe, *Globe Downtown Historic District (Globe Commercial and Civic MRA)*, Broad St. between Cedar and Tebbs

**CONNECTICUT**

*Fairfield County*

Bridgeport, *Pequonnock River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Pequonnock River

Greenwich, *Mianus River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Mianus River

Milford-Stratford vicinity, *Housatonic River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Housatonic River

South Norwalk, *Norwalk River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Norwalk River

Westport, *Saugatuck River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Saugatuck River

*Windham County*

Woodstock, *Bowen Matthew, Homestead*, Plaine Hill Rd.

**FLORIDA**

*Brevard County*

Palm Bay, *St. Joseph's Catholic Church*, Miller St., NE

**KENTUCKY**

*Jefferson County*

Louisville, *St. Francis of Assisi Complex*, 1960 Bardstown Rd.

*Marion County*

Lebanon, *Lebanon Historic Commercial District*, Main St. roughly between Proctor Knott and Spalding Aves.

**LOUISIANA**

*Lafourche Parish*

*Acadia Plantation*

*St. Mary Parish*

Franklin vicinity, *Dixie Plantation House*, LA 182, 1 mi. SE of Franklin.

**MARYLAND**

*Anne Arundel County*

Gambrills vicinity, *Rosehill*, 2403 Bell Branch Rd.

*Cecil County*

Rising Sun vicinity, *Brown, Mercer, House*, 1270 England Creamery Rd.

*Prince George's County*

Aquasco, *Sunnyside*, 16005 Dr. Bowen Rd.

**MISSISSIPPI**

*Forrest County*

Hattiesburg, *Old Hattiesburg High School*, 846 Main St.

**NEW HAMPSHIRE**

*Merrimack County*

Concord, *Endicott Hotel*, 1–3 S. Main St.

*Sullivan County*

Charlestown, *Charlestown Main Street Historic District*, Main St.

**NEW JERSEY**

*Bergen County*

Waldwick, *Erie Railroad Signal Tower, Waldwick Yard*, NE end of Bohnert Pl., W side of RR Tracks

*Cape May County*

Dennisville, *Dennisville Historic District*, Petersburg Rd., Main St., Church Rd., Hall Ave., Fidler and Academy Rds., and NJ 47

*Essex County*

Newark, *Mount Pleasant Cemetery*, 375 Broadway.

*Hudson County*

Kearney, *Highland Hose No. 4*, 72–74 Halstead St.

NORTH CAROLINA

Macon County

Franklin, *St. Agnes Church*, 27 Franklin St.

Wake County

Raleigh, *North Carolina State Fair Commercial & Educational Buildings*, NW corner Jct. of Blue Ridge Rd. and Hillsborough St.

UTAH

Utah County

Pleasant Grove, *Adams, John Alma, House (Peasant Grove Soft-Rock Buildings TR)*, 625 E. Two Hundred S.
Pleasant Grove, *Goode, Charles T.H., House (Pleasant Grove Soft-Rock Buildings TR)*, 1215 E. Main
Pleasant Grove, *Green, Samuel, House (Pleasant Grove Soft-Rock Buildings TR)*, 264 E. Two Hundred S.
Pleasant Grove, *Harper, Alfred William, House (Pleasant Grove Soft-Rock Buildings TR)*, 125 W. Four Hundred N.
Pleasant Grove, *Larsen, Neils Peter, House (Pleasant Grove Soft-Rock Buildings TR)*, 1150 N. One Hundred E.
Pleasant Grove, *Lim, William, House (Pleasant Grove Soft-Rock Buildings TR)*, 695 N. Four Hundred E.
Pleasant Grove, *Richins, Thomas A., House (Pleasant Grove Soft-Rock Buildings TR)*, 405 N. Five Hundred E.
Pleasant Grove, *Wadley, Edward, House (Pleasant Grove Soft-Rock Buildings TR)*, 2445 N. Canyon Rd.
Pleasant Grove, *White, Jacob Hanmer, House (Pleasant Grove Soft-Rock Buildings TR)*, 599 E. One Hundred S.
Pleasant Grove, *Young, William Friend, House (Pleasant Grove Soft-Rock Buildings TR)*, 550 E. Five Hundred N.

VIRGINIA

*Lynchburg (Independent City)*
*Mountview*, Liberty University Campus between VA 670 and US 29

[FR Doc. 87-10691 Filed 5-11-87; 8:45 am]
BILLING CODE 4310-70-M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

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: Coal Mining Reclamation Operations, Initial and Permanent Regulatory Programs, Excess Moisture Content Allowance—Reclamation Fees

Abstract: Section 402 of Pub. L. 95-87 require fees to be paid to the Abandoned Mine Reclamation fund by coal operators on the basis of coal tonnage produced. The information will be used by the regulatory authority during audits to verify that the amount of the excess moisture deduction taken by the operator is appropriate

Bureau Form Number: None
Frequency: On occassion
Description of Respondents: Coal Mine Operators
Annual Responses: None
Annual Burden Hours: 3573
Bureau clearance officer: Darlene Grose-Boyd (202) 343-5447

Dated: May 1, 1987.

**Carson W. Culp,**

*Assistant Director, Budget and Administration.*

[FR Doc. 87-10734 Filed 5-11-87; 8:45 am]
BILLING CODE 4310-05-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Senior Executive Service; Appointment of Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the Federal Register.

The following executive is hereby appointed to a three-year term effective April 20, 1987: Linda R. Anku.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry K. Goodwin, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, DC 20210, Telephone Number 523-6551. Signed at Washington, DC, this 5th day of May, 1987.

**William E. Brock,**

*Secretary of Labor.*

[FR Doc. 87-10812 Filed 5-11-87; 8:45 am]
BILLING CODE 4510-23-M

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

#### Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

#### List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often recordkeeping/reporting requirement if needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, of applicable.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Office for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management

and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**Extension**

*Employment and Training Administration*

Job Corps Data Sheet
1205–0025; ETA 652
On occasion
State or local governments; businesses or other for-profit; non-profit institutions 103,000 respondents; 51,500 burden hours; 1 form

This form is used to obtain information for screening and enrollment purposes to determine eligibility for the Job Corps program. It is prepared by the screener for each applicant and has no further impact on the public.

*Employment and Training Administration*

Job Corps Health Questionnaire (ETA 6–53)
1205–0033; ETA 6–53
On Occasion
Individuals or households
97,500 respondents; 19,500 hours; 1 form

The Health Questionnaire is used to obtain the health history of applicants to the program to determine medical eligibility.

The applicant must not have a health condition which represents a potentially serious hazard to the youth or others, results in a significant interference in the normal performance of duties, or requires frequent, expensive, or prolonged treatment.

Signed at Washington, DC, this 7th day of May, 1987.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 87–10811 Filed 5–11–87; 8:45 am]

BILLING CODE 4510-30-M

## Employment and Training Administration

### Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Addition to List of Labor Surplus Areas

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**DATE:** The addition to the labor surplus area list is effective May 1, 1987.

**SUMMARY:** The purpose of this notice is to announce an addition to the list of labor surplus areas.

**FOR FURTHER INFORMATION CONTACT:** William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–535–0185.

**SUPPLEMENTARY INFORMATION:** Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the doemstic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981. (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on March 26, 1987 (52 FR 9727).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the list of labor surplus areas, effective May 1, 1987.

The following addition to the list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

**Addition to the Annual List of Labor Surplus Areas**

May 1, 1987.
Labor Surplus Area:
Kansas: Neosho County
Civil Jurisdiction Included:
Neosho County

Signed at Washington, DC, on May 5, 1987.

**Roberts T. Jones,**

*Deputy Assistant Secretary of Labor.*

[FR Doc. 87–10819 Filed 5–11–87; 8:45 am]

BILLING CODE 4510-30-M

### Job Training Partnership Act, Debt Collection; Guidance to States

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Employment and Training Administration of the Department of Labor announces its intention to issue instructions to the States on the recovery of misexpenditures under the Job Training Partnership Act. The notice is given to interested persons in order that they may familiarize themselves with the types of misexpenditures requiring repayment in non-Federal funds and the disposition of recoveries from other less serious misexpenditures. This guidance is being provided in a proposed Training and Employment Guidance Letter published at the end of this document.

**DATE:** Written comments must be received before June 11, 1987.

**ADDRESS:** Written comments on this notice shall be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N4671, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Mr. David O. Williams, Administrator, Office of Financial and Administrative Management. Commenters wishing acknowledgment of receipt of their comments must submit them by certified mail, return receipt requested.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda D. Kontnier, Chief, Division of Debt Management, Office of Grants and Contracts Management, Employment and Training Administration, Department of Labor, Room N4671, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535–0704.

**SUPPLEMENTARY INFORMATION:** The Employment and Training

Administration of the Department of Labor announces its intention to issue instructions to the States on the disposition of misexpended funds recovered under the Job Training Partnership Act. This guidance is being provided in a Training and Employment Guidance Letter published at the end of this document. Written comments are invited from the public.

Signed at Washington, DC, this 31st day of March 1987.

**Roger D. Semerad,**

*Assistant Secretary of Labor.*

**Training and Employment Guidance Letter**

From: Roger D. Semerad, Assistant Secretary for Employment and Training.

Subject: Debt Collection Under the Job Training Partnership Act (JTPA).

1. *Purpose:* To provide States with instructions on the method of repayment to recover misexpenditures under the Job Training Partnership Act.

2. *References:* Debt Collection Act of 1982 (31 U.S.C. 3701 *et seq.*); Federal Claims Collection Standards (4 CFR Chapter II); Training and Employment Guidance Letter (TEGL) No. 6–84; OMB Circular A–128; Training and Employment Information Notice (TEIN) No. 7–86.

3. *Background:* Training and Employment Information Notice (TEIN) No. 7–86 was issued on August 14, 1986, to address a very narrow concern: Insuring consistency in the Training and Employment Administration's (ETA) response to States' inquiries on how to handle misspent JTPA funds recovered from sub-recipients. Since the issuance of TEIN No. 7–86, further consideration has been given to two additional objectives: (1) The reinforcement of the Department of Labor's commitment to vigorous corrective action in relation to instances of serious violations or illegal acts, and (2) the conserving of funds for program use.

4. *Method of Repayment:* Section 164(e)(1) of the Job Training Partnersahip Act requires repayment from non-JTPA funds where the misexpenditure was due to "willful disregard of the requirements of the Act, gross negligence, or failure to observe accepted standards of administration."

For those misexpenditures where the liability arises from (1) "Willful disregard," "gross negligence," or "failure to observe accepted standards of administration," in Section 164(e)(1), or (2) Incidents of fraud, malfeasance, or misapplication of funds as defined in TEGL No. 6–84, or (3) Illegal acts or irregularities which are required to be reported in accordance with Paragraphs 11b.(4) and 12 of OMB Circular A–128, it is ETA policy that non-Federal funds must be remitted to the Department of Labor and will not be available for reprogramming; such funds will revert to the U.S. Treasury. This policy applies whether the misexpenditure occurs at the recipient or at any sub-recipient level. These funds are to be remitted to:

U.S. Department of Labor, Employment and Training Administration, Office of Financial and Administrative Management, Room N4671, 200 Constitution Ave., NW. Washington, DC 20210.

The letter of transmital should provide the following identifying information:

Governor/Secretary Agreement Number (Grant No.), Program Title, Program Year to which the repayment applies, Sub-recipient name, Sub-recipient grant or contract number.

For the remainder of misexpenditures, where the liability does not arise under the above categories, remitance of non-Federal funds to the Department of Labor is not required. Rather, the non-Federal funds shall be reprogrammed into the same JTPA program and title, provided this reprogramming takes place during the program year and funds were obligated by DOL, or the two succeeding program years. Any funds remitted to ETA because the three year availability period has expired, must be remitted to the Department of Labor at the above address. Such funds will not be available to the State for subsequent drawdown or expenditure.

In those cases where non-Federal funds are reprogrammed, documentation relating to the repayment of the liability and the reprogramming of the funds should be maintained and available for review during the compliance review process.

5. *Effective Date:* This Training and Employment Guidance Letter shall be effective as of the date of issuance.

6. *Inquiries:* Questions concerning this guidance letter should be directed to Linda Kontnier or James MacDonald on (202) 535–0704.

[FR Doc. 87–10817 Filed 5–11–87; 8:45 am]

BILLING CODE 4510–30–M

## Job Training Partnership Act, Migrant and Seasonal Farmworker Program for Program Year 1987; Methodology for Setting Grantee Performance Standards

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of Method for setting performance standards.

**SUMMARY:** The Department of Labor adopts a methodology for setting performance standards for Job Training Partnership Act Migrant and Seasonal Farmworker grantees for Program Year 1987 (July 1, 1987–June 30, 1988).

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Clayton Johnson, Telephone: 202–535–0685.

**SUPPLEMENTARY INFORMATION:** On November 3, 1986, the Department of Labor published in the **Federal Register** a notice of a proposed methodology for setting performance standards for Job Training Partnership Act Migrant and Seasonal Farmworker program grantees. 51 FR 39923. Interested parties were invited to submit comments until November 17, 1986. This notice summarizes the comments received and announces the adoption of the modeling process for the purpose of setting performance standards for Program Year (PY) 1987 (July 1, 1987–June 30, 1988).

### Discussion of Comments

A total of 14 letters were received containing numerous comments in response to the previous notice. In their letters, the Farmworker grantees raised a variety of questions and expressed a number of concerns regarding the standard setting methodology and related performance standards issues.

Based on the Department's review of the comments received, the principal changes in the two statistical models are as follows:

- *Migrant* is deleted as a factor from the Entered Employment Rate (ERR) model.
- *Aged 14–21* (Youth), *Elementary School Dropouts*, and *Unemployment at Enrollment* are deleted as factors from the Cost per Entered Employment (CEE) model.
- *Average Weeks Participated* will be computed based on terminees later entering employment.
- *Non-Metropolitan Statistical Area* (Non-MSA/"balance of state") data will be used in calculating the local economic factors in both models (EER, CEE) instead of statewide data previously used.

These several changes are described in more detail along with other concerns and questions as grouped under the major topic headings shown below.

*1. Selection of Factors in the Models*

A large share of comments contained in the letters were in this category. Some commenters questioned why given factors were included in the models for

Entered Employment Rate (EER) or for Cost per Entered Employment (CEE). Other commenters expressed concern as to why certain factors were not included among the participant characteristics or local economic conditions in either of the two models.

- Including Migrant as a factor in the EER model was questioned since it appears to indicate that they are easier to place. This is a conclusion that runs counter to experience cited by grantees.
- The validity of including youth (Aged 14–21), Elementary School Drop-Outs, and Unemployed at Enrollment as factors in the CEE model was questioned since the apparent implication is that participants with these characteristics are less expensive to place. Again, this is a conclusion that is not consistent with grantees' experience.
- Excluding program activity mix as a factor was questioned since it seems to be a strong influence in determining participant outcomes and costs.
- The absence of some other special factors (e.g. exoffenders) was questioned.

Upon further consideration, the Labor Department concurs with the proposed deletion of the Migrant factor from the EER model and the deletion of the factors for Youth, Elementary School Drop-Outs, and Unemployed at Enrollment from the CEE model. However, the Department continues to regard program activity mix as an aspect that should be excluded from the models. Choosing program activity options is clearly an internal management decision within each grantee's control.

The Department recognizes that either model may not contain some participant characteristics that are significant to certain grantees. However, whether a factor should be included in the model must depend upon the degree to which it is applicable to all or most grantees. Also, some factors not presently included in the models may become more significant in future years once more data are accumulated.

*2. Factor Weights and Data Used in Models*

Questions were raised in some comments about the value of using program data reported for the nine month transition period (TY 1984—October 1, 1983 to June 30, 1984) in constructing the models for the two performance measures (EER, CEE). Grantees were concerned about that timeframe since it appeared to omit a full migrant season. However, a statistical analysis of TY 1984 data along with data from PY 1984 (July 1, 1984 to June 30, 1985) showed essentially the same patterns for both periods. In addition, the main consideration has been that the models be developed on the broadest available data base and that this should include TY 1984 as well as PY 1984.

Several commenters sugggsted that it would be more accurate to use balance of State data for the unemployment rate factor since it would more fully reflect the rural areas in which the grantees operate. The Department agrees with the desirability of this proposed change; thus, the local economic factors in the models will be calculated using balance of State data that exclude metropolitan statistical areas.

Other comments were directed at the data used in computing "Average Weeks Participated." The "Average Weeks Participated" factor will be calculated based on those terminees who later entered employment as reported on the Farmworker Annual Status Report.

The overall statistical significance of the proposed methodology was questioned since the models appear to account for only about 25 to 30 percent of whatever impacts on placement rates and their costs. It should be noted that the prediction power of the models could be increased by including program activity mix, but only with the key disadvantage of reducing flexibility in program planning (i.e., previous patterns of program activity would tend to drive the standards). Also, two other important aspects that cannot be included in the models are the quality of grantee management and certain intangible elements such as participant motivation, terminees relocating to other areas, etc. The correlations for the Farmworker performance standards models are in the same range as those for the JPTA II–A performance standards models and these meet acceptable statistical criteria.

In response to grantee comments, the Department will continue to study the possibility of utilizing a direct placement versus indirect placement ratio in future revisions of the models. Current problems in segregating this type of data on the reporting forms make it impractical at this time.

*3. Sub-state Data for California Grantees*

Concern was expressed by several California grantees about their being given statewide data for three of the local factors in the model (i.e., % of population living on farms, median family income, and state unemployment rate). In the case of the other States, there is only a single JTPA Section 402 program grantee within a given State. However, California has five JTPA Section 402 grantees with each being designated to serve a separate sub-state area. The Department agrees with the desirability of providing separate sub-state data that reflects each grantee's designated service area within California.

*4. Implementaion of Model Based Standards*

Serveral commenters suggested that a "sanctionless" test period be set up for PY 1987. However, the Department does not regard such a step as being necessary or desirable. This is because the standards have already had a developmental phase extending over the past five program periods (FY 1983, TY 1984, PY 1984, PY 1985, PY 1986). Also, the existing Federal regulations at 20 CFR 633.321 limit the trial period to the end of PY 1986. Consequently, PY 1987 is the first year the results of performance standards will be considered officially effective.

Some other commenters expressed concern about the lack of final performance standards until year's end. This concern points up a key change from the previous approach which provided fixed numbers (i.e., "issued" standards) at the beginning of the year. The model-based approach utilizes a more flexible process in which actual program data reported by the grantee at the end of the year is used to calculate the standards for each measure (EER, CEE). If it turns out that the grantee has generally served easy to place terminees, then its standards will be tighter. If the grantee has generally served hard to place terminees, then its standards will be more lenient. By utilizing their current data in the models, grantees can compute and monitor where they stand at any point in time.

Another concern expressed in some grantee comments related to the matter of negotiating changes in their performance standards. This concern partially reflects the old system in which fixed standards were set at the beginning of the period and in which grantees sought to negotiate changes to account for certain anticipated problems or conditions. The new model-based approach offers greater flexibility since it provides for a broader range of acceptable performance and since final standards are not established until after the period ends. The Department expects that there may be some occasions where grantees that miss their final minimum standards can submit appropriate justification for missing their standards based on "acts of God

or other extenuating circumstances that may have radically affected their actual performance during the year.

The comments regarding how this methodology "leans" toward performance driven programming are dealt with in the following topic category ("5" below).

*5. "Negative" Impact of Performance Standards*

In their letters, grantees acknowledged the important role that performance standards can play in improving services to participants and enhancing public acceptance. However, they also emphasized their genuine concern that measurements tied solely to cost efficiency will drive their program toward a low cost/high placement rate imperative. As an example, they said that too much emphasis on reducing the Cost per Entered Employment might encourage shorter training and more direct palcement activities.

The Department has carefully considered the potential influence of the standards on types of participants served and the varieties of training and services provided. The manner in which the standards have been established is based on the expectation that 85% of the Farmworker grantees will exceed their minimally acceptable levels even if their performance is only comparable to PY 1984 experience. For this reason, the judgment of the Department is that the minimum standards are not excessively stringent.

*6. Impact of New Immigration Law*

The comments received on this topic reflected grantee apprehension as to how newly eligible participants will affect their programs. Specific concerns were expressed as to how the newly eligible population will impact on the reporting of participant characteristics during PY 1987. The speculation is that the PY 1987 data might be quite different in pattern from previous years and from future periods, particularly for certain states where there are many aliens in the farmworker population. It was suggested that additional reporting of the newly eligible participants duirng PY 1987 might avoid possible negative effects that the data might otherwise have on future standard setting efforts. Grantees are at liberty to maintain separate reporting if they desire for their own use.

*7. Rewards and Sanctions*

Several commenters expressed interest and concern regarding any plans that the Department may have regarding incentives or sanctions as a result of grantee performance against the performance standards in future years. This particular notice does not address the possible range of such rewards and sanctions to be adopted, aside from indicating that performance standards are one of fourteen (14) responsibility tests that grantees must meet to be considered for future designations.

The Department intends to develop appropriate sanctions for grantees, whose failures to meet the standards are substantial or persistent. Also, efforts will be made to formulate incentives for those grantees that meet or exceed their model based performance levels. The Department will continue to explore approaches for establishing rewards and sanctions in accordance with JTPA Section 402 regulations.

**Information on Methodology**

Job Training Partnership Act (JTPA) Section 402 authorizes programs to meet the training and employment needs of migrant and other seasonal farmworkers and their dependents. These programs and services are provided through grants made to public agencies and nonprofit organizations as determined by the Secretary of Labor (Secretary) to possess a demonstrated ability to effectively administer these activities within the given states. JTPA Section 402(c)(4) states, "Recipients of funds under this section shall establish performance goals, which shall, to the extent required by the Secretary, comply with performance standards established by the Secretary pursuant to section 106."

Performance standards for Migrant and Seasonal Farmworker (MSFW) programs were first introduced on a trial basis in the last year of the Comprehensive Employment and Training Act (CETA) (Fiscal Year (FY) 83 (October 1, 1982–September 30, 1983)). Performance standards have continued to be used in MSFW programs under JTPA during the following periods.

Transition Year (TY) 84, October 1, 1983–June 30, 1984
Program Year (PY) 84, July 1, 1984–June 30, 1985
Program Year (PY) 85, July 1, 1985–June 30, 1986
Program Year (PY) 86, July 1, 1986–June 30, 1987

It should be noted that Federal regulations for JTPA Section 402 programs State that "no grantee shall be penalized for not meeting performance standards for program years 1984–86" (20 CFR 633.321(c)). Therefore, PY 1987 (July 1, 1987–June 30, 1988) will be the first program period from which performance standards results will be used in assessing MSFW grantees for designation purposes for PY 1989/90. Performance standards are one of fourteen (14) responsibility tests that MSFW grantees are required to meet in being considered for final selection (20 CFR 633.204). By focusing on participant outcomes of the MSFW programs, performance standards complement the other criteria relating to various compliance aspects.

Two performance measures are used for MSFW programs:

- Entered Employment Rate.
- Cost Per Entered Employment.

In calculating these standards, participants in the "Services Only" programs and youths who obtain an employability enhancement outcome are excluded and the costs of "Services Only" activities and "Administration" costs are subtracted from the cost measure.

The Entered Employment Rate (EER) standard reflects the employment orientation of all JTPA programs. A Cost Per Entered Employment (CEE) standard holds grantees accountable for using their training funds in a cost effective manner.

Revisions and the Reasons for Them

Through PY 85, standards were adjusted based on the average performance in clusters of grantees, defined by whether more than 50% of the terminees were migrants and by categories of program size (based on allocation levels). Further adjustments were made to the entered employment rate for differences in the unemployment rate by using the adjustments from the JTPA Title II–A model. Adjustments for the unemployment rate were similarly made to the cost per entered employment standard and additional adjustments were also made for the proportion of indirect placements and the local consumer price index.

The use of the clusters to adjust standards created problems because the procedures were fairly ad hoc and thus lacked both statistical and face validity. For example, whether it was appropriate to use Title II–A unemployment rate adjustments for MSFW programs had not been verified. Further, the division of grantees into distinct groups meant that grantees serving 49% migrants were given substantially different standards than those serving 51%. Because of the problems with the clustering approach, an interim procedure was adopted for PY 1986 by which performance standards were set at 100% of each grantee's actual performance in PY 1984

with a 15% end of year variance allowed for both measures.

The rationale for performance standards is to motivate grantees to run well-managed, efficient programs. Setting standards based on how well the grantee actually performed in the previous year assumed that service levels and local economic conditions do not change from year-to-year, and that only management quality is reflected in these year-to-year changes in performance. Moreover, it holds grantees harmless for perpetuating poorly managed programs from one year to the next. For a given set of client characteristics and labor market conditions, a grantee who runs a well managed program and, thus, did better in the past year would be given a higher standard than a grantee who runs a poorly-managed program and thus performed poorly last year. Because performance standards are intended to encourage efficient management, standards should distinguish between well-managed and poorly-managed programs rather than holding the grantees harmless for management quality.

Since participant characteristics and local economic conditions may change from year to year, a grantee may have to meet the same standard with a more difficult to serve clientele or in a more difficult economy. The current approach assumes that each and every grantee can do as well as it did last year and does not account for random or chance events that may also influence how well a grantee performs. For example, a new firm may open in the area, creating a short-term need for new workers that wanes in the following year; participants in one year may, by chance, be easier placed in job openings than the typical participants; additional funding for related programs may be available in one year, but not the next. Consequently, under the current system, some MSFW grantees found that they could not expect to meet their issued PY 86 standards because of such random events and have had to negotiate with DOL for revised standards.

To mitigate problems associated with negotiations and other aspects of the standard-setting process, the Department of Labor is adopting a statistical modeling approach for setting PY 87 standards. Using historical (TY 84 and PY 84) data, the model identifies a set of factors that strongly influence the performance outcome. It then provides weights to convert differences among grantees on these factors into appropriate adjustments in expected performance levels. The adjustments raise or lower the expected performance level form the average performance of all grantees. The adjustment model has the following advantages over the current standard-setting approach:

- The model represents the average influence of factors across all grantees; well managed programs are expected to do better than the model indicates and poorly-managed programs are expected to do worse. Thus, grantees will not be held harmless for poorly-managed programs.
- It allows adjustments to be applied consistently and equitably to all grantees.
- It quantifies the size of adjustments so that, for exmaple, one knows not only that serving primarily a farming community is a justifiable reason for lowering performance standards but also that the standards should be lowered by a specific amount for each percentage point change in farming residents.
- It allows on to add up the adjustments for several factors to determine the net adjustments that should be made to the standards.

### Selection of Modeling Factors

The models are designed to adjust expected performance levels for selected participant characteristics and local economic conditions (called "local factors") that are not under the grantees' control and are known to have strong relationships to program outcomes.

Numerous factors reported on the Farmworker Program Annual Status Report (FASR) were examined for inclusion in the model. Economic conditions for non-metropolitan areas have been constructed from Census and Bureau of Labor Statistics data.

The following criteria were used when selecting the factors to be included in each model:

- Management practices are excluded because they are regarded as within the control of program managers, not beyond their control.
- There must be some variation on the factor, that is, in service levels or local economic conditions, among grantees.
- The relationship between the factor and the performance measures makes intuitive sense.
- The factor is strongly related to the performance outcomes.
- Measures of the factor are objective and easily quantifiable.
- For statewide economic conditions, published data is available nationwide.

The following 15 factors are included in the PY 87 MSFW models:

| Local factors | Model | |
|---|---|---|
| | EER | CEE |
| Percent Migrants | | x |
| Percent Females | | x |
| Percent Aged 14 to 21 | x | |
| Percent Elementary School Dropouts | x | |
| Percent Blacks | x | x |
| Percent Hispanic | x | |
| Percent Indian or Native Americans | | x |
| Percent Asian or Pacific Islanders | | x |
| Percent Limited English language proficiency | x | x |
| Percent Welfare recipient | x | x |
| Percent Unemployed at enrollment | x | |
| Average Weeks Participated by those who entered employment. | | x |
| Unemployment rate in State (Non-MSA) | x | x |
| Percent of Population living on farms (Non-MSA). | | x |
| Median Family Income (000) (Non-MSA) | x | x |

Models are derived from the past average performance of grantees (e.g., TY 84 and PY 84 experience was used in estimating the PY 87 models). Such an approach is quite appropriate because the relationships between grantee performance and local factors remain fairly stable over time. The model weights represent the size and direction of each local factor's effect on the performance outcome when the other factors in the model are also taken into account. The following relationships between local factors and performance measures are identified in the PY 87 models:

- The cost per entered employment is somewhat higher for serving migrants.
- Youths under 21 have significantly lower entered employment rates than do older terminees.
- Similarly, dropouts with less than 8 grades of education have lower entered employment rates than do individuals with more education.
- Blacks and Hispanics have lower entered employment rates than do whites.
- Individuals with limited English-language proficiency have lower entered employment rates and are associated with higher costs per entered employment.
- Welfare recipients have lower entered employment rates and are associated with higher costs per entered employment.
- Individuals who were unemployed prior to entry have higher entered employment rates.
- Grantees in States with a greater proportion of the population living on farms have higher costs per entered employment.
- Grantees serving more females had somewhat higher cost per entered employment.
- Grantees serving more Blacks, Indian or Native American, and Asian or Pacific Islander had somewhat higher cost per entered employment.

• Grantees in Staters with higher unemployment rates have lower entered employment rates and higher costs per entered employment.

• Grantees in States with higher median family incomes, and presumably higher living costs, had higher costs per entered employment and lower entered employment rates.

• Grantees where the successful participants, on average, have longer training times have higher cost per entered employment.

Program mix has been excluded to hold grantees accountable for the program-activity mix they provide. Providing the appropriate mix of program activities to meet the changing needs of the clients is an important management responsibility.

Other factors are excluded from the models because grantees serve very similar (and usually very small) proportions of individuals with those characteristics. Participant characteristics excluded because of little variation are: single head of household and handicapped.

Some factors were included in a model for one of the outcomes but excluded from the other because their adjustments in the latter did not make sense from a programmatic perspective. Thus, migrants and females were excluded from the entered employment rate model because including them would have generated higher expected performance.

Several variables measuring local economic conditions were examined but were excluded from the recommended models because they did not have significant relationships with the performance measures. These variables include population density, average annual earnings in the State, percent employed in manufacturing, percent of land in farms and percent of farm revenues from crops. The lack of a strong relationship between many economic conditions and program performance is probably due to the use of statewide data.

The recommended performance goals are calculated as differences from the national average performance. The national average performance represents the outcome of serving participants with average characteristics in local areas with average conditions. Thus, a grantee's performance adjustments will depend on how different its service levels and economic conditions are from the national averages of these local factors.

The national average levels, excluding "Services Only", of the factors used in the models to calculate the PY'87 performance goals are:

| | |
|---|---|
| Percent Migrants | 21.2 |
| Percent Females | 32.7 |
| Percent Aged 14 to 21 | 31.6 |
| Percent Elementary School Dropouts | 23.7 |
| Percent Black | 19.4 |
| Percent Hispanic | 44.5 |
| Percent Indian or Native American | 3.2 |
| Percent Asian or Pacific Islander | 4.4 |
| Percent Limited English Proficiency | 17.7 |
| Percent Welfare recipients | 11.7 |
| Percent Unemployed at enrollment | 79.8 |
| Average Weeks Participated by those who entered employment | 17.1 |
| Unemployment rate in State (Non-MSA) | 8.8 |
| Percent of population living on Farms (Non-MSA) | 6.4 |
| Percent Median Family Income in 000's (Non-MSA) | 17.0 |

These national averages of service levels are not meant to indicate that grantees should strive to serve those proportions of participants. These average service levels are used only to determine whether a grantee is serving more hard-to-serve participants than average and thus should receive lower than average performance goals, or whether the grantee is serving fewer hard-to-serve participants than average and thus should receive somewhat higher than average performance goals.

Because the use of an adjustment model may yield substantially different standards for some grantees than they received from previous standards-setting approaches, the Department of Labor will include past performance in the setting of standards for the first year of model use in PY 87.

Under this weighted average approach, grantees' expected performance derived from the model and past performance would be weighted and combined to yield a new expected performance level that is a compromise between the two. A weight for past performance was statistically derived to best predict performance. Weights for past performance (PY 1985) are 45% for the EER standard and 49% for the CEE standard.

The adjustment model will provide:

• *A recommended performance goal for each outcome measure.* Each grantee's recommended goal is calculated to fall at an average performance level given the participant characteristics and local economic conditions of that grantee. At an average performance level, fifty per cent of grantees facing these same conditions can be expected to perform above their recommended goals.

• *A standard set below the recommended goal to reflect a minimally acceptable level of performance.* The standard identifies the performance a grantee must achieve to meet the responsibility test at 20 CFR 633.204(a)(5). Consistent with grantees' rate of failure to meet standards in the past, an individual performance standard is set for each grantee so that, unless the grantee improves their performance relating to the conditions they face, 15% will perform below the standard. No end of year variance will be allowed below this minimally acceptable standard, as was applied in the past. Thus, grantees should aim their planned performance at or above the recommended goal level calculated by the model. By planning and maintaining performance at the recommended goal level during the year, grantees can accommodate possible changes in actual service levels and local economic conditions during the year that may cause an overlooked increase in the grantee's minimum standard when it is recalculated at year end.

• *A level of exemplary performance* is designated separately for each grantee and this is a point above which only 15% of grantees would be expected to perform, unless they improve their performance relative to the conditions they face.

Minimally acceptable performance standards and exemplary levels of performance are uniquely established for each grantee taking into account the number of their terminees. Minimally acceptable standards will be set further below the recommended goal for smaller grantees than for larger grantees. Exemplary levels of performance will be set closer to the recommended goal for larger grantees than for smaller grantees.

Unlike the previous standard setting approaches, the model-based process does *not* produce a fixed set of numbers ("issued standards") at the beginning of the year to be targeted by grantees throughout the year. Rather, the models provide each grantee with a broader range of acceptable performance from the minimally acceptable level (standard) to the average expected level (recommended performance goal) to the exemplary level. The models are designed to generate varying goals, standards, and exemplary levels depending upon each grantee's participant characteristics and local economic conditions. Participant characteristics data and local conditions may be expected to change during the year; accordingly, grantees should monitor revised estimates of their

performance so that they will not be caught short when the final standards are calculated on the actual participant service levels shown in the Farmworker Annual Status Reports at the end of the year.

THe Department will provide each grantee with initial performance levels—recommended goal, minimally acceptable performance standard, and exemplary performance—calculated using the actual service levels reported on the PY 1985 Annual Status Reports. Worksheets, showing these initial calculations for planning purposes, will be provided for use in preparing the Grant Plans for PY 1987. These initial calculations are intended for preliminary planning and monitoring use. Grantee performance for PY 1987 will be judged by model results using the actual service levels reported at the end of PY 1987. At year end, grantees will submit their Farmworker Annual Status Reports showing actual service levels and will obtain their final performance levels once the Department recalculates the model-based results.

The Employment and Training Administration will provide worksheet computations for all grantees on both the initial calculations and the final calculations. However, individual grantees are required to familiarize themselves with the worksheets for each performance measure (EER, CEE) so that they can update the worksheets with more current service levels as the program year progresses. In this manner, the performance standards can serve as a continuing management tool in their internal operations.

Signed at Washington, DC, this 5th day of May, 1987.

**Roberts T. Jones,**

*Deputy Assistant Secretary of Labor.*

[FR Doc. 87-10818 Filed 5-11-87; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-18,704]

## Abex Corp., Railroad Products Group, Superior, WI; Negative Determination Regarding Application for Reconsideration

By an application dated March 19, 1987, the International Brotherhood of Boilermakers requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Abex Corporation, Railroad Products Group, Superior, Wisconsin. The denial notice was signed on January 22, 1987 and was published in the **Federal Register** on February 19, 1987 (52 FR 5211).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims unfair foreign competition because the Abex Corporation closed its Superior, Wisconsin plant instead of its Canadian plant which produced the same products. It is also claimed that Abex purchased Japanese rail and castings which adversely affected Abex plants in the United States.

Findings in the investigation show that the "contributed importantly" test of the increased import criterion of the Trade Act was not met in 1986 compared to 1985. This test is generally demonstrated through a Department of Labor survey of the subject firm's customers. The survey showed that increased trackwork imports by the customers of Abex accounting for the predominant portion of the Superior facility's 1985–1986 sales decline were not important in relation to that sales decline.

The union's claim concerning foreign competition from Abex's Canadian plant is not supported by the findings of the investigation. The Canadian plant served the Canadian market. If the Canadian plant were shut down and the Superior plant remained open, the additional production would have been for the export market which would not form a basis for certification.

The union's claim concerning Abex Corporation's purchase of Japanese castings is correct but this did not affect the Superior fabrication plant. The Department has determined that imported Japanese castings have adversely affected production and employment at Abex Corporation's foundry in Anderson, Indiana (TA-W-16,277).

According to company officials the railroad market is soft. Railroad companies are retrenching their capital expenditures and eliminating unused track. As a result of this situation, a domestic transfer of production occurred from the Superior, Wisconsin plant in 1986 to the Chicago Heights, Illinois and Pueblo, Colorado plants.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 1st day of May 1987.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87-10813 Filed 5-11-87; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-18,064 et al.]

## Cities Service Oil and Gas Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of—

TA-W-18,064 Tulsa, Oklahoma
TA-W-18,064-A Oklahoma City, Oklahoma
TA-W-18,064-B Lindsay, Oklahoma
TA-W-18,064-C Houston, Texas
TA-W-18,064-D Midland, Texas
TA-W-18,064-E Bridgeport, Texas
TA-W-18,064-F Robstown, Texas
TA-W-18,064-G West Seminole, Texas
TA-W-18,064-H Odessa, Texas
TA-W-18,064-I Pratt, Kansas
TA-W-18,064-J El Dorado, Kansas
TA-W-18,064-K Bakersfield, California
TA-W-18,064-L Ingleside, California
TA-W-18,064-M Denver, Colorado
TA-W-18,064-N Jackson, Mississippi
TA-W-18,064-O Anchorage, Alaska
TA-W-18,064-P Charleston, South Carolina
TA-W-18,064-Q Niagara Falls, New York
TA-W-18,064-R Gillette, Wyoming
TA-W-18,064-S Lake Charles, Louisiana
TA-W-18,064-T Hobbs, New Mexico
TA-W-18,064-U Hutchinson, Kansas
TA-W-18,064-V Hackberry, Louisiana
TA-W-18,064-W Blackwell, Oklahoma
TA-W-18,064-X Waukomis, Oklahoma
TA-W-18,064-Y Longview, Texas
TA-W-18,064-Z Chico, Texas
TA-W-18,064AA Mont Belvieu, Texas
TA-W-18,064AB Liberal, Kansas
TA-W-18,064AC Wichita, Kansas

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1986 applicable to all workers of the Exploration and Production of Division of Cities Service Oil and Gas Corporation, Tulsa, Oklahoma. The

Certification was published in the **Federal Register** on January 9, 1987 (52 FR 874). The Certification was amended on January 16, 1987 to reflect the correct worker group. The amended certification was published in the **Federal Register** on February 3, 1987 (52 FR 3359).

The company furnished new information to the Department which showed additional locations where worker separations occurred in early 1986 that were not included in the amended certification. Accordingly, the amended certification is changed to include the following locations where additional worker separations occurred: Hutchinson, Kansas; Hackberry, Louisiana; Blackwell, Oklahoma; Waukomis, Oklahoma; Longview, Texas; Chico, Texas; Mont Belvieu, Texas; Liberal, Kansas and Wichita, Kansas.

The intent of the certification is to cover all workers of Cities Service Oil and Gas Corporation headquartered in Tulsa, Oklahoma who were adversely affected by increased imports of crude oil. The amended notice applicable to TA-W-18,064 is hereby issued as follows:

All workers of Cities Service Oil and Gas Corporation in Tulsa, Oklahoma; Oklahoma City, Oklahoma; Lindsay, Oklahoma; Houston, Texas; Midland, Texas; Bridgeport, Texas; Robstown, Texas; West Seminole, Texas; Odessa, Texas; Pratt, Kansas; El Dorado, Kansas; Bakersfield, California; Ingleside, California; Denver, Colorado; Jackson, Mississippi; Anchorage, Alaska; Charleston, South Carolina; Niagara Falls, New York; Hobbs, New Mexico; Gillette, Wyoming; Lake Charles, Louisiana; Hutchinson, Kansas; Hackberry, Louisiana; Blackwell, Oklahoma; Waukomis, Oklahoma; Logview, Texas; Chico, Texas; Mont Belvieu, Texas; Liberal, Kansas and Wichita, Kansas who became totally or partially separated from employment on or after August 29, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of May 1987.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87-10814 Filed 5-11-87; 8:45 am]

BILLING CODE 4510-30-M

## Pittsburgh Forgings et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding elibility to apply for adjustment assistance issued during the period April 20-24, 1987 and April 27-May 1, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proporation of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-19,176; Pittsburg Forgings, Coraopolis, PA*

*TA-W-19,206; Cigtap Corp., USA, Carmichaels, PA*

*TA-W-19,257; Columbua Hardwood & Moulding Co., Tigard, OR*

*TA-W-19,227; Wisconsin Foundry & Machine Co., Madison, WI*

*TA-W-19,234; Lakeside Bridge & Steel Co., Milwaukee, WI*

*TA-W-19,150; Cooper Biomedical, Inc., Freehold, NJ*

*TA-W-19,199; Champion Spark Plug Co., Detroit, MI*

*TA-W-19,200; Champion Spark Plug Co., Cambridge, OH*

*TA-W-19,201; Champion Spark Plug Co., Toledo, OH*

*TA-W-19,202; Iowa Industries Division, Burlington, IA*

*TA-W-19,131; Dresser-Rand, Worthington Compressor Operation, Buffalo, NY*

*TA-W-19,189; Metzger Group, Inc., New York, NY*

*TA-W-19,195; Putnam Herzl Finished Co., Putnam, CT*

*TA-W-19,027; Western Gas Processor, Limited (Ecological Engineering Systems, Inc) Northglenn, CO*

*TA-W-19,185; Central Counter Co., St. Louis, MO*

*TA-W-19,190; Oklahloma Steel Castings Co., Tulsa, OK*

*TA-W-19,174; USX Corp., US Diversified Group, Waukesha, WI*

*TA-W-19,207; Smurfit Newsprint Corp. Tillamook, OR*

*TA-W-19,208; Smurfit Newsprint Corp., Toledo, OR*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

*TA-W-19,248; Crown Central Petroleum Corp., Midland, TX*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-19,183; Monsanto Chemical Co., W.G. Krummrick Plant, Sauget, IL*

U.S. imports of nitrate benzenes are negligible.

*TA-W-19,303; Johnson Control Battery Div., Atlanta, GA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-19,321; Texas Eastern Transmission Corp., Houston, TX*

U.S. imports of dry natural gas declined absolutely and relative to U.S. shipments in 1986 compared with 1985.

*TA-W-19,290; Control Data Corp., St. Louis Park, MN*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-19,550; Joy Manufacturing Co., Inc., Wichita Falls, TX*

U.S. imports of oilfield machinery are negligible.

*TA-W-19,320; Superior Blast Hole Bit Co., Inc., Virginia, MN*

U.S. imports of drill rock bits are negligible.

*TA-W-19,249; Island Creek Coal Co., Beatrice Mine, Oakwood, VA*

U.S. imports of metallurgical coal are negligible.

*TA-W-19,335; American Trading and Production Co. (ATAPCO), Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,251; Halliburton Service, Pittsburgh Division, Bradford, PA*

The workers's firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,483 and TA-W-19,503; Pittston Coal Group, Inc., Jewell Ridge Coal Corp., & Sea B Mining Co., Jewell Ridge, VA*

U.S. imports of bituminous steam coal, lignite and anthracite were negligible.

*TA-W-19,162; Oil Dynamics, Inc., Tulsa, OK*

U.S. imports of oilfield pumps are negligible.

*TA-W-19,139; McDaniel Mining Co., Siltix & Pax Mines, Mt Hope, WV*

U.S. imports of coal are negligible.

*TA-W-19,279; AKJ Industries, Provo, UT*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-19,184; USX Corp., U.S. Diversified Group, Chicago, IL*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,163; Southern Coal & Trucking, Inc., Cover Creek Mine, Bolt, WV*

U.S. imports of metallurgical and steam coal are negligible.

*TA-W-19,167; Crown Creative Industries, Greensburg, PA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,308; North American Philips Light Corp., Paris, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,284; Borg-Warner Automotive, Muncie, IN*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-19,289; Clover Mining, Inc., of West Virginia, Clover #1 Mine, Roderfield, WV*

U.S. imports of metallurgical coal are negligible.

*TA-W-19,136; CSX Oil & Gas Corp., (Formerly Texas Gas Exploration Corp), Oklahoma City District Office, Oklahoma City, OK*

U.S. imports of dry natural gas decreased absolutely and relative to domestic shipment in 1986 compared to 1985.

*TA-W-19,327 and TA-W-19,328; Virginia Crews Coal Co., Alpine #1 Mine and Blueco Mine, McDowell County, WV*

U.S. imports of metallurgical coal are negligible.

*TA-W-19,487; 3M Company, Newark, NJ*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,258; Best Packers, Inc., Ham Department, Hialeah, Fl*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,223; Cut Fabrics, Inc., Brooklyn, NY*

U.S. imports of apparel trimmings are negligible.

*TA-W-19,241; General Electric Supply Co., Abilene, TX*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,254; F.C. Stickney, Inc., Midland, TX*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,145; Pennzoil Exploration & Production Co., Denver District Office, Denver, CO*

U.S. imports of motor gasoline lubricants, dry natural gas declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA-W-19,035; Western Division, Exploration & Production Group, Denver, CO*

U.S. imports of dry natural gas and gasoline declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA-W-19,134; Corporate Engineering, Borger, TX*

U.S. imports of dry natural gas and gasoline declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA-W-19,135; Refinery & Natural Gas Liquids, Center Borger, TX*

U.S. imports of dry natural gas and gasoline declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA-W-19,314; Eastern Division Exploration & Production Group, Bellaire, TX*

U.S. imports of dry natural gas and gasoline declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA-W-19,517; Central Appalachian Coal Co., Montgomery, WV*

Bituminous steam coal, lignite and anthracite were negligible.

*TA-W-19,210; Phoenix Steel Corp., Claymont, DE*

U.S. imports of carbon and alloy steel plate declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA-W-19,551; Mustang Mud, Inc., Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,367; Cabot Oil and Gas Corp., of West Virginia, Charleston, WV*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,228; Thermex Energy Corp., Biwabik, MN*

Imports of explosives declined absolutely and relative to domestic shipments in 1986 compared to 1985.

*TA-W-19,311; Ohmeda, El Paso, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,518; Daniel Geophysical, Inc., Denver, CO*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,278; Burns International Security Service, Inc., Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,388; Kitt Energy Corp., Meadow Land, PA*

Workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,389; Kitt Energy Corp., Fredericktown, PA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,390; Kitt Energy Corp., Verona, PA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,391; Kitt Energy Corp., Russelton, PA*

Workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,542; City of Midland Midtran Department, Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,274; Mobil Producing Texas and New Mexico, Midland Division, Midland, TX*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the

relevant period as required for certification.

*TA-W-19,238; Heckett Co., Division of Harsco, Geneva, UT*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,187; Amerada Hess Corp., Houston, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,214; Amerada Hess Corp., Woodbridge, NJ*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,272; Amerada Hess Corp., Southeast Production Region, Lafayette, LA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,273; Gulf Coast Exploration Div., Lafayette, LA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-19,219; Hammond Machinery, Inc., Kalamazoo and Otsego, MI*

U.S. imports of grinding, honing, buffing and polishing machines declined absolutely and relative to U.S. shipments in 1985 compared to 1984 and in January through September 1986 compared to the same period of 1985.

*TA-W-19,507; Toub Distributors, Thorofare, NJ*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

**Affirmative Determinations**

*TA-W-19,343; International Boiler Works, East Stroudsburg, PA*

A certification was issued covering all workers of the firm separated on or after February 24, 1986.

*TA-W-19,198; Marsh Instrument Co., Skokie, IL*

A certification was issued covering all workers of the firm separated on or after February 12, 1986.

*TA-W-19,221; W.R. Case & Sons Cutlery Co., Bradford, PA*

A certification was issued covering all workers of the firm separated on or after April 16, 1986.

*TA-W-19,216; Ristance Corp., Ready-Wired Div., Dallas, TX*

A certification was issued covering all workers of the firm separated on or after February 3, 1986.

*TA-W-19,233; MacGregor Sporting Goods, LaGrange, GA*

A certification was issued covering all workers of the firm separated on or after November 1, 1986.

*TA-W-19,242; The French Oil Mill Machinery Co., Piqua, OH*

A certification was issued covering all workers of the firm separated on or after February 11, 1986.

*TA-W-19,334; Alco Power, Inc., St. Louis, MO*

A certification was issued covering all workers of the firm separated on or after December 15, 1986.

*TA-W-19,422; Bedford Coat & Suit Co., Boston, MA*

A certification was issued covering all workers of the firm separated on or after March 11, 1986.

*TA-W-19,344; International Computers Limited, Cosby Manor Road Facility, Utica, NY*

A certification was issued covering all workers of the firm separated on or after April 1, 1987.

*TA-W-19,212; Marben Manufacturing, Jackson, MI*

A certification was issued covering all workers of the firm separated on or after February 6, 1986.

*TA-W-19,250; LTV Steel Co., Atlanta Sales Office, Atlanta, GA*

A certification was issued covering all workers of the firm separated on or after February 10, 1986.

*TA-W-19,211; J.I. Case Co., Terre Haute, IN*

A certification was issued covering all workers of the firm separated on or after February 11, 1986.

*TA-W-19,113; Avondale Industries, Inc., Danly Machine Div., Chicago, IL*

A certification was issued covering all workers of the firm separated on or after January 30, 1986.

*TA-W-19,305; Natalie Apparel, Inc., Windber, PA*

A certification was issued covering all workers of the firm separated on or after February 17, 1986.

*TA-W-19,203; Henry I Siegel Co., Trezevant, TN*

A certification was issued covering all workers of the firm separated on or after February 10, 1986.

*TA-W-19,204; Henry I. Siegel Co., Gleason, TN*

A certification was issued covering all workers of the firm separated on or after February 10, 1986.

*TA-W-19,340; Gates-Mills, Inc., Johnstown, NY*

A certification was issued covering all workers of the firm separated on or after March 6, 1986.

*TA-W-19,416; West Virginia Plastics, Inc., Grafton, WV*

A certification was issued covering all workers of the firm separated on or after March 4, 1986.

*TA-W-19,161; National Roll Co., Delmont, PA*

A certification was issued covering all workers of the firm separated on or after February 1, 1986.

*TA-W-19,193; Exxon Co., USA, Exploration Department—Western Div., Denver, CO*

A certification was issued covering all workers of the firm separated on or after February 6, 1986.

*TA-W-19,194; Exxon Co., USA, Upstream Controller Div., Houston, TX*

A certification was issued covering all workers of the firm separated on or after February 6, 1986.

*TA-W-19,159; The Lodge & Shipley Co., Cincinnati, OH*

A certification was issued covering all workers of the firm separated on or after February 4, 1986.

*TA-W-19,143; Sifco Industries, Inc., Forge Group Div., Cleveland, OH*

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

*TA-W-19,368; Calvert Manufacturing Co., Seattle, WA*

A certification was issued covering all workers of the firm separated on or after March 4, 1986.

*TA-W-19,130; Ada Oil Co., Flora, IL*

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

*TA-W-19,318; Speller Oil Corp., Oklahoma City, OK*

A certification was issued covering all workers of the firm separated on or after February 27, 1986.

*TA-W-19,157; Armira Company, Bolivar, TN*

A certification was issued covering all workers of the firm separated on or after February 5, 1986.

*TA-W-19,237; Walter Manufacturing Div., Ingleside, IL*

A certification was issued covering all workers of the firm separated on or after February 13, 1986.

*TA-W-19,168; Toledo Pressed Steel Co., Toledo, OH*

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

I hereby certify that the aforementioned determinations were issued during the period April 20–April 24, 1987 and April 27–May 1, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 4, 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87–10815 Filed 5–11–87; 8:45 am]

BILLING CODE 4510–30–M

## U.S. Steel Mining Co., Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of U.S. Steel Mining Company, Inc., TA–W–17,700 Maple Creek Complex, New Eagle, Pennsylvania, TA–W–17,700A Everson Central Shop, Everson, Pennsylvania, TA–W–17,700B Filbert Central Shop, Filbert, Pennsylvania.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 15, 1986 applicable to all workers of the Maple Creek Complex of U.S. Steel Mining Company, Incorporated, in and around New Eagle, Pennsylvania. The certification was published in the **Federal Register** on November 4, 1986 (51 FR 40091).

On the basis of additional information, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information from the company revealed that U.S. Steel Mining's Central Shops in Everson, Pennsylvania and Filbert, Pennsylvania were under Maple Creek management and control and provided services only for the Maple Creek Complex whose workers are certified for adjustment assistance. Accordingly, the Department is amending the subject petition (TA–W–17,700) to include workers at U.S. Steel Mining's Central Shops in Everson and Filbert, Pennsylvania and revoking the Department's negative determinations TA–W–18,998 and TA–W–18,998A issued on March 6, 1987 and published in the **Federal Register** on March 26, 1987 (52 FR 9725).

The intent of the certification is to cover all workers at U.S. Steel Mining Company, Inc., in and around New Eagle, Pennsylvania including all workers at U.S. Steel Mining Company's Central Shops in Everson, Pennsylvania and Filbert, Pennsylvania.

The amended notice applicable to TA–W–17,700 is hereby issued as follows:

All workers of the Maple Creek Complex of U.S. Steel Mining Company, Inc., in and around New Eagle, Pennsylvania including all workers at U.S. Steel Mining's Central Shops in Everson, Pennsylvania and Filbert, Pennsylvania who become totally or partially separated from employment on or after January 1, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of May, 1987.

**Barbara Ann Farmer,**

*Acting Director, Office of Program Management, UIS.*

[FR Doc. 87–10816 Filed 5–11–87; 8:45 am]

BILLING CODE 4510–30–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[87–41]

## Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Agency Report Forms Under OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by May 22, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** Ray S. Mayfield, NASA Agency Clearance Officer, Code NM, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

### Reports

Title: Patent License Report
OMB Number: 2700–0010
Type of Request: Extension
Frequency of Report: Annually
Type of Respondent: Businesses or other for-profit, small businesses or organizations
Annual Responses: 600
Annual Burden Hours: 300

Abstract-Need/Uses: NASA grants nonexclusive and exclusive licenses to private business firms for commercial use of NASA patented inventions. This report is required by each licensee and is obtained annually from each licensee to determine the extent of commercial use being made by each licensee of the patented inventors.

Titles: Report of Government-Owned/Contractor-Held Property
OMB Number: 2700–0017
Type of Request: Extension
Frequency of Report: Annually
Type of Respondent: Businesses or other for-profit, small businesses or organizations
Annual Responses: 2,750
Annual Burden Hours: 11,000

Abstract-Need/Uses: NASA is required to account for Government-owned/contractor-held property. The NASA Form 1018 submitted by contractors provides the data to reconcile NASA's property accounts, from which internal management and external information reports are derived.

**Ray S. Mayfield,**

*Director, Management Analysis Office.*

May 1, 1987.

[FR Doc. 87–10700 Filed 5–11–87; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

## Humanities Panel; Closed Meetings

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at

the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. Date: May 28, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

2. Date: May 29, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

3. Date: June 1, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

4. Date: June 3, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

5. Date: June 4, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

6. Date: June 5, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Biennial Proposals submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1987.

7. Date: June 8, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Biennial Proposals submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1987.

8. Date: June 2, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in English Literature, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

9. Date: May 28–29, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Higher Education Program applications, submitted to the Division of Education Programs, for projects beginning after September 1, 1987.

10. Date: June 1–2, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Higher Education Program applications, submitted to the Division of Education Programs, for projects beginning after September 1, 1987.

11. Date: June 1, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications in the fields of the humanities submitted to the Publication Subvention category of the Texts Program, submitted to the Division of Research Programs, for projects beginning after October 1, 1987.

12. Date: May 29, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications in the fields of the humanities submitted to the Publication Subvention category of the Texts Program, submitted to the Division of Research Programs, for projects beginning after October 1, 1987.

**Stephen J. McCleary,**
*Advisory Committee Management Officer.*

[FR Doc. 87–10781 Filed 5–11–87; 8:45 am]

BILLING CODE 7536–01–M

## NUCLEAR REGULATORY COMMISSION

### Abnormal Occurrences for Third Quarter CY 1986; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090, Vol. 9, No. 3 ("Report to Congress on Abnormal Occurrences: July–September, 1986"). This report will be available in the NRC's Public Document Room 1717 H Street NW., Washington DC. about three weeks after the publication data of this **Federal Register** Notice.

#### Nuclear Power Plants

*AO 86–15 Differential Pressure Switch Problem in Safety Systems at LaSalle Facility*

One of the general AO criteria notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. In addition, one of the AO examples notes that incidents with implications for similar facilities (generic incidents), which create major safety concern, can be considered an AO.

*Date and place*—On June 1, 1986, LaSalle Unit 2 experienced a feedwater transient that resulted in low water level in the reactor vessel. The level reached a point where an automatic reactor scram would be expected; however, no such scram occurred. LaSalle County Nuclear Power Station consists of two Units, each utilizing a General Electric-

designed boiling water reactor. The Station is operated by Commonwealth Edison Company (the licensee) and is located in LaSalle County, Illinois.

Subsequent investigation found that the problem was caused primarily by inadequate calibration of mechanical differential pressure switches supplied by SOR, Incorporated (formerly Static "O" Ring Pressure Switch Company). Similar switches have been installed in safety systems at many nuclear power plants.

*Background*—10 CFR Part 50, Appendix A, General Design Criterion 21 ("Protectin System Reliability and Testability") requires that the reactor protection system be highly reliable. Recent experience with SOR mechanical differential pressure switches at LaSalle (as described below) and similar experience at Oyster Creek has strongly suggested that this may not be the case if the switches are not adequately calibrated.

Earlier concern for mechanical level indication equipment was expressed in NRC Generic Letter No. 84–23, issued on October 26, 1984, which addressed water level instrumentation for boiling water reactor (BWR) reactor vessels. The generic letter was based on NRC's evaluation of a report by S. Levey, Incorporated, which had been commissioned by a BWR Owner's Group. The generic letter addressed the need for BWR licensees to review plant experience related to mechanical level indication equipment, indicated that analog trip units have better reliability and greater accuracy than mechanical level indication equipment, and stated that BWR licensees should replace such equipment with analog transmitters unless operating experience indicates otherwise. Responses to Generic Letter No. 84–23 have shown that 80% of BWR licensees have replaced or plan to replace their mechanical level instrumentation with analog level transmitters.

SOR mechanical differential pressure switches have been installed by many licensees predominantly as environmentally qualified electrical equipment important to safety, as described in 10 CFR 50.49(b). The licensee for LaSalle Unit 2 installed SOR Series 103 differential pressure switches in mid 1985 as part of an environmental qualification modification which was performed after initial operation of the unit. Identical switches were also installed in LaSalle Unit 1. LaSalle Units 1 and 2 each have about 60 of these switches in various systems, including the reactor protection system and the emergency core cooling system.

*Nature and probable consequences*—At about 4:21 a.m. (CDT) on June 1, 1986, LaSalle Unit 2 was operating at 93% of full power. Both trubine-driven feedwater pumps were operating, with the "A" pump in manual control and the "B" pump in automatic control. The motor-driven feedwater pump was in standby. While a surveillance test was being conducted on feedwater pump "A", the turbine governor value unexpectedly opened further resulting in an increase in pump output and a corresponding rise in reactor water level. At about the same time, the automatic control systems for both turbine-driven pumps locked out. The reactor operator regained control of feedwater pump "A" and ran back the feedwater pump's speed in an attempt to restore the normal water level. A few seconds later when the "B" reactor feedwater pump's control system was reset, the "B" feedwater pump controler automatically ran back the pump speed to zero. Reactor water level started falling at about 2 inches/second.

Subsequently, separate reactor water level switches responded to the falling reactor water level by reducing recirculation flow to reduce power, and the operator started the motor-driven feedwater pump to increase level. The level continued to fall for a few more seconds before the flow from the motor-driven pump began to raise the water level. The minimum reactor scram setpoint required in the technical specification is 11 inches. (This point is 11 inches above a water level specified as "instrument zero," which is a measuring reference point. Instrument zero is approximately 13 feet above the top of the reactor core; all levels indicated here are above instrument zero.) There are four water level sensing switches, each normally set to trip at 13.5 inches above instrument zero, and reactor operators are trained to expect a reactor trip by the time the water level reaches 12.5 inches. The switches are in pairs (two each in two circuits, called channels), and one switch in each pair must trip in order for there to be a reactor scram signal generated.

As the water level was falling, one of the four switches tripped at approximately 10 inches; the other three did not actuate, and therefore no scram signal occurred. (With a switch tripped in just one channel, the condition is called a "half scram.")

The subsequent investigation indicated that the reactor water level fell briefly to a minimum level of 4.5 inches (above instrument zero, but more than 13 feet above the reactor fuel). The water level was below the scram setpoint for about two seconds before the increased feedwater flow increased the level.

During the incident, the reactor operators did not have sufficient data to evaluate the water level drop and the failure of the differential pressure switches to actuate. Shortly after the subsequent shift change, the oncoming shift engineer's review indicated that the reactor water level appeared to have fallen below the scram setpoint and the level switches may not have performed properly. After further review, the licensee believed that a malfunction of the scram system may have occurred. Based on this concern, the licensee declared an "Alert," started an orderly shutdown of the plant, and notified the NRC. The licensee subsequently notified SOR, Incorporated, of possible malfunctions involving its Series 103 mechanical differential switches. The Alert was terminated at 9:22 am., June 2, 1986, when all control rods were inserted.

On June 2, 1986, the NRC determined that the incident warranted a thorough investigation. The Administrator for NRC Region III sent an Augmented Inspection Team (AIT) to the site to investigate the root cause and significance of the feedwater transient, the performance of the differential pressure switches in the low level trip channels, the response of the reactor protection system, and related matters.

The licensee continued testing of the reactor scram water level switches; the additional data demonstrated continued erratic behavior of switch setpoints. As of June 9, 1986, the licensee had also tested SOR Series 103 switches in the reidual heat removal system and the high pressure core spray systems. Similar erratic results were found; therefore, all SOR Series 103 switches used in the plant became suspect. The licensee declared all emergency core cooling systems in both units to be inoperable. At the time of the incident, Unit 1 was shut down for its first refueling outage. Both units were kept in cold shutdown while the investigations continued.

Most of the tests performed at LaSalle Units 1 and 2 showed erratic set-points for the Series 103 switches and, in one case, the switch failed to operate at all. During the vessel water level drop tests at LaSalle 1 on June 2, one of two Series 103 switches used to provide a confirmatory water level input signal to the automatic depressurization system failed to function. On June 25, the switch was disassembled and inspected. Rust (severe corrosion) was found inside the switch assembly and probably caused a

cross shaft bearing, which is outboard of the O-rings, to seize.

The event at LaSalle was not the first indication of erratic behavior of SOR mechanical differential pressure switches. A precursor event had previously occurred at Oyster Creek Unit 1 on January 17, 1986, during monthly surveillance of four SOR differential pressure switches which detect low water level in the reactor vessel. The "as-found" setpoints for three of the switches had drifted downward as much as 6 inches. During the subsequent 11 weeks, the level switches continued to perform erratically; each switch was replaced one or more times; and modified switches were installed. On April 7, after a modified switch had nonconservative setpoint drift, the licensee performed daily surveillance until about April 12 when the reactor was shut down for a six month outage. Increased surveillance frequency did not resolve the problem. (At LaSalle, however, changing the setpoint and increasing the surveillance testing of the switches have resulted in acceptable performance.)

SOR, Incorporated also manufacturers Series 102 mechanical differential pressure switches. Therefore, all Series 102 and 103 switches installed in BWR and pressurized water reactor (PWR) plants were suspect. Use of such possibly erratic behavior switches in reactor scram systems and various engineered safety features raises serious concern regarding the safety and health of plant personnel and the public. Such systems are designed and installed in plants to prevent the occurrences, or ameliorate the effects, of serious accidents.

*Problem areas*—A review of the testing performed at LaSalle, and discussions with the manufacturer, show that there are several potential problems that could account for the erratic behavior of Series 102 and 103 switches. These problems include a shift of the setpoint caused by calibratin under atmospheric pressure instead of actual operation pressures; a shift in setpoint which occurs as the switch is subjected to constant pressure over a period of time; setpoint variation depending on whether the setpoint is approached from the high side or the low side; and a tendency, in some case, for the switches to "stick," i.e., to require a higher differential pressure to actuate the switch on the first actuation than on later actuations.

At LaSalle, the licensee has successfully compensated for these phenomena by setting the setpoint to account for the setpoint shift, which occur under actual operating conditions and, further, by checking the calibrations periodically.

The manufacturer is conducting long range tests with switches which have a more highly polished shaft to minimize the "stickiness" that may have affected the actuating setpoint. Also the LaSalle plant is using the first test of the switches after they have not been actuated for a period of time, rather than actuating the switches several times before performing the test, which had been the previous practice. This testing provides a more accurate determination that the switches would function as intended.

Although there is no evidence to suggest that it was involved in the LaSalle switch performance, another factor that is under review is the affect of aging and exposure to reactor water on the O-ring materials and other components of the differential pressure switches.

*Cause of causes*—The problems with the Series 103 switches at LaSalle appear to be associated with the licensee's procedures for testing them, and a possible design deficiency resulting in occasional "sticky operation."

*Actions Taken To Prevent Recurrence*

*Licensee*—Commonwealth Edison Company undertook an extensive testing program to evaluate the nature of the SOR switch problem at LaSalle. This testing determined that the switches, if properly calibrated to include the predicted setpoint shift, can continue to be used in their current applications. The licensee and the manufacturer are testing the switches on a more frequent basis over long time periods to assure their continued operability.

*NRC*—The licensee's investigation of the water level switch problem was initially monitored by the resident inspectors. As previously mentioned, an NRC AIT was later dispatched to the site on June 2, 1986, to evaluate the incident and the nature of the switch problem and corrective actions. The NRC's Office of Nuclear Reactor Regulatory reviewed the results of the tests performed by the licensee and the vendor and concluded that the SOR Series 102 and 103 differential pressure switches could remain in service until NRC reviewed the licensee's long-term plans.

The NRC AIT's report, Inspection Report No. 50–374/86–23, was issued on September 17, 1986.

On June 10, 1986, Inspection and Enforcement Information Notice No. 86–47 ("Erratic Behavior of Static 'O' Ring Differential Pressure Switches") was issued to inform licensees of the erratic behavior of SOR differential pressure switches during the incident at LaSalle 2 on June 1 and during subsequent testing. An attachment to the Notice listed licensees to which SOR had supplied Series 103 differential pressure switches. The information notice also announced a public meeting of representatives from NRC, General Electric Company, SOR, and interested licensees to discuss the application and performance of Series 102 and 103 switches in safety-related systems, which was held on June 12, 1986.

Since the SOR differential pressure switches were installed by many licensees predominantly as environmentally-qualified electrical equipment important-to-safety, Inspection and Enforcement Bulletins No. 86–02 ("Static 'O' Ring Differential Pressure Switches") was issued on July 18, 1986, to update the information provided is Notice No. 86–47 and to ensure that all licensees currently using the SOR switches in safety-related systems were taking appropriate remedial actions. Licensees with SOR switches installed were requested per the Bulletin to determine which of those switches are installed in systems which are subject to Limiting Conditions for Operations of the plant Technical Specifications. For SOR differential switches that are not in systems subject to Technical Specifications, licensees were expected to review the information in the Bulletin and consider actions, if appropriate, to preclude problems similar to those discussed in the Bulletin from occurring. For SOR differential pressure switches that were installed in systems subject to Technical Specifications, the Bulletin requested licensees to take certain action to assure that these switches and systems will be capable of performing acceptably, if called upon during an actual plant transient or accident.

First, the Bulletin requests that each licensed reactor operator (and senior reactor operator) on duty be made aware of the potential problem that may occur at their plant in terms of where SOR differential pressure switches are installed in their plant, how to detect a malfunction or failure of any of these switches, and the remedial actions that they should be prepared to take if a malfunction were to occur.

Second, the Bulletin requests licensees to conduct special operability tests of each system that is subject to Technical Specifications that involve SOR differential pressure switches. Special tests are necessary to determine the actual trippoint of the switches and

the operability of the systems since tests of the type typically conducted may not be adequate to reveal the type of problems that have been revealed at the LaSalle station.

Last, the Bulletin requests licensees to determine what long-term corrective actions may be appropriate and will be taken, including consideration of the potential effects of common mode failures. The NRC staff is currently reviewing reports made by licensees in response to the Bulletin.

*AO 86-16 Abnormal Cooldown and Depressurization Transient at Catawba Unit 2*

One of the AO examples notes that discovery of a major condition not specifically considered in the safety analyses report (SAR) or technical specifications that requires immediate remedial action action can be considered an AO.

*Date and place*—On June 27, 1986, while Duke Power Company (the licensee) was conducting a startup test at Catawba Unit 2 from remotely located control panels, athe reactor experienced an unexpected depressurization and cooldown. Catawba Unit 2 utilizes Westinghouse-designed pressurized water reactor and is located in York County, South Carolina.

*Background*—On February 24, 1986, the licensee was issued a fuel loading and low power (up to 5%) license for Catawba Unit 2. The Unit achieved initial criticality on May 8, 1986. A full power license was issued on May 15, 1986; however, some startup tests had to be completed before the plant could be taken to full power.

During the morning of June 27, 1986, the licensee planned to perform a Loss of Control Room Functional Test (procedure TP/2/A/2650/03) to fulfill one of the commitments for startup testing delineated in its Final Safety Analysis Report (FSAR).

The purposes of the test are to demonstrate:

a. That the plant can be brought to Hot Standby conditions from a moderate power level (10–25%) using Auxiliary Shutdown Panel (ASP) controls and following procedure AP/2/A/5500/17 (Loss of Control Room).

b. That the plant can be maintained at Hot Standby conditions for 30 minutes from the ASPs.

c. That the plant can be brought to Hot Standby and maintained in that condition with the minimum shift requirements of Technical Specifications (five people).

d. That the reactor coolant system (RCS) can be cooled down at least 50°F from a steady state Hot Standby condition while being operated from the ASPs.

The test would be performed by a crew of five (simulating the minimum shift crew available to Unit 2 operations) leaving the control room (since this was a test, the control room would remain fully staffed by the regular operations shift), tripping the reactor, and proceeding to remote shutdown panels. At these panels, the crew would switch reactor control to these panels and proceeds with the test.

*Nature and probable consequences*—At 9:41 a.m. on June 27, 1986, the test was initiated with the reactor at 24% power. The crew of five left the control room, tripped the reactor from the trip breaker panel, and proceeded to the two remotely located ASPs and the auxiliary feedwater pump turbine control panel (AFWPTCP).

At the ASPs and AFWPTCP, switches were activated transferring conttrol of vital functions from the control room to the auxiliary panels. By design, the transfer blocked automatic initiation of safety injection (SI). By error, the transfer of control of steam generator (S/G) power operated relief valves (PORV) to the AFWPTCP also commanded all four PORVs to open to 75% of full stroke. Reactor pressure and pressurizer level, which had been decreasing slowly as a result of the cooldown after the trip, fell rapidly. Within a minute of the transfer, pressurizer level indication was lost; and within two more minutes, pressure had dropped below 1845 psig generating an SI demand signal. After another 3½ minutes of unsuccessful attempts to manage the situation from the ASPs and AFWPTCP, control was returned to the control room which was staffed by the regular operations shift. The transfer, which automatically initiated a SI, occurred at a pressure of 702 psig. After approximately 5½ minutes, pressurizer level was restored to a level near 34% with a pressure of 1250 psig, and about 100°F subcooling. At this point the operators had full control of the stabilized plant.

The cooldown and depressurization transient did not result in any adverse thermo-hydraulic or nuclear effects on the plant; there were no actual consequences to public health or safety. However, if the decay heat load of the reactor core had been greater and if the use of the remote shutdown panels had been actually required during a plant emergency, a more servere transient could have occurred.

NRC Resident Inspectors were on site witnessing the test. The NRC Region II Office was notified and an Augmented Inspection Team (AIT), regional plus headquarters staff participants, was sent to this site from the Regional Office to investigate the event. The licensee began investigating the cause of the event and agreed not to restart the reactor without NRC concurrence; this was confirmed by a Region II Confirmation of Action Letter sent to the licensee on June 30, 1986. The AIT made their inspection from June 28 through July 2, 1986, and numerous deficiencies were identified in the areas of human factors, procedures, equipment labeling, retraining of personnel, and equipment repair. On July 3, 1986, Region II issued a Confirmation of Action Letter documenting the licensee's commitment to develop a detailed restart plan which deals with the corrective actions necessary to correct the deficiences.

In addition, the licensee agreed to rerun the Loss of Control Room Functional Test, after attaining the requisite power rating to adequately demonstrate that the plant can be safely shut down and cooled down from the auxiliary shutdown station following evacuation of the control room.

*Cause of causes*—The underlying cause of this event was the failure to specify in the Design Control documents that the mode of control of the S/G PORV controllers at the AFWPTCP had been changed. This, in turn, led to a failure by station personnel to change procedures and to train operators on this modification. The situation was further exacerbated by human engineering deficiences introduced by the modifications. As a consequence, the staff assigned to perform the test did not understand the function and interaction of controls on the shutdown panels. This lack of understanding led to a pretest setup of the panels that ensured that the PORVs would open on transfer and that attempts to shut them would be futile. Other human engineering factor failures led to reducing charging pump flow to the reactor coolant pump seals by the very attempts to increase flow.

Although the main control room PORV controllers had been replaced with safety-related controllers, the licensee chose not to replace or modify the AFWPTCP controllers. Also, no human engineering deficiency review was performed on the shutdown panels.

Other contributing factors to this event included inadequate training on the shutdown panel instuments and controls, inconsistencies in labeling of instruments and controls, lack of termination test criteria, and reluctance by the control room crew to assist the

shutdown panel crew for fear of invalidating the test.

*Actions Taken, To Prevent Recurrence*

*Licensee*—In accordance with the restart plan, the licensee has taken the following corrective actions:

a. A review of all Design Changes and Construction Department Shutdown Requests implemented after hot functional testing and prior to fuel load was performed prior to Unit 2 re-entering Mode 2, Startup.

b. A review of both Units ASPs and AFWPTCPs was performed to identify all difference between Units and all human engineering deficiences. Numerous Unit differences and labeling problems were identified. Labeling problems were corrected.

c. Revisions were made to Operating and Abnormal Procedures to reflect changes required as a result of Corrective Action b above. Also instructions were added to manually initiate SI, Containment Spray, and Annulus Ventilation if required following a Loss of Control Room Incident. Test termination criteria were also clarified in the test procedure.

d. A new procedure was developed and performed, to verify proper function of various valves while controlling at the ASPs.

e. An existing procedure, Controlling Procedure for Power Escalation, was revised to include more thorough pre-transient test preparation and walk throughs. This will include reviews of previous test results, Operating Procedures, Abnormal Procedures, and Emergency Procedures.

f. Various problems were identified with Operator Aid Computer indication. The problems are being investigated.

g. Personnel had difficulty controlling reactor collant pump seal flow during the event. Additional labeling on the ASPs was added to clarify control requirements for 2NV–309, Seal Injection Flow Control Valve. The appropriate operations procedures were also revised to clarify use of the valve.

h. 2NV–148A, Letdown Pressure Control Valve, failed open during the event following transfer to the ASP. A poor electrical connection in the control circuitry was found and corrected. The control circuit for the valve had maintenance performed on it in January 1986. It is not certain if the poor connection was the result of this previous maintenance activity.

i. Difficulty was encountered during the event in resetting the main steam isolating bypass valves. The problem could not be recreated during investigation. The associated Monthly Surveillance Test was performed successfully.

Following the above, the plant was restarted. After reaching 20% power on July 11, 1986, the licensee satisfactorily reperformed the Loss of Control Room Functional Test. Subsequently, the plant reach 100% power and on August 19, 1986, the licensee declared the plant to be in commerical operation.

*NRC*—The NRC monitored the licensee's corrective actions to assure that they were responsive and satisfactory before permitting the plant to restart.

On November 12, 1986, the NRC forwarded to the licensee a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $50,000. The first violation pretained to a significant failure in the licensee's design control program. The second violation pertained to the licensee's failure to establish adequate procedures for the Loss of Control Room Test.

The NRC AIT's report was issued on July 25, 1986.

*AO 86–17 Significant Safeguards Deficiencies at Wolf Creek and Fort St. Vrain*

One of the AO examples notes that any substantial breakdown of physical security, such as access control, that significantly weakened the protection against theft, diversion, or sabotage, can be considered an AO.

*Date and place*—On July 7, 1986, NRC Region IV issued enforcement letters containing Severity Level II violations to the licensees of two nuclear power plant stations for serious deficiencies in plant physical barriers. The licensees are: (1) Kansas Gas and Electric Company (KG&E), operator of the Wolf Creek Generating Station, A Westinghouse - desinged pressurized water reactor located in Coffey County, Kansas; and (2) Public Service Company of Colorado (PSC), operator of Fort St. Vrain, a General Atomic Corporation-desinged high-temperature, gas-cooled reactor located in Weld County, Colorado.

*Nature and probable consequences*—The July 7, 1986 letters identified serious failures of the licensees to comply with NRC regulatory requirements pertaining to physical barriers. In the most serious example, it was determied at the Wolf Creek Generating Station that multiple uncontrolled access paths existed from the Owner Controlled Area (OCA) into the Protected Area (PA) and in two instances into Vital Areas (VAs). This condition was identified by the licensee as part of a quality assurance surveillance followup and confirmed by a Region IV safeguards specialist during reactive inspesction No. 50–482/85–44. The inspection report was issued on April 24, 1986. At the Fort St. Vrain Nuclear Station, NRC inspectors identified during routine inspection No. 50–267/85–32 two uncontrolled access paths from the OCA to the PA and VA. In this situation, each access had a barrier installed, but each was evlauated to be inadequate and not capable of preventing an intruder from defeating it easily. This inspection report was issued on April 7, 1986.

In these examples, conditions existed whereby an intruder could have obtained unauthorized and undetected access into protected and/or vital areas from the OCA. It appeared from the inspection and review of licensee records that the conditions had existed at both plants for a minimum of six to seven months.

*Cause or causes*—The cause of these occurrences was a failure in management control, including design oversight during the system planning stages, construction deficiencies, and the failure of the startup testing/surveillance program to identifiy these deficiencies. Another related cause at the Wolf Creek Generating Station was the failure of, management to provide coordination among the various organizational entities which may affect facility security.

*Actions Taken To Prevent Recurrence*

*Licensees*—In each case identified, the licensee took immediate corrective action to post compensatory guards and install appropriate barriers. At Fort St. Vrain Nuclear Station, the affected piping was secured with adequate barriers and a routine surveillance was initiated to ensure that no degradation to these and similar barriers had occurred. The Wolf Creek Generating Station installed acceptable barriers where required and initiated a complete walkdown of the PA and VA to identify all possible points of vulnerability. This work is being conducted by a KG&E Security Passive Barrier Task Force that was formed to review all penetrations in passive barriers to assure that no further problems exist.

Both licensees have modified engineering/design change procedures to ensure that security system requirements are considered as part of any overall plant changes that could impact the safeguards program/systems.

*NRC*—On the date that the Wolf Creek Generating Station identified this condition, NRC Region IV initiated calls to all the Region IV licensees and to the other NRC Regional Offices to alert them to the possible generic implications of this finding.

On July 7, 1986, Region IV issued enforcement letters to the licensees involved as follows:

a. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $40,000 to KG&E. The violation was categorized as Severity Level II (on a scale where Severity Levels I and V are considered the most significant and least significant severity levels).

b. A Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $65,000 to PSC. The Civil Penalty consisted of $40,000 for the Severity Level II violation and $25,000 for other less significant violations.

Enforcement conferences were held at the Region IV office on November 25, 1985, with KG&E and January 6, 1986, with PSC to discuss these issues and the corrective actions undertaken by the licensee. The specific corrective actions described by the licensees have been evlauated by the NRC.

The NRC has inspected both sites since the violations were identified and is continuing to review the licensees' corrective actions to assure that all of the issues are satisfactorily resolved.

*AO 86–18 Significant Deficiencies in Access Controls at River Bend Station*

One of the AO examples notes that any substantial breakdown of physical security, such as access control, that significantly weakened the protection against theft, diversion, or sabotage, can be considered an AO.

*Date and place*—By letter of August 7, 1986, the NRC issued to Gulf States Utilities (GSU), licensee for the River Bend Station, an enforcement letter containing a Severity Level II violation for serious deficiencies in the plant's safeguards program pertaining to access controls. River Bend Unit 1 is a General Electric-designed boiling water reactor located in West Feliciana Parish, Louisiana.

*Nature and probable consequences*—The Severity Level II violation involved four examples of failure to adequately control the access of personnel to vital areas. In the most serious example, the licensee incorrectly devitalized the plant auxiliary building access control system for over 17 hours. The other three examples included: (1) Improperly removing a hatch cover tha allowed uncontrolled vital-island-to-vital-island access; (2) allowing a vital island door to be unsecured and uncompensated for about 30 minutes; and (3) improperly removing a large concrete floor plug which served as a vital-island-to-vital-island barrier. In all four examples, conditions existed whereby an intruder could have obtained unauthorized and undetected access into vital areas from either the protected area or other vital areas. It appeared from interviews with licensee personnel and a review of maintenance records that the floor plug had been removed for several months.

The August 7, 1986 letter also described a second violation of lesser significance involving two examples of inadequate vital area physical barriers. Details of the items that constitute the two violations described above are contained in NRC Inspection Reports 50–458/86–11 and 50–458/86–17, both of which were issued on June 4, 1986.

*Cause or causes*—The cause of these deficiencies was the failure of management to exercise effective personnel access control and to recognize and correct plant design deficiencies as they related to implementation of the security program.

*Actions Taken To Prevent Recurrence*

*Licensee*—In each example identified, the licensee took immediate corrective action to post compensatory guards where required. At the locations where uncontrolled access was identified, the licensee secured the area and conducted a search to confirm that no unauthorized activity has occurred, or conditions existed that would prevent safe plant operation. In the "devitalization incident," the licensee performance-tested all equipment essential for safe shutdown that was not operating during that period. The licensee has revised procedures and trained personnel to be aware of the safeguards implications of work performed by maintenance/operations personnel. Markings have been placed on all plugs, hatches, etc., that form part of the vital area barrier to alert personnel to notify Security before removal. The licensee implemented an engineering review and walkdown to identify any barrier openings that existed. Acceptable barriers have been installed to prevent unauthorized access through these openings.

*NRC*—An enforcement conference with GSU was held at the NRC Region IV office on June 10, 1986, to discuss these matters and the corrective actions undertaken by them. The August 7, 1986 enforcement letter forwarded a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $65,000. The Civil Penalty consisted of $40,000 for the Severity Level II violation and $25,000 for the other less significant violation. The NRC has inspected the site since the violations were identified and is continuing to review the licensee's corrective action to ensure that the issues are resolved satisfactorily.

**Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)**

*AO 86–19 Therapeutic Medical Misadministration*

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an AO.

*Date and place*—On September 4, 1984, NRC Region III was notified by the University of Cincinnati Medical Center, Cincinnati, Ohio, that an iodine-125 radiation source, which had been implanted in a patient had leaked, causing an unintended radiation exposure of 2,087 rad to the patient's thyroid. The leaking radioactive source was one of eight implanted in a patient August 27, 1984, for treatment of a brain tumor. The eight sources were removed on September 1, 1984.

The event has not been previously reported as an abnormal occurrence because at the time of the incident it was not classified as a medical misadministration as defined in 10 CFR 35.41–35.45. However, a recent reevaluation of the event by that NRC Staff concluded that the event should have properly been classified as a medical misadministration, and reportable as an abnormal occurrence, because the treatment was intended to irradiate only the patient's brain tumor, but because of the leaking source, also irradiated the thyroid. (In the body, iodine is deposited in the thyroid, and therefore, the radiation from the leaking iodine source would be concentrated there.)

*Nature and probable consequences*—On August 27, a total of eight seeds were placed in thin plastic catheter tubes and were temporarily implanted in the brain of a terminally ill patient. the next day, iodine-125 contamination was detected in the brachytherapy source storage room (BSR). Bioassay results showed that the technicians who had worked with the iodine-125 seeds had measurable uptakes of iodine. When the seeds were removed from the patient on September 1, a radiation survey of the patient's neck revealed a radiation level of 1.5 millirem per hour at two inches from the thyroid, which confirmed the seeds were leaking inside the patient. The patient was then discharged from the hospital with instructions to return for further bioassay analyses.

Subsequently bioassay testing of the patient's thyroid determined that there had been a deposition of 557 microcuries of iodine-125 thyroid. This level of deposition would result in a radiation dose to the thyroid of 2,087 rad. (A rad is

a standard measure of absorbed dose.) Such an exposure would be expected to result in some diminished thyroid function. Drugs are available to compensate for the reduced thyroid function.

The licensee found that the patient's friend and about 60 hospital personnel had received thyroid uptakes of 0.04 to 209 nanocuries; the NRC's maximum permissible thyroid burden for iodine-125 is 720 nanocuries. The 209 nanocuries was received by one of the technicians involved in preparing the iodine-125 seeds, and would result in a thyroid dose of about 0.8 rad. This dose would not be expected to result in any clinically detectable effects. The doses received by the other people were all considerably less than that received by this technician. Followup 24 hour urine bioassay testing of the two technicians involved in preparing the iodine-125 seeds showed a thyroid deposition of 29 nanocuries for one and no detectable activity for the other. The results of thyroid function testing of both individuals were normal.

The hospital personnel who received iodine uptakes included those who had handled or were in close vicinity of the leaking source, those involved in the control and cleanup of the contamination of the BSR, and those who frequented the areas outside of the BSR. In regard to the latter, the licensee found that a positive differential pressure between the BSR and the area outside it had exited for several days following the discovery of contamination in the BSR. This positive pressure contributed to the airborne migration of the iodine-125 into adjacent areas. (The licensee later changed the room to be under negative pressure.)

The licensee's investigation of the contamination incident determined that one of the iodine-125 seeds had been cut, apparently when it was being removed from a catheter tube from a previous patient implanted on August 13–17, 1984. Two technicians were involved in removing the seeds, and reported that after the tubes were removed from the previous patient, they were discolored and the seeds were difficult to see. One technician stated that he believed the damage most likely occurred when the ends of the catheter tubes were cut off with scissors.

The use of high activity iodine-125 seeds as removable brachytherapy sources was a new procedure at the University of Cincinnati. Previous uses (treatment protocols) involved the use of low activity iodine-125 seeds (0.1–1 millicurie) as permanent brachytherapy implants.

Although the contamination of the BSR was extensive, wipe surveys and air samples revealed that the contamination was essentially limited to the BSR. The room was decontaminated and then painted to fix any remaining contamination in place. Subsequent air samples in the room and in adjoining areas showed no detechable radioactivity. Some equipment (i.e., a sink, shelving, and storage safe) were found to have some residual contamination; they were covered in plastic to allow for radioactive decay prior to use.

*Cause or causes*—The cause of the misadministration was found to be an inadequate procedure used in removing the iodine-125 seeds from the catheter tubes for reuse. Further, there were inadequate radiation surveys performed in the work area where the source preparation was performed. Had adequate surveys been performed, the leaking seed might have been discovered prior to its being implanted in the patient.

*Actions Taken to Prevent Recurrence*

*License*—The licensee's Radioisotope Committee recommended that the use of high activity iodine-125 seeds be discontinued for this type of radiation therapy, pending a thorough review of the health physics aspects of their use. The hospital also contructed a new radiation source storage room with a greater distance between the storage area and the source preparation area. A fume hood was also installed in the room.

*NRC*—Region III conducted a special inspection at the hospital on October 10–12, 1984, to evaluate the circumstances of the source leakage and patient use. A Notice of Violation was issued on December 18, 1984 for two violations, i.e., opening a sealed source and failure to make an adequate survey for the source storage area following the preparation of the iodine-125 seeds for patient use.

Followup inspections have been conducted to determine the adequacy of the licensee's corrective actions.

On September 30, 1986, the NRC issued Inspection and Enforcement Information Notice No. 86–84 ("Rupture of a Nominal 40-Millicurie Iodine-125 Brachytherapy Seed Causing Significant Spread of Radioactive Contamination") to all NRC institution licensees to inform them of this event.

The NRC's Office of Nuclear Material Safety and Safeguards, and the NRC's Region Office, are evaluating what additional measures should be taken by the manufacturer and medical licensees to improve handling procedures for iodine seeds.

The NRC Office for Analysis and Evaluation of Operational Data undertook a review of the incident to determine if there was a generic problem associated with the reuse of high activity iodine-125 seeds in brachytherapy implant protocols, and to assess any associated health and safety problems. The findings and recommendations for action by various NRC offices, were issued in AEOD/C601 ("Rutpure of an Iodine-125 Brachytherapy Source at the University of Cincinnati Medical Center") during August 1986.

Dated In Washington, DC, this 6th day of May 1987.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 87–10823 Filed 5–11–87; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 40–8857]**

## Everest Minerals Corp.; Draft Finding of No Significant Impact Regarding a New Source and Byproduct Material License

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of draft finding of no significant impact.

### 1. Proposed Action

The proposed administrative action is to issue a new source and byproduct material license authorizing Everest Minerals Corporation to operate the Highland in situ leach uranium recovery operation located in Converse County, Wyoming.

### 2. Reasons for Draft Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the research and development insitu leach operation, the licensee's application dated December 30, 1985, and the Final Environmental Statement for Exxon Corporation (Everest's Highland site) prepared by the Commission staff dated November 1978. Based on the review of these documents

the Commission has determined that no significant impact will result from the proposed action, and therefore, an addendum to the existing Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground water monitoring program proposed for Everest Minerals Corporation's operation is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, additional aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**.

This finding, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 4th day of May, 1987.

For the Nuclear Regulatory Commission.

**Edward F. Hawkins,**

*Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.*

[FR Doc. 87-10792 Filed 5-11-87; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on May 28, 1987, 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, May 28, 1987—8:30 A.M. Until the Conclusion of Business*

The Subcommittee will continue the review of the proposed generic letter for Individual Plant Examinations (IPEs) as part of the NRC Implementation Plan for the Severe Accident Policy Statement.

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, IDCOR representatives, 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. Dean Houston (telephone 202/634-3267) 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: May 6, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87-10824 Filed 5-11-87; 8:45 am]

BILLING CODE 7590-01-M

## Transportation of Spent Fuel; Availability of Publication Concerning Research on Transportation Safety

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of a publication concerning the transportation of spent fuel. The publication reports results from research on the level of safety provided by NRC package standards under severe transportation accident conditions.

**ADDRESS:** Copies of NUREG/CR-4829 may be purchased by calling the U.S. Government Printing Office on (202) 275-2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are available for inspection in the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** John R. Cook, Transportation Branch, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 427-4240.

**SUPPLEMENTARY INFORMATION:** In the mid-1970's, staff conducted a reevaluation of the NRC transportation regulations to assess the adequacy of the regulations to protect the public health and safety. In the course of the reevaluation, a Final Environmental Statement (FES), designated NUREG-0170, was prepared. The FES included an examination of the transportation of radioactive material by all modes of transport. After considering the information developed, the public comments received on the FES, and the safety record associated with the transportation of radioactive materials, the Commission determined that its regulations provided a reasonable degree of safety and that no immediate changes were needed to improve safety (46 FR 21619; April 13, 1981).

The accident resistance of packages was identified as a subject for further study in NUREG-0170. It was recognized that for certain types of shipments, including spent fuel, the nature and quantity of material being transported was such that the consequences of release in an accident could be serious. Packages used for these types of shipments are required to be designed so that there is essentially no increase in radiological hazard when the package is subjected to the Hypothetical Accident

Condition tests specified in 10 CFR Part 71. The regulatory performance requirements are adequate to assure high integrity packaging when subjected to accidents and are generally recognized to be rigorous. The extent to which the regulatory performance requirements reflect real accidents, however, had not been fully developed. The adquacy of the performance requirements, particularly with respect to spent fuel packages, had also become a subject of public concern. To address these concerns, the Commission authorized a study to evaluate the safety of spent fuel shipments in terms of severe accidents which actually occurred in non-nuclear shipments in surface transport modes (i.e., Modal Study).

Lawrence Livermore National Laboratory has recently completed the final phase of the Modal Study, and presented their findings in a report entitled "Shipping Container Response to Severe Highway and Railway Accident Conditions" (NUREG/CR–4829). Among other results, the study concludes that the annual radiological risk from spent fuel shipment accidents is less than one third of that previously estimated in the "Final Environmental Statement (FES) on the Transportation of Radioactive Material by Air and Other Modes" (NUREG–0170). In April 1981, the Commission relied on the FES as a major basis for concluding that its transportation regulations provided a reasonable degree of safety, and that no immediate changes were needed. Results from the new study indicate that this earlier determination that transportation regualtions are adequate was based on a conservative evaluation.

For the Nuclear Regulatory Commission.

**Robert M. Bernero,**

*Acting Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 87–10793 Filed 5–11–87; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–133]**

## Availability of the Final Environmental Statement for Decommissioning of Humboldt Bay Power Plan Unit No. 3

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Final Environmental Statement (FES) (NUREG–1166) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed decommissioning of the Humboldt Bay Power Plant Unit No. 3 in Humboldt County, California. The FES Addresses the aquatic, terrestrial, radiological, social and economic impacts associated with decommissioning. A Draft Environmental Statement (DES) on this action was issued on April 23, 1986 to Federal, State and local agencies and to members of the public who requested copies. An extended public comment period was provided for the DES, beginning on April 28, 1986 and ending on August 15, 1986 for a total of 109 days. Comments on the DES, and NRC staff responses to those comments, are incorporated into the FES.

Copies of the FES are available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555, and at the Eureka-Humboldt County Library, 421 I Street (County Courthouse), Eureka, California. Upon written request to the Division of Technical Information and Document Control, Publication Services Section, U.S. Nuclear Regulatory Commission, Washington DC 20555, and to the extent available, single copies of the FES will be made available to interested persons without charge.

Federal, State, and specified local agencies are being provided with copies of the FES, as well as all agencies and individuals that commented on the DES. Other local agencies may obtain the FES upon request.

Dated at Bethesda, Maryland, this 6th day of May 1987.

For the Nuclear Regulatory Commission.

**Herbert N. Berkow,**

*Director, Standardization and Non-Power Reactor Project Directorate Division of Reactor Projects III, IV, V and Special Projects Office of Nuclear Reactor Regulation.*

[FR Doc. 87–10794 Filed 5–11–87 8:45 am]

BILLING CODE 7590–01–M

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## Advisory Committee on Reactor Safeguards, Subcommittee on Generic Items; Meeting

The ACRS Subcommittee on Generic Items will hold a meeting on May 27, 1987, 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, May 27, 1987—8:30 A.M. until the conclusion of business*

The Subcommittee will discuss the process involved in identifying, prioritizing, resolving, and implementing generic issues, and unresolved safety issues (USIs) so as to determine the effectiveness of this process.

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. Sam Duraiswamy (telephone 202/634–3267) 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: May 5, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87–10701 Filed 5–11–87; 8:45 am]

BILLING CODE 7590–01–M

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## Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on May 18 and 19, 1987, 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:

*Monday, May 18, 1987—8:30 A.M. until the conclusion of business*

*Tuesday, May 19, 1987—8:00 A.M. until 12:00 Noon*

The Subcommittee will review the following topics: A. *High-Level Waste:* (1) Impact of NMSS reorganization on waste management program, (2) Overview of QA program and activities, (3) Waste acceptance activities regarding the processing or radioactive wastes into glass, (4) Update on the National Bureau of Standard's waste form program, (5) Generic Technical Position (GTP) on Qualification of Existing Data for HLW Repositories, (6) GTP on Peer Review for HLW Repositories, and (7) Report on the Hanford, Washington (BWIP) hydrology meeting. B. *Waste Management Research:* (1) Demonstration of Performance Modeling of a LLW Shallow Land Burial Site—the nitrate disposal pit site at Chalk River, Canada, and (2) Control of Water Filtration into Near Surface LLW Disposal Units. C. *Low-Level Waste:* (1) Update on status of mixed wastes issue, and (2) Greater than Class C wastes.

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 whan a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Person 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 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 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. Owen S. Merrill (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: May 6, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87–10702 Filed 5–11–87; 8:45 am]

BILLING CODE 7590–01–M

## Pacific Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

**[Docket No. 50–323]**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–82 issued to Pacific Gas and Electric Company (the licensee), for operation of Diablo Canyon NUclear Power Plant, Unit 2, located in San Luis Obispo County, California. The request for amendment was submitted by letter dated March 17, 1987, as supplemented May 6, 1987.

The proposed amendment would revise the Diablo Canyon Unit 2 License Condition 2.C.(9) to allow the submittal of a plant-specific steam generator tube rupture (SGTR) analysis in April 1988, rather than prior to startup following the first refueling outage, to allow the use of the results and methodology of the Westinghouse Owners Group SGTR Subgroup (Subgroup).

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 request for amendment 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 determined that the proposed change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because (a) based on the Subgroup's generic evaluation, the operators can respond to a design basis SGTR and perform the required actions to locate and terminate primary to secondary leakage before steram generator overfill occurs; (b) based on the Subgroup's generic evaluation, the offsite radiation doses for a design basis SGTR will be less than the allowable limits; and (c) the extension of time for submittal of the SGTR analysis is administrative in nature and has no effect on cause mechanisms.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed extension does not necessitate physicial alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the extension of time for submitting the SGTR analysis is an administrative change.

Accordingly, the licensee has determined that the proposed change to License Condition 2.C.(9) involves no significant hazards consideration. The NRC 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 no significant hazards consideration is involved in the proposed amendment.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the 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.

By June 11, 1987, 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 proceding 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 must be filed in accordance with the Commission's "Rules of Practice for Domestic 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 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 2.741, a petition for leave to intervene must 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 request for amendment 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.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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 Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amenement which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC., and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California, 93407.

Dated at Bethesda, Maryland, this 7th day of May 1987.

For the Nuclear Regulatory Commission.

**Charles M. Trammell,**

*Project Manager, Project Directorate V, Division of Reactor Projects—III/IV/V and Special Projects.*

[FR Doc. 87–10957 Filed 5–11–87; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–24425; File No. SR–Amex–87–8]**

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Increased Maximum Orders on PER and AMOS Systems

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 3, 1987, the American Stock Exchange, Inc. ("Amex" or "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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested groups.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. has determined to expand its Post Execution Reporting (PER) system and its Amex Options Switching (AMOS) system to increase the size of eligible market and marketable limit orders from 1,000 to 2,000 shares for PER and from 10 to 20 contracts for AMOS.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The PER and AMOS systems provide member firms with the means to electronically transmit, for routing purposes, equity and option orders up to the volume limits specified by the Exchange directly to the post where the issue is traded for execution and reporting by a specialist. The systems were implemented in 1977 and 1979 to increase the capacity of the Floor to handle order flow by facilitating the transmission, execution, and reporting of small routine orders.

In response to the operational needs of member firms as a result of significant increases in volume in both equities and options trading, and in response to development of competitive automated systems, the order parameters for both PER and AMOS have been increased over the years. The current PER and AMOS eligibility levels, up to 1,000 shares and 10 contracts, respectively, for market and marketable limit orders (limit orders that are executable when received by the specialist), were approved in 1985.[1]

Since the last expansion of PER and AMOS, the average order size per trade has increased from 800 to 1,300 shares in equities and from 17 to 19 contracts in options. Average daily Amex equity volume has increased from 8,224,988 shares in 1983 to 14,892,249 as of January 29, 1987. In options, Amex's average daily volume increased over the same period from 153,722 contracts to 309,058 contracts.

At the same time, enhancements to the PER and AMOS systems have greatly improved the Exchange's ability to handle larger order flow and permit the reporting of executions on a more timely basis. Accordingly, the Exchange is proposing to increase the size of eligible market and marketable limit order from 1,000 to 2,000 for PER and from 10 to 20 contracts for AMOS.

[1] *See* Securities Exchange Act Release Nos. 21680 (January 23, 1985) 50 FR 4004 (AMOS); 21693 (January 28, 1985) 50 FR 5024 (PER).

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will also result in more efficient and effective market operations, consistent with section 11A(a)(1)(B).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will create no burden on competition given that use of the PER and AMOS systems are optional, and those firms which use PER and AMOS can achieve more efficient handling of their respective order. The proposed rule change will also enhance the Exchange's competitive status in providing efficient, fast and accurate order-delivery systems.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 2, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 5, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10831 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 6, 1987.

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:

Cedar Fair L.P.
Depositary Receipts (File No. 7-9919)
H & Q Health Fund
Shares of Beneficial Interest (File No. 7-9920)
B.F. Goodrich Co.
$3.50 Cumulative, Convertible, Preferred Series D Stock (File No. 7-9921)
Phelps Dodge Corp.
Depositary Shares (File No. 7-9922)
Southmark Corp.
9¼ Cumulative, Convertible, Series H Stock (File No. 7-9923)
A.T.& E Corp.
Common Stock, $0.01 Par Value (File No. 7-9924)
GCA Corporation
Common Stock, $0.01 Par Value (File No. 7-9925)
Nortek, Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7-9926)

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 May 27, 1987 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 the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10828 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-24423; File No. SR-MSE-87-6]**

## Self-Regulatory Organizations; Midwest Stock Exchange; Exchange's Revised Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1987, the Midwest Stock 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submitted the revised fee schedule in connection with the rule filing.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to amend the Exchange's Transaction Fee Schedule. The current Item Charge based on the number of round lot trades/month is being eliminated. The current trade volume credit of 10¢/trade for trades exceeding 1000 trades/month is being changed to a credit of 15¢/trade for trades executed on the Exchange floor above 3000 trades/month.

A new Item Charge based on the number of shares per trade is being implemented as follows: A charge of 20¢/100 shares with a cap of $1.00 per trade. In addition to the new Item Charge the current Value Charge based on total gross dollar value/month will still apply with 2 modifications. First, the rate (per $1000) at the total gross dollar volume/month of $550.1 million and over is being reduced from 3¢ to 2.5¢. Second, the first 500 shares per trade will be excluded from valuation.

The new Item Charge coupled with the changes to the Value Charge should encourage member firms to send a higher number of smaller sized orders to the Exchange resulting in the Exchange being more competitive for trades of 100 to 1000 shares, while at the same time remaining competitive on larger orders.

In addition, the current credit of 0.15 per trade for round lot orders entered by a member firm through the MAX System will be increased to 0.20 per trade and will be expanded to include trades in over the counter stocks sent by the member firm to the MAX-OTC system operated by the Exchange's subsidiary, MSE Information Processing Corp. (MSE-IPC). This network utilization credit encourages member firms to take advantage of the efficiences inherent in the use of the order routing network developed by the Exchange and MSE-IPC for both listed and over the counter issues.

The proposed credit will pass on to the member firm utilizing both the MAX and MAX-OTC systems the benefits inuring to the Exchange of such utilization by such credit being applied against the member firm's total monthly Exchange bill.

The proposed fee increase is consistent with Section 6 of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSE's members.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments have neither been 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 purposes 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-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 2, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10832 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-24424; File No. SR-MSE-87-2**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change of Midwest Stock Exchange; Trading of NMS Securities on the MSE

On February 10, 1987, the Midwest Stock Exchange ("MSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal amends MSE's rules to accomodate trading of National Market System ("NMS") Securities on either a listed basis or pursuant to unlisted trading privileges ("UTP").[1] The Commission published notice of the Release on February 13, 1987,[2] and received no comments.

### I. Description of the Proposal

The proposal amends MSE's rules by adding a new Rule 40 to Article XX governing trading in NMS Securities. The proposal also amends MSE's rules to require MSE specialists to provide telephone access to NASD market makers and makes related conforming changes. MSE amended its Guaranteed Execution System Rule to accomodate OTC/UTP, as well as its Specialists Rule. Finally, some of the proposed rule changes are conforming changes that add references to NASDAQ/NMS securities whre appropriate.[3]

New Rule 40 defines "NASDAQ/NMS security" and "NASDAQ system." It also specifies that exchange specialists are required to provide NASDAQ system market makers direct telephone access to the specialists' posts. The Rule also clarifies that NASDAQ market makers are able to direct to MSE specialsists orders for execution on the exchange.[4] Further, Rule 40 clarifies that the same rules applicable to making bids and offers and to executing transactions on the floor will apply to telephone orders by NASDAQ market makers. Similarly, the proposal provides procedures for exchange specialists to route orders from the MSE floor to any NASDAQ market maker by telephone. Finally, new Rule 40 specifies that comparison of transactions effected with a NASDAQ market maker will be made under procedures to be established between the NASD and MSE.[5]

The propsal exempts specialists in NASDAQ/NMS securities from the mandatory posting provisions of MSE's Interpretation and Policy. The mandatory posting provisions set forth the conditions that may lead to a reallocation of a specialist's specialty stock.[6] The purpose of this change is to exempt specialists registered in NASDAQ/NMS securities from the mandatory posting provisions until the MSE and MSE specialists have gained greater experience in trading and in evaluating the specialists' performance in these issues.

The MSE amended Article XXXI, Rule 5 by adding a new Interpretations and Policies .01 to specify that the specialist for a NASDAQ/NMS security also will be the Odd-Lot Dealer for the security. MSE made a related change to Article XXXI, Rule 10, adding a new Interpretation and Policy stating that odd-lot orders to buy or sell NASDAQ/NMS securities received by the specialist will be executed on the basis of the best bid or offer. This change conforms MSE rules to the practice of the over-the-counter market.

NASDAQ/NMS securities trading on the MSE also necessitated changes to MSE's Guaranteed Execution System Rule (*i.e.*, Article XX, Rule 34). The changes to this Rule extend, in certain circumstances, the guarantees currently afforded Dual Trading System Issues to NASDAQ/NMS securities. The changes provide that agency market market orders in NASDAQ/NMS securities placed by exchange members will be guaranteed fills in substantially the same manner as Dual Trading System Issues.[7] Preopening orders in NASDAQ/NMS securities will be accepted and filled at the MSE opening price. After trading halts, orders will be executed at the MSE reopening price. In contrast, for Dual Trading System Issues, the primary market opening is used. This difference reflects the fact that there is no one "opening" price in the over-the-counter market, which generally will be the primary market for NASDAQ/NMS issues. Further, the MSE added a new "Interpretation and Policies" .01 to extend a guarantee to all automated agency market orders up to 1,099 shares in NASDAQ/NMS securities placed with a specialist but not to manually placed market orders placed with a specialist by a floor member (other than the first one placed at any given price). The MSE intended the change to decrease the likelihood of professional orders receiving the same guarantees afforded customer orders. Finally, no limit order guarantee will be provided with respect to quotes in other markets[8]

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[1] The Commission today approved MSE's application for UTP in 25 NMS Securities. *See* Securities Exchange Act Release No. 24406 (April 29, 1987), ("OTC/UTP Approval Order").

[2] Securities Exchange Act Release No. 24100 (February 13, 1987), 52 FR 5363 (February 20, 1987).

[3] MSE amended the proposed rule change. Letter from Patrick K. Conroy, Counsel, MSE, to Brandon Becker, Associate Director, Division of Market Regulation dated March 24, 1987, ("March 24 Letter"). In its original proposal, MSE amended it Interpretations and Policies to Article XX, Rule 8, to exempt MSE specialists from the requirement that they input their quotes into the quotation system during a NASD-called quotation halt. The MSE included this provision because the NASD's system cannot collect or disseminate MSE quotations when it has imposed a quotation halt on it own members. Rule 11Ac1-1 ("Quote Rule") requires, however, that the MSE make available to vendors quotes in reported securities communicated on the exchange floor whenever the exchange is open for trading. Thus, because the processor's (*i.e.*, the NASD) system cannot accept quotation from the MSE during a NASD quotation halt, the MSE will be in violation of the Quote Rule during such halts. The Commission believes, however, that it is more appropriate to provide the MSE with a no-action position under Rule 11Ac1-1 with the expectation that a processor will be developed with the capability to disseminate quotations selectively. *See* letter from Brandon Becker, Associate Director, Division of Market Regulation, to George T. Simon, Esq., Coffield, Ungaretti, Harris & Slavin, dated May 4, 1987.

[4] The MSE subsequentaly informed the Commission of the procedures it has developed to accomodate telephone access to its specialists. The MSE will provide NASADAQ market makers telephone numbers for direct access to MSE specialists. In addition, secondary numbers will be available when they cannot reach the specialist on the primary telephone line. Further, these telehpone lines will have multiple search functions. Finally, if a market maker is unable to contact a specialist by the means described above, the market maker will be able to call a specific exchange staff person for assistance. *See* March 24 Letter.

[5] The MSE informed the Commission that all transactions in NASDAQ/NMS securities effected between exchange specialists and NASDAQ market makers will be compared, cleared and settled throught he Midwest Clearing Corporation's and National Securities Clearing Corporation's over-the-counter systems. *See* March 24 Letter.

[6] Article XXX, Rule 1, Interpretations and Policies .01. The mandatory posting provisions requires a semi-annual review of the MSE's market share, calculated as a percentage of the number of trades reported on the consolidated tape. If the MSE's market share, when compared with the market shares of other markets trading the security, is less than the third largest and is also less than the exchange's average market share for all issues for which there is a registered specialist, the MSE automatically will post the security for reallocation to a new specialist.

[7] These orders will be filled at the consolidated best bid or offer. Unlike Dual Trading System Issues, however, specialists will not be required to grant stops, if requested, if the execution will be outside the primary market range for the day.

[8] It bears emphasis that it is only the primary market limit order guarantee that is not extended to

Continued

on NASDAQ/NMS securities trading on the MSE until the MSE gains greater expertise in trading NASDAQ/NMS securities.[9]

As noted above, many of the proposed rule changes are intended to accomodate the Commission's requirement that MSE specialists provide OTC market makers telephone access to the floor of the exchange.[10] In effect, this requirement would allow a NASDAQ market maker to interact with the MSE specialist as if he were another NASDAQ market maker. For example, the MSE amended Interpretations and Policies .01 of Article XX, Rule 5, which provides that transactions on the floor shall be made only with MSE members, to make clear that the Rule permits specialists to effect transactions while on the floor with NASDAQ market makers in NMS Securities. Similarly, Article XX, Rule 28, which prohibits transmitting from the floor the name of a bidder, offeror, buyer or seller, has been amended to exempt transactions with OTC market makers. The MSE also amended Article XX, Rule 31 to provide that telephone orders received on the exchange floor from NASDAQ market makers are exempt from the requirement that orders on behalf of another be in writing.

The MSE also amended section C(1)(a) of the Blue Book Rules (Rules and Practices for Trading on the Midwest Trading Floor). The amendment provides that NASDAQ/NMS Securities trading on an unlisted trading basis will be treated as local issues with the exception that, under certain circumstances where an unusual variation from the last transaction will occur if a trade is executed, the transaction may be completed without first securing the approval of a member of the Committee on Floor Procedure.

Finally, some of the MSE's proposed changes are administrative in nature. For example, the MSE amended Rule 3 of Article XX to clarify that orders transmitted from the exchange floor in NASDAQ/NMS securities will be subject to the MSE's rule prohibiting dealings on the exchange floor except during the hours the exchange is open for business.[11] The MSE also amended Article XX, Rule 8 to indicate that quotes from other market centers displayed on the exchange floor have not standing in the crowd.[12] Finally, MSE's rule governing the authority of the Committee on Floor Procedure has been amended to indicate that the Committee's authority extends to oversight and supervision of transactions on the exchange floor between MSE members and NASDAQ system market makers.

## II. Discussion

The Commission believes that the proposed rule changes are consistent with section 6(b)(5) of the Act. Generally, because the proposals enable the MSE to provide trading facilities for NMS securities, they facilitate transactions in securities and thus remove impediments to and perfect the mechanism of a free and open market and a national market system. Several of the proposed rule changes are designed to allow MSE to obtain eperience with NASDAQ/NMS stocks before MSE determines whether and how to permanently adapt its rules to OTC/UTP. The Commission thus requested and received assurances from the MSE that, at the end of a pilot period testing exchange trading of NMS securities on an unlisted basis, the MSE would re-examine the operation of its rules.[13] The MSE also assured the Commission that it would make any necessary revisions or modifications to its rules at that time.[14] For these reasons, the Commission believes it is appropriate to permit the exchange to gain additional experience in trading these types of securities before it considers any revisions or modifications to the Rules.

The Commission expects the MSE to monitor, in particular, its Guaranteed Executive System rules. The Commission believes that the MSE should consider whether it is appropriate to extend the same or other limit order protection to orders in NASDAQ/NMS securities. Similarly, the MSE should examine whether it is appropriate to amend Article XX, Rule 34, paragraph 6 to apply to trading in NASDAQ/NMS issues the requirement that specialists must grant a stop, if requested, if an agency market order will be executed outside the primary market range for the day. Finally, the Commission expects the MSE to monitor closely whether its new Interpretation and Policy to the Guaranteed Execution System Rule (*i.e.*, that only the first manually placed agency market order in NASDAQ/NMS securities at any given price must be guaranteed an execution) is necessary. The Commission has questions whether this interpretation will achieve the stated objective of preventing floor members from submitting professional orders as agency orders to secure the guarantee.

## III. Conclusion

For the reasons stated above, the Commission believes the proposed rule change is consistent with the Act and Section 6(b)(5), in particular.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that SR-MSE-87-2 be, and hereby is, approved. The Commission expects the MSE to re-examine its rules, however, at the end of the pilot period testing the trading of NMS securities on an unlisted basis, or earlier, if the Commission determines such earlier re-examination to be appropriate.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10833 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

NASDAQ/NMS Securities. Limit order "protection" within MSE's market is accorded NASDAQ/NMS under MSE Rule 2 of Article XXX, which requires specialists to fill limit orders in the book before trading for their own account at the limit price.

[9] The MSE's rules provide that all agency limit orders in Dual Trading System Issues will be filled if one of the following conditions occur: (a) The bide or offering at the limit pricehas been exchausted in the primary market (as defined in the Consolidated Tape Association Plan), (b) there has been a price penetration of the limit price in the primary market, (c) the issue is trading at the limit price in the primry market unless it can be demonstrated that such order wouldnot hve been executed if it had been transmitted to the primary market or the broker and specialist agree to a spedific volume-related or other criteria for requiring a fill. As noted above, the MSE rules will not extend the same protections to NASDAQ/NMS

[10] The Commission conditioned a grant of OTC/UTP to an exchange on, among other things, the exchange requiring its specialists assigned to OTC securities trading on a UTP basis to provide telephone access to the OTC market makers in those securities. *See* Securities Exchange Act Release Nos. 24407 (April 29, 1987); and 22412 (September 16, 1985), 50 FR 38640.

[11] The MSE also amended its Interpretations and Policies .01 to that Rule, however, to provide that, under certain circumstances and with prior approval of two members of the Committee on Floor Procedure, a member may effect transactions at other times. This corresponds to the policy for Dual Trading System issues.

[12] MSE's rules contain a similar exemption for quotations from other market centers displayed in the Intermarket Trading System.

[13] *See* OTC/UTP Approval Order, *supra* n.1, at 4 n.8 for a discussion of the OTC/UTP pilot period.

[14] *See* March 27, 1987, letter.

[Release No. 34-24411; File No. SR-NYSE-86-37]

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Review of Combinations Among Specialist Units

### I. Intorudction and Summary

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on December 18, 1986, and amended on February 20, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to adopt, on a six month pilot basis, a policy for the review of certain proposed mergers, acquisitions, and other combinations ("combinations") between or among specialists units. The proposed rule change would authorize the Board of Directors' ("Board") Quality of Markets Committee ("QOMC") to review, under a two tier system, proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

Under the proposal, a tier I QOMC review would occur whenever a proposed combination would result in a specialist organization specializing in securities which exceed 5% of any one of four concentration measures.[1] Similarly, a tier II review would occur whenever a proposed combination would result in a specialist organization exceeding 10% of any concentration measure. In a tier II review, however, there would be a rebuttable presumption that the proposed combination would result in undue concentration within the specialist community. The constituent specialist units must then present clear and convincing evidence that the proposed combination would not result in unude concentration and would promote competition among specialist units.

The NYSE has requested that the Commission grant accelerated effectiveness to the proposal for a six month pilot period pursuant to section 19(b) of the Act.

### II. Background

The proposed policy is a consequence of a study of significant issues relating to the specialist system that the QOMC undertook early in 1986. The study, which included a review of consolidation in the specialist community, raised questions on whether undue concentration of specialist units currently exists or is developing, and, if so, what the effects of such undue concentration would be on internal competition between specialists units and on overall market quality.[2]

As a result of this study, the QOME recommended that the NYSE conduct an in-depth review of specialist concentration on the Exchange floor and declare a moratorium on proposed combinations pending completion of the study. On October 7, 1986, the NYSE announced the commencement of the moratorium and initiated the study.

As a part of its study, the Exchange solicited comments and suggestions from its membership and various constitunet committees. In response the Exchange received comments from six constituent committees, one listed company, and six member organizations, including three specialist organizations.[3]

Those who favored some kind of limitation on specialist unit concentration commented that increased concentration among specialist units would harm the public's perception that there is a competitive, "free market" environment on the Exchange. These commentators also contended that fewer and larger specialist units would present a significant barrier to new entrants to the specialist business, and would reduce the incentives to maintain high levels of performance and market quality and the competition for the allocation of new listings. In addition, the commentators suggested that the Exchange's ability to ensure an orderly market in all its securities could be significantly imparied if a large specialist unit were to experience financial or operational problems.

Commentators who opposed a limitation on specialist unit concentration noted that consolidation in the specialist community is no different and, in fact, may be lesser in degree than the consolidation in the securities industry in general over the last 20 or 30 years. In these commentators' view, consolidation in the specialist community to date has had a healthy effect on the specialist system and the quality of Exchange markets, and has better enabled the specialist system to function effectively in an environment of high volume, high volatility, and high risk to capital. Finally, these commentators also observed that a limitation on specialist unit concentration might impair the ability of specialist units to raise and maintain adequate capital.

In the course of its study, the Exchange reviewed the current concentration level of the specialist business using the four concentration measures.[4] The Exchange collected and summarized data detailing the distribution of stocks and activity among specialist units.[5]

After reviewing the current distribution under the four concentration measures and the environmental factors affecting the specialist system, the Board concluded that although the specialist business was not yet unduly concentrated, further combinations among specialist units would occur as these units sought to acquire additional capital and resources. The Board believed that this increase in concentration could, at some point, result in undesirable concentration levels.

In order to strike an appropriate balance between the need for some specialist organizations to grow through

[1] The concentration measures are:

(a) The common active listed on the Exchange;

(b) The 250 most active common stocks listed on the Exchange;

(c) The total share volume of trading in common stock on the Exchange; and

(d) The total dollar value of trading in common stock on the Exchange.

[2] In 1956, there were 136 specialist units with 354 individual specialists registered in a total of 1,077 common stocks. In contrast, there are currently 55 specialist units with more than 400 individual specialists registered in over 1,560 common stocks, a reduction of 60% in the number of specialist units and an increase from 7.9 to 28.4 in the average number of stocks per specialist unit.

[3] Of the thirteen comments received by the Exchange, eleven commentators agreed with the Exchange's position that some form of review of proposed combinations was necessary to prevent undue concentration within the specialist community. Of these eleven, six commentators favored adoption of a 5% and 10% threshold level of review, while the remaining five commentators favoring review of proposed combinations voiced concerns about setting specific limits on the size of specialist units. The two remaining commentators opposed any limitation on specialist expansions based solely upon the size of the units. *See* letters from Irwin Schloss, President, Marcus Schloss & Co., Inc., to Santo Famularo, Assistant Vice President, NYSE, dated November 6, 1986 (opposing in principle a limitation on specialist mergers based on the size of the unit); Harvey Silverman, Managing Partner, Spear, Leeds & Kellogg to Santo Famularo, dated November 7, 1986 (noting that statistically, there is no evidence of significant concentration within the specialist community that would require such a policy of review by the exchange). Copies of the comments are available from the Commission and the NYSE.

[4] *See* note 1, *supra*, for specification of the concentration measures.

[5] The cumulative distribution of stocks and activity among specialist units shows that, under each of the concentration measures, the top 5 units account for 26% or more of all stocks listed on the Exchange; the top 10 units account for 40% or more of all the stocks listed on the Exchange (46% of both the 250 most active common stocks listed on the Exchange and the total dollar value of trading in common stock); and the top 15 units account for over 50% of all stocks listed on the Exchange (59% of the 250 most active common stocks listed on the Exchange). The data was compiled for the 12-month period of November 1985 through October 1986.

combinations, on the one hand, and the need to maintain internal competition and the perception of a free and open market, on the other hand, the Board felt that the Exchange should adopt an orderly, structured approach for reviewing proposed organization combinations that could raise concentration-related issues. The NYSE has proposed therefore to adopt, on a pilot basis, a policy which it believes will provide the Exchange with a means for overseeing an orderly evolution of the specialist system. According to the NYSE, the policy is designed to avoid unnecessarily restricting proposed combinations that do not have an adverse impact on market quality or result in undue concentration.

**III. Description of Proposal**

The NYSE proposal creates a mechanism whereby it can monitor the level of concentration within the Exchange specialist community. The proposal establishes a two tier system of review whereby the QOMC would be authorized to review proposed specialist combinations that raise concentration-related issues.[6]

A tier I QOMC review would be triggered whenever a proposed combination involves or would result in a specialist organization exceeding 5% of any concentration measure.[7] In a tier I review, the QOMC would review the proposed combination with the following considerations in mind:

(a) Specialist performance and market quality in the stocks subject to the proposed combination;

(b) The effects of the proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure, and the negative consequences of any such failure, on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(c) Commitment to the Exchange market; focusing on whether the constituent specialist organizations have worked (or in case of new applicants to the specialist community, will work) to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specialist organizations.

There would be no presumption that a proposed combination might result in undue concentration in a tier I review. The QOMC would approve or disapprove a particular proposed specialist unit combination based on its assessment of the concentration and other considerations described above. Under the proposal, the QOMC also will have the ability to offer conditional approval based on the satisfaction of particular concerns.

The criterion relating to the "commitment to the Exchange market" under a tier I review[8] was further elaborated upon in Amendment No. 1 to the proposed rule change. In that filing, the NYSE indicated that the commitment criterion is designed to require the QOMC to look to a variety of factors that extend beyond compliance with the Exchange's requirements for providing sufficient capital, talent and order handling services. Specifically, the Committee would review and assess each constituent unit's past conduct on the Exchange relating to such items as:

- Participation upon request in the Exchange's FACTS program,[9] in its marketing seminars, in sales calls and in other of its marketing initiatives seeking to attract order flow and new listings.
- Acceptance of innovations in order-routing and other trade-support systems and willingness to make optimal use of the systems once they become fully operational.
- Willingness to apply for allocations of stocks that are less lucrative from the standpoint of profitability to the specialist.
- Assistance to other units by providing capital and personnel in unusual market situations, such as "breakouts" and difficult openings.
- Efforts at customer relations with both listed companies and order providers, as evidenced by personal contact, return of telephone calls, prompt resolution of complaints, assessment of customer needs and anticipation of customer problems.
- Efforts to streamline its own operations so as to reduce its own costs, enabling it to pass on savings to its customers.

When a combination involves an entity that is not an existing specialist unit (*e.g.*, if a third party's contemporaneous purchase of two or more units creates a combination exceeding the five percent threshold), the application of the "Exchange commitment" criterion to the non-specialist entity would be based upon an assessment of any relevant experience of the entity in its pre-combination activity and on its operational plans that would indicate its ability to operate a specialist unit that is consistent with the factors cited above.

A tier II QOMC review would be triggered whenever a proposed combination involves or would result in a specialist organization exceeding 10% of any of the concentration measures. In a tier II review, the QOMC will give primary weight to the effect of the proposed combination on the overall concentration of specialist organizations. The review would begin with a rebuttable presumption that the proposed combination would result in a level of concentration harmful to the specialist business. The Committee would disapprove the proposed combination unless the constituent specialist organizations:

(a) Present clear and convincing evidence that, if approved, the proposed combination:

(i) Would not create or foster concentration in the specialist business detrimental to the Exchange and its markets;

(ii) Would foster competition among specialist organizations; and

(iii) Would enhance the performance of the constituent specialist organizations and the quality of the markets in the stocks involved; and

(b) Demonstrate that, if approved, the proposed combination is otherwise in the public interest.

The proposed rule change defines a "proposed combination" subjected to the policy to include:

(a) A merger of specialist organizations or an acquisition of one organization by another;

(b) The formation of a joint account involving two or more existing organizations;

(c) The "split-up" of an existing organization (including an organization operating under a joint account) and recombination with another organization;

(d) An individual specialist leaving an existing organization and proposing to

[6] Currently, the Exchange's Market Performance Committee ("MPC"), acting under delegated authority from the QOMC, reviews proposed combinations between specialist units to determine the effects of the proposed combination on market quality. If the MPC concludes that the proposed specialist combination will erode significantly market quality, it informs the constituent units of its concern. If the units persist in their plans, the MPC can inform them that some or all of the affected stocks will be put up for reallocation. Under the present scheme, a specialist unit may seek review of the MPC's decision through the Exchange's specialist allocation and reallocation rules relating to hearings and appeals. *See* NYSE Constitution, Article IV, Section 14.

[7] *See*, note 1, *supra*.

[8] *See* discussion, *supra*.

[9] The FACTS program is used to introduce member firms and other interested persons to the operations of the Exchange.

take stocks with him to join another existing organization; and

(e) Any other arrangement that would result in previously separate organizations operating under common control.

In discussions with Commisison staff, the NYSE also addressed three situations involving the purchase of specialist units by an entity other than a specialist firm, such as a so-called "upstairs firm" or full service broker-dealer.[10] First, when a non-specialist entity purchases a specialist unit that has a concentration level of 5% or more at the time of the purchase, the acquisition of the specialist unit would not be reviewable under the proposed rule. The proposal only applies to combinations of specialist units that involves or would result in a unit exceeding 5% or 10% of a concentration measure. Second, if an entity proposes to purchase several specialist units that, combined into one unit, account for more than 5% of 10% of a concentration measure, the acquisition would be reviewable under the proposed rule. Finally, a third party's contemporaneous purchase of two or more units which are kept operationally separate, but when viewed together would cross a 5% or 10% concentration measure, would be reviewable under the policy.[11]

The Exchange has stated in it filing with the Commission that the proposed rule change is designed to provide the Exchange with a mechanism for reviewing proposed mergers, acquisitions and other combinations between or among specialist units that may lead to a level of concentration within the specialist community that is detrimental to the Exchange and the quality of its markets. The Exchange believes that undue concentration may undermine its agency/auction process, accentuate specialist complacency, and damage the public's preception of the Exchange as a free market environment. The proposed policy seeks to strike an appropriate balance between the perceived harm from undue concentration and the need for some specialist organizations to grow and attract capital through combinations. The NYSE believes the policy offers a structured approach for reviewing proposed combinations that raise concentration-related issues. The NYSE asserts that when taken together with its existing policy for reviewing combinations, the new policy will establish a three-level approach for overseeing an orderly evolution of the specialist system without unnecessarily restricting combinations that do not result in undue concentration or otherwise have an adverse impact on market quality.[12]

In its filing, the NYSE has indicated that the basis under the Act for the proposed rule change is section 6(b)(5).[13] The NYSE notes that with the policy it will be able to monitor tendancies toward concentration in the specialist community and intervene to prevent undue concentration. In its filing, the Exchange also indicates that the proposed rule change will not impose any burden on competition inconsistent with Section 6(b)(8) of the Act and, in fact, create a mechanism that will help assure competition among specialist units. According to the NYSE, its principal concern from a concentration standpoint is that the transformation of the specialist community into fewer and larger units might vitiate the competition among existing specialist units and present a significant barrier to new entrants to the specialist business, all to the detriment of the competition for the allocation of new listings. Accordingly, the NYSE believes the proposal will serve to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest. Finally, the NYSE contends that the proposed rule change is consistent with section 11A(a)(1)(C), which states Congress' finding that fair competition among brokers and dealers serves and fosters the public interest, investor protection and fair and orderly markets.

## IV. Discussion

The Commission does not believe that consolidations among specialist units are inherently harmful and believes that in many situations they can, in fact, be beneficial, particularly for those units with limited capital.[14] Nevertheless, the Commission recognizes the NYSE's concern that undue concentration can have negative effects on market quality by, among other things, hampering competition among specialists and reducing incentives for specialists to provide better markets.[15]

Furthermore, we recognize that, as specialist concentration increases, the continued financial and operational vitality of any one unit will have increased importance on the overall quality of the NYSE's markets and the specialist systems as a whole. Accordingly, although the NYSE has indicated that its proposed policy does not derive from an assessment that the specialist business is unduly concentrated at the present time, the Commission believes it is appropriate for the NYSE to adopt a policy that authorizes it to monitor specialist combinations to determine their impact upon the competitive environment necessary to maintain an orderly market.[16]

We have carefully reviewed the NYSE's proposed policy. The Commission initially believes that the factors identified in the NYSE policy for reviewing specialist combinations are adequately designed to result in approval of proposed combinations which will not have an adverse impact on market quality or result in undue concentration. For example, under the policy, the Exchange will analyze, among other things, the combination's potential effect on market quality and overall concentration of specialists on

[10] In this regard, the Commission notes that it recently approved a proposed rule change submitted by the NYSE that would amend NYSE Rule 98 to ease restrictions imposed on approved persons or member organizations affilated with specialists or specialist units in order to facilitate entry into the specialist business by retail broker-dealers and other entities. Under the Rule, approved persons must establish an organizational separation or a "Chinese Wall," between itself and the associated specialist unit in conformity with certain guidelines to be exempt from various Exchange restrictions which would otherwise render such an acquisition impracticable. *See*, Securities Exchange Act Release No. 23768 (November 3, 1986), 51 FR 41183 (November 13, 1986).

[11] For example, if a full service broker-dealer bought two specialist units, one with 4% of all allocations and the other with 3%, this would constitute a combination subject to review. Likewise, if a full service broker-dealer that already owned one specialist unit with 7% of all allocations bought another unit having 2% of all allocations, this would be reviewable under the proposed policy because it is a combination of specialist units crossing the 5% threshold percentage. In contrast, if a full service broker-dealer that had no affilated specialist units bought a unit having 11% of all allocations, this purchase would *not* be a combination reviewable under the proposed policy.

[12] The three levels consist of the NYSE's current review policy which would apply to those combinations that neither cross the 5% or 10% threshold, *see*, note 6, *supra*, and two proposed reviews for combinations exceeding the 5% and 10% thresholds.

[13] 15 U.S.C. 78f(b)(5).

[14] We agree, for example, with the NYSE's claim that consolidations can benefit the quality of markets because larger units, with greater capital, manpower, and back office resources may be better equipped to handle volatile stocks.

[15] In this regard, we note that the Commission has previously indicated that it would be concerned if a structural change in the market were likely to lead to increased concentration and it was reasonably forseeable that such concentration was likely to lead to reduced competition within the securities industry. *See*, order approved NYSE Amendments to Rule 98, *supra* note 10.

[16] We note that, in its filing, the NYSE expressed concern that several "environmental" factors make it likely that specialist organizations may choose to acquire additional capital and resources through further combinations in the future, and therefore a policy to take into account concentration effects should be developed at this time.

the Exchange floor, and whether the combination will strengthen the capital base for the resulting unit, minimize the potential for financial failure, and increase operational efficiencies. The Commission believes that these and the other factors in the policy will enable the NYSE to identify those combinations that can be potentially harmful to market quality and actually decrease competition.

In this regard, the Exchange has specified those criteria under the proposed policy which it believes focus on combinations harmful to market quality. Most notably, the criterion of whether constituent specialist units have demonstrated a "commitment to the Exchange market" has been amended to clarify its potential scope. Under this criterion, evaluation of proposed combinations will be limited to the constituent's past conduct involving Exchange related activity rather than conduct in another marketplace. In the case where the combination involves an organization that has not been a specialist unit, however, the NYSE's assessment of the organization's commitment to the Exchange market would be based upon an analysis of the organization's plans for operating the combined units to determine whether it intends to operate the new specialist unit in a manner consistent with the relevant criteria.[17] This will ensure that new entrants to the specialist community will not be penalized for their lack of experience in the specialist business.

Although the Commission believes that the proposal will provide the NYSE with a means to review combinations that would increase concentration among specialist units, the Commission believes that the 5% and 10% threshold percentages raise certain concerns. Because the NYSE would be permitted to disapprove proposed combinations based upon their potential concentration effects, it is important to determine whether the 5% and 10% thresholds are appropriate measurements of potentially harmful concentration. This concern is particularly applicable to those combinations exceeding the 10% threshold, where the constituent firms would have to overcome the presumption that the proposed combination would result in a level of business harmful to the specialist community.

Nevertheless, the NYSE has selected concentration levels which most of its specialist units do not reach by themselves.[18] Thus, many potential combinations might not reach the 5% threshold, while most probably would not reach the 10% level. Accordingly, in light of the legitimate concentration concerns the NYSE has identified, the Commission believes that it is consistent with the Act for the NYSE to implement the proposed review on a pilot basis.

As noted above, the NYSE has requested accelerated approval of the proposed rule, pursuant to section 19(b)(2) of the Act, for a six month pilot period. The Exchange has indicated that there is good cause for accelerated effectiveness because it is necessary to reconcile (a) the Exchange's determination that combinations between specialist units must be analyzed for their impact on concentration with (b) specialist units' desire for timely processing of proposed combinations. The NYSE lifted its moratorium in connection with the present rule filing so that proposed combinations could be reviewed under the new criteria. According to the Exchange, it could receive new proposals at any time which raise concentration concerns and, yet, must be considered expeditiously. A delay in action by the Commission in order to receive and consider additional comments on the proposed rule change could result in delays in the Exchange's processing of combination proposals that would be inimical to the proposed combination from a business standpoint. At the same time, accelerated effectiveness of the proposed rule change will not require the Commission to forego thorough consideration of, and public comment on, the proposed policy.

The Exchange anticipates that it will file a second proposed rule change requesting permanent approval of its six month pilot program in advance of the pilot's expiration date.[19] The NYSE states that the rule filing will include a discussion of any experience the Exchange has had in the application of its policy, which may aid the Commission in its consideration of whether to grant permanent approval to the proposal. The Commission expects that the NYSE filing will contain a thorough analysis of the basis for the chosen threshold levels and for the use of a presumption against a combination at the higher threshold level.

For the reasons discussed above, the Commission has determined to accelerate the approval of the NYSE's proposal. Because the NYSE intends to file for permanent approval prior to the conclusion of the pilot, the Commission will be able to fully analyze all aspects of the proposal, consider any comments received during the pilot period, and determine, pursuant ot the Act, whether the policy should be approved, disapproved or modified.[20] Accordingly, the Commission will have a full opportunity to analyze, among other things, the threshold concentration levels of 5% and 10% that trigger a QOMC review under the new policy. As the Exchange indicated above, its experience in implementing its specialist merger policy during the pilot period can be useful in the Commission's consideration of whether the pilot should be approved on a permanent basis or modified in some manner.

## IV. Solicitation of Comments

Because the NYSE proposal raises competitive, procedural, and substantive issues, the Commission is soliciting comments on all aspects of the proposal. In particular, commentators may wish to focus on some of the following questions:

(1) Does concentration within the specialist community pose a threat to the quality of the Exchange's markets and to the investing public? If so, is the level of concentration within the specialist community at the NYSE approaching a level where action must be taken to avoid such concentration?

(2) What effect will the proposed rule change have on (a) competition among specialist units and (b) new entrants to the specialist business?

(3) Are the threshold percentage of 5% and 10% adequate (too high or low) to meet the NYSE's needs to avoid undue concentration within the specialist community without unduly burdening specialist firms?

(4) Are the standards to be used by the QOMC in its review of proposed combinations adquate or, conversely, burdensome? Is the evidentiary standard required by proposed

[17] *See*, Notes 8 and 9, *supra* and accompanying text. The Commission emphasizes that the NYSE's proposal would not permit the NYSE to weigh against a particular firm its activities in other markets. Thus, a firm's decision to route customer orders to another market or to make markets in NYSE listed securities on another exchange or in the over-the-counter market would be irrelevant to the NYSE's review.

[18] Indeed there are currently only three specialist units registered on the Exchange that specialize in more than 5% of the Exchange's 1,560 listed common stocks. One of the three firms specializes in 8.5% of all stocks listed on the Exchange.

[19] The Commission expects that this filing will be made at least 45 days prior to the expiration date so that no further extensions will be required prior to providing additional opportunity for public comments.

[20] The Commission's determination will be governed by the standards in the Act, its review of the comments received, and its evaluation of the experience of the Exchange and its members during the pilot period.

combinations that cross the 10% threshold too restrictive or is it appropriate in light of the higher concentration level?

(5) Does the proposed rule change cover an appropriate range of combinations between specialist organizations?

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. Copies of such filing also will be available for inspection and copying at the NYSE. All submissions should refer to the file number in the caption above and should be submitted by June 11, 1987.

## V. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6. In this regard, we believe that the proposal is consistent with section 6(b)(5) of the Act in that it identifies a special level of review for combinations that could impair market quality to the detriment of investors and the public interest.

As noted above, the Commission also finds good cause for approving the rule change prior to the thirtieth day after the date of publication of notice thereof, in that it will avoid undue delays in NYSE's consideration of specialist mergers, while at the same time providing the Commission with an opportunity to solicit full public comment and observe the policy in practice prior to making a determination on permanent approval.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referred to above be, and hereby is approved.

For the Commission, by the Division of Market Regualtion, pursuant to delegated authority,[21]

Dated: April 29, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10421 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-24431; File No. SR-OCC-86-16]**

## Self-Regulatory Organizations; Options Clearning Corp.: Order Approving Proposed Rule Change

On July 31, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") concerning late submission of exercise notices. The proposal would enable specified senior officers of OCC to authorize certain late filings, revocations, or modifications of option exercise notices, for the purpose of correcting *bona fide* errors by OCC clearing members or their exchange-member customers. The Commission published notice of the proposal in the **Federal Register** on August 8, 1986.[1] No public comments have been received. On April 13, 1987, OCC amended the proposal to require, among other things, clearing members to explain, in writing, the reasons for late exercise notice submissions; to revise late exercise notice filing fees; and to clarify that late exercise notice filings, under certain circumstances, may be deemed to be violations of OCC's procedures. This order approves the proposal.

## I. Description

The proposal rule change would amend OCC Rule 801 to permit OCC, in its discretion, to allow clearing members to file, revoke, or modify exercise notices after the 7:00 p.m. deadline prescribed in OCC's rules, for the purposes of correcting *bona fide* errors. The proposed rule change would delegate authority to accept such exercise notices to OCC's Chairman of the Board of President (or, in their absence, any Executive Vice President). Whether to accept such exercise notices would be solely within the officials's discretion, subject to that official's judgment that notwithstanding the filing, OCC can complete its nightly processing cycle. Assuming OCC accepts the filing, the proposed rule change would require the requesting clearning member to pay a late filing fee [2] (which may be remitted in certain circumstances) [3] and to explain, in writing, within two business days, the reason for the late filing.[4] Finally, the proposed rule change would authorize OCC to discipline, in appropriate cicrumstances, clearing members who submit late exercise notices for purposes other than correcting *bona fide* errors.[5]

## II. OCC's Rationale

OCC believes that the proposal is consistent with Section 17A of the Act because it would further the public interest by adopting a more flexible system for correction of exercise notices, thereby reducing the potential for clearing member lossess due to errors and omissions in exercise activity. As stated in its filing OCC believes that it is appropriate to permit clearing members to correct *bona fide* errors after the 7:00 p.m. deadline, provided OCC can complete its nightly processing on a timely basis and clearing members do not abuse the opportunity affored under the proposal. OCC notes that the 7:00 p.m. deadline was established for operational considerations and that the first step in OCC's night processing cycle is to edit clearing member input. Indeed, OCC states that, as a practical matter, it ordinarily could process corrections received during the editing process, without substantial difficulty. Nevertheless, OCC's ability to accept a post-deadline correction would depend on: (1) Its volume of work scheduled for processing, (2) the presence or absence of operational problems, and (3) how late OCC receives corrected data.

Thus, while, as a general principle, OCC favors continued enforcement of its 7:00 p.m. filing deadline, OCC also believes that its officers should have the discretion to make exceptions to the 7:00 p.m. deadline, where practicable, on a case-by-case basis.

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[21] 17 CFR 200.30-3.

[1] Securities Exchange Act Rel. No. 23492 (August 1, 1986), 51 FR 28645.

[2] For notices submitted to OCC from 7:00 to 8:30 p.m. (Central Time), OCC would impose a late fee of $10 per options contract, subject to a minimum of $500 and a maximum of $2,500 per exercise notice. For exercise notices submitted from 8:31 to 10:00 p.m., the fee would be $5,000; from 10:01 to 11:00 p.m. the fee would be $7,500; and for the notices submitted after 11:01 p.m. the fee would be $10,000.

[3] *See* OCC Rule 801(e)(5). The proposal would authorize the OCC's Board of Directors to remit, in whole or part, any late fee imposed under subparagrah (e)(2), if the Board should determine, in its discretion, that: (1) Such late fee resulted from circumstances beyond the clearing member's control, or (2) equity requires remittance.

[4] *See* OCC Rule 801(e)(3). The clearing member must file its written explanation with OCC and each national securities exchange trading the affected option.

[5] See OCC Rule 801(e)(4).

OCC believes that the proposed fees for late filing are reasonable for three reasons. First, the proposed fees would compensate OCC for both the added costs of developing special systems to accommodate late filings and for the added expenses of the extra processing runs. Secondly, the proposed fees would limit the use of OCC's late filing procedures to cases involving substantial losses to its members. Finally, the proposed fees would encourage care by its members in filing the exercise notices.

OCC recognizes the potential for abuse of exercise notice filing procedures and, as explained in its filing, believes that requiring clearing members to file written explanations, with OCC and each affected exchange, will facilitate review of late filings to detect such abuse. OCC notes, for example, that because the exercise settlement amount for index options is based on the closing index value on the date of exercise, news developments after the 7:00 p.m. deadline could create an incentive for holders either to file late exercise notices or revoke notices previously filed. Accordingly, OCC believes it is appropriate to provide explicit authority to discipline clearing members who use the opportunity afforded by the proposal for purposes other than correcting *bona fide* errors.

### III. Discussion

The Commission believes that OCC's proposal is consistent with the Act. As discussed below, the Commission believes that the proposal is designed to ensure continued timely and accurate processing of exercise notices by OCC while adding flexibility to enable clearing members to submit exercise notices, corrections, or revocations after OCC's 7:00 p.m. deadline. Accordingly, the Commission is approving OCC's proposed rule change.

The Commission believes that clearing members and their options exchange-member customers [6] should be afforded some flexibility in filing exercise notices or correcting *bona fide* errors in appropriate circumstances. Indeed, as OCC notes in its filing, OCC's first step in processing exercise notices is to edit clearing member input, among other things, to ensure uniform record format and to reject unintelligible data.

The Commission notes that the proposal specifically makes completion of OCC's nightly processing the primary consideration when clearing members submit late exercise notices. The Commission agrees that completion of OCC's nightly processing schedule should remain its primary consideration and that OCC should accept corrections of exercise notices only where, in the judgement of its officers, the corrections would not unreasonably interfere with OCC's normal processing schedule.

The Commission believes that OCC's proposal appropriately is designed to require clearing members to document to OCC and interested exchanges are reasons for late exercise notice submission or corrections. The proposal requires any clearing member who submits a late correction notice to file with OCC and each exchange trading affected options a memorandum within two days explaining what caused the error. The Commission believes that this requirement would alert clearing members' management and, where appropriate, exchange examiners to potential operational or other problems related to options processing. Moreover, the absence of an adequate explanation of *bona fide* errors might justify OCC or exchange disciplinary action.[7] The files of such memoranda also would serve as useful records in future examinations of clearing members by self-regulatory organizations and Commission examination of these self-regulatory organizations.

The proposal provides that late exercise notice filings, in appropriate cases, may be deemed violations of OCC's procedures justifying disciplinary action under OCC's disciplinary rules. The Commission believes that such a provision is necessary in the event a clearing member abuses OCC's late filing procedures by, for example, repeated late filings or by using late filings to profit from changes in securities prices. The Commission agrees that, in the public interest, OCC should have the authority to bring disciplinary proceedings in such cases. Indeed, the Act requires OCC to discipline its members appropriately for violations of OCC's rules. Any disciplinary action taken by OCC would be subject to OCC's due process procedures.[8]

Finally, the Commission believes that the proposed late filing fees are consistent with the requirement that OCC's rules equitably allocate dues, fees and other charges. The Commission believes these fees are reasonable charges in that the fees are designed to: (1) Cover the capital costs of establishing the systems necessary to process late filings; (2) cover the operational expenses attributable to the additional use of personnel and equipment; (3) provide a disincentive to carelessness by clearing members and minimize the number of late filings; and (4) encourage the use of late filings only in instances involving substantial dollar amounts.

### IV. Conclusion

For the reason stated above, the Commission finds that the proposed rule change is consistent with the Act. In particular, the Commission finds that the proposed rule change is consistent with section 17A and the rules and regulations applicable to clearing agencies.

Accordingly, it is therefore Ordered, under section 19(b)(2) of the Act, that the proposed rule change be, (File No. SR–OCC–86–16) and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to obligated authority.

Dated: May 6, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–10830 Filed 5–11–87; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations: Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 6, 1987.

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:

Hard Rock Cafe PLC

American Depositary Shares (File No. 7–9917)

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[6] The rules of options exchanges provide deadlines for their members' acceptance of customers' options exercise notices. Accordingly, the Commission believes that, under the proposed rule change, only OCC clearing members and their non-public customers (*e.g.* options market makers) would be able to modify exercise notices after 7:00 p.m.

[7] Although OCC would not have direct authority over options markets makers that are not OCC members, the requirement that the memorandum be sent to options exchanges would enable those exchanges to monitor their members use of OCC's late filing procedures.

[8] The Commission notes that the proposal authorizes OCC's Board to remit, in whole or in part, any late filings fee if the Board should find either that: (1) The filing was caused by circumstances beyond the member's control, or (2) equity requires the fee's remission. The Commission believes that this provision is consistent with the Act in that it would enable OCC to prevent the undue imposition of late charges.

Par Pharmaceutical, Inc.
Common Stock, $.01 Par Value (File No. 7–9918)

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 May 27, 1987, written data, views and arguments concerning the above-referenced application. 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 application 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 the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–10829 Filed 5–11–87; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–24432; File No. SR–PHILADEP 87–01]**

## Self-Regulatory Organizations; Philadelphia Depository Trust Co.; By-Law Change Governing the Composition of the Board of Directors; Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1987, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change reflects the amendment of By-Law Article IV, section 2 of the Philadelphia Depository Trust Company governing composition of the PHILADEP Board of Directors.

The following is the full text of the proposed rule change. (New language is *underscored.*)

**Philadelphia Depository Trust Company By-laws**

* * * * *

*Composition of Board of Directors*

Sec. 2(a) * * *

(d) At least a majority of the number of directors authorized to serve shall be governors of the exchange. *Solely for the purpose of determining this majority, the President of the Corporation shall be counted as an exchange governor.* At least a majority of the number of directors authorized to serve shall be participants or general partners or officer of participants in the Corporation. There shall be included in the classification of directors who are associated with participants, persons who are not governors of the Exchange

* * * * *

### II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements:

*(A) Self-Regulatory Organizations's Statemetns of Purpose of, and Statutory Basis for, the Proposed Rule Change*

As a wholly owned subsidiary of the PHLX, PHILADEP traditionally has had close ties with its Exchange parent. One close tie has been that at least a majority of the number of directors authorized to serve on PHILADEP's Board shall be Board governors of the Exchange.

The rule change reflects the nationwide growth of PHILADEP and its increasing expansion to participants that do not necessarily have an affiliation with the Exchange. These new participants include, among others, major banks and trust companies.

The rule changes, therefore, provides the flexibility to more accurately reflect the changing composition of those who utilize PHILADEP's facilities while still ensuring an adequate PHLX voice in PHILADEP's goverance in light of the Exchange's continued close and substantial nexus with the Depository. Functionally, the rule change will authorize PHILADEP's President, who is not a PHLX Board governor, to be counted as an Exchange governor solely for satisfying the requirement that a majority of PHILADEP directors be Exchange governors. In this regard, the PHILADEP President will not have any position, voting or other functional authority with respect to the PHLX Board. The rule change would permit an additional person who is not an Exchange governor to be a director on the PHILADEP Board.

In fully registering PHILADEP as a clearing agency registered under the Exchange Act in 1983, the Commission carefully reviewed PHILADEP's By-Laws and rules to ensure their compliance with the Act. In particular, the Commission examined whether PHILADEP's By-Laws ensured fair representation of PHILADEP's participants in the selection of directors in accordance with section 17A(b)(3)(C) of the Act. Cognizant that many clearing agencies were directly affiliated with exchanges, the Commission was concerned that a meaningful opportunity exists for those other than Exchange members to be represented in the selection of the board of directors, particularly as more categories of participants join the clearing agency.

Accordingly, while the Commission permitted the PHILADEP By-Law requirement that a majority of PHILADEP's directors be PHLX governors, the Commission stressed the importance of PHILADEP's establishment of board of director nominating committees that consist of participants that are charged with the responsibility of assuring fair representation for a cross-section of participants.

In view of the above, the current By-Law amendment is consistent with the Fair Representation standards of the Act. The amendment, if approved, provides PHILADEP's director nominating committee the flexibility of adding representation to the Board from new categories of users and participants that are not necessarily members of, or affiliated with, the Exchange. Moreover, such representation is critical in order for the Depository to comply with its obligations under section 17A(b)(4)(F) of the Act which include, fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and avoiding unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PHILADEP does not believe that the rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.*

Comments on the proposed rule change have not been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the propose rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submision, 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 PHILADEP. All submissions should refer to File Number (SR-PHILADEP-87-01) and should be submitted within (21) days after the date of the publication in the **Federal Register.**

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 6, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10834 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-24422; File No. SR-SCCP-87-01]**

## Self-Regulatory Organizations; Stock Clearing Corp. of Philadelphia; Filing and Order Granting Accelerated Approval of Proposed Rule Change

On April 24, 1987, the Stock Clearing Corporation of Philadelphia ("SCCP") filed a proposed rule change with the Commission under Rule 19b-4, promulgated under the Securities Exchange Act of 1934 (the "Act"), to authorize SCCP's President to be counted as an Exchange governor solely for the purpose of satisfying the By-law requirement that a majority of SCCP's directors be Exchange governors. The Commission is publishing this Order to solicit comment on the proposed rule change. In its filing, SCCP requested approval of the proposal on or before May 4, 1987, in order to ensure its timely implementation by the May 4, 1987 election of the new SCCP Board of Directors. This Order approves the proposal on that basis.

**I. Description**

SCCP's By-laws require that a majority of is Board of Directors shall be governors of the Philadelphia Stock Exchange, Inc. ("PHLX").[1] The proposal would amend SCCP's By-laws to allow SCCP's President to be counted as an exchange governor for the purpose of determining this majority. This rule change would permit an additional person who is not an Exchange governor to be a director on the SCCP Board and still meet the requirement imposed by the By-laws that a majority of directors authorized to serve on SCCP's Board are Exchange Board governors.

**II. SCCP's Rationale**

SCCP states in is filing that the purpose of the proposal is to provide SCCP's Board of Directors with the flexibility to more accurately represent the changing composition of those who utilize SCCP's facilities while still ensuring an adequate PHLX voice in SCCP's governance. This amendment provides SCCP's director nominating committee with the flexibility to add a representative to the Board who is not affiliated with PHLX.

SCCP requested accelerated effectiveness pursuant to section 19(b)(2) to ensure its timely implementation with respect to the May 4, 1987 annual election of new SCCP Board of Directors.

**III. Solicitation of Comment**

Interesed persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission 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, 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to file number SR-SCCP-87-01 and should be submitted by May 12, 1987.

**IV. Discussion**

The Commission believes that the proposal is consistent with the Act and, in particular, the requirement that SCCP's rules generally provide fair representation of the interests of shareholders and of a cross-section of the community of participants.[2] The Commission is concerned that a meaningful opportunity exists for non-exchange members to be represented in the selection of a clearing agency's board of directors, particularly as more categories of participants join the clearing agency. The proposal achieves this goal by facilitating the addition of a participant who is not an Exchange governor to SCCP's Board.

The Commisson believes this proposed change in the By-laws may be granted accelerated approval pursuant to section 19(b)(2) of the Act because its purpose is to achieve fair representation of a cross-section of SCCP's participants, a stated goal of the Act. The Commission believes this proposal should be effective immediately to allow SCCP to implement this change in time for the May 4, 1987 SCCP Board of Directors election.

**V. Conclusion**

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

[1] Stock Clearing Corporation of Philadelphia By-laws, Article IV, Section 2.

[2] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983).

The Commission finds good cause for approving the proposed rule change on an accelerated basis before the thirty-fifth day after notice of the proposed rule change appeared in the **Federal Register.**

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–87–01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–10835 Filed 5–11–87; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD 87–036]**

### Chemical Transportation Advisory Committee Meeting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Chemical Transportation Advisory Committee (CTAC). The meeting will be held on Tuesday, June 16, 1987 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m.

The agenda for the meeting follows:

1. Call to order.
2. Opening remarks.
3. Committee organization.
4. Nomination of Chairman.
5. Suggested Work Program:

a. Vessel and facility regulations implementing Annex II of MARPOL 73/78;

b. Vapor recovery systems employed in the transfer of volatile organic compounds to tank ships and tank barges;

c. Regulations for tank barges carrying dangerous liquid chemicals (46 CFR Part 151);

d. Carriage of coal in bulk;

e. Filling limit requirements for liquefied gas carriers;

f. Implementation of occupational health and safety study recommendations;

g. Regulations for handling of explosives or other dangerous cargoes within or contiguous to waterfront facilities (33 CFR Part 126); and

h. Safety and pollution aspects for the carriage of bulk chemicals on offshore support vessels.

5. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

**FOR FURTHER INFORMATION CONTACT:** Commander R.W. Tanner or Mr. R.H. Trainor, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC, 20593, (202) 267–1577.

Dated: May 7, 1987.

**J.W. Kime,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 87–10754 Filed 5–11–87; 8:45 am]

BILLING CODE 4910–14–M

## Federal Aviation Administration

**[Summary Notice No. PE–87–8]**

### Petition for Exemption; Summary of Petitions Received and Dispositons of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before: June 1, 1987.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 6, 1987.

**Leonard R. Smith,**

*Manager, Program Management Staff.*

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25189 | Parachute Center | § 105.43(a) | To allow the jump masters, instructors, and pilots of the Parachute Center to make training jumps wearing a dual harness and dual parachute pack having at least one main parachute and one approved reserve parachute packed as required. |
| 25241 | Rolls-Royce plc | §§ 145.73(a) and 43.3(a) | To allow Rolls-Royce Repair and Overhaul Facilities in the United Kingdom to work on and approve products for return to service on U.S. registered aircraft regardless of base or area of operation. |
| 25186 | H & S Aviation Limited | § 145.73 | To allow H & S Aviation Limited to repair and overhaul Rolls Royce Dart engines, their accessories and associated units in Fokker F27 aircraft operated by Horizon Air. |

PETITIONS FOR EXEMPTION—Continued

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25205 | Envergreen International Airlines INC (HOOVER) | 91.213(A)(2) | Would permit Mr. R.A. Hoover to perform certain single-pilot operations during Acrobatic Flight Demonstrations in North American Sabreliner, NA265-40, Serial number 282-027, Registration Number 61RH. |
| 23908 | Piedmont Airlines Inc. | § 121.371(a) and 121.378 | To allow Piedmont Airlines to purchase components and services from original equipment manufacturers in support of its Boeing 767-200ER aircraft. |
| 23800 | Simulator Training Inc | 61.63(d)(2) & (d)(3), 61.157(d)(1), 121.407(c)(1). | This amendemnt would allow certain practical test maneuvers and procedures to be performed in STI's Lockheed Electra L-188 training device in lieu of nonvisual simulator as stipulated in Appendix A Part 61, and extend the expiration date of Exemption No. 4295, as amended, to December 31, 1987. |
| 22690 | Boeing Commerical Airplane Company | § 61.57(c) | To allow certain pilots employed by Boeing to satisfy the general recent flight experience requirements of that section by alternate means. *Granted, April 17, 1987.* |

[FR Doc. 87-10705 Filed 5-11-87; 8:45 am]
BILLING CODE 4910-13-M

## Maritime Administration

**[Docket No. R-111]**

## Final Determination of Essential Trade Routes

**SUMMARY:** This Notice announces the consolidation of present essential trade routes and essential trade areas into eight essential trade routes (described below), in order to reflect more realistically the current pattern of vessel operations.

**FOR FURTHER INFORMATION CONTACT:** Edmond J. Fitzgerald, Director, Office of Trade Studies and Subsidy Contracts, Room 8117, 400 Seventh Street, SW., Washington, DC 20590, Tel. (220) 366-2400.

### Final Determination of Essential Trade Routes

Under section 211(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1121), "[t]he Secretary of Transportation is authorized and directed to investigate, determine, and keep current records of (a) The ocean services, routes, and lines from ports in the United States . . . to foreign markets, which are, or may be, determined by the Secretary of Transportation to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States, and in reaching his determination the Secretary of Transportation shall consider and give due weight to the cost of maintaining each of such steamship lines, the probability that any such line cannot be maintained except at a heavy loss, disproportionate to the benefit accruing to foreign trade, the number of sailings and types of vessels that should be employed in such lines, and any other facts and conditions that a prudent businessman would consider when dealing with his own business, with the added consideration, however, of the intangible benefit the maintenance of any such line may afford to the foreign commerce of the United States, to the national defense, and to other national requirements."

MARAD has considered these criteria. MARAD considers that the cost to the government of maintaining existing steamship lines (i.e., routes) is the cost of ODS. Total ODS accurals for FY 1984 were $288.5 million, to seven subsidized operators. U.S.-flag liners carried 21.5%, or 13.8 million tons, of the total liner trade. (Accruals for FY '85 were $295.2 million.) Several routes were abandonded during this time due to unprofitability of service.

In conjunction with this consideration, MARAD has also studied "the probability that any such line cannot be maintained except at a heavy loss disproportionate to the benefit accruing to foreign trade." This requires a balancing of the cost of maintaining service on certain routes against the benefit of having U.S.-flag service available to any such routes. MARAD beleives that FY '84 subsidies would have been used effectively if operators were allowed the freedom to serve broader trade routes, a possibility that would result from trade route redesignation.

The result of expanded service into the new routes would be to ensure maintenance of service on routes essential to foreign trade, while minimizing the loss resulting from operators serving less profitable or unprofitable narrow routes. Thus, more cargo would be carried per dollar of subsidy accrued. The benefits to the government would be an eventual reduction in subsidy outlays once operators were better able to operate on a competitive basis with non-subsidized U.S.-flag operators and with foreign-flag operators.

MARAD has attempted to examine "the number of sailings and the types of vessels that should be employed in such lines." Such an examination has proven to be problematic due to the inability to predict which operators might apply for expanded service, what types of expansion of service they might request, and what action the MSB will take on such applications. However, MARAD has examined: (1) Current U.S.-flag sailings under existing contracts; (2) and U.S. liner trade on the new routes versus U.S. liner trade under the existing routes; and (3) types of vessels deployed by U.S.-flag and major foreign-flag competitors in the U.S. liner trade (see Review). On the basis of this data, MARAD has concluded that consolidating existing trade routes would allow operators the opportunity to apply for expanded service on these routes, resulting in possibly increased numbers of sailings using existing types of vessels, and vessels planned to be produced.

This Notice announces and discusses the consolidation of existing essential trade routes and trade areas into eight essential trade routes (described below) in order to reflect more realistically the current pattern of vessel operations. A detailed discussion of the factors which led to the proposal to consolidate trade routes is contained in an agency September 1984 study "Reevaluation of U.S. Liner Trade Routes" ("Study"). This Study is available upon request. In addition, in compliance with MAO 560-9, MARAD has prepared a detailed economic review ("Review") of the sources and nature of the data used as the basis for this decision and the criteria to be applied in determining essentiality oil trade routes. The Review also is available upon request.

### *Summary of the Comments on the Notice of Intent To Redesignate Essential Trade Routes*

A Notice of Intent to Redesignate Essential Trade Routes was issued for comments on March 8, 1985 (50 FR 9532). It stated that the comment period was to close on April 22, 1985. However, due to requests from commenters, the comment period was extended to May 15, 1985. MARAD received ten comments,

shipment by feeder vessels, truck, or rail throughout the United States or foreign areas. The proposed geographic area concept largely reflects the growth in containerization in the liner trade, particularly the development of linehaul/feeder services. For example, Europe and the Mediterranean were combined because the Mediterranean is often served from Northern Europe by land and water feeder services.

Another factor that affects the existing trade route system is the decrease in the number of liner operators from nineteen in 1958 to eight today (excluding Central Gulf, and CCT which operate extensive foreign-flag services; PRMSA and Matson which are domestic trade operators). With fewer companies and fewer but more efficient vessels, the existing narrowly defined trade routes impede an operator's ability to adapt to changing trade patterns. One commenter argued that a redesignation was unnecessary because trade flows change slowly, and operators can adapt to such changes under the existing trade route system. However, an example of a rapid change in trade flow is one that occurred in 1976–77 due to the sharp increase in U.S. exports to the Middle East. Some ODS liner operators were unable to respond to the increase in trade in this area because of their narrowly defined trade routes.

Further, MARAD believes that the numerous former trade routes avoided recognition of the needed flexibility to serve ports on some routes that are now considered non-essential. The new trade route system would extend essential trade route status of several, presently non-subsidized trade routes. However, a majority of the currently non-essential routes are between the United States and Canada. These routes would still be considered non-essential. The U.S. shares a common land boundary with Canada and extensive, alternative modes of transportation are available to move liner-type cargoes between the two countries. Trade routes between Mexico and the U.S. are currently shared with other Central American countries and have both essential and non-essential status.

Pursuant to this Notice, the following non-essential trade routes would be embraced by the eight new trade routes:

U.S. Pacific/West Africa
U.S. Pacific/South and East Africa
U.S. Pacific/Mediterranean
U.S. Atlantic/W. Coast Central America and Mexico
U.S. Gulf/W. Coast Central America and Mexico
U.S. Great Lakes/W. Coast Central America and Mexico
Hawaii/Foreign
Puerto Rico/Foreign
Alaska/Foreign

While non-essential routes generally account for relatively small trade volumes by themselves, modern line haul feeder vessel operations are designed to maximize vessel utilization in trades where direct service may be too costly and, thus, impractical. Furthermore, as noted in the Study and the Review, the most successful U.S. and foreign-flag liner operators tend to deploy their vessels over a broad range of ports or markets. Even a seemingly insignificant trade can be an important part of an extensive line-haul feeder operation. Hapag Lloyd, for example, provided service, in 1984, from three U.S. West Coast ports and Puerto Rico to Guatemala, using ports in El Salvador, Costa Rica, Nicaragua and St. Thomas as transshipment centers. As another example in the same year, Sea-Land used the port of San Juan, Puerto Rico, to ship goods to the following countries: Costa Rica, Dominican Republic, El Salvador, Haiti, Guatemala, Honduras, Jamaica, Netherlands Antilles, Nicaragua, Panama and Trinidad. Under current trade route essentially designations, a U.S.-flag liner operator would not be able to serve the U.S. foreign trades from Puerto Rico and, at the same time, receive subsidy. In this second example, Puerto Rico has developed into a major shipping "hub" serving many Central American markets. In the first example, the operator serves one market through many different port areas.

MARAD recognizes that additional hub ports have developed and are likely to develop, even in port areas where trade volumes are currently low. Consequently, MARAD believes that it should be recognized under the section 211 redesignation that ODS operators need flexibility, to deploy their vessels to a broad range of ports. It is also important to recognize that not all cargoes moving through U.S. ports are of U.S. origin/destination. U.S. ports handle large amounts of foreign origin/destination cargoes which are increasingly important to U.S.-flag liner operators, that otherwise might depend solely on small volume and/or imbalanced trades.

Under the new trade route designation, U.S.-flag liner operators would be eligible to receive subsidy for "round-the-world" westbound and eastbound services by combining several of those routes. Again, the eight routes will exclude no U.S.-foreign trade, except as noted with Canada, as a liner essential service.

(c) *Elimination of U.S. coastal areas.* Some commenters contended that the elimination of U.S. coastal areas in the proposal would be inconsistent with section 809 of the Act which requires that contracts "shall be entered into so as to equitably serve . . . the foreign trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports . . ." [46 U.S.C. 1213). MARAD believes that this is not an issue in a section 211 determination, since section 809 applies to the consideration of the four coasts by the MSB in making contracts, while section 211 determinations are made by the Administrator. In addition, the eight trade routes would allow service from any of the four coastal areas without discriminating against any one area. While certain coasts may have more traffic than others, all coasts retain the same capability of carrying traffic under the consolidation.

Moreover, it should be noted that the one large non-subsidized operator, which is not restricted to serving certain coasts elects to serve the Gulf, Atlantic, and Pacific ports. MARAD believes that under the new trade route scheme, it is possible that fewer U.S. ports may be served, but that this is a result of allowing market forces to control. The development of major U.S. ports and complex inland transportation networks have made certain ports more attractive than others. Allowing operators the freedom to serve these ports would make both operators and ports more competitive and efficient.

(d) *Investigation supporting the proposed redesignation.* Several commenters expressed the view that MARAD did not undertake the type of detailed investigation mandated by section 211(a) of the Act, and by MAO 560–9, a MARAD internal order which sets forth the sources, nature of data required as a basis for and the criteria to be applied in determining the essentiality of trade routes. The smaller subsidized operators strongly criticized MARAD's failure to address the effect of the proposal on them.

MARAD believes it has fulfilled the mandate of section 211(a) by publishing its Study. The Study examined the existing trade routes and analyzed their inadequacy in light of changing conditions. It discussed a three-trade area alternative, and briefly addressed the competitive impact of consolidated trade areas on smaller subsidized operators (See study, p. 12). However, in response to comments, MARAD has prepared a more detailed analysis of the existing and proposed trade route systems in the form of the Review rather than revise the MARAD Study.

MAO 560–9, Manual of Procedures and Criteria for Determining the Essentiality of U.S. Foreign Trade Routes and Requirements for U.S. Flag Service, was issued by the Maritime Administration in March 1977 at the request of the Office of Audits, U.S. Department of Commerce.

In compliance with the MAO, the Review examines (among other factors) the following:

—U.S. as well af foreign-to-foreign trade patterns;
—U.S. flag participation in U.S. liner trades, and foreign to foreign trades;
—U.S. flag sailings under ODS contracts;
—U.S. liner trade on proposed routes vs. Existing routes (including U.S. flag participation);
—International economic conditions and projections, including impact of oil price decline, current account deficits and least developed country debt problems on liner trades;
—Preference trades (including military); and U.S. bilateral shipping agreements;
—Location of U.S. military installations overseas;
—Liner shipping markets including rates, capacity, demand, changes in fleet composition and shipping technology;
—U.S. liner trade on an origin and destination basis vs. port of loading and unloading, i.e., use of transshipment centers and feeder services by U.S. flag and major foreign flag operators; and
—Types of vessels deployed by U.S. flag and major foreign flag competitors in U.S. liner trade.

Among the alternatives to an eight trade route structure, a three trade route proposal is discussed in the NAO 560–9 Review and in the September 1984 study; Reevaluation of U.S. Liner Trade Routes (Section 211). In the September 1984 study, the three trade area scheme was presented in the context of liberalizing and deregulating subsidized vessel operations. The section 211 study noted that, as opposed to the three trade area scheme, the eight trade area scheme has the advantage of minimizing costs associated with adverse competition, protracted operator negotiations and hearings. Several of the shipping companies which responded to the **Federal Register** Notice of intent contended that the three trade area proposal was too broad and unrepresentative of trading patterns. Section 211 of the Merchant Marine Act, 1936, as amended (Act), begins: "The Secretary of Transportation is authorized and directed to investigate, determine, and keep current records of—(a) the ocean services, routes, and lines from ports in the United States, or in a territory, district, or possession thereof, to foreign markets, which are, or may be determined by the Secretary of Transportation to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States. . . ."

In the context of section 211, trade routes must reflect ocean services and routes. In considering the written comments and evaluating the operating patterns of the U.S.-flag and foreign-flag liner companies serving the United States ocean services, MARAD determined that the pattern of service for the liner companies did not conform to the three trade areas, Particularly Trade Area 3 which encompassed the East Coast of Central and South America, West Coast of Central and South America, South and East Africa, West Africa, and the Middle East and South Asia. However, MARAD determined that a consolidation to eight trade routes was valid and reflected the changes that had occurred in the liner services—mainly the extensive use of landbridge intermodal operations in the United States and the increasing use of line-haul/feeder/intermodal services in international trade. Moreover, based on the facts available and the overall comments MARAD believed that a consolidation to three broad trade areas did not reflect actual trade patterns with sufficient differentiation in accordance with the intent of section 211 of the Act. Thus, an eight trade route consolidation appear to meet the spirit and intent of section 211 better than the three trade route configuration.

The Review supports the determination that eight trade routes are essential to the promotion, development and expansion of the foreign commerce of the U.S.

3. Section 605(c) Issues

Most of the opponents expressed serious concern over the implications of section 605(c) of the Act (46 U.S.C. 1175(c)) on the proposed consolidation. Some believed that the Notice of Intent was unclear as to whether ODS contracts would be amended without section 605(c) proceedings. Section 605(c) states in relevant part:

> No contract shall be made . . . with respect to a vessel to be operated in an essential service . . . which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon . . . .

It is MARAD's understanding and it so states to all commenters that section 605(c) requirements will be observed before any amendment to any ODS contract to reflect the proposed trade routes. If any interested party requests a hearing under section 605(c) of the Act, and such hearing is appropriate, one will be scheduled. MARAD believes that it had made this clear in the Notice of Intent, which stated: "In order to accomplish these modifications [to ODS agreements], it is expected that the Board will rely upon the authority provided for in the Agreements which permit amendment by mutual consent, as well as its authority in sections 606(3), 204 and 605(c) of the Act, as may be applicable." (50 FR 9532, March 8, 1985). Past section 211 determinations uniformly indicated that any new services proposed due to a redesignation are subject to section 605(c) determinations.

One commenter suggested that MARAD redefine "existing service" to mean any prior operation allowed in its contract on a route now part of a trade area. MARAD believes that this cannot be done. MSB determinations regarding existing service are measured by actual experience and not contractual authority. *E.g., (Farrell Lines Inc.*, 19 SRR 1200 (MSB 1979).) On that basis, applications for expansion of service would be treated as requests for new service.

(a) *The Relationship between acequacy of existing service and a determination of essentiality.* Some commenters expressed confusion over how MARAD would determine adequacy of existing service in a section 605(c) proceeding. Opponents voiced concern that determinations of adequacy would be based on the expanded trade routes, rather than on existing trade routes, making it esier for applicants to prove inadequacy. Several commenters argued that certain trade routes are saturated already, but that expanding the base route into a larger trade route would absorb such a saturation. MARAD has analyzed the percentage participation on the former trade routes and on the new trade routes. For example, on Trade Routes 5–7–8–9 (U.S. Atlantic Coast/N. Europe), 27% of cargo carried is carried by U.S.-flag vessels. Allowing service to expand into new Trade Route (1) also results in 27% U.S.-flag service. In any case, determinations of adequacy are the province of the Maritime Subsidy Board in section 605(c) proceedings. As early as 1963 the Maritime Subsidy Board recognized the need to consider the concept of trade areas and flexibility of

service in determining adequacy of U.S.-flag service for the purpose of granting subsidy. In the American President Lines, Ltd—Atlantic/Straits Service proceeding (S–132 4 FMB 143, 166–7 (1963)), the Maritime Subsidy Board final opinion and order states:

It seems clear that this Board has the authority to look at a trade route or trade area as a whole or in parts as the circumstances of the application and the trade route indicate should be done. From our past decisions we have viewed a particular trade route in segments if the particular application indicated that was appropriate. In others we have viewed it as a whole. These differing approaches have been made when a realistic appraisal of the situation has demanded it. Consequently, we are of the opinion and so hold that in ascertaining the area by which to judge adequacy a realistic approach consonant with the surrounding circumstances must be the guiding standard.

World trade is changing and increasing. The nature of the foreign trade of the United States has changed very greatly indeed since the days in 1936 when our essential trade routes were first laid out. We review them annually but it is still in the context of the old patterns and perhaps without the full realization of the shift in nature and character of our overall foreign trade.

For these reasons the concept of a trade route as viewed by this Board and the staff of the Maritime Administration has been changing. We think more in terms of adequate service to a trade area than in terms of a rigid schedule to specific ports or a route. We are confident that the language of the Act and the legislative intent of the Congress permits this changing concept with the changing conditions. We also think in terms of greater flexibility of operations within a trade area based on the demands for cargo movement rather than on the basis of accumulated statistics which inevitably take time to gather.

It is our opinion that a concept of trade areas as opposed to tightly bound service descriptions provides needed flexibility in meeting the changing patterns of foreign trade and enables the subsidized operator not only to meet effectively the needs of U.S. exporters and importers but also to meet competition offered by foreign-flag steamship lines.

As long as the ship is serving an area and there is an absence of a showing that subsidy moneys are not being effectively and efficiently employed or that the subsidy moneys are not being unfairly used as between citizens of the United States, we are inclined to give that ship the privilege of calling where the trade requires. We have and will retain no more administrative safeguards than necessary to assure the wise and fair employment of the subsidy funds for the public purpose for which they were granted.

MARAD reiterates further that: (1) No amendment to a subsidy contract implementing the trade area concept shall increase (on a not present value basis) ODS payments over those that otherwise actually would be made under the existing contract taking into account all relevant factors (i.e., given current market conditions, actual payments would likely be less than the maximum allowable under the contract); and (2) this section 211 finding by the Administrator is limited to a determination of essentiality of trade routes, and does not address changes in contractual subsidized operations. It is not the intention of MARAD to increase the cost of existing contracts, as described above, by amending the operating authority of the existing ODS contracts. MARAD intends to adhere to the Administration's policy of not entering into new subsidy contracts, including the award of new contracts to operators not presently subsidized.

Pursuant to the authority granted in section 211 of the Act, the Maritime Administrator hereby determines the following trade routes to be essential to the foreign commerce of the United States: Between the United States (meaning the contiguous 48 United States, Alska, Hawaii, and U.S. territories and possessions (e.g. Puerto Rico, Virgin Islands, Guam, American Samoa) and:

| | Area served |
|---|---|
| Trade route number: | |
| (1) | Europe and Mediterranean. |
| (2) | Far East. |
| (3) | East Coast of Central and South America (including Caribbean). |
| (4) | West Coast of Central and South America. |
| (5) | South and East Africa. |
| (6) | West Coast of Africa. |
| (7) | Australasia (including Australia and Pacific Islands). |
| (8) | Middle East and South Asia. |

A detailed description of each area is set forth in the accompanying Appendix 1.

Dated: May 7, 1987.

By Order of the Maritime Administrator.

**James E. Saarl,**

*Secretary, Maritime Administration.*

[FR Doc. 87–10762 Filed 5–11–87; 8:45 am]

BILLING CODE 4910–81–M

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**[Docket No. R–112]**

## Maritime Subsidy Board; Invitation to Subsidized Liner Operators To Apply for Amended Subsidized Service Descriptions

The Maritime Subsidy Board (MSB), in conjunction with the issuance of the Maritime Administrator's Notice of Final Determination of Essential Trade Routes, hereby invites parties to existing liner operating-differential subsidy agreements (ODSA) seeking to amend their subsidized service in view of the eight new essential trade routes to apply to the MSB for amendment of their ODSA. The MSB will agree to no amendment to an ODSA implementing the new trade routes that would increase ODS payments over the most recent baseline, updated as necessary, as a result of those amendments.

Upon application of any subsidized liner operator to amend such operator's ODSA so as to conform such agreement to these essential trade routes, the MSB will rely upon the authority provided for in the ODSA for modification, as well as its authority under the Merchant Marine Act of 1936, as amended (Act).

Applications of any subsidized liner operator to amend such operator's ODSA will be published promptly in the **Federal Register** for comment. If any interested party requests a hearing under section 605(c) of the Act, and such a hearing is appropriate, one will be scheduled. The MSB gives notice that one or more consolidated hearings on such requests may be ordered, if it is determined that any consolidated hearing is feasible and would expedite processing of such application.

Any subsidized liner operator seeking to amend its ODSA should file an application pursuant to the provisions of 46 CFR 251.21 with the Secretary of the Maritime Subsidy Board, Maritime Administration, U.S. Department of Transportation, Room 7300, 400 Seventh Street, SW., Washington, DC 20590.

Dated: May 7, 1987.

By Order of the Maritime Subsidy Board.

**James E. Saari,**

*Secretary, Maritime Administration.*

[FR Doc. 87–10763 Filed 5–11–87; 8:45 am]

BILLING CODE 4910–81–M

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## National Highway Traffic Safety Administration

## International Harmonization of Safety Standards; Calendar of Meetings

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) will continue its participation during this year in the international meetings to harmonize U.S. and foreign motor vehicle safety standards. These meetings are conducted by the Group of Experts on the Construction of Vehicles (WP29) under the Inland Transport Committee of the United Nations' Economic Commission for Europe (ECE) and the six groups of Rapporteurs of

WP29. The NHTSA currently represents the United States in all of the rapporteur meetings except those on Pollution and on Noise.

**DATES:** For a list of scheduled meetings, see the Supplementary Information section of this Notice. Inquiries or comments related to specific meetings should be made at least two weeks preceding that meeting.

**FOR FURTHER INFORMATION CONTACT:** Francis J. Turpin, Office of International Harmonization (NOA-05), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC. 20590 (202 366-2114).

**SUPPLEMENTARY INFORMATION:** The following calendar represents meetings scheduled by the United Nations' Economic Commission for Europe. The meetings will be conducted by the Group of Experts on the Construction of Vehicles (WP29) under the ECE's Inland Transport Committee and the six groups of Rapporteurs of WP29. This calendar is published for information and planning purposes; the meeting dates and places are subject to change. NHTSA attendance at these meetings will be affected by agenda content, priorities and availability of travel funds.

*May 25-27, 1987*

Group of Rapporteurs on Lighting and Light-Signalling(GRE), Seventeenth Session—Geneva, Switzerland.

*June 3-5, 1987*

Group of Rapporteurs on Noise(GRB), Fourteenth Session—Geneva, Switzerland.

*June 22, 1987*

Ad Hoc Meeting on the Program of Work of WP-29, Thirty-Fourth Session—Geneva, Switzerland.

*June 23-26, 1987*

Group of Experts on the Construction of Vehicles(WP-29), Eighty-Second Session—Geneva, Switzerland.

*August 31-September 4, 1987*

Group of Rapporteurs on Pollution and Energy(GRPE), Sixteenth Session—Geneva, Switzerland.

*September 7-9, 1987*

Group of Rapporteurs on Brakes and Running Gear(GRRF), Twentieth Session—Geneva, Switzerland.

*October 19, 1987*

Ad Hoc Meeting on the Program of Work of WP-29, Thirty-Fifth Session—Geneva, Switzerland.

*October 20-23, 1987*

Group of Experts on the Construction of Vehicles (WP-29), Eighty-Third Session—Geneva, Switzerland.

*November 16-20, 1987*

Group of Rapporteurs on General Safety Provisions (GRSG), Fifty-First Session—Geneva, Switzerland.

*December 7-11, 1987*

Group of Rapporteurs on Passive Safety (GRSP), Second Session—Geneva, Switzerland.

The following meetings took place earlier this year.

*January 12-16, 1987*

Group of Rapporteurs on Brakes and Running Gear (GRRF), Nineteenth Session—Geneva, Switzerland.

*January 26-27, 1987*

Group of Rapporteurs on Pollution and Energy (GRPE), Fifteenth Session—Geneva, Switzerland.

*March 9, 1987*

Ad Hoc Meeting on the Program of Work of WP-29, Thirty-Third Session—Geneva, Switzerland.

*March 10-13, 1987*

Group of Experts on the Construction of Vehicles (WP-29), Eighty-First Session—Geneva, Switzerland.

*April 13-15, 1987*

Group of Rapporteurs on General Safety Provisions (GRSG), Fiftieth Session—Geneva, Switzerland.

*April 27-30, 1987*

Group of Rapporteurs on Passive Safety (GRSP), First Session—Geneva, Switzerland. **Note.**—This Group is a combination of the former Groups on Crashworthiness and Protective Devices.

[FR Doc. 87-10826 Filed 5-11-87; 8:45 am]
BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Bonds and Notes Eligible for Principal of Securities Program (STRIPS)

**AGENCY:** Bureau of the Public Debt, Fiscal service, Treasury.

**ACTION:** Amendments to offering circulars for Treasury bonds and notes eligible for STRIPS program to allow reconstitution.

**SUMMARY:** This notice is being published to announce that effective May 1, 1987, Principal and Interest Components of Treasury bonds and notes, eligible for, and held under, the Treasury's Separate Trading of Registered Interest and Principal of Securities program (STRIPS), may be reassembled into fully constituted securities.

**EFFECTIVE DATE:** May 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Rochelle F. Granat, Attorney-Adviser, Bureau of the Public Debt, Washington, DC (202) 447-9859.

**SUPPLEMENTARY INFORMATION:** The Department of the Treasury under authority of chapter 31 of title 31, United States Code, issued offering circulars for certain Treasury bonds and notes, which, by their terms and conditions, are eligible to be held in book-entry form as separate Principal and Interest Components. This notice amends the circulars to provide that securities previously or hereafter separated into their Principal and Interest Components may be reassembled into fully constituted securities, as set forth in this notice.

### Department of the Treasury, Office of the Secretary

[Amdts. to Dept. Circs., Public Debt Series Nos.: 29-84 (11⅝% Bond 2004), 34-84 (11⅝% Note C-94), 35-84 (11¾% 2009/14), 3-85 (11/¼% Note A-95), 4-85 (11¼% Bond 2015), 10-85 (12% Bond 2005), 13-85 (11¼% Note B-95), 21-85 (10¾% Bond 2005), 24-85 (10-½% Note C-95), 25-85 (10⅝% Bond 2015), 35-85 (9½% Note D-95), 36-85 (9⅞ Bond 2015), 4-86 (9⅜% Bond 2006), 7-86 (8⅞% Note A-96), 9-86 (9¼% Bond 2016), 17-86 (7⅜% note C-96), 18-86 (7¼ Bond 2016), 35-86 (7¼% Note D-96), and 36-86 (7½% Bond 2016)]

Washington, April 30, 1987.

Department of the Treasury Circulars, Public Debt Series Nos. 29-84, 34-84, 35-84, 3-85, 4-85, 10-85, 13-85, 21-85, 24-85, 25-85, 35-85, 36-85, 4-86, 7-86, 9-86, 17-86, 18-86, 35-86, and 36-86, are hereby amended, effective May 1, 1987, to redesignate in each circular Section 7 thereof as Section 8, with a new Section 7 added to read as follows:

7. *Reconstitution of Components Held in STRIPS*

7.1. Beginning on and after May 1, 1987, the Interest and Principal Components of securities separated and held under the Treasury's STRIPS program pursuant to Section 6 hereof may be restored to their fully constituted form.

7.2. The Principal Components and all related unmatured Interest Components of the securities must be submitted together for reconstitution.

7.3. Physical coupons, coupons held under the Coupons Under Book-Entry Safekeeping program (CUBES) and/or

cash payments may not be substituted for missing Interest Components or missing Principal Components.

7.4. The request for reconstitution of securities, accompanied by all the Components thereof, may be made on-line to the Federal Reserve Bank of New York by all depository institutions having that capability. Off-line requests should be transmitted through the Federal Reserve Bank of the district in which the depository institution is located. Following reconstitution, the securities will be transferred to the book-entry account of the depository institution from which the transaction request was received.

7.5. Any reconstitution request received by the Federal Reserve Bank of New York which is not complete, *e.g.*, it is not comprised of the necessary STRIPS components, will not be accepted.

7.6. The book-entry transfer of each Interest Component and its Principal Component will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

The foregoing amendments were effected under authority of Chapter 31, of title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

May 6, 1987.

[FR Doc. 87-10761 Filed 5-7-87; 3:52 pm]

BILLING CODE 4810-35-M

## VETERANS ADMINISTRATION

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

**SUMMARY:** The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

**DATE:** Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 6, 1987.

By direction of the Administrator,

**David A. Cox,**

*Associate Deputy Administrator for Management.*

**Reinstatement**

1. Department of Medicine and Surgery
2. Residency Application and Appointment Information
3. VA Form 10-2850b
4. The information is used to determine the qualifications and suitability of applicants for appointment as residents in VA medical care facilities
5. Non-Recurring
6. Individuals or households
7. 27,000 responses
8. 13,500 hours
9. Not applicable

[FR Doc. 87-10711 Filed 5-11-87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 91
Tuesday, May 12, 1987

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).

**FEDERAL ENERGY REGULATORY COMMISSION**

May 8, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

**TIME AND DATE:** May 15, 1987—
10:00 a.m. to 12:00 noon
1:30 p.m. to 3:30 p.m.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** In the morning session, the Commission will hear comments from the Electric Committee of the National Association of Regulatory Utility Commissioners (NARUC) on electric issues. In the afternoon session, the Commission will hear comments from NARUC's Gas Committee on natural gas strategy.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–10933 Filed 5–8–87; 3:36 pm]

BILLING CODE 6717-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 12:00 Noon, Monday, May 18, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 8, 1987.

**James McAfee,**

*Association Secretary of the Board.*

[FR Doc. 87–10932 Filed 5–8–87; 3:36 pm]

BILLING CODE 6210-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Friday, May 15, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Proposals regarding fees for examinations of Edge Act corporations, inspections of bank holding companies, and processing applications for banks and bank holding companies. (Proposed earlier for public comment; Docket No. R–0584)

2. Publication for comment of proposed guidelines for financial institutions to implement the Bank Bribery Amendments Act of 1985.

3. Any items carried forward from a previously announced meeting.

**Note.**—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 8, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–10877 Filed 5–8–87; 10:55 am]

BILLING CODE 6210-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** Approximately 11:00 a.m., Friday, May 15, 1987, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Request by the General Accounting Office for Board comment on a draft report regarding access to brokers services in the government securities market. (This item originally announced for a closed meeting on May 13, 1987.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 8, 1987.

**James McAfee,**

*Associate Secretary of the Board*

[FR Doc. 87–10878 Filed 5–8–87; 10:55 am]

BILLING CODE 6210-01-M

# Corrections

Federal Register
Vol. 52, No. 91
Tuesday, May 12, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DELAWARE RIVER BASIN COMMISSION

### 18 CFR Part 410

### Amendment of Comprehensive Plan and Water Code of the Delaware River Basin

*Correction*

In rule document 87-10004 beginning on page 16238 in the issue of Monday, May 4, 1987, make the following corrections on page 16239:

1. In the first column, the part number in the heading above amendatory instruction 1 should read "410".

2. In 2.1.6, in the second column, in paragraph (4), in the 11th line, "to" should read "the".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 262

[SWH-FRL-3157-8]

### Exception Reporting for Small Quantity Generators of Hazardous Waste

*Correction*

In proposed rule document 87-9909 beginning on page 16158 in the issue of Friday, May 1, 1987, make the following correction:

On page 16159, in the third column, in the third complete paragraph, the first sentence should read, "The generators would be required to mail the manifest copy if the return copy is not received within 60 days."

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[BERC-373-FN]

### Medicare Program; Lowest Charge Levels

*Correction*

In notice document 87-8803 beginning on page 12969 in the issue of Monday, April 20, 1987, make the following correction:

On page 12977, in the first column, in paragraph 63, "EO310" should read "EO305".

BILLING CODE 1505-01-D

federal register

Tuesday
May 12, 1987

Part II

# Department of Transportation

## Federal Aviation Administration

14 CFR Part 25

Low Fuel Quantity Alerting System; Notice of Proposed Rulemaking

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

**[Docket No. 25263; Notice No. 87-3]**

## Low Fuel Quantity Alerting System

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend the airworthiness standards for transport category airplanes by requiring a means to alert the flightcrew of potentially unsafe low fuel quantities. There have been several recent fuel depletion incidents involving loss of power or thrust on all engines that could have resulted in forced landings and injury or loss of life. Most of these incidents resulted from improper fuel management techniques. This proposal would require new transport category airplane designs to incorporate a low fuel quantity alert to the flightcrew that would allow either correction of certain fuel management errors or the opportunity to make a safe landing prior to engine fuel starvation.

**DATE:** Comments must be received on or before September 9, 1987.

**ADDRESS:** Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25263, 800 Independence Avenue SW., Washington, DC 20591, delivered in triplicate to: FAA Rules Docket, Room 915-G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 25263. Comments may be examined in Room 915-G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be examined in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Neil Schalekamp, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2135.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25263." The postcard will be date/time stamped and mailed to the commenter.

### Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

### Background

Section 25.955(b) of the Federal Aviation Regulations (FAR) requires an airplane fuel system that is designed to prevent interruption of fuel flow to an engine without attention by the flightcrew, when any fuel tank supplying fuel to that engine is depleted of usable fuel during normal operation, and any other tank that normally supplies fuel to that engine contains usable fuel. Although this requirement ensures that a continuous fuel supply is available during normal operation, it does not ensure a continuous fuel supply in all fuel-feed configurations.

With the development of more complex aircraft fuel systems and fuel management techniques, the need for a low fuel quantity alerting system has become evident. A review of transport airplane operational problems has revealed a number of fuel feed system depletion incidents. Five recent incidents involved the loss of power or thrust on all engines, and each had the potential for a catastrophic result. The causes of these incidents have included fuel quantity indication system service difficulties, inadequate preflight preparation, and flightcrew inattention to fuel management. In several of these instances, a low fuel level alerting system could have provided the flightcrew with the opportunity to take appropriate corrective action prior to engine fuel starvation. Additionally, the advent of electronic instruments has made possible direct-reading digital displays which, while they provide an accurate quantitative reading, may not provide sensory cues to the flightcrew that are as effective as those provided by analog displays. For example, analog displays facilitate rapid cross-checking of the fuel quantities in several tanks. Furthermore, the flightcrew's capability to effectively monitor fuel quantity is diminished in cockpit designs where the fuel quantity displays are in the pilot's overhead panel.

Many airplane designers have recognized that a low fuel quantity alerting system is a proper and desirable fuel system design, and some recently certificated airplanes have incorporated such a system.

Section 25.1305 of the FAR specifies the required powerplant instruments for transport category airplanes. These include a fuel quantity indicator for each fuel tank; however, there is currently no additional requirement to annunciate a low fuel state to the flightcrew. The proposed amendment would add a requirement for a cautionary alert to indicate low fuel quantity.

To preclude unintentional engine power loss due to fuel depletion resulting from fuel mismanagement or other causes while substantial fuel remains in the airplane, a low fuel alerting system would be required for any tank that normally should not be depleted of usable fuel. The FAA considers this approach to be appropriate because in using approved fuel management procedures, certain fuel tanks are expected to be depleted of

usable fuel with no resultant interruption of fuel to the engine. A low fuel cautionary alert on these tanks would be unnecessary and considered a nuisance. For example, fuel tanks that do not feed directly to engines or tanks with boost pump pressure which overrides boost pump pressure from other tanks and are normally emptied first need not have a low fuel alerting system. Therefore, the proposed rule is not intended to require a low fuel alerting device for each fuel tank.

A low fuel alerting system based on total fuel remaining in the system, irrespective of which tank contains the fuel, is considered inadequate. While it would provide indication of impending total fuel depletion, no alert would occur if the fuel in a tank feeding an engine is depleted due to fuel-feed mismanagement while a significant amount of fuel remains available in another tank.

The proposed amendment would require the low fuel alerting system to be independent of the normal fuel quantity measurement system. There have been instances in which fuel quantity systems have provided inaccurate information due to wiring harnesses being inadvertently switched or the system becoming disabled. An effective low fuel quantity alerting system should be protected from these types of malfunctions. The alerting system would probably incorporate a test feature to ensure functional reliability. Therefore, as proposed, no malfunction or failure of the normal fuel quantity measuring system would prevent proper operation of the low fuel quantity alerting system.

As proposed, the alert must occur with no less fuel remaining in the tank than that required to operate the engine(s) which can be supplied by that tank for 30 minutes at normal cruising conditions. A low fuel alert would not occur under normal circumstances because fuel reserves are usually in excess of the fuel quantity specified by this requirement. If a low fuel alert occurs due to fuel mismanagement or other factors, the flightcrew would have at least 30 minutes to correct the situation or to land at a suitable airport.

**Economic Evaluation**

This analysis estimates only the incremental costs associated with the low fuel alert proposal.

The three basic areas of compliance costs include: (1) Design and certification, including any testing that may be required; (2) manufacturing and parts; and (3) operating costs such as maintenance or weight penalties. Costs will vary according to the number, size, and shape of tanks that directly supply fuel to engines on an airplane. Therefore, this cost analysis incorporates a low and high end cost estimate based on the number and nature of those tanks.

The cost of type certification of the low fuel alerting system would be negligible because, for the most part, system components could be used that have already been tested and approved in other applications. Because the reliability and accuracy of such components would have been established previously, no further testing in these regards would be necessary. Calibration testing would be required; however, this could be performed concurrently with the calibration required for the fuel quantity indication system at no additional cost. Through the use of such previously approved components, the FAA estimates that there would be a one-time design or development cost ranging from $200 to $5,000 per tank. This estimate is based on the assumption that the system would include a self-test feature.

Material costs of the low fuel alerting system would range from $150 per tank for a simple float type system to $1,000 for a more sophisticated electronic system.

Labor costs are estimated at $70–$140 per airplane when the low fuel alerting system is installed during the manufacture of the airplane.

Low fuel alerting systems weigh from 1.0 to 2.0 pounds per tank. Each additional pound will result in an estimated average fuel consumption of 15 gallons per year per airplane. Therefore, two tanks at two pounds each will consume an estimated 60 additional gallons per year.

Calculating the actual fleet cost is infeasible since the requirements would apply only to airplanes for which future application for type certificate is made subsequent to the effective date of this regulatory amendment. In order to estimate a hypothetical maximum cost for a present base period, the estimated costs of compliance for a large air carrier airplane and for turbojet and turboprop business airplanes are each multiplied by their respective number in the present turbine-powered transport category fleet. The results are then totaled. Accordingly, the air carrier fleet protection cost would be $308 per airplane per year, as presented in Table 1.

TABLE 1.—MAXIMUM COST OF COMPLIANCE FOR A TURBINE POWERED AIR CARRIER AIRPLANE USING THE MOST COSTLY LOW FUEL QUANTITY INDICATOR SYSTEM [1]

| | Total cost | Annualized cost per airplane [3] |
|---|---|---|
| *Certification:* [2] | | |
| Certification Cost | | |
| Design Cost [4] | $25 | $3 |
| Testing Cost | | |
| *Manufacturing:* [2] | | |
| Materials | 2,000 | 235 |
| Labor: Installation | 140 | 16 |
| *Weight Penalty:* [5] | | |
| Fuel | 54 | 54 |
| | | $308 |

[1] The large turbine-powered airplane assumed for the purpose of estimating maximum cost is a two-engine, large body airplane directly fed by two fuel tanks, with a conservatively estimated useful life of 20 years. (Fuel tanks that do not feed directly to engines or tanks whose boost pump pressure overrides boost pump pressure from other tanks and are normally emptied first, do not require a low fuel alerting system.)

[2] One time costs.

[3] Using a 10 percent capital recovery factor for a period of 20 years (0.11746).

[4] Based on a one-time, $5,000 cost for adaptation to a specific airplane tank, and an assumed total production run of 200.

[5] Based on a fuel price of 89.4 cents per gallon. This average fuel usage value was obtained from data presented in a NASA study entitled Optimization of Aircraft Seat Cushion Fire Blocking Layers, March 1983 (Report #DOT/FAA/CT-82/132), p. 128.

The cost estimate for business jet fleet protection would be $70 per airplane per year, as presented in Table 2.

TABLE 2.—Estimated Cost of Compliance for a Turbine-Powered Airplane Using the Less Costly Low Fuel Quantity Indicator System [1]

| | Total cost | Annualized cost per airplane [3] |
|---|---|---|
| *Certification:* [2] | | |
| Certification Cost | | |
| Design Cost [4] | $1 | $0 |
| Testing Cost | | |
| *Manufacturing:* [2] | | |
| Materials | 300 | 35 |
| Labor: Installation | 70 | 8 |

TABLE 2.—Estimated Cost of Compliance for a Turbine-Powered Airplane Using the Less Costly Low Fuel Quantity Indicator System [1]—Continued

| | Total cost | Annualized cost per airplane [3] |
|---|---|---|
| *Weight Penalty:* [5] | | |
| Fuel | 27 | 27 |
| | | $70 |

[1] The turbine-powered airplane assumed for the purpose of estimating cost is a two-engine, business jet directly fed by two fuel tanks, with an estimated useful life of 20 years. (Fuel tanks that do not feed directly to engines or tanks whose boost pump pressure overrides boost pump pressure from other tanks and are normally emptied first, do not require a low fuel alerting system.)

[2] One time costs.

[3] Using a 10 percent capital recovery factor for a period of 20 years (0.11746).

[4] Based on a one-time, $200 cost for adaptation to a specific airplane tank, and an assumed total production run of 200.

[5] Based on a fuel price of 89.4 cents per gallon. This average fuel usage value was obtained from data presented in a NASA study entitled Optimization of Aircraft Seat Cushion Fire Blocking Layers, March 1983 (Report #DOT/FAA/CT-82/132), p. 128.

The maximum possible estimated annual cost for a hypothetical air carrier fleet protection would be $1.12 million, based on an estimated maximum cost per airplane per year of $308 multiplied by the 1984 U.S. air carrier fleet of 3,643 turbine-powered airplanes. This estimate includes all sizes of turbine-powered air carrier airplanes but is calculated as if all are the largest size and is therefore overstated.

The estimated cost per airplane per year for business jets is $70. The estimated annual cost for a hypothetical turbine-powered business airplane fleet would be $654,000 based on an estimated cost per airplane per year of $70 multiplied by the 1984 general aviation fleet of 9,351 turbine-powered airplanes, including 5,453 turboprop airplanes and 3,898 turbojet airplanes.

The estimated annual cost for full-fleet protection of the 12,994 turbine-powered airplanes, including general aviation (business airplanes) and the U.S. air carrier fleet, is $1.77 million.

A series of 13 recent incidents have been complicated by fuel exhaustion or the threat of fuel exhaustion. While not all of the incidents were directly attributable to fuel exhaustion or the threat of fuel exhaustion, in each case an alert to the flightcrew of low fuel might have contributed to improved conditions for fuel management and therefore a greater likelihood for a safe conclusion to the flight.

The FAA cannot easily estimate the prospective number of lives that might be saved or airplane crashes that might be avoided in the future by low fuel warning devices, but some insights into the potential benefits of these devices can be gained from the air carriers' recent experiences. Based on these experiences, while no monetary benefits can be calculated, the proposal would contribute an increment of safety that would assure that incidents like those that occurred will not become accidents in the future.

A benefit/cost ratio of unity for a full-fleet cost of $20.3 million over a 20 year fleet life cycle would require avoiding one air carrier and one general aviation crash with a total of 10 fatalities.

The FAA estimates the statistical value of a life at $1,000,000 in current dollars. Additionally, the FAA has estimated the replacement value of an air carrier airplane in current dollars at $8.3 million and of a general aviation airplane at $1.858 million. This estimate is based on data contained in "Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs," Report Number FAA-APO-81-3, September 1981 and report update, APO Bulletin APO-84-3, June 1984. (These values are developed based on ranges of replacement costs.) For further details on this estimate see the Regulatory Analysis in the Docket.

The ratio of the low fuel alerting system annualized cost to the weighted average air carrier airplane replacement cost is $308/$8,300,000 = .000037, or $37 of system cost per $1,000,000 of airplane replacement cost in any future year. The same ratio to turbine-powered general aviation airplane replacement cost is $70/$1,858,000 = .000038, or $38 of system cost per $1,000,000 of airplane replacement cost in any future year.

The estimated annualized cost for full-fleet protection of the 12,994 turbine-powered airplanes is $1.77 million. The total estimated annualized full-fleet protection cost is less than the weighted average replacement cost of either a single air carrier airplane or a single general aviation turbine-powered airplane. The cost for the increment in safety is a reasonable investment for the prospect of avoiding even one fatal airplane crash.

The FAA further notes that because of a trend in industry toward incorporation of a low fuel quantity alerting system in some new models of air carrier airplanes, the overall cost to society of the incremental regulatory cost for full-fleet protection will likely be significantly less than the FAA's estimate because approximately 80 percent of future, newly designed turbine-powered transport category airplanes would voluntarily incorporate a system similar to the one proposed.

**International Trade Impact Analysis**

The proposals will have no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S.

There will be no impact on the sale of foreign turbine powered transport airplanes in the U.S. and the sale of such U.S. airplanes in foreign countries. Since the certification rules are applicable to both foreign and domestic manufacturers that sell in the U.S., there will be no competitive advantage to either. Because of the large U.S. market, foreign manufacturers are likely to certify their airplanes to U.S. rules; and therefore, U.S. manufacturers would not suffer in foreign markets. Further, the cost of compliance is negligible compared to the total cost of an airplane.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (FRA) was enacted by Congress to insure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The proposal in this notice would directly affect those turbine-powered transport airplane manufacturers that certify their airplanes under Part 25 and are classified as small entities. The FAA has published a size threshold of 75 employees as a standard for an aircraft manufacturer to be considered a small entity. According to current FAA data, there are no turbine-powered airplane manufacturers that meet that standard. (Reference FAA Order 2100.14, Regulatory Flexibility Criteria and Guidance, dated July 15, 1983.)

Accordingly, this proposal is not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

**Conclusion:**

For the reasons discussed earlier in the preamble, the FAA has determined that this proposed regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the

Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities, since none would be affected. A preliminary evaluation has been prepared for this regulation, has been placed in the docket, and is summarized in the preamble of this notice in the section entitled "Economic Evaluation." A copy of the complete evaluation may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

**List of Subjects in 14 CFR Part 25**

Air transportation, Aircraft, Aviation safety.

**The Proposed Amendment**

Accordingly, the Federal Aviation Administration (FAA) proposes to amend Part 25 of the Federal Aviation Regulations (FAR), 14 CFR Part 25, as follows:

## PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 49 CFR 1.47(a).

2. By amending § 25.1305 by adding a new paragraph (a)(9) to read as follows:

**§ 25.1305 Powerplant instruments.**

* * * * *

(a) * * *

(9) A means to provide a cautionary alert to the flightcrew of a low fuel quantity in any fuel tank that normally should not be depleted of usable fuel. The alerting system shall operate independently of the fuel quantity measuring system. The alert shall commence at a time appropriate to the type of airplane and the intended operation, but shall be prior to that time when the remaining fuel reaches the quantity required to operate the engine(s) being supplied by that tank for 30 minutes at normal cruising conditions.

* * * * *

Issued in Seattle, Washington on May 1, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-10704 Filed 5-11-87; 8:45 am]

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federal register

Tuesday
May 12, 1987

Part III

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 3280**

**Manufactured Home Construction and Safety Standards—Deregulation of Thermal Protection Standards; Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 3280**

**[Docket No. R-87-1329; FR-2280]**

# Manufactured Home Construction and Safety Standards—Deregulation of Thermal Protection Standards

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** HUD proposes to remove the thermal protection requirements at 24 CFR Part 3280, Subpart F (with the exception of the condensation control standards in § 3280.504) from the Manufactured Home Construction and Safety Standards. The Department has determined that the thermal protection standards in current §§ 3280.505 through 3280.511 are no longer necessary to ensure adequate performance with respect to the energy efficiency of manufactured homes. In particular, HUD has determined that the thermal efficiency levels in manufactured homes currently produced in the United States generally provide stricter thermal protection than is required under HUD's maximum transmission heat loss coefficients in § 3280.506(a). Under this revision, § 3280.504 (condensation control) would be redesignated as § 3280.310.

**COMMENT DATE:** July 13, 1987.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Devlopment, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number. A copy of each communication will be available for public inspection and copying during regular hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mark W. Holman, Chief, Standards Branch, Manufactured Housing and Construction Standards Division, Office of Manufactured Housing and Regulatory Functions, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 755–6590. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

*HUD Thermal Protection Regulations in Part 3280, Subpart F*

The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–26, directs the Department to establish standards for the construction, design and performance of manufactured homes. *See* 42 U.S.C. 5403(a), 5402(7). Accordingly, the Department issued standards for manufactured homes which became effective on June 15, 1976, (40 FR 58754, December 18, 1975). Among these standards are requirements controlling condensation, air infiltration, thermal insulation and certification for heating and comfort cooling. *See* 24 CFR Part 3280, Subpart F. With the exception of § 3280.504 (condensation control standards to ensure the durability of manufactured homes), Subpart F includes various sections designed to ensure thermal efficiency in manufactured homes.

With the exception of § 3280.504, all of the other sections of Part 3280, Subpart F depend on HUD's maximum overall transmission heat loss coefficients in § 3280.506(a) as the key measure for ensuring thermal efficiency in manufactured homes. (The maximum transmission coefficients in § 3280.506(a) have been established for three outdoor winter design temperature zones.) Sections 3280.510 (heat loss certificate) and 3280.511 (comfort cooling certificate and information) have been designed to implement HUD's transmission heat loss coefficient for the respective zones. Sections 3280.507 (comfort heat gain), 3280.508 (heat loss, heat gain and cooling gain calculations), and 3280.509 (criteria in absence of specific data) provide guidance for the calculation of HUD's transmission heat loss coefficient for the respective zones. Section 3280.505 provides general design criteria for manufactured homes to facilitate compliance with HUD's maximum transmission coefficient for the respective zones.

*Current Manufactured Housing Industry Performance and State Regulatory Developments*

Information available to the Department indicates that the thermal protection standards in current §§ 3280.505 through 3280.511 are no longer necessary to ensure adequate performance with respect to the energy efficiency of manufactured homes. HUD has determined that the thermal efficiency levels in manufactured homes currently produced in the United States generally provide stricter thermal protection than is required under current § 3280.506(a). An economic analysis prepared for the Department indicated that most of the manufactured homes studies incorporated insulation levels that are more strict than HUD's current thermal protection standards. *See* Steven Winter Associates, Economic Cost Benefit Analysis of Thermal Envelope Improvements for Manufactured Home Standards Revision 16–17, 21 (January 10, 1985). In the Steven Winter Associates report, for each of the outdoor winter design temperature zones referred to in HUD's thermal efficiency regulations (Zones I, II, and III), a typical insulation package for manufactured homes was estimated based on a representation sample of typical current manufacturing practices.

At least thirty-seven States have promulgated regulations for single family residential structures with maximum overall transmission heat loss coefficients stricter than HUD's standards in § 3280.506(a). Under § 3280.506(a), HUD's maximum overall transmission coefficients are: (1) for Zone I, .157 Btu/(hr.)(sq. ft.)(F); (2) for Zone II, .126 Btu/(hr.)(sq. ft.)(F); and (3) for Zone III, .104 Btu/(hr.)(sq. ft.)(F). (Of those thirty-seven States with stricter maximum overall transmission coefficients than in HUD's thermal protection standards, nine States are in Zone I, and twenty-eight are in Zone II.)

On the effective date of the final rule removing Part 3280, Subpart F, HUD's current thermal efficiency regulations would no longer preempt State or local regulations. With respect to the thirteen States without codified thermal efficiency regulations, HUD has determined that because the thermal efficiency levels in manufactured homes currently produced in the United States generally provide greater thermal protection than do the current Subpart F standards, consumers of manufactured homes would be able to purchase homes that meet the current Subpart F standards.

## II. Proposed Rule

The Department is proposing to remove Subpart F from the Manufactured Home Construction and Safety Standards at 24 CFR Part 3280. This proposed rule would also remove the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) from the list of organizations whose codes or standards are incoporated by reference at § 3280.4, because ASHRAE's Handbook of Fundamentals would no longer be incorporated by reference in the Standards. Section 3280.5(a)(5) would be amended to remove the reference to

heating and cooling information certificates, currently required to be affixed to manufactured homes under §§ 3280.510–.511. Finally, current § 3280.504 would be redesignated as § 3280.310.

### III. Miscellaneous

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. The rule would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Consistent with the provisions of 5 U.S.C. 605 (the Regulatory Flexibility Act), the Secretary has determined that this rule would not have a significant economic impact on a substantial number of small entities, because the thermal efficiency levels in manufactured homes currently produced in the Untied States generally provide stricter thermal protection than is required under the current HUD standards in 24 CFR Part 3280, Subpart F.

There are no information collection requirements in this proposed rule that would require compliance with the Paperwork Reduction Act of 1980.

A Finding of No Significant Impact with respect to the environment was made for this proposed rule in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. A copy of this Finding of No Significant Impact has been placed in this rulemaking file and is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item 949 in the Department's Semiannual Agenda of Regulations published at 52 FR 14362, 14385 on April 27, 1987, under Executive Order 12291 and the Regulatory Flexibility Act.

### List of Subjects in 24 CFR Part 3280

Fire prevention, Housing standards, Mobile homes.

Accordingly, the Department proposes to amend 24 CFR Part 3280 as follows:

## PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for Part 3280 would continue to read as follows:

**Authority:** Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Title VI, Housing and Community Development Act of 1974, 42 U.S.C. 5401, unless otherwise noted.

### § 3280.4 [Amended]

2. Section 3280.4, paragraph (b) would be amended by removing the following entry: ASHRAE—American Society of Heating, Refrigeration and Air-conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.

3. Section 3280.5, paragraph (a)(5) would be revised to read as follows:

### § 3280.5 Data plate.

* * * * *

(a) * * *

(5) Reference to the structural zone and wind zone for which the home is designed and duplicates of the maps as set forth in § 3280.305(c)(4).

* * * * *

### § 3280.504 [Amended]

4. Section 3280.504 would be redesignated as § 3280.310 and placed in Subpart D of Part 3280.

### Subpart F—[Removed]

5. Subpart F of Part 3280 would be removed.

Dated: April 27, 1987.

**Thomas T. Demery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 87–10789 Filed 5–11–87; 8:45 am]

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federal register

Tuesday
May 12, 1987

Part IV

# Department of Education

34 CFR Part 673

Income Contingent Loan Program Demonstration Project; Final Regulations

**DEPARTMENT OF EDUCATION**

**34 CFR Part 673**

## Income Contingent Loan Program Demonstration Project

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Higher Education Amendments of 1986 authorize the Secretary to implement an Income Contingent Loan Program Demonstration Project (Demonstration Project) beginning with the 1987–88 award year. The Secretary is issuing regulations governing the selection and funding of Demonstration Project participants. The Demonstration Project will examine the feasibility of a direct loan program which uses the income contingent repayment method in order to increase the economic and full use of direct student loan funds.

**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:** Ms. Carney McCullough or Mr. William L. Moran, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW., [Regional Office Building 3, Room 4100], Washington, DC 20202. Telephone number: (202) 732–4888.

**SUPPLEMENTARY INFORMATION:**

### Background

The Higher Education Amendments of 1986, Pub. L. 99–498, added part D to Title IV of the Higher Education Act of 1965, authorizing an Income Contingent Loan Program Demonstration Project.

During the past decade, higher education costs have escalated and, as a result, students are borrowing more. By the time of graduation, many students have incurred a larger debt burden. Repayment of such debt on a short-period, mortgage-type basis commencing shortly after graduation often forces students to pay substantial sums at a time when earnings are at their lowest. Income-sensitive loan repayment, on the other hand, is an equitable and reasonable approach to student debt manageability. The flexibility afforded by this type of repayment plan accommodates changes in the borrowers' financial circumstances.

The Income Contingent Loan Program Demonstration Project explores the feasibility of a direct loan program which uses an income contingent repayment plan. The Demonstration Project will be conducted for five years beginning with the 1987–88 academic year, and a maximum of ten institutions will be selected to participate in the Demonstration Project. In the fiscal year 1988 Budget, the Secretary has requested a major expansion of the Income Contingent Loan (ICL) Program.

### Revisions to the Notice of Proposed Rulemaking

On March 5, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register**, 52 FR 6924–6939. In this document, the Secretary is publishing final regulations for Subpart B—Selection and Funding of Demonstration Projects. No significant changes have been made to Subpart B of the NPRM. However, to facilitate allocation of funds to institutions with immediate need for them, § 673.17 has been revised to permit the Secretary to direct an institution to return those funds from its allocation that it does not expect to use within the award year. The Secretary may then redistribute those funds as needed to other institutions. Final regulations of Subparts A, C, and D will be published as a separate document. The Secretary will publish an NPRM of Subpart E—Due Diligence after publishing the final due diligence requirements for the Perkins Loan Program.

### Comments and Responses

The following is a summary of the comments received on Subpart B and the Secretary's response to those comments. Comments received on the other subparts will be addressed in the appropriate document.

*General*

*Comment:* Many commenters felt that it was inappropriate for the Department to issue simultaneously the Notice of Proposed Rulemaking (NPRM) and the application notice. They expressed concern that the dual dealing would preclude institutions from commenting in a meaningful fashion and from making an informed decision about their participation in the Demonstration Project. Furthermore, they questioned whether the intent of the Department is to ignore any comments received from institution, relative to the NPRM. Several commenters objected to the brevity of a thirty-day comment period.

*Response:* No change has been made. The Higher Education Amendments of 1986 were enacted on October 17, 1986 and authorized the Secretary to conduct an ICL Demonstration Project beginning with the 1987–88 academic year. This date of enactment provided very little time for development of regulations and selection of Demonstration Project participants. Thus, in order to implement the Demonstration Project early enough to allow institutions to include ICLs in student aid packages for the 1987–88 award year, it was necessary to have a thirty-day comment period and a simultaneous application period. If, based on public comment, the Secretary had determined that significant changes were needed to the selection criteria, he would have extended the application period to allow additional applications and amendments to previously submitted applications.

*Comment:* One commenter opposed the Secretary's plan to seek a technical amendment to permit the participation of consortia in the Demonstration Project on the grounds that Congress had limited the number of participants to ten institutions, and the inclusion of consortia would expand the number of participants. Many commenters favored modification of legislation to permit more institutions to participate as a means of obtaining a greater variety of institutional settings to provide data to determine the viability of the program. Several commenters expressed concern that the limitation of ten institutional participants is insufficient to test the Demonstration Project.

*Response:* No change has been made. Although the Secretary did seek a technical amendment to allow consortia to participate in the Demonstration Project, statutory changes necessary to allow consortia to particpate have not yet been enacted. The Secretary agrees with the commenters that the ICL program should be available to more institutions and has requested a major expansion of the program and the elimination of the limit on the number of participating schools in the budget proposal for fiscal year 1988.

*Section 673.11 Eligible Applicants.*

*Comment:* Many commenters objected to the restrictions on institutions that wish to participate in the ICL Demonstration Project and indicated that any institution which participates in the Perkins Loan Program should be eligible for the Demonstration Project. The commenters felt that the restrictions exclude from the ICL Program entire categories of institutions which participate in the Perkins Loan Program and, therefore, will skew the results of the Demonstration Project. In particular, the commenters were concerned that proprietary schools would be excluded

by a requirement that in order to be considered an eligible applicant, an institution must offer at least one program of study leading to or acceptable for full credit toward a four-year undergraduate degree and have at least 500 students enrolled in such programs.

*Response:* No change has been made. Students who are enrolled in programs leading to an undergraduate degree generally incur higher student loan debt burdens than students enrolled in programs requiring less than four years to complete. Since the Demonstration Project is intended to assess the impact of an income contingent repayment plan for student loans, and since only ten schools may participate, the Secretary believes that it is necessary to limit participation to schools with borrowers who are likely to have incurred larger debt obligations. If more schools could participate, of course, as under the 1988 Budget proposal, the Secretary would revise the selection criteria to make more schools eligible.

*Comment:* Several commenters noted that students enrolled in graduate programs generally incur higher debt than students enrolled in undergraduate programs and requested that the Secretary expand the eligibility criteria to include these types of programs.

*Response:* No change has been made. Although the Secretary agrees that graduate students incur higher debt, the statute limits borrowing under the ICL program to undergraduate students only. Therefore, at the present time, the Secretary cannot revise the regulations to permit borrowing by graduate students. The Secretary is requesting a legislative change in 1988 to make graduate students eligible to receive ICLs.

*Comment:* Several commenters were opposed to limiting participation in the Demonstration Project to those schools with a default rate of less than 7.5% because it may eliminate institutions with a large population of higher-risk student borrowers. One commenter qustioned the December 31, 1986 date for calculation of default rate since no information is ordinarily submitted as of that date.

*Response:* No change has been made. The rule does not exclude automatically institutions with a large population of high-risk borrowers, since many institutions participating in the Perkins Loan Program with such students have managed to maintain a low default rate. The Secretary does consider institutions with a low default rate to have demonstrated the administrative capability to manage a loan program effectively.

The Secretary selected December 31, 1986 as the date for calculation of the default rate in order to take into account actions to reduce its default rate such an assignments which the institution may have made after it completed the Fiscal-Operations Report and Application to Participate (FISAP) in the National Direct Student Loan (NDSL), Supplemental Educational Opportunity Grant (SEOG) and College Work-Study (CWS) Programs which reports program activity through June 30. Institutions may appeal their funding under the Perkins Loan Program by demonstrating that their default rate has decreased between June 30 and December 31; for convenience, the Secretary provides that same option here. The Secretary has revised § 673.11(d) to clarify that the default rate on which ICL determinations are made is that used in determing funding for the Perkins Loan Program.

*Section 673.14 Selection Criteria—New Grants.*

*Comment:* Many commenters were in favor of the proposal to assign points. One commenter complained that the selection criteria target schools that will have the best chance to make a success of the program. Several comenters criticized the lack of details concerning the way the Secretary would apply the selection criteria concerning the findings of the latest ED program review, the results of the institutions' most recent audit report submitted to ED, and the institutions default rate under the Perkins Loan Program.

*Response:* The purpose of the Income Contingent Loan Demonstration Project is to examine the feasibility of administering an income contingent loan program. To identify, measure, and resolve the problems involved in the income contingent method of loan management, it was essential to select participants with a demonstrated ability to manage a traditional, fixed-term loan program effectively. Problems encountered by these instititions in using the income contingent method could reasonably be attributed to the method itself and not to shortcomings in the schools' own loan management techniques. The latter subject has been extensively studied by Congress, the Department, the General Accounting Office, and professional and trade associations, and remedies and incentives for correction are in place. Moreover, institutions with a demonstrated ability to manage traditional loan programs are, in the Secretary's judgment, more likely to have the expertise and imagination to devise and implement effective and replicable solutions to those problems encountered in an income contingent loan program.

The selection criteria used to evaluate applicants for the ICL Demonstration Project have been identified and developed through research by the Department of Education as valid measures of administrative capability.

*Comment:* One commenter noted that the NPRM stated that the Secretary would review the institution's full-time equivalent (FTE) enrollment as reported on the FISAP; however, the FISAP does not collect information on FTE.

*Response:* A change has been made. The Secretary has changed this selection criterion to reflect the undergraduate student enrollment which is reported on the FISAP and which includes all full-time and part-time students.

*Comment:* One commenter objected to the use of the institution's compliance with the Pell Grant Program reporting requirements as a selection criterion, since the persons responsible for Pell Grant reporting are usually not responsible for loan collections; the criterion therefore would not be helpful in assessing administrative capability for the ICL Demonstration Project.

*Response:* The Secretary disagrees with the commenter. At most institutions, the person responsible for complying with the Pell Grant reporting requirements is also responsible for determining student eligibility and awarding funds for all Title IV programs, including ICL. Therefore, the demonstrated level of capability to comply with Pell Grant reporting requirements, which is a valid measure of proper administration of the Pell Grant Program, is directly applicable to determining the capability to administer an ICL Demonstration Project effectively.

*Comment:* One commenter objected to the selection criterion related to the institution's plan of operation. The commenter felt that it is the Department's responsibility to establish standards for effective plans and acceptable objectives. Several commenters objected to the statement in the preamble indicating the Secretary was interested in the benefits an institution would expect to derive from participation in the Demonstration Project.

*Response:* No change has been made. The Secretary believes that institutions that wish to participate in the Demonstration Project should develop a plan of operation for the administration of the ICL Program which demonstrates the institution's administrative

capability. As a part of the Demonstration Project, the Secretary is interested in a variety of models and suggested methods of operation from which to establish standards for effective plans of operation. The Secretary expects institutions that apply to do so because they perceive a benefit to their institution and their students as a result of participation and that the perceived benefit is an important incentive for an effective plan of operation.

*Comment:* One commenter agreed with the Secretary that the quality of key personnel is an important selection criterion since the quality of key personnel has a direct bearing on the institution's desire and ability to administer any of the Title IV loan programs successfully. Many commenters were opposed to the inclusion of consideration of the quality of key personnel in the selection criteria because they felt that tenure and experience does not demonstrate capability or effectiveness of administration and that this item would be difficult to evaluate.

*Response:* No change has been made. The Secretary believes that the quality of key personnel is an important measure of the administrative capability demonstrated by an institution for a Demonstration Project and that experience and training provide an indication of an individual's capability to administer an ICL Demonstration Project.

*Comment:* Many commenters noted that the Department of Education is charged to report to Congress on the feasibility of an income contingent repayment concept and complained that applicants should not be required to propose a self-evaluation plan as part of the application process.

*Response:* No change has been made. The Secretary believes that it is important that institutions that wish to participate in the Demonstration Project provide input into the development of a cooperative and comprehensive evaluation plan for the entire Demonstration Project. The Secretary does intend to carry out both implementation and impact evaluations of the Demonstration Project.

*Comment:* Many commenters objected to the inclusion in the selection criteria of an institution's willingness to overmatch funds. They expressed concern that willingness to overmatch had little relevance to ability to participate successfully in the Demonstration Project and that this criterion could be seen as encouraging institutions to "buy" participation in the Demonstration Project. One commenter suggested that the criterion be used solely as a tie-breaker.

*Response:* No change has been made. A very limited amount of funds has been appropriated for the Demonstration Project, and institutions that overmatch the Federal Capital Contribution will have more money available to make ICLs to students. This, in turn, will result in a larger number of student loans that permits better evaluation of an income contingent repayment plan. Because the Secretary is seeking to obtain as much data as possible to evaluate the Demonstration Project, it is reasonable in ranking applicants to consider the extent to which an applicant can help achieve that goal by contributing a larger institutional share to each loan.

*Section 673.16 Determination of Need for ICL Demonstration Project Funds.*

*Comment:* Many commenters feared that institutions with large amounts of collections which, therefore, receive little or no new Perkins Loan FCC would not qualify for FCC under the ICL program.

*Response:* No change has been made. In determining need for ICL funds, the Secretary deducts from the institution's self/help need its Perkins Loan Level of Expenditures, rather than its anticipated collections, to determine the institution's unmet need. Institutions that have large collections would not be penalized under this formula.

*Section 673.17 Allocation of ICL Demonstration Project Funds.*

*Comment:* One commenter suggested that the Secretary assure each participant a "conditionally guaranteed" minimum annual funding level in an amount necessary to accommodate the purpose of the Demonstration Project and to ensure a valid test at each of the ten selected institutions.

*Response:* No change has been made. The Secretary agrees with the commenters that a minimum annual funding level is desirable; under the proposed and final rule the Secretary will, within the limits of the funding made available annually by Congress, allocate funds on the basis of both the ratio of each institution's unmet need to the aggregate unmet need of Demonstration Project institutions, and an individual determination of the amount of funds necessary to sustain or to create an ICL Demonstration Project (§ 673.17(b)).

**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.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, 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 in 34 CFR Part 673**

Education, Loan Programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number has not been assigned)

Dated: May 6, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 673 to read as follows:

## PART 673—INCOME CONTINGENT LOAN PROGRAM

**Subpart A—[Reserved]**

**Subpart B—Selection and Funding of Demonstration Projects**



**Authority:** 20 U.S.C. 1087a–1087e, unless otherwise noted.

### Subpart A—[Reserved]

### Subpart B—Selection and Funding of Demonstration Projects

#### § 673.11 Eligible applicants.

An institution is eligible to apply for a grant to carry out an Income Contingent Loan (ICL) Demonstration Project if the institution—

(a) Participates in the current award year in the Pell, campus-based [Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan Programs;

(b) Offers at least one educational program—

(1) For which it awards a baccalaureate degree; or

(2) Which is at least a two-year program which is acceptable for full credit toward a baccalaureate degree;

(c) Has at least an aggregate of 500 students enrolled in the program(s) described in paragraph (b) of this section; and

(d) Has a Perkins Loan default rate, as defined in 34 CFR 674.6a(d) of no more than 7.5 percent as of December 31 of the calendar year preceding the award year for which the institution applies for a grant.

(Authority: 20 U.S.C. 1087a, 1087b)

**§ 673.12 Application for grants.**

(a) *New grants.* An institution applies for a new grant for an ICL Demonstration Project by submitting an application that—

(1) Includes information that addresses each of the selection criteria set forth in § 673.14 (g), (h) and (i);

(2) Describes in detail the institution's plans for a Demonstration Project as outlined in § 673.14(f); and

(3) Contains an assurance that the institution will comply with the requirements imposed under this part and will carry out a Demonstration Project for the five years for which the project is authorized.

(b) *Continuation grants.* An institution may apply for funds to continue an ICL Demonstration Project by submitting an application that reports the results of the institutional evaluation completed for the previous award year as set forth in the institution's original application and that requests additional funds.

(Approved by the Office of Management and Budget under control number 1840–0589)

(Authority: 20 U.S.C. 1087b)

**§ 673.13 Evaluation of an application.**

(a)(1) The Secretary uses the selection criteria in § 673.14 to evaluate applications for new grants.

(2) The Secretary awards up to 120 points for these criteria.

(3) The maximum possible score for each criterion is indicated in parentheses.

(b) The Secretary uses the selection criteria in § 673.15 to evaluate applications for continuation grants.

(c)(1) After evaluating applications for new grants according to the criteria in § 673.14, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition under this program. The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(2) The Secretary may select an application for funding to improve the diversity of activities or projects funded under a particular competition.

(Authority: 20 U.S.C. 1087b)

**§ 673.14 Selection criteria—new grants.**

(a) *Findings of the latest ED program review.* (15 points) The Secretary reviews the results of the latest ED program review in order to determine whether the applicant has demonstrated compliance with applicable statutes and regulations.

(b) *Results of the institution's most recent audit report submitted to ED.* (15 points) The Secretary reviews the results of the institution's most recent audit report submitted to ED to determine whether a significant misuse of Federal funds has been identified.

(c) *The institution's total number of undergraduate students.* (10 points) The Secretary reviews the total number of undergraduate students as reported by the institution on the Fiscal-Operations Report and Application to Participate (FISAP) in the National Direct Student Loan (NDSL), Supplemental Educational Opportunity Grant (SEOG) and College Work-Study (CWS) Programs for the previous award year to determine whether the institution has experience in administering student assistance programs for a large number of students.

(d) *Compliance with the Pell Grant Program reporting requirements.* (10 points) The Secretary reviews ED records of the institution's compliance with all the deadline dates set by ED for the receipt of institutional payment summary (IPS) documents for the Pell Grant program for the award year prior to the award year for which the institution is applying for a demonstration grant.

(e) *The institution's default rate under the Perkins Loan Program.* (10 points) The Secretary evaluates the information provided by the institution on the FISAP to determine the institution's default rate under the Perkins Loan Program as of June 30 of the calendar year preceding the award year for which the institution applies for a grant. If the institution's default rate has changed since submission of the FISAP, the institution must submit revised Sections A and C of the FISAP in order for the Secretary to determine the institution's default rate under the Perkins Loan Program as of December 31 of the calendar year preceding the award year for which the institution applies for a grant.

(f) *Plan of operation.* (20 points) (1) The Secretary reviews each application to evaluate the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the plan of operation shows—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) How the objectives of the project relate to the mission of the institution;

(iii) An effective plan to use institutional resources and personnel to achieve each objective;

(iv) A documented process to be used in selecting ICL borrowers; and

(v) An effective plan for publicizing the ICL Program.

(g) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to evaluate the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary evaluates—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (g) (1) and (2) of this section will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training in student financial aid administration, particularly the Perkins Loan Program, related to the objectives of the project, as well as other qualifications relevant to the quality of the project.

(h) *Evaluation plan.* (20 points) (1) The Secretary reviews each application to evaluate the quality of the evaluation plan for the Demonstration Project.

(2) The Secretary determines whether the applicant proposes methods of evaluation that are appropriate for the project and, to the extent possible, produce procedures that may be replicated.

(i) *Willingness to overmatch.* (10 points) The Secretary reviews each application to determine whether the applicant is willing to contribute institutional capital contribution to the loan fund exceeding that required under § 673.21.

(Approved by the Office of Management and Budget under control number 1840–0589)

(Authority: 20 U.S.C. 1087b)

**§ 673.15 Selection criteria—continuation grants.**

(a) *Compliance with performance and reporting requirements.* The Secretary evaluates the FISAP to determine

whether the institution has demonstrated a high degree of compliance with the performance and reporting requirements of the Perkins Loan program as evidence of continuing ability to implement the repayment administration activities required by the ICL Progam.

(b) *Evaluation.* The Secretary determines whether the evaluation submitted by the institution of its experience with the Demonstration Project is thorough and indicates a high level of administrative capability and institutional commitment to the ICL Demonstration Project.

(Authority 20 U.S.C. 1087b)

**§ 673.16 Determination of need for ICL Demonstration Project funds.**

(a) The Secretary determines an institution's need for ICL Demonstration Project fund Federal Capital Contributions (FCC) according to 34 CFR 674.6, 674.7, and 674.7a.

(b) The amount of Perkins Loan FCC allocated to the institution is considered in determining remaining institutional need for ICL funds.

(Authority: 20 U.S.C. 1087b)

**§ 673.17 Allocation of ICL Demonstration Project funds.**

(a) The Secretary allocates ICL Demonstration Project funds to institutions on the basis of the institution's need for ICL funds determined in accordance with § 673.16.

(b) If funds appropriated for the ICL Demonstration Project FCC are insufficient to fund the aggregate amount of unmet institutional need as determined in 34 CFR 674.6 for Demonstration Project Institutions, the Secretary allocates funds to institutions on the basis of—

(1) The ratio of each institution's unmet need to the aggregate amount of that need at all Demonstration Project institutions; and

(2) The Secretary's determination of the amount of funds needed to create or sustain an ICL Demonstration Project at the institution at a level consistent with the purpose of the ICL Demonstration Project.

(c)(1) If an institution anticipates not using all of its allocation for an award year for ICLs and for authorized expenses by the end of that award year, it must specify the expected unused amount to the Secretary and return those funds, if directed.

(2) The Secretary distributes funds returned in accordance with paragraph (c)(1) of this section in a manner that best carries out the purposes of the ICL program.

(Authority: 20 U.S.C. 1087b(c))

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Tuesday
May 12, 1987

Part V

# Department of Education

34 CFR Part 614

College Facilities Loan Program; Proposed Rule and Notice

## DEPARTMENT OF EDUCATION

### 34 CFR Part 614

### College Facilities Loan Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes regulations for the College Facilities Loan Program. These proposed regulations would implement changes effected in the Higher Education Amendments of 1986. These regulations establish selection criteria and other requirements for the award of low interest loans to undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing, undergraduate academic facilities, and other educational facilities for students and faculty.

**DATES:** Comments must be received on or before June 11, 1987.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Mr. Sumner Bravman, Program Manager, College Facilities Loan Program, Division of Higher Education Incentive Programs, Office of Higher Education Programs, Office of Postsecondary Education, Department of Education, (Room 3022 ROB-3), 400 Maryland Avenue, SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sumner Bravman, (202) 732-4394.

**SUPPLEMENTARY INFORMATION:** The Higher Education Amendments of 1986 reauthorized and revised the college construction loan program that the Secretary previously administered under Title IV of the Housing Act of 1950, which has now been repealed. The program is now authorized by Title VII, Part F of the Higher Education Act of 1965, as amended. In view of the major statutory changes that were made to this program, previously known as the College Housing Program, the Secretary is proposing to rename the program as the College Facilities Loan Program and to revise existing regulations to conform to applicable statutory changes.

These changes are in the following areas:

*Eligible Facilities.* Assistance is provided for housing, undergraduate academic facilities, and other educational facilities for students and faculties. However, loans for undergraduate academic facilities may only be made in connection with facilities that will be used primarily for the instruction of students pursuing a baccalaureate degree or for the administration of the educational programs serving these students.

*Program Priorities.* The Secretary is required to give priority to loans for renovation or reconstruction of undergraduate academic facilities, and to loans for renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time.

*Selection Criteria.* New selection criteria have been proposed for: (1) Loans for housing facilities, (2) loans for undergraduate academic facilities, and (3) loans for other educational facilities.

*Interest Rate.* Loans shall bear interest at a rate not to exceed 5.5% per annum.

*Limitations on Loans.* The minimum loan amount is $250,000 and the maximum loan amount is $3,000,000.

### Executive Order 12291

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

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of postsecondary education. These regulations describe the progam and establish minimal application requirements. They will not have a significant economic impact on the institutions affected.

### Paperwork Reduction Act of 1980

Sections 614.12, 614.20, 614.21, 614.22, 614.23, 614.27, 614.28, and 614.45 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regualations will be available for public inspection, during and after the comment period, in Room 3022, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

### Assessment of Educational Impact

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

### List of Subjects in 34 CFR Part 614

Colleges and universities, Education, Grant programs—housing and community development, Housing, Loan Programs—housing and communities development, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.142)

Dated: May 8, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to revise Part 614 of Title 34 of the Code of Federal Regulations to read as follows:

## PART 614—COLLEGE FACILITIES LOAN PROGRAM

### Subpart A—General



### Subpart B—How Does One Apply for a Loan?



### Subpart C—How Does the Secretary Make a Loan?



### Subpart D—What Conditions Must be Met After an Award?



Authority: 20 U.S.C. 1132g–1132g–3, unless otherwise noted.

### Subpart A—General

#### § 614.1 What is the College Facilities Loan Program?

The College Facilities Loan Program provides low interest loans to assist undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing, undergraduate academic facilities, and other educational facilities for students and faculties.

(Authority: 20 U.S.C. 1132g)

#### § 614.2 Who is eligible to receive a loan?

Any of the following are eligible to receive a loan:

(a) Any public or private non-profit undergraduate postsecondary educational institution which offers, or provides satisfactory assurance to the Secretary that it will offer within a reasonable time after completion of the facility for which assistance is requested under this part, at least a two-year program acceptable for full credit toward a baccalaureate degree.

(b) Any public educational institution that—

(1) Is administered by a college or university which is accredited by a nationally recognized accrediting agency or association;

(2) Offers technical or vocational instruction; and

(3) Provides residential facilities for some or all of the students receiving that instruction.

(c) Any public or non-profit private hospital that—

(1) Operates a school of nursing beyond the level of high school and is approved by an appropriate State authority; or

(2) Is approved for internships by an accrediting agency or association recognized by the Secretary.

(d) Any non-profit corporation established for the sole purpose of providing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section if—

(1) The housing or facilities are not restricted to students or faculty on the basis of their membership in or affiliation with any social, fraternal, or honorary society or organization; and

(2) Upon dissolution of the non-profit corporation, all title to any property built or purchased with proceeds of the loan will go to the institutions or be used for some other non-profit educational purpose.

(e) Any agency, public authority, or other instrumentality of any State, established for the purpose of providing or financing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(f) Any non-profit student housing cooperative corporation established for the purpose of providing housing for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(Authority: 20 U.S.C. 1132g–3)

#### § 614.3 What types of projects may the Secretary fund?

(a) The Secretary approves loans for projects that enable undergraduate postsecondary educational institutions to construct, reconstruct, or renovate—

(1) Housing facilities for students and faculties;

(2) Undergraduate academic facilities; or

(3) Other educational facilities.

(b) The Secretary may announce from among those categories listed in paragraph (a) of this section funding priorities under this program in any given fiscal year through a Notice pubished in the **Federal Register** in accordance with the procedures in 34 CFR 75.105.

(c) In addition to the priorities that may be established under paragraph (b) of this section, the Secretary gives priority to loans for renovation or reconstruction of—

(1) Older undergraduate academic facilities; and

(2) Undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period.

(Authority: 20 U.S.C. 1132g–2)

#### § 614.4 What regulations apply?

The following regulations apply to the College Facilities Loan Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Subpart D and P, Part 75 (Direct Grant Programs) §§ 75.105, 75.600–75.616, Part 77, and Part 79.

(b) The regulations in this Part 614.

(Authority: 20 U.S.C. 1132g–1)

#### § 614.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR 34 Part 77.1:

| | |
|---|---|
| Applicant | Budget |
| Application | Department |
| Award | EDGAR |

| | |
|---|---|
| Facilities | Recipient |
| Fiscal year | Secretary |
| Nonprofit | State |
| Private | Supplies |
| Public | |

(b) *Revised EDGAR definitions.* The following terms defined in EDGAR, 34 CFR 77.1, are redefined for this part as follows:

"Acquisition" means taking ownership of property through purchase at fair market value.

"Equipment" means non-expendable personal property having a useful life of more than ten years, including machinery, fixtures, and other items necessary for maintenance and operation of a facility, except books, computer software, instructional materials, and other items involving current operating expenses such a fuel, supplies, and serviceable parts. Equipment may consist of—

(1) "Built-in equipment," which is a permanent part of a facility; and

(2) "Initial equipment," which includes furniture and other necessary and appropriate items for the functioning of a facility taking into account the specific purposes of the facility.

"Project" means the construction activity that is proposed for funding by an applicant under this program.

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Higher Education Act of 1965, as amended. Unless otherwise indicated, references to titles in this part are to titles of the Act.

"Assignable area" means the square footage of floor space in facilities which is designated and available for assignment to specific functional purposes, but does not include—

(1) Areas used for general circulation within a building;

(2) Areas for public washrooms;

(3) Areas for building maintenance or custodial services; or

(4) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures available for assignment to specific functional purposes.

"Construction" means—

(1) The erection of new or the expansion of existing structures, including acquisition of the land thereunder, and the acquisition and installation of initial equipment therefor; or

(2) The acquisition of existing structures, including the land thereunder, not owned by the institution involved.

"Design capacity", with respect to housing, means the number of occupants a building was originally designed to house, or if fewer, the maximum number of occupants permitted by State or local building codes.

"Development cost" means costs of the construction, reconstruction, or renovation of the housing, undergraduate academic facilities, or other educational facilities, including necessary site improvements to permit its use for housing, undergraduate academic facilities, or other educational facilities.

(20 U.S.C. 1132g–3(d))

"Facilities" means members of the faculty and their families.

"Full-time enrollment" means the number of full-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

"Gross area" means the total square footage of floor space within the outside faces of exterior walls in the facilities including common areas such as halls and stairways, public washrooms, and area for building maintenance and utilities.

"Housing" means—

(1) New or existing structures suitable for dwelling use by students or students and faculty and their families, including—(i) dormitories; and (ii) Apartments; and

(2) Dwelling facilities for students or faculty provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for the proposed dwelling use.

(20 U.S.C. 1132g–3(a))

"Housing shortage" means an existing need for decent, safe, and sanitary housing for currently enrolled full-time undergraduate students and faculty.

"Other educational facilities" means—

(1) New or existing structures suitable for use as cafeterias or dining halls, student centers or student unions, infirmaries or other inpatient or outpatient health facilities, or for use as other essential service facilities; and

(2) Structures suitable for those uses provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for those uses.

(20 U.S.C. 1132g–3(f))

"Part-time enrollment" means the number of part-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

"Reconstruction or renovation" means rehabilitation, alteration, conversion or improvement (including the acquisition and installation of initial equipment, or modernization or replacement of that equipment) of existing structures. ("Major renovation" means reconstruction or renovation with a total development cost in excess of $100,000.)

(20 U.S.C. 1132i–1(1)(B))

"Substandard housing" means student housing, either on campus or off campus that—

(1) Is owned or leased by an institution eligible under § 614.2; and

(2) Fails to meet current applicable State or local building code requirements.

"Undergraduate academic facilities" means structures suitable for use as classrooms, laboratories, libraries, and related facilities, the primary purpose of which is the instruction of students pursuing a baccalaureate degree, or for administration of the educational programs serving those students, and maintenance, storage, or utility facilities essential to operation of these facilities, as well as infirmaries or other facilities designed to provide primarily outpatient care for students and instructional personnel. The term does not include facilities such as—

(1) Dormitories, residence halls, or similar facilities designed for residence or habitation;

(2) Facilities primarily intended for events for which admission is to be charged the general public;

(3) Gymnasiums, stadiums, swimming pools, student centers, or other similar facilities specially designed for athletic or recreational activities; or

(4) Facilities used for religious worship or sectarian activities, or used in connection with a program conducted by a school or department of divinity.

(Authority: 20 U.S.C. 1132g–1(c), 1132g–3(c))

## Subpart B—How Does One Apply for a Loan?

### § 614.10 How does one submit an application?

(a) An applicant for a reservation of funds for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information required by the Secretary.

(b) (1) An applicant may submit only one application for a reservation of

funds in any fiscal year for each category of project described in §614.3.

(2) For purposes of paragraph (b) (1) of this section, the Secretary considers as a separate applicant a branch campus of a multi-campus institution if that branch campus has its own Federal Interagency Committee on Education (FICE) identification number.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.11 What conditions of eligibility apply?**

(a) The Secretary considers a project eligible to receive assistance only if—

(1) The applicant has not contracted for construction before filing its application;

(2) The facility will not be used—

(i) For religious worship;

(ii) In connection with a school or department of divinity; or

(iii) For a school providing either training for religious purposes or principally sectarian instruction; and

(3) Construction will be undertaken in an economical manner, and the facilities are not or will not be of elaborate or extravagant design or materials.

(b) The Secretary does not approve a college facilities loan under this part for any facility on the campus of an undergraduate educational institution until ten years after the date on which a previous loan for another facility on that campus was made under this part.

(c) Except in cases where construction assistance is necessary to remove a threat to life or limb or to repair a facility affected by a natural disaster, the Secretary does not approve a loan for a project in a facility on which there is an outstanding loan made under this part or under Title IV of the Housing Act of 1950.

(d) The Secretary does not approve a loan to an institution that is—

(1) Delinquent on a loan previously made under the Act, or under Title IV of the Housing Act of 1950, whether or not the Secretary has agreed to any deferment; or

(2) In default of any other obligation made under any other Federal program.

(e) The Secretary does not approve a loan to an institution that is financially insolvent.

(Authority: 20 U.S.C. 1132g–(b), 1132g–1(c))

**§ 614.12 What evidence, assurances, and opinions of counsel are required of the applicant institution?**

An applicant shall submit to the Secretary, as part of its application, the following evidence, assurances, and opinions of counsel:

(a) Satisfactory evidence that the applicant has or will have—based on title or lease—an interest in the project site, including the right of access, that is sufficient to ensure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, reconstruct or renovate or maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the Secretary offers and the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The securitry may be one or a combination of procedures listed in § 614.27.

(e) Satisfactory assurance that the applicant will not, without consent of the Secretrary, sell, mortgage, encumber, or lease to others during the life of the loan, the facility constructed, reconstructed, or renovated with the aid of the loan.

(f) Legal opinions by bond counsel or legal counsel with respect to—

(1) The legal sufficiency of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legal sufficiency of the debt instrument and collateral on delivery.

(g) As used in this paragraph, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction, reconstruction, or renovation projects through the issuance of bonds;

(2) Whose approving opinions have been previously accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(h) As used in this paragraph, "legal counsel" means a law firm or individual lawyer—

(1) Having experience in the financing of construction, reconstruction, or renovation projects; and

(2) Whose opinions with regard to that type of financing have been accepted previously by responsible lenders or lending institutions.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.13 What application procedures apply to non-profit student housing cooperatives?**

A nonprofit student housing cooperative, as described in § 614.2(f), that applies for a reservation of funds for a loan must assure the Secretary at the time of its application that—

(a) The institution the proposed project is intended to serve has agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution from cosigning the loan, the institution has approved the cooperative and the proposed project.

(Authority: 20 U.S.C. 1132g–3(b))

**§ 614.14 What application procedures apply to non-profit corporations?**

If a non-profit corporation described in § 614.2(d) that has not been established by the institution or institutions the proposed project is intended to serve applies for a reservation of funds for a loan, it shall assure the Secretary at the time of its application that—

(a) The educational institution or institutions the proposed project is intended to serve have agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution or institutions from cosigning the loan, the institution or institutions have approved the corporation and the proposed project.

(Authority: 20 U.S.C. 1132g–3(b))

## Subpart C—How Does the Secretary Make a Loan?

**§ 614.20 How does the Secretary evaluate applications?**

The Secretary evaluates applications for loans to construct, reconstruct or renovate—

(a) Housing facilities according to the criteria in § 614.21;

(b) Undergraduate academic facilities according to the criteria in § 614.22; and

(c) Other educational facilities according to the criteria in § 614.23.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.21 What selection criteria are used to evaluate applications for loans for housing facilities?**

The Secretary evaluates each application for a loan for housing facilities on the basis of the following criteria:

(a) *Use of existing housing.* (10 points)

(1) The Secretary considers the extent to which the institution makes effective use of the undergraduate student

housing space that it owns or leases as measured by the number of assignable square feet per undergraduate student occupant.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of assignable square feet per undergraduate student occupant.

(b) *Housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a housing deficiency as measured by the number of accommodations required to—

(i) Eliminate overcrowding of undergraduate students, that is, occupancy in excess of design capacity;

(ii) Provide accommodations for undergraduate students living a substandard housing; and

(iii) Provide accommodations for undergraduate students denied housing but registered for classes for the opening fall semester preceding the date of application.

(2) The Secretary assigns the highest scores to institutions with the greatest housing deficiency.

(c) *Relative housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a relative housing deficiency as measured in terms of a percentage obtained by dividing the total housing deficiency in § 614.21(b) by the institution's full-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the highest relative housing deficiency.

(d) *Cost effectiveness of project.* (30 points)

(1) The Secretary considers the cost effectiveness of the project as measured by the total development cost per gross square foot of the project, and the total development cost per undergraduate student accommodation.

(2) The Secretary assigns up to 15 points to institutions with the lowest cost per gross square foot, and up to 15 points to institutions with the lowest cost per undergraduate student accommodation.

(e) *Financial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student, as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per student.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.22 What selection criteria are used to evaluate loans for undergraduate academic facilities?**

(a) The Secretary evaluates each application for a loan for the construction of new undergraduate academic facilities according to the following criteria:

(1) *Increase in enrollment.* (25 points)

(i) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(2) *Relative increase in enrollment.* (25 points)

(i) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

(b) The Secretary evaluates each application for a loan for the reconstruction or renovation of undergraduate academic facilities according to the following criteria:

(1) *Age of undergraduate academic facilities to be renovated or reconstructed.* (25 points)

(i) The Secretary considers the date of construction completion of the undergraduate academic facilities to be renovated or reconstructed.

(ii) The Secretary assigns the highest scores to the oldest facilities.

(2) *Deferred maintenance.* (25 points)

(i) The Secretary considers the extent to which the facilities have gone without major renovation or reconstruction.

(ii) The Secretary assigns the highest scores to the facilities that have gone the longest time without major renovation or reconstruction.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. The expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assign the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.23 What selection criteria are used to evaluate applications for loans for other educational facilities?**

The Secretary evaluates each application for a loan for other educational facilities according to the following criteria:

(a) *Increase in enrollment.* (25 points)

(1) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(b) *Relative increase in enrollment.* (25 points)

(1) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(c) *Use of existing other educational facilities.* (30 points)

(1) The Secretary assesses the extent to which the institution makes use of its existing other educational facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(d) *Finacial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate students.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.24 What apportionment requirements and other limitations apply?**

(a) The Secretary awards not more than 12.5 percent of the amount of the funds provided under this part to educational institutions within any one State.

(b) Subject to paragraph (a) of this section, the Secretary may, as necessary, deviate from the rank order of applications in each category of loans to ensure that not less than ten percent of the number of loans made or not less than ten percent of the amount of total funds available are reserved for applications from historically black colleges and universities.

(c) The maximum loan that the Secretary makes to an eligible applicant is $3,000,000.

(d) The minimum loan that the Secretary makes to an eligible applicant is $250,000.

(Authority: 20 U.S.C. 1132g–1(c), 1132g–2)

**§ 614.25 What determination must be made by the Secretary regarding non-availability of equally favorable terms and conditions?**

(a) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may require, including—if bonds are to be issued—public advertising for bids.

(Authority: 20 U.S.C. 1132g)

**§ 614.26 What is required in a loan agreement?**

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations in this part; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan including financial reporting requirements; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(Authority: 20 U.S.C. 1132–1(c))

**§ 614.27 What kinds of security are required for the loan?**

(a) A borrower shall evidence its loan by either notes or bonds issued by the borrower, secured by a mortgage, a trust indenture, project revenues, other revenue sources, or any combination thereof.

(b) If the Secretary determines that additional security is needed to assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds.

(2) A pledge of securities.

(3) A mortgage on other facilities or real property.

(4) A guarantee of the payment of principal and interest by a third party.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.28 What evidence of an approved debt instrument is required?**

After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary evidence of indebtedness in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.29 When does loan closing take place?**

Loan closing occurs at a time determined by the Secretary.

(Authority: 20 U.S.C. 1132–1g(c))

**§ 614.30 What are the conditions for interim financing?**

(a) A borrower may arrange for interim financing, subject to approval of the Secretary, to cover the cost of construction pending the loan closing.

(b) After the award of all prime construction contracts, if the Secretary finds that the borrower is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(Authority: 20 U.S.C. 1132g–1(c))

## Subpart D—What Conditions Must Be Met After an Award?

**§ 614.40 What are the general rules for determining eligible development costs?**

The Secretary determines eligible development costs by assessing the reasonableness and appropriateness of costs that would be incurred by the project taking into account—

(a) The timing of when certain costs would be incurred by the applicant; and

(b) The applicant's compliance with the regulations in this part.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.41 What are ineligible development costs?**

(a) The Secretary excludes from eligible development costs any costs for

construction, rconstruction, or renovation or for otherwise eligible equipment, if the construction, reconstruction, or renovation contract was entered into before the Secretary executed the loan agreement and before the Secretary concurred in the award of the contract, except in cases where there is a threat to life or limb or there is a natural disaster which is related to the construction project.

(b) In cases of threat to life or limb or a natural disaster, the Secretary, in determining the eligibility of costs incurred prior to execution of a loan agreement and the approval of a construction contract, requires that the applicant provide a certification from a licensed professional architect or engineer that construction is necessary and appropriate.

(c) The Secretary excludes from eligible development costs any costs for—

(1) Land incurred before the applicant files the application;

(2) The acquisition of a structure incurred before the applicant files the application;

(3) Equipment incurred before the date the applicant files the application; and

(4) Ineligible facilities included in the total development costs.

(Authority: 20 U.S.C. 1132g–3(d))

**§ 614.42 What are the requirements with respect to a construction account?**

(a) A borrower shall deposit in a separate account known as the Construction Account—

(1) The proceeds of the sale of the bonds or notes;

(2) Any interim advances against the approved loan; and

(3) All other money that the borrower will use in paying for the construction of the approved project.

(b) The borrower shall make all expenditures for construction, rehabilitation or acquisition from this account.

(c) Accounting for this account must be in accordance with generally accepted accounting principles.

(d) If the borrower chooses to invest the funds in this account, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(e) An investment made in accordance with paragraph (d) of this section must be in obligations that will mature not later than 18 months from the date of the investment.

(f) Any interest earned on the investment of idle funds in the Construction Account during the construction period must be deposited in the Construction Account. The interest must be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess must be used to reduce the outstanding principal amount of the loan.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.43 What are the procedures for loan disbursement?**

(a) The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(b) The Secretary charges interest on the advances at the same rate the Secretary charges interest on the loan.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.44 How shall the balance remaining in the construction fund be disposed of?**

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, a borrower shall dispose of any money remaining in the Construction Account in accordance with the provisions of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.45 How is the determination of final approved development costs made?**

(a) For the purpose of determining the final approved development costs, the Secretary may permit a borrower to use—in place of an audit by the Government—a certificate of project development costs prepared on forms prescribed by the Secretary and executed by the borrower.

(b)(1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include, but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, and other items of expense approved by the Secretary.

(Authority: 20 U.S.C. 1132g–1)

**§ 614.46 How must pledged revenues be applied?**

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues in a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.47 What are the length and maturity of loans?**

(a)(1) The maximum repayment period for a loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, reconstructed, renovated, or purchased with the proceeds.

(b) Loans must bear interest at a rate not to exceed 5.5 percent per annum.

(c) Unless the Secretary authorizes otherwise—

(1) The borrower must repay the loan semi-annually in substantially level total annual installments of principal and interest.

(2) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with a borrower's total financial planning.

(3) For a reasonable period of time—normally not exceeding two years following the closing of the loan—the Secretary may permit a borrower to make payments of interest only.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.48 What are borrowers' non-financial obligations?**

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution, including its accreditation;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities;

(d) Repair and maintain the project facilities; and

(e) Never use the project facilities for religious worship or a sectarian activity or for a school or department of divinity.

(Authority: 20 U.S.C. 1132g–1(c))

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## DEPARTMENT OF EDUCATION

**[CDA No. 84.142]**

### Notice Inviting applications for New Awards Under the College Facilities Loan Program for Fiscal Year 1987

*Purpose:* Provide low interest loans to eligible undergraduate postsecondary educational institutions for the construction, reconstruction, or renovation of housing facilities, undergraduate academic facilities, and other educational facilities.

*Deadline for Transmittal of Applications:* July 20, 1987.

*Applications Available:* June 1, 1987.

*Available Funds:* The Congress authorized $60,000,000 for this program in fiscal year 1987.

*Estimated Range of Awards:* $250,000 to $3,000,000.

*Estimated Average Size of Awards:* $1,500,000.

*Estimated Number of Awards:* 40.

*Project Period:* Until completion.

*Priorities:* In accordance with section 763(b) of the Higher Education Act, as amended, the Secretary gives priority to loans for renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time. In order to accomplish this objective, $31,000,000 will be reserved for loans for the renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time, and $29,000,000 will be reserved for loans for housing facilities.

*Deadline for Intergovernmental Review Comments:* September 18, 1987.

*Applicable Regulations:* Regulations governing the College Facilities Loan Program as proposed to be codified in 34 CFR Part 614. (Applications are being accepted based on the Notice of Proposed Rulemaking which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

*Technical Assistance Workshops:* Applicants are invited to participate in technical assistance workshops to be held in five regional locations to assist applicants in application preparation. The workshops will take place in San Francisco on June 9, Dallas on June 11, Atlanta on June 16, Chicago on June 17, and Washington, DC on June 19. For specific information on these workshops, please contact the Division of Higher Education Incentive Programs on (202) 732–4394.

*For Applications or Information Contact:* Sumner Bravman, U.S. Department of Education, 400 Maryland Ave., SW., Room 3514, ROB–3, Washington, DC 20202, Telephone: (202) 732–4394.

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Dated: May 8, 1987.

**C. Ronald Kimberling,**

*Assistant Secretary for Postsecondary Education.*

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Federal Register

Vol. 52, No. 91

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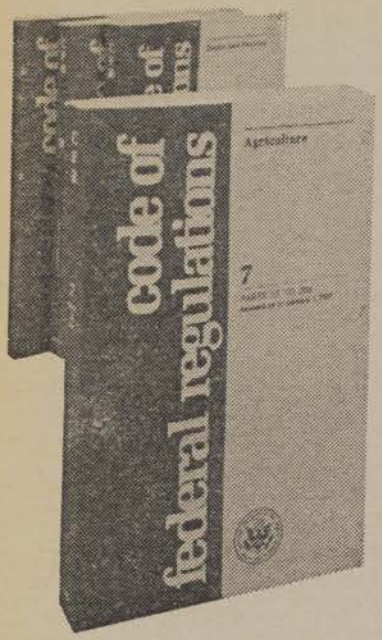
**H.R. 14/Pub. L. 100-33**

To designate certain river segments in New Jersey as study rivers for potential inclusion in the national wild and scenic river system. (May 7, 1987; 101 Stat. 299; 1 page) Price: $1.00

**H.R. 1963/Pub. L. 100-34**

To amend the Surface Mining Control and Reclamation Act of 1977 to permit States to set aside in a special trust fund up to 10 per centum of the annual State funds from the Abandoned Mine Land Reclamation Fund for expenditure in the future for purposes of abandoned mine reclamation, and for other purposes. (May 7, 1987; 101 Stat. 300; 2 pages) Price: $1.00

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