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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations modify the Official Standard Grades for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. This modification will: (1) Revise the definition of nested tobacco to specifically include a lot arranged so that tobacco in the lower portion of the lot is distinctly inferior to the tobacco in the top portion, and (2) delete the wrapper group, which contains the grades A1L—Choice Quality Lemon Wrappers and A1F—Choice Quality Orange Wrappers which have been determined to be no longer necessary.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Lionel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, telephone: (202) 447–2567.

SUPPLEMENTARY INFORMATION: A notice was published July 6, 1987, (52 FR 25235) that the Department was considering a modification of the Official Standard Grades for Flue-Cured Tobacco, U.S. Types 11–14 and Foreign Type 92, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The following modifications were proposed: (1) To revise the definition of nested to include specifically any lot of tobacco consisting of distinctly different grades, qualities or conditions which is arranged so that the layers in the bottom portion are distinctly inferior in grade to the tobacco in the top portion, and (2) delete the wrapper group which contains the grades A1L—Choice Quality Lemon Wrappers and A1F—Choice Quality Orange Wrappers because tobacco characteristic of these grades has not appeared in the marketplace during the past 5 marketing seasons. A period of 15 days was provided for interested parties to comment on the proposed modifications.

Two comments were received, one favoring the proposal as published and one favoring deletion of the wrapper grades but opposing the revision of the definition of nested. It was suggested that the revised definition is unnecessary because lots consisting of different grades or groups of different colors are covered under current rules and definitions of mixed groups and mixed color. The comment illustrates the desirability of the proposed clarification. Some variation in grade, quality or condition within any particular lot of tobacco is normal. There are many provisions in the official standards, including those for mixed color and mixed groups, which describe variation within a lot and which establish tolerance levels. However, a lot of tobacco which is not merely non-uniform but which has been arranged to conceal inferior tobacco would be regarded as nested under the old definition as well as the revised definition. The revision does not make a substantive change but merely clarifies the definition of nested so that there can be no doubt that it includes any lot of tobacco which consist of different grades, qualities or conditions not mixed together but arranged with the same kinds together and with the inferior tobacco in the bottom portion of the lot. Accordingly, the suggestion is not adopted in this final rule.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "nonmajor" because they do not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29 for need, currentness, clarity and effectiveness has been completed.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business of this final rule. The changes made by this final rule will have any adverse effects. The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. Compliance with these revisions will not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive positions of small entities relative to large businesses.

It is also found and determined that it is impractical, unnecessary, and contrary to the public interest to delay the effective date of this rule for 30 days after publication in the Federal Register. This final rule is made effective upon publication so that the revisions will be in place for the entire 1987 marketing season, which begins on July 28, 1987, and in order to allow the Commodity Credit Corporation to establish and announce the flue-cured price supports by grade prior to the opening of the marketing season.

Therefore, after consideration of comments on the proposal and other relevant information, the Department hereby adopts the regulations as proposed.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29, Subpart C, as follows:

PART 29—TOBACCO INSPECTION

1. The authority citation for §§ 29.1001 to 29.1225 continues to read as follows:

Authority: Sections 29.1001 to 29.1225 are issued under sec. 14, 49 Stat. 734, as amended (7 U.S.C. 511m); sec. 213, 97 Stat. 1149 (7 U.S.C. 511r).

2. Section 29.1026 is revised to read as follows:

§ 29.1026 Group.

A division of a type covering closely related grades based on certain characteristics which are related to stalk position, body, or the general quality of the tobacco. Groups in Flue-

cured, U.S. Types 11–14, and Foreign Type 92 are: Leaf (B), Smoking Leaf (H), Cutters (C), Lugs (X), Primings (P) Mixed (M), Nondescript (N), and Scrap (S).

3. Section 29.1037 is revised to read as follows:

§ 29.1037 Nested.

Any lot of Types 11–14 tobacco which has been loaded, packed or arranged to conceal tobacco of inferior grade, quality or condition. Nested includes: (a) Any lot of tobacco which contains injured or other inferior tobacco, any of which cannot be readily detected upon inspection because of the way the lot is packed or arranged; (b) Any lot of tobacco which consists of distinctly different grades, qualities or conditions and which is stacked or arranged with the same kinds together so that the tobacco in the lower portions of the lot is distinctly inferior in grade, quality or condition from the tobacco in the top portion of the lot.

§ 29.1161 [Removed and Reserved]

4. Section 29.1161 is removed and reserved.

§ 29.1181 [Amended]

5. In § 29.1181, the heading and text of the chart headed "2 Grades of Wrappers" are removed.

§ 29.1225 [Amended]

6. In § 29.1225, under the heading "Groups", the text "A-Wrappers" is removed.

Dated: July 29, 1987.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 87–17563 Filed 7–30–87; 8:45 am]

BILLING CODE 3410–02–M

Federal Grain Inspection Service

7 CFR Part 810

Official U.S. Standards for Grain; Correction

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Federal Grain Inspection Service (Service) is correcting errors contained in the preamble and the regulatory text of the Official U.S. Standards for Grain which appeared in the **Federal Register** under document number 87–14827 on June 30, 1987 (52 FR 24414).

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: The Service published this final rule to the Official U.S. Standards for Grain to revise the format, establish new rounding procedures, replace the term "weevily" with "infested," and revise various portions of the barley standards. The changes made to this final rule were effective on June 30, 1987, except for barley protein testing services which will be available upon request beginning May 1, 1988.

Accordingly, the errors contained in the Official U.S. Standards for Grain published on June 30, 1987 (52 FR 24414) are corrected as follows:

1. On page 24418, second column, line 27, change "800.106" to "810.106".

2. On page 24418, third column, line 10, change "800.106" to "810.106".

3. On page 24419, third column, Subpart L, one line below § 810.2203, change "Grades and Grades Requirements" to "Grades and Grade Requirements".

§ 810.104 [Corrected]

4. On page 24420, second column, § 810.104(b), line 19, insert after the word "of" the words "smut in barley and"; change the last word "is" to "are"; and add at the end of the paragraph the sentence "All other percentages are reported in tenths percent."

§ 810.202 [Corrected]

5. On page 24421, second column, remove the semicolon at the end of line 23; and in line 24 change the word "contain" to "contains".

6. On page 24422, first column, first line, change "Federal Grain Inspection Service" to "American Malting Barley Association".

§ 810.204 [Corrected]

7. On page 24422, § 810.204, footnote 1, listed under the table, remove the words "Includes heat-damaged kernels" at the beginning of the footnote statements.

§ 810.205 [Corrected]

8. On page 24422, § 810.205, footnote 1, listed under table, change "stored" to "scored".

§ 810.206 [Corrected]

9. On page 24422, § 810.206, fourth column in the table, under the heading of Damaged kernels (percent) for the Grade U.S. No. 1, change "0.2" to "2.0".

10. On page 24422, § 810.206, eighth column in table, under the heading Thin Barley (percent) for the Grade U.S. No. 4, change "5.0" to "35.0".

11. On page 24422, § 810.206, under U.S. Sample grade, paragraph (b), line 3, change "cocklebur (Xanthium) ssp.)" to "cocklebur (Xanthium spp.)".

§ 810.402 [Corrected]

12. On page 24423, first column, § 810.402 (a), line 5, insert the word "sample" after the word "sieved".

§ 810.404 [Corrected]

13. On page 24423, § 810.404, second column in the table, change the heading "Minimum test weight per bushel (percent)" to "Minimum test weight per bushel (pounds)".

§ 810.403 [Corrected]

14. On page 24423, third column, § 810.403, line 2, insert "waxy corn" before the word "flint".

§ 810.405 [Corrected]

15. On page 24424, first column, line 4 third word, change "of" to "or".

§ 810.1402 [Corrected]

16. On page 24427, second column, under paragraph (d), at the end of the definition for dockage remove the words "and that cannot be recovered by properly rescreening or recleaning."; and add a period after the word "sorghum."

17. On page 24427, third column, line 18, change the first word "and" to "the"; and change the fifth word "that" to "which".

§ 810.1604 [Corrected]

18. On page 24428, § 810.1604, under U.S. Sample grade, item (b), change the word "that" to "which".

§ 810.2002 [Corrected]

19. On page 24429, second column, below table, § 810.2002, line 6, change "insert-bored" to "insect-bored".

§ 810.2004 [Corrected]

20. On page 24430, § 810.2004, within the table, which reads:

"U.S. Sample grade—
(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, of f; or"

Is correctly revised to read:

"U.S. Sample grade—
U.S. Sample grade is triticale that:
(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or"

§ 810.2203 [Corrected]

21. On page 24431, § 810.2203, line 3, change "other classes" to "wheat of other classes".

Dated: July 27, 1987.
W. Kirk Miller,
Administrator.
[FR Doc. 87-17378 Filed 7-30-87; 8:45 am]
BILLING CODE 3410-EN-M

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7 CFR Part 910

[Lemon Reg. 572]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: Regulation 572 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 353,000 cartons during the period August 2 through August 8, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 572 (§ 910.872) is effective for the period August 2–8, 1987. Comments due August 20, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning the possible impact of volume regulations on small entities. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250–0200. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended, and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

At the beginning of each marketing year, the Lemon Administrative Committee (committee) submits a marketing policy to the Department which discusses, among other things, the potential use of volume and/or size regulations for the ensuing season. The Committee's 1987–88 season marketing policy contemplated the use of volume regulation this season. The U.S. Department of Agriculture reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

Lemons regulated under Marketing Order No. 910 are grown in California and Arizona. For marketing order purposes, the production area is divided into three districts: District 1, representing Central California; District 2, representing Southern California; and District 3, representing Arizona and the desert area of California. In recent seasons, District 2 has accounted for around 48 percent of total production, District 1 about 12 percent, and District 3 around 40 percent. The estimated production for the 1987–88 crop season is 46,913 cars (1 car equals 1,000 cartons, 1 carton equals 37½ pounds).

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic fresh market is fairly static, receiving around 14,000–15,000 cars per year unless unusual conditions occur. Quantities utilized in the export market have ranged from 7,000 to 10,000 cars in the past four years. Exports vary depending on factors such as the amount of competitive supplies, foreign monetary exchange rates, quality, quantity, and trade practices. The processing market is basically a residual outlet. Estimated crop utilization for the 1987–88 season is 15,250 cars for domestic fresh markets, 10,000 cars export, with the remaining 21,663 to processed and other outlets.

The California-Arizona lemon industry is characterized by a large number of growers that cover a large geographical area. The exact number of growers is not presently known, but estimates are that this number is in the range of 2,000 to 2,500. An actual number is difficult to obtain, due to the various types of entities involved in growing lemons. For example, one grower may be involved in several different legal entities; either as an individual or with others. It is therefore difficult to ascertain if such an entity constitutes one or several growers. There is also a lack of complete information regarding all the entities themselves. In addition, there are approximately 85 handlers of California-Arizona lemons in the regulated area.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three fiscal years of less than $100,000 and agricultural service firms, which includes handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona lemon producers and handlers may be characterized as small producers and handlers.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to both producers and consumers. Producers benefit in areas such as increased grower returns and improved market conditions. Reduced fluctuations in supplies and prices result from pre-planned shipping levels, resulting in a more stable market. Consumers are assured of a steady supply of lemons in the market throughout the marketing season.

Benefits and costs of issuing regulations are difficult to quantify, as indicated in various studies regarding effects of marketing orders and criteria for measuring the effects. Although the information currently available to AMS is limited, the known costs to growers of implementing the regulations appear to be significantly offset when compared to potential benefits of regulation.

The reporting and recordkeeping requirements under M.O. 910 are incurred by handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by the handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

If volume regulations were not to be used for the 1987–88 season, it is likely that most of these reporting and recordkeeping functions would still be carried out. The method of calculating the quantities of lemons for fresh shipments by handlers for any given week is based on information gathered over several previous weeks' time. Therefore, there is an incentive to keep

and maintain records in anticipation of future implementation of regulation.

Based on consideration of the conditions that exist in the lemon industry at this time, the Administrator of the AMS has determined that the issuance of weekly volume regulations will not have a significant economic impact on a substantial number of small entities.

The Fruit and Vegetable Division of the AMS, however, encourages the submission of comments on economic impacts on small entities from all interested parties. USDA's position on this certification of the regulatory action will be further evaluated in view of the applicable comments received.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Act. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1987–88. The committee met publicly on July 28, 1987, at Los Angeles, California to consider the current and prospective conditions of supply and demand and unanimously recommended (with two abstentions) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.872 is added to read as follows:

§ 910.872 Lemon Regulation 572.

The quantity of lemons grown in California and Arizona which may be handled during the period August 2 through August 8, 1987, is established at 353,000 cartons.

Dated: July 29, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–17578 Filed 7–30–87 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

10 CFR Part 763

Uranium Enrichment Late Payment Charges

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is announcing its decision to change the method of assessing interest charges for overdue uranium enrichment customer accounts. This change will raise the late payment charge due DOE. The proposed new interest charge applicable only to uranium enrichment customers accounts will be Treasury's current value of funds rate plus 6 percent pro rata on a daily basis. The additional 6 percent charge will not go into effect until five business days after payment is due. However, if the payment is due between September 15 and September 30, the additional 6 percent charge will go into effect the first day the payment is late.

The primary reason for this change is to motivate customers to pay on time and reduce uncertainty in DOE's estimate of revenue collections.

EFFECTIVE DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Knipp, Office of Marketing and Business Operations (NE–32), Washington, DC 20545, (301) 353–5841; and Lawrence Leiken, Attorney for Office of General Counsel (GC–31), Washington, DC 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Introduction

The current late payment charge applicable to all DOE accounts including uranium enrichment customers is tied to the Treasury's current value of funds rate and was established in a **Federal Register** notice, 46 FR 21408, April 10, 1981. The Treasury Funds rate is an annualized percentage rate determined by the Treasury and represents the average of the current value of funds to the Treasury for a recent 3-month period. In that notice of April 10, 1981, it was stated that interest should be collected on all overdue accounts in order for the Federal Government to manage its accounts receivable more efficiently. At that time, the quarterly publishing of the Treasury Funds rate was deemed a good barometer of current economic conditions. The use of the rate would enable the Government to recoup the approximate value that has been lost by the delayed receipt of funds.

In the recent history of uranium enrichment revenue collections, it has been determined that the use of the Treasury's current value of funds rate for setting the late payment charge has not been adequate to ensure timely payment of customer accounts. The late payment charge (i.e., Treasury Funds rate) is currently at 7 percent. Over the last few years, the rate has been relatively low compared to the Public Utility Bond Rates. Thus, enrichment customers may view the Department's late payment charge as an attractive source of financing compared to the rates available to them through private sources.

To the extent that DOE's late payment rate encourages customers to delay payments, it contributes to the Federal deficit. Additionally, the Department attempts to maintain its enrichment budget outlays within the level of revenues estimated to be collected each fiscal year. If there is uncertainty about revenue collections, then enrichment outlays may have to be reduced to reflect this uncertainty. The only significant program vehicle available to the Department for reducing outlays is to reduce power purchases which can cause a drop in production to uneconomical levels. The lost production must be replaced in later years when the cost of production is estimated to increase significantly due to escalation, economies of scale, and existing power contract commitments. As the typical annual customer delivery is worth over $10 million, the programmatic impact of late payments from even a single customer can be

significant, penalizing customers who have paid on time.

II. Background

On February 10, 1987, DOE proposed a change in the method of assessing interest charges for overdue uranium enrichment customer accounts. 52 FR 4151. DOE requested written comments on the proposal by March 12, 1987, and provided for a public hearing which was held on March 5, 1987.

DOE received nine written comments in response to the Notice of Proposed Rulemaking from major United States utilities located throughout the country. These comments have provided DOE with a full and thorough rulemaking record, containing the points of view of all interested persons. DOE has considered all the comments carefully in its deliberations and has modified its proposal where appropriate.

In the following section DOE describes the comments which it has received and the revisions in the proposal to respond to some of those comments.

III. Revised Late Payment Charge

A. Section 763.1

Section 763.1 provides that the late payment charge for uranium enrichment customers will be the current Treasury Funds rate plus 6 percent pro rata.

Several customers indicated that the increased late charges should not be due until several days after payment was due. Comments were also received discussing the fact that occasional and unavoidable late payments by customers that normally pay on time should not be treated the same as customers that are habitually late for prolonged periods.

In response to these comments and in recognition of the fact that a majority of the customers make a "good faith" effort to pay their bills on time, DOE has decided to modify the proposed rule which appeared in the **Federal Register** notice of February 10, 1987.

Whereas the original proposed late payment charge was the current value of funds rate plus 6 percent pro rata on a daily basis starting on the first day the payment was late, the final rule provides that the additional 6 percent charge will not go into effect for the first 5 days after payment is due. However, due to the particular needs of the uranium enrichment program to receive all revenues due before the end of the fiscal year, if the payment is due between September 15 and September 30, the 6 percent additional charge will be assessed beginning on the first day the payment is late.

Additionally, to allow customers to prepare themselves for the new change, the rulemaking will not go into effect until August 31, 1987.

Commenters raised other issues with respect to the proposal. Several indicated that late charges should be negotiated with each customer rather than applied on a uniform basis. Others contend that adding 6 percent to the Treasury rate would be excessively high. In addition, legal issues were raised such as whether the proposed late charge would permit DOE to recover more than the cost of providing enrichment services or whether enrichment customers may be charged a different late fee from other DOE customers.

After careful consideration DOE has determined that it is more appropriate to establish a uniform policy for late charges through rulemaking than to negotiate on a customer by customer basis. A key factor considered in this decision is that the great majority of customers pay on a timely basis and will not be directly impacted by the change in late charges. Moreover, the additional 5 day grace period applicable during most of the year will in most instances insulate customers from the higher charge when those customers are only a day or two late.

DOE disagrees with the view that the new late charge is excessively high. As explained previously, the Treasury rate has been relatively low compared to the Public Utility Bond Rates. See 52 FR 4153, February 10, 1987. Only a 1 or 2 percent increase in the late charge would not change that relationship. DOE believes that the 6 percent increase will be adequate to provide an incentive for all customers to pay DOE on time rather than to use its late charge as an alternative form of financing.

DOE rejects the suggestion that the increase in the late charge represents a deviation from the cost recovery provision in the Atomic Energy Act. The measure is not designed to enhance revenues but merely to assure cost recovery and to allocate costs fairly. When revenues total less than outlays, a debt results which is passed on to all enrichment customers. DOE believes that it is inequitable to pass on the costs and risks of nonpayment to customers who pay on a timely basis.

Finally, DOE believes that it has adequate authority to establish a new late charge for enrichment customers. While traditionally a single late charge has been applicable to all DOE customers, there is no legal requirement of uniformity with respect to late charges. Departures from the Treasury rate are not unprecedented. In fact, DOE disposal contracts under the Nuclear Waste Policy Act also provide for late payment charges based on Treasury's current value of funds rate plus 6 percent.

The applicable legal requirements peculiar to the enrichment program fully support development of a separate late charge methodology for enrichment. These include the cost recovery mandate applicable only to uranium enrichment which appears at section 161(v) of the Atomic Energy Act and subsequent legislation which requires that the Secretary establish a separate account for uranium enrichment. For example, the Energy and Water Development Appropriations Act for the fiscal year ending September 30, 1986 provides as follows:

> [t]hat revenues received by the Department for the enrichment of uranium . . . shall be retained and used for the specific purpose of offsetting costs incurred by the Department in providing uranium enrichment services. . . .[1]

IV. Procedural Matters

A. Review Under Executive Order 12291

Executive Order 12291, 46 FR 13191, February 19, 1981, requires an agency to prepare a regulatory impact analysis for any major rule. DOE has determined that this does not constitute a "major rule," as defined in the Executive Order, because: (1) The late payment charge increase applicable to uranium enrichment customers will not directly result in the level of impact necessary to meet the definition of a "major rule;" and (2) in keeping with the purpose and intents of the Executive order, the late payment charge increase applicable to uranium enrichment customers will not increase the regulatory burdens on American society. The Office of Management and Budget has reviewed and commented on this rule.

B. Review Under the Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, DOE certifies that the proposal will not have a significant economic impact on a substantial number of small entities because: (1) The proposed late payment charge applicable to uranium enrichment customers will not directly result in the level of impact required to meet the standard set forth in the Regulatory Flexibility Act; (2) to the extent the proposed late payment charge increase applicable to uranium enrichment customers may have any direct impact, such impact will not be

[1] See also section 111(b)(2) of the Energy Reorganization Act of 1974, 42 U.S.C. 5821(b)(2).

adverse to small entities; and (3) the number of small entities that may be affected by the proposed late payment charge increase applicable to uranium enrichment customers is not large enough to meet the standard set forth in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The late payment charge increase for uranium enrichment customers does not directly provide for the collection of new information. DOE will submit the collection of any new information requests concerning the rulemaking amendments to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1. *et seq.*

D. National Environmental Policy Act

The Department of Energy has determined that this rulemaking clearly will have no effect on the quality of the human environment. Since the rulemaking is not a major Federal action significantly affecting the quality of the human environment, neither an Environmental Assessment nor an Environmental Impact Statement is required.

List of Subjects in 10 CFR Part 763

Uranium.

For the reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on 28 July 1987.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

Chapter III of Title 10 of the Code of Federal Regulations is amended by adding a new Part 763 to read as follows:

PART 763—URANIUM ENRICHMENT LATE PAYMENT CHARGES

Authority: Sec. 161(v) of the Atomic Energy Act, as amended, 68 Stat. 943, 42 U.S.C. 2201(v).

§ 763.1 Uranium enrichment late payment charges.

The late payment charge for uranium enrichment customers will be the current Treasury Funds rate plus 6 percent pro rata on a daily basis. The additional 6 percent charge will not go into effect until five business days after payment is due. However, if the payment is due between September 15, and September 30, the additional 6 percent charge will go into effect the first day the payment is late.

[FR Doc. 87-17446 Filed 7-30-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Securities Credit Transactions; List of Marginable OTC Stocks; Regulations G, T, U, and X

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; Determination of Applicability of Regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective May 12, 1987 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Research Assistant, Division of Banking Supervision and Regulation, (202)-452-2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), (202)-452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks. This List supersedes the last complete List which was effective May 12, 1987. (Additions and deletions for that List were published at 52 FR 15941, May 1, 1987). The current List includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U, and X (12 CFR Parts 207, 220, 221 and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulations in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. sections 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additons to the Board's List:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

Advanced Tobacco Products, Inc.
$.01 par common
American Restaurants Corporation
No par common
ANAC Holding Corporation
15.25% cumulative, exchangeable preferred
Bluefield Supply Company
$2.00 par common
Chargit, Inc.
$.01 par common
Computer Resources, Inc.
No par common
Energy Conversion Devices, Inc.
Warrants (expire 09–30–87)
First Federal of the Carolinas F.A.
$1.00 par convertible, preferred
GNI, Inc.
No par common
Edward Hines Lumber Co.
$10.00 par common
International Mobile Machine Corporation
$.10 par convertible, preferred
Kloss Video Corporation
$.20 par common
American Land Cruisers, Inc.
Warrants (expire 05–04–89)
American Surgery Centers Corporation
$.001 par common
Banc One Corporation
Series A, convertible, preferred
Chapman Energy, Inc.
$1.20 par convertible, preferred
Columbia Savings and Loan Association (California)
Warrants (expire 05–15–93)
Di Giorgia Corporation
12% convertible, subordinated debentures
Financial Security Savings and Loan Association (Florida)
Class A, $2.50 par common
First of America Bank Corporation
$11.00 par cumulative, convertible preferred
Great American Bancorp
No par common
Home Intensive Care, Inc.
$.01 par cumulative, convertible preferred
Investors Savings Bank (Virginia)
Series A, $.95 par cumulative convertible, preferred
North American Ventures, Inc.
Warrants (expire 05–09–91)
Oliver's Stores, Inc.
$.01 par common
Palm Springs Savings Bank
$2.50 par common
P & F Industries, Inc.
Warrants (expire 05–18–87)
Walker Telecommunications Corporation
Warrants (expire 04–05–90)

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

American Businessphones, Inc.
No par common
Amwest Insurance Group, Inc.
No par common
Auxton Computer Enterprises, Inc.
$.01 par common
Bancserve Group, Inc.
$5.00 par common
Burnham Pacific Properties, Inc.
No par common
Catalyst Energy Development Corporation
$.10 par common
Chicago Pacific Corporation
$.01 par common
Cobanco, Inc.
No par common
Conifer Group, Inc., The
$1.00 par common
Davis Water and Waste Industries, Inc.
$1.00 par common
Faraday Laboratories, Inc.
$.01 par common
American Land Cruisers, Inc
$.01 par common
Anchor Glass Container Corporation
$.01 par common
Bamberger Polymers, Inc.
$.01 par common
Baron Data Systems
$.10 par common
Cambridge Royalty Company
$1.00 par common
Chemlawn Corporation
No par common
Coast R.V., Inc.
No par common
Color Systems Technology Inc.
$.15 par common
Data Architects, Inc.
$.01 par common
Dual-Lite, Inc.
No par common, $.01, stated value
Federal National Mortgage Association
Warrants (expire 02–25–01)
First Data Management Company, Inc.
$1.00 par common
Gulf Broadcast Company
$.10 par common
High Plains Oil Corporation
$.10 par common
Instinet Corporation
$.25 par capital
Joule, Inc.
$.01 par common
KMW Systems Corporation
$.10 par common
Meditrust Corporation
No par shares of beneficial interest
Norris Oil Co.
$.001 par common
Old National Bancorporation
$5.00 par common
Pacific Southwest Airlines
$.25 par common
Paxar Corporation
$.10 par common
Pro-Med Capital, Inc.
$.01 par common
Quincy Co-Operative Bank, The (Massachusetts)
$.10 par common
RLI Corporation
$1.00 par common
Galoob, Lewis Toys, Inc.
No par common
Gray & Company Public Communications International, Inc.
$.01 par common
Houston Oil Fields Company
Series C, 1.375% cumulative convertible, preferred
Intrawest Financial Corp.
$10.00 par common
Kent Electronics Corporation
No par common
Lane Company, Inc., The
$5.00 par common
Monfort of Colorado, Inc.
$1.00 par common
North Carolina Federal Savings and Loan Association
$.01 par common
Orbanco Financial Services Corporation
No par common
Par Pharmaceutical, Inc.
$.01 par common
Philips' Gloeilampen-Fabrieken, N.V.
Common New York Shares, Nfl 10 par value
Progressive Corporation, The
$1.00 par common
Riedel Environmental Technologies, Inc.
$.01 par common
Shelby Williams Industries, Inc.
$.10 par common
Staff Builders, Inc.
$.10 par common
Thermedics Inc.
$.10 par common
Town & Country Jewelry Manufacturing Corporation
$.01 par common
Union Federal Savings and Loan Association (California)
No par common
Valley Utah Bancorporation
No par common
Ziyad Inc.
No par common
Telesis Systems Corporation

$.10 par common
Thermo Process Systems, Inc.
$.10 par common
U.S. Design Corporation
$.03 par common
United Telecontrol Electronics Inc.
$.10 par common
Wright, William E. Company
$.50 par common

Additions to the OTC Margin List

A & W Brands, Inc.
$.01 par common
Action Auto Stores, Inc.
No par common
Advanced Marketing Services, Inc.
$.001 par common
Aldus Corporation
$.01 par common
Allcity Insurance Company
$1.00 par common
Alpha 1 Biomedicals, Inc.
$.001 par common
Alpharel, Inc.
No par common
Amerford International Corporation
$.05 par common
American Credit Card Telephone Company
$.01 par common
American Pacific Corporation
$.10 par common
Amplicon, Inc.
$.01 par common
ATN, Inc.
No par common
Attwoods, PLC
American Depository Receipts
Autospa Corporation
$.01 par common
Avery, Inc.
$.01 par common
Bando McGlocklin Capital Corporation
$.0667 par common
Barr Laboratories, Inc.
$.01 par common
Beazer, C. H. (Holdings) PLC.
American Depository Receipts
Berry Petroleum Company
Class A, $.01 par common
Big O Tires, Inc.
$.02 par common
Boys Markets, Inc.
$.01 par common
Brajdas Corporation
$.10 par common
Brandywine Savings & Loan Association (Pennsylvania)
$1.00 par common
Brougher Insurance Group, Inc.
No par common
Budget Rent a Car Corporation
$.01 par common
Cabot Medical Corporation
No par common, Warrants (expire 01-16-89)
Cal Rep Bancorp, Inc.
$1.00 par common
Calgon Carbon Corporation
$.01 par common
California Biotechnology, Inc.
Warrants (expire 12-31-91)
Cardinal Federal Savings Bank (Kentucky)
$1.00 par common
Care Plus, Inc.
$.01 par common, Class A, warrants (expire 08-13-90)
Carme, Inc.
$.0001 par common
Cash America Investments, Inc.
$.10 par common
Cato Corporation, The
Class A, $.33-⅓ par common
Cavalier Homes, Inc.
$.10 par common
Century Bancorp, Inc.
Class A, $1.00 par common
Chalone, Inc.
No par common
Checkrobot, Inc.
$.01 par common
Chemex Pharmaceuticals, Inc.
Warrants (expire 05-29-88)
Citipostal, Inc.
$.04 par common
Citizens Bank (North Carolina)
$2.50 par common
CK Federal Savings and Loan Association (North Carolina)
$1.00 par common
CMS Advertising, Inc.
$.01 par common
CMS Enhancements, Inc.
$.001 par common
Commerce Bancorp, Inc.
Series B, no par cumulative convertible preferred
Commodore Environmental Services, Inc.
$.10 par common
Costco Wholesale Corporation
$7-¼% convertible subordinated debentures
CSC Industries, Inc.
$.10 par common
Cumberland Federal Savings Bank (Kentucky)
$1.00 par common
Data Measurement Corporation
$.01 par common
Data Technology Corporation
$.001 par common
Dataflex Corporation
No par common
Davox Corporation
$.01 par common
Delphi Information Systems, Inc.
$.10 par common
Designs, Inc.
$.01 par common
Devcon International Corporation
$.10 par common
Digital Microwave Corporation
$.01 par common
Discovery Associates, Inc.
$.001 par common
Diversco, Inc.
$.01 par common
Donegal Group Inc.
$1.00 par common
Doskocil Companies, Inc.
$.40 par common
Downey Designs International, Inc.
$.01 par common
EA Engineering, Science & Technology, Inc.
$.01 par common
Easco Hand Tools, Inc.
$.01 par common
ECAD, Inc.
$.01 par common
Electrolux AB
Class B, American Depository Receipts
Elmwood Federal Savings Bank (Pennsylvania)
$1.00 par common
Empire Savings & Loan Association (New Jersey)
$.01 par common
Empire-Orr, Inc.
$.01 par common
Enex Resources Corporation
$.01 par common
Environmental Treatment & Technologies Corporation
8% convertible subordinated debentures
Envirosafe Services, Inc.
$.01 par common
Enzon, Inc.
$.01 par common, Warrants (expire 02-15-89)
Equitex, Inc.
$.001 par common
Essef Corporation
No par common
Falcon Oil & Gas Company, Inc.
$.01 par common
Fidelity Federal Savings Bank (Indiana)
$.01 par common
Finest Hours, Inc.
No par common
First Bancorp (North Carolina)
$5.00 par common
First Charter Corporation
$5.00 par common
First Federal of Western Pennsylvania
$1.00 par common
First Federal Savings & Loan Association of Salt Lake City (Utah)
$1.00 par common
First Federal Savings & Loan Association of Wooster
$1.00 par common
First Federal Savings & Loan of East Hartford (Connecticut)
$.01 par common
First Federal Savings Bank of Georgia
$1.00 par common
First Fidelity Bankcorp, Inc. (West Virginia)
$1.24 par common
First Financial Savings Association F.A. (Ohio)

$1.00 par common
First Golden Bancorporation
$1.00 par common
First National Bank Corp. (Michigan)
$3.125 par common
First of America Bank Corporation
Series E, convertible preferred; Series G, 9% convertible preferred
First Republic Bankcorp, Inc. (California)
$.01 par common
First Savings and Loan Association of Penns Grove (New Jersey)
$.01 par common
First Savings Bank, F.S.B. (New Mexico)
$1.00 par common
First Women's Bank, The (New York)
$5.00 par common
Fisher Transportation Services, Inc.
$.00001 par common
Freymiller Trucking, Inc.
$.01 par common
Gainsco, Inc.
$.01 par common
Gateway Federal Savings & Loan Association Ohio
$.01 par common
General Sciences Corporation
$.01 par common
Germantown Saving Bank (Pennsylvania)
$.10 par common
Giant Bay Resources, Ltd.
No par common
Gish Biomedical, Inc.
No par common
Gold Company of America
Depository units of limited partnership interest
Graphic Packaging Corporation
$.01 par common
Greater New York Savings Bank, The
$1.00 par common
Griffith Consumer Company
$.01 par common
Groff Industries, Inc.
$.50 par common
Hako Minuteman, Inc.
No par common
Hamptons Bancshares, Inc.
$4.00 par common
Harleysville National Corporation
$1.00 par common
Healthcare Compare Corporation
$.01 par common
Heritage Financial Corporation
$.90 par cumulative convertible preferred
Higby's, J., Inc.
$.01 par common
Hospital Staffing Services, Inc.
$.001
par common
Hosposable Products, Inc.
Class A, Warrants (expire 01–07–90)
HWC Distribution Corporation
$.01 par common
Integon Corporation
$1.00 par common
Intelligent Electronics, Inc.
$.01 par common
Interactive Technologies, Inc.
Warrants (expire 03–06–91)
Interfund Corporation
$.01 par common
International Broadcasting Corporation
$.001 par common
International Genetic Engineering, Inc.
No par common
International Microelectronic Products, Inc.
$.001 par common
International Mobile Machines Corporation
$.10 cumulative convertible preferred
Interspec, Inc.
$.001 par common
Itel Corporation
Class B, Series C, $1.00 par convertible preferred
J.P.M. Industries, Inc.
No par common
Jay Jacobs, Inc.
$.01 par common
KMS Industries, Inc.
$.01 par common
Komag, Incorporated
$.01 par common
LDI Corporation
$.01 par common
Lectec Corporation
$.01 par common
Lincoln Bancorp
No par common
Liposome Technology, Inc.
$.0001 par common
Magma Copper Company
Class B, $.01 par common
Marsam Pharmaceuticals, Inc.
$.01 par common
Maryland Federal Savings & Loan Association
$1.00 per common
Masco Industries, Inc.
6% convertible subordinated debentures
Mayfair Industries, Inc.
$.01 par common
McClain Industries, Inc.
No par common
Medmaster Systems, Inc.
$.01 par common, Warrants (expire 07–10–91)
Meridian Insurance Group, Inc.
No par common
Metropolitan Bancorp, Inc.
$5.00 par common
Metropolitan Consolidated Industries, Inc.
$.10 par common
Michael Foods, Inc.
$.01 par common
Microage, Inc.
$.01 par common
Microcom, Inc.
$.001 par common
Midwest Communications Corporation
$.01 par common
Multi-Local Media Corporation
$.01 par common
Mycogen Corporation
$.001 par common
Nellcor, Inc.
$.001 par common
New Jersey Steel Corporation
$.01 par common
North Star Universal, Inc.
$.25 par common
Northern Trust Corporation
Series B, $6.25 cumulative convertible preferred
Northwest Illinois Bancorp, Inc.
$5.00 par common
Nycor, Inc.
$1.00 par common
$1.00 par convertible exchangeable preferred
One Price Clothing Stores, Inc.
$.01 par common
Organogenesis, Inc.
$.01 par common
Osicom Technologies, Inc.
$.01 par common
Pacific Dunlop Limited
American Depository Receipts
Pacific International Services Corp.
No par common
Pentair, Inc.
$.10 cumulative convertible preferred
Peoples Savings Bank F.S.B. (Michigan)
$1.00 par common
Pharmatec, Inc.
$.03 par common
Phonemate, Inc.
$.10 par common
PHP Healthcare Corporation
$.01 par common
Pioneer Federal Savings & Loan Association (Virginia)
Series A, $1.00 par cumulative convertible preferred
Plains Resources, Inc.
$.02 par common
Proffitt's, Inc.
$.10 par common
Prospect Park Savings and Loan Association (New Jersey)
$1.00 par common
Quality Food Centers, Inc.
$.001 par common
Railroadmen's Federal Savings & Loan Association of Indianapolis
$.01 par capital
Raleigh Federal Savings Bank (North Carolina)
$1.00 par common
Raritan Bancorp, Inc.
$.01 par common
Regency Cruises, Inc.
$.001 par common
Rexworks, Inc.
$.12 par common
Rights Management Consultants, Inc.
$.01 par common
Roadway Motor Plazas, Inc.
$.01 par common

Ross Cosmetics Distribution Centers, Inc.
$.01 par common
Sahlen & Associates, Inc.
$.001 par common, Warrants (expire 1989)
Samna Corporation
$.01 par common
Schult Homes Corporation
No par common, Warrants (expire 03–01–91)
Schwartz Brothers, Inc.
$.10 par common
Security Savings and Loan Association (New Jersey)
$1.00 par common
Sensor Control Corporation
$.0008 par common
Sequent Computer Systems, Inc.
$.01 par common
Sharper Image Corporation
$.01 par common
Somerset Group, Inc., The
No par common
South Atlantic Financial Corporation
$.01 par common
Southold Savings Bank (New York)
$1.00 par common
Southstate Bank for Savings (Massachusetts)
$.10 par common
Southwall Technologies, Inc.
$.001 par common
St. Paul Bancorp, Inc.
$.01 par common
Sunresorts Ltd. N.V.
$.01 par common
Tecogen, Inc.
$.10 par common
Telecast, Inc.
$.01 par common
Texcel International, Inc.
$.001 par common
Topps Company, Inc., The
$.01 par common
Two Pesos, Inc.
$.01 par common
U.S. Minerals Exploration Company
No par common
Ungermann-Bass, Inc.
6–7/8% convertible subordinated debentures
United Bankshares, Inc. (West Virginia)
$2.50 par common
United Coasts Corporation
$.01 par common
Valley Capital Corporation
$1.00 par common
Vanderbilt Gold Corporation
$.10 par common
Vertex Communications Corporation
$.10 par common
VMS Strategic Land Trust
No par shares of beneficial interest
Washington Bancorp, Inc. (New Jersey)
$.10 par common
Washington Federal Savings Bank (Oregon)
$1.00 par common
Washington Federal Savings Bank (Washington, D.C.)
$.01 par common
Waterhouse Investor Services, Inc.
$.01 par common
Wellman, Inc.
$.001 par common
Westwood One, Inc.
$6.75% convertible subordinated debentures
Wolverine Exploration Company
No par common, Class A, Warrants (expire 12–31–93)
York Research Corporation
$.01 par common

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–17364 Filed 7–30–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 370

[Docket No. 70628–7128]

Exports to the Federated States of Micronesia and the Republic of the Marshall Islands

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration is revising the Export Administration Regulations to reflect the newly independent status of the Republic of the Marshall Islands and the Federated States of Micronesia. Formerly, these areas were part of the Trust Territories of the Pacific Islands and no license was required for shipments from the United States to these areas. The Republic of the Marshall Islands and the Federated States of Micronesia are now included in Country Group V and shipments from the United States to these countries now require export licenses, either general or validated. This final rule also clarifies that the Northern Mariana Islands are now a commonwealth of the United States and are no longer part of the Trust Territories of the Pacific Islands..

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Background

In 1947 the United Nations charged the United States with trusteeship of the area known as the Trust Territories of the Pacific Islands. The Trust Territories included the Caroline Islands, the Marshall Islands, the Palau Islands, the Northern Mariana Islands, and other smaller islands. The relationship between the United States and the Trust Territories has been based upon the International Trusteeship System of the United Nations Charter.

In response to the desires of the peoples of the Trust Territories, the United States entered into political status negotiations with representatives of the peoples of the Federated States of Micronesia (representing all the areas of the Trust Territories except the Marshall Islands, the Palau Islands, and the Northern Mariana Islands) and the Republic of the Marshall Islands. These negotiations resulted in the "Compact of Free Association" signed by the United States and the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) on October 1, 1982 and June 25, 1983, respectively. The Compact of Free Association was then approved by majorities of the peoples of FSM and RMI in United Nations-observed plebiscites conducted on June 21, 1983 and September 7, 1983, respectively. The Republic of the Marshall Islands and the Federated States of Micronesia finally became independent countries in free association with the United States on October 21, 1986, and November 3, 1986, respectively. Although FSM and RMI rely on the United States for foreign policy guidance and national defense, they each administer their own domestic affairs.

In 1975 the people of the Northern Mariana Islands voted to become a commonwealth of the United States when the Trust Territory was dismantled. Thus, on November 5, 1986, the Northern Mariana Islands formally became the Commonwealth of the Northern Mariana Islands and the residents became citizens of the United States. The Trust Territories of the Pacific Islands now consist of only the Palau Islands.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or

final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Room 1622, Export Administration, International Trade Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 370

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 370 of the Export Administration Regulations is amended as follows:

PART 370—[AMENDED]

1. The authority citation for 15 CFR Part 370 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Section 370.4 is revised to read as follows:

§ 370.4 Shipments to territories, dependencies, and possessions of the United States, and to Trust Territories.

No license is required for shipments from the United States to the Commonwealth of Puerto Rico or the commonwealth of the Northern Mariana Islands (which does not include Guam, an island possession of the United States), or any territory, dependency, or possession of the United States as listed in *Schedule C-E, Classification of Country and Territory Designations for U.S. Export Statistics*, issued by the Bureau of the Census. Nor is a license required for shipments to the Trust Territory of the Pacific Islands (*i.e.* Palau).

Dated: July 28, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–17412 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Part 375

[Docket No. 70608–7108]

Substitution of Form ITA–629P for the PRC End-User Certificate

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: On December 27, 1985 (50 FR 52900–52912), Export Administration issued a final rule implementing several amendments to the Export Administration Regulations (15 CFR Parts 368–399). Among these amendments was the establishment of a People's Republic of China (PRC) End-User Certificate. This Certificate must accompany license applications to export or reexport to the PRC commodities valued at more than $5,000 and identified by the code letter "A" on the Commodity Control List (Supplement No. 1 to § 399.1).

Some exporters have been unsure about when use of the PRC End-User Certificate is mandatory and when Form ITA–629P (Statement by Ultimate Consignee and Purchaser) may be substituted for it. This rule amends § 375.6 of the Regulations by specifically enumerating the types of transactions for which a Form ITA–629P may be substituted for the PRC End-User Certificate. This rule also adds a provision that the inclusion of the title of the contract and contract number on the Certificate is optional.

EFFECTIVE DATE: This rule is effective July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian or John Black, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared."

4. This rule contains collection of information requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The Statement by Ultimate Consignee and Purchaser, Form ITA–629P, has been approved by the Office of Management and Budget under control number 0625–0136.

List of Subjects in 15 CFR Part 375

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 375—[AMENDED]

1. The authority citation for Part 375 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Section 375.6 is amended by removing the last sentence of paragraph (a), revising paragraph (b)(1), and adding a paragraph (c) reading as follows:

§ 375.6 People's Republic of China End-User Certificate.

* * * * *

(b) * * *

(1) Title of contract and contract number (optional);

(c) *Substitution of Form ITA–629P.* A Form ITA–629P (Statement by Ultimate Consignee and Purchaser) may be substituted for the PRC End-User Certificate under the following conditions:

(1) The commodity to be exported is described in an Advisory Note for Country Groups QWY on the Commodity Control List;

(2) The commodity to be exported is for demonstration only and will be returned to the U.S.;

(3) The commodity to be exported is for servicing previously exported equipment and is valued at $50,000 or less; or

(4) The Chinese do not issue an End-User Certificate because the end-user is not a Chinese entity.

Dated: July 27, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–17366 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Parts 376, 379 and 399

[Docket No. 70643–7143]

Export Controls on Equipment and Technical Data Related to Nuclear Weapons Delivery Systems (Missile Systems)

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: With the concurrence of the Department of State, the Department of Commerce is establishing foreign policy export controls on certain types of equipment and related technical data that could be used in the development and production of missiles capable of delivering nuclear weapons. These controls are intended to limit the proliferation of such missiles around the world, to increase regional stability, and to publicly convey the United States' firm resolve to address an issue of mounting concern. They implement policies relating to non-proliferation of delivery systems that are also being implemented by several of our allies (Canada, the Federal Republic of Germany, France, Italy, Japan, and the United Kingdom). No new export license requirements are imposed on commodities by this Rule; all the commodities covered by this Rule already require a license for national security reasons. However, new validated license requirements are imposed for certain technical data covered by this Rule. The licensing policy on export of commodities and technical data that are controlled for foreign policy reasons by this Rule will be to consider applications on a case-by-case basis to determine whether such exports would contribute significantly to proliferation of such systems, except that applications that involve equipment for the manufacture of certain munitions items, controlled under ECCN 2018A on the Commodity Control List (Supplement No. 1 to 15 CFR 399.1), will generally be denied.

EFFECTIVE DATE: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Webb, Capital Goods Technology Center, Office of Technology and Policy Analysis, (OTPA), Telephone: (202) 377–3806); Eugene Christiansen, Capital Goods and Production Materials Branch, Office of Export Licensing: (202) 377–0894; Export Administration, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The United States, Canada, the Federal Republic of Germany, France, Italy, Japan, and the United Kingdom are major manufacturers and suppliers of missile-related hardware and technical data. Following multilateral negotiations, these countries have each established a common set of guidelines for export controls on missile-related hardware and technical data and a common specific listing of the commodities and technical data to be controlled. This international effort to control the spread of equipment and technical data related to strategic missiles will limit the risks of nuclear proliferation by controlling transfers that could contribute to the development and production of nuclear weapons delivery systems.

The United States Government intends to approach other foreign governments that produce missile-related commodities and technical data, to persuade them to adhere to the missile technology guidelines. This will be done to further ensure that there is no significant foreign availability of the controlled commodities or technical data.

In accordance with section 6 of the Export Administration Act of 1979, as amended, following preliminary consultation with the Congress and industry, the Foreign Policy Report regarding these controls was submitted to Congress on April 15, 1987.

Other aspects of the policy regarding nuclear weapons delivery systems are being administered under the International Traffic in Arms Regulations of the U.S. Department of State.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections

603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This collection was approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects

15 CFR Parts 376 and 399

Exports, Reporting and recordkeeping requirements.

15 CFR Part 379

Computer technology, exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, Parts 376, 379 and 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

1. The authority citation for Part 376 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citations for Parts 379 and 399 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

PART 376—[AMENDED]

3. Section 376.18 is added to read as follows:

§ 376.18 Equipment and related technical data used in the development of missiles capable of delivering nuclear weapons.

In support of U.S. foreign policy to limit the proliferation of missiles that are capable of delivering nuclear weapons, an individual validated license is required to export certain equipment and technical data related to the development and production of such nuclear-capable missiles to Country Groups QSTVWYZ. The specific commodities appear within ECCNs 2018, 1118, 1131, 1133, 1302, 1357, 1361, 1362, 1385, 1460, 1485, 1501, 1516, 1517, 1518, 1519, 1522, 1529, 1531, 1564, 1565, 1568, 1587, 1595, 1715, and 1801.

(a) *Definition.* The term "missiles capable of delivering nuclear weapons" is defined as rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kilogram (kg) payload to a range of at least 300 kilometers (km).

(b) *Licensing policy.* Applications to export the commodities and related technical data subject to this policy will be considered on a case-by-case basis to determine whether the export would make a significant contribution to proliferation of missiles capable of delivering nuclear weapons. Applications involving those commodities controlled under this section that are classified under ECCN 2018A on the Commodity Control List (Supplement No. 1 to § 399.1) and related technical data will generally be denied.

(1) In reviewing license applications subject to the missile technology controls, the following factors are among those considered to determine what action should be taken on individual applications:

(i) The assessment of the end-use;

(ii) The significance of the export in terms of the potential development of missiles capable of delivering nuclear weapons;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The non-proliferation credentials of the importing country; and

(v) The types of assurances or guarantees against use for nuclear weapons delivery purposes or proliferation given in a particular case.

(2) License applications involving contracts entered into prior to April 15, 1987, will be considered on a case-by-case basis consistent with applicable national security licensing criteria or other applicable controls. Such license applications must be accompanied by documentation sufficient to establish the existence of a contract.

(c) Commodities and technical data controlled under this section are not eligible for special licenses.

PART 379—[AMENDED]

4. In § 379.4, the word "and" that appears at the end of paragraph (d)(19) is removed; paragraph (d)(20) is redesignated as paragraph (d)(21) and new paragraph (d)(20) is added to read as follows:

§ 379.4 General License GTDR: Technical Data under Restriction.

* * * * *

(d) *Restrictions applicable to all destinations except Canada.* * * *

(20) Technical data for the design and production of commodities that are controlled for nuclear weapons delivery reasons (see § 376.18 and Supplement No. 4 of this part), including related software; and

* * * * *

5. Supplement No. 4 to Part 379 is amended by adding a new paragraph (4) to read as follows:

Supplement No. 4—Additional Specifications for Certain Data Requiring a Validated License to All Destinations Except Canada

* * * * *

(4) Technical data, including software, for the design and production of commodities that are listed below in numerical order by their respective Export Control Commodity Number. The commodities and related design and production technical data are controlled for nuclear weapons delivery reasons (see § 376.18).

ECCN 2018A: Specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering nuclear weapons (as defined in § 376.18(a)), their propulsion systems and components, and pyrolytic deposition and densification equipment.

ECCN 1118A: Production equipment for the development or production of rocket propellants.

ECCN 1131A: Pumps used in propulsion systems and related components as follows: Pumps (except vacuum pumps), having all flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

ECCN 1133A: Valves used in propulsion systems and related components as follows: Servo valves designed for flow rates of 24 liters per minute or greater at a pressure of 250 bars, and having flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

ECCN 1302A: Specially designed nozzles for producing pyrolitically derived materials formed on a mould, mandrel or other substrate from precursor gases that decompose in the 1,573 K (1,300 °C) to 3,173 K (2,900 °C) temperature range at pressures of

133.3 Pa to 19.995 kPa. (Commodities described in this entire entry.)

ECCN 1357A: Equipment for the production of fibers covered by ECCN 1763A, or their composites as follows, and specially designed components and accessories therefor. (Commodities described in this entire entry.)

ECCN 1361A: Commodities described in entire entry, except for paragraph (e) under the "List of Wind Tunnels Controlled by ECCN 1361A."

ECCN 1362A: Vibration test equipment. (Commodities described in this entire entry.)

ECCN 1385A: Specially designed production equipment for gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A. (Commodities described in this entire entry.)

ECCN 1460A: Commodities described in paragraphs (c), and (d) as applicable to (c), under the "List of Nonmilitary Equipment Controlled by ECCN 1460A" for lightweight turbojet and turbofan engines (including turbocompound engines) that are small and fuel efficient.

ECCN 1485A: Commodities described in this entire entry (Note: Department of State, Office of Munitions Control, has jurisdiction over certain inertial system technical data (see Interpretation 21 of Supplement No. 1 to § 399.2)).

ECCN 1501A: Commodities described in paragraphs (b) (2) through (5) and (c) under the "List of Navigation, Direction Finding, Radar and Airborne Communication Equipment Controlled by ECCN 1501A" for launch and ground support equipment, including precision tracking systems usable for complete rocket systems and unmanned air vehicle systems described in § 376.18(a).

ECCN 1516A: Commodities described in paragraph (c) under the "List of Receivers and Specialized Parts and Accessories Controlled by ECCN 1516A" for telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

ECCN 1517A: Commodities described in paragraph (c) under the "List of Radio Transmitters and Components Controlled by ECCN 1517A" for telemetering and and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

ECCN 1518A: 1. Telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

ECCN 1519A: Commodities described in paragraph (c) under the "List of Equipment Controlled by ECCN 1519A" for single- and multi-channel communications transmission equipment as follows: 1. Telemetering and telecontrol equipment usable with complete rocket systems and unmanned air vehicle systems described in § 376.18(a), and 2. precision tracking systems for the above systems.

ECCN 1522A: Commodities described in paragraphs (b) and (c) under the "List of Lasers and Laser Systems Controlled by ECCN 1522A" as follows: 1. Test and alignment equipment for flight control systems usable in complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. precision tracking systems for the above systems.

ECCN 1529A: 1. Commodities described in paragraph (a) under the "List of Equipment Controlled by ECCN 1529A" for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. commodities described in paragraph (b)(4) under the List when part of a test system described in ECCN 1361A or 1362A.

ECCN 1531A: Commodities described in paragraphs (a) and (c) through (e) under the "Illustrative List of Frequency Synthesizers Controlled by ECCN 1531A" as follows: 1. Avionics equipment usable in complete rocket systems and unmanned air vehicle systems described in § 376.18(a); 2. Vibration test equipment (ECCN 1362A) and wind tunnels (ECCN 1361A); and 3. Launch and ground support equipment usable for the systems described in § 376.18(a).

ECCN 1564A: A–D converters described in paragraph (d)(2)(D)(m)(1) under the "List of Electronic Component Assemblies, Sub-Assemblies, Printed Circuit Boards, and Microcircuits Controlled by ECCN 1564A" when usable in systems described in § 376.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

ECCN 1565A: 1. Specially designed analog computers or specially designed hybrid (combined analog/digital) computers that are described in paragraphs (c) through (d), and (h) as applicable to (d), under the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A" for modeling, simulation, or design integration of the following: Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. Technical data for analog or digital computers and related equipment that provide special capabilities as described in paragraphs (a), (b), and (f) under the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A."

ECCN 1568A: A–D converters described in paragraph (k) under the "List of Equipment Controlled by ECCN 1568A" when usable in systems described in § 376.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

ECCN 1587A: Commodities described in paragraph (c) under the "List of Characteristics of Quartz Crystals and Assemblies Thereof Controlled by ECCN 1587A" when usable as launch and ground support equipment.

ECCN 1595A: Gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, designed or modified for airborne or marine use, and having a static or operational accuracy of one milligal or better, with a time to steady-state registration of two minutes or less.

ECCN 1715A: Propellants and constituents as follows: High energy density fuels such as Boron Slurry, having an energy density of 40 x 10^6 joules/kg or greater.

ECCN 1801A: Propellants and constituents as follows: Polymeric substances, specifically: 1. Carboxy-terminated polybutadiene (CTPB), and 2. hydroxy-terminated polybutadiene (HTPB).

PART 399—[AMENDED]

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), add a new paragraph reading *"Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 379.4(d)(20))"* after the *"Special Licenses Available"* paragraph for the following entries:

A. In Group 0—Metal-Working Machinery: ECCN 2018;

B. In Group 1—Chemical and Petroleum Equipment: ECCNs 1118 and 1131, and 1133;

C. In Group 3—General Industrial Equipment: ECCNs 1302, 1357, 1361, 1362, and 1385;

D. In Group 5—Electronics and Precision Instruments: ECCNs 1516, 1517, 1519, 1522, 1529, 1531, 1564, 1565, 1568, 1587, and 1595;

E. In Group 7—Chemicals, Metalloids, Petroleum Products and Related Materials: ECCN 1715; and

F. In Group 8—Rubber and Rubber Products: ECCN 1801.

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), add a new paragraph reading *"Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 379.4(d) (5) and (20)). The Department of State, Office of Munitions Control, has jurisdiction over certain inertial system technical data (see Interpretation 21 of Supplement No. 1 to § 399.2)"* after the *"Special Licenses Available"* paragraph for the following entry: In Group 4—Transportation Equipment: ECCN 1485.

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), add a new paragraph reading *"Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 379.4(d) (3), (5), and (20))"* after the *"Special Licenses Available"* paragraph for the following entries: In Group 5—Electronics and Precision Instruments: ECCNs 1501, 1518.

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery),

ECCN 2018A is amended by revising the *"Reason for Control"* paragraph to read as follows:

2018A Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, specially designed for the examination, manufacture, testing, and checking of arms, appliances, machines, and implements of war.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls include controls on specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering nuclear weapons (as defined in § 376.18(a)), their propulsion systems and components, and pyrolytic deposition and densification equipment.

* * * * *

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), ECCNs 1118A, 1131A and 1133A are amended by revising the *"Reason for Control"* paragraphs of those entries to read as set forth below. In addition, the *"G–COM Eligibility"* paragraph of ECCN 1133A and the *"Special Licenses Available"* paragraphs of 1131A and 1133A are revised to read as set forth below.

1118A Equipment for the production of military explosives and solid propellants.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to production equipment for the production of rocket propellants.

* * * * *

1131A Pumps (except vacuum pumps listed under Entry 1129A) having any of the characteristics in paragraph (a) and (b) of the List below, and specially designed parts and accessories therefor.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. National security and nuclear non-proliferation controls apply to commodities defined in paragraphs (a) and (c) of the List below. Foreign policy controls apply only to pumps used in propulsion systems and related components that are described in paragraphs (b), and (c) as applicable to (b), of the List below for nuclear weapons delivery purposes as follows: Pumps (except vacuum pumps), having all flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

Special Licenses Available: None available for commodities defined in paragraph (a) of the List below nor for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1131A.

* * * * *

1133A Valves, cocks and pressure regulators having all flow contact surfaces made of 90 percent or more tantalum, titanium, or zirconium, either separately or combined, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium; and specially designed parts and accessories therefor.

* * * * *

G–COM Eligibility: Commodities that meet technical specifications described in the Advisory Note under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c). This license does not apply to those commodities controlled for foreign policy reasons.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls only apply to valves used in propulsion systems and related components for nuclear weapons delivery purposes as follows: Servo valves designed for flow rates of 24 liters per minute or greater at a pressure of 250 bars, and having flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

Special Licenses Available: None for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCn 1133A.

* * * * *

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCNs 1302A, 1357A, 1361A, 1362A, and 1385A are amended by revising the *"Reason for Control"* paragraphs of those entries to read as set forth below. In addition, the *"Special Licenses Available"* paragraphs of ECCN 1361A and 1385A are revised to read as set forth below.

1302A Specially designed nozzles for producing pyrolitically derived materials formed on a mould, mandrel or other substrate from precursor gases that decompose in the 1,573K (1,300 °C) to 3,173K (2,900 °C) temperature range at pressures of 133.3 Pa to 19.995 kPa.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes.

* * * * *

1357A Equipment for the production of fibers covered by ECCN 1763A, or their composites as follows, and specially designed components and accessories therefor.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes.

* * * * *

1361A Test facilities and equipment for the design or development of aircraft or gas turbine aero-engines; and specially designed components, and accessories therefor.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to this entry, except for paragraph (e) of the List below, for nuclear weapons delivery purposes.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1131A.

* * * * *

1362A Vibration test equipment.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply to vibration test equipment for nuclear weapons delivery purposes.

* * * * *

1385A Specially designed production equipment for compasses, gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to specially designed production equipment for gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A (commodities described in this entire entry).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1385A.

* * * * *

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCNs 1460A and 1485A are amended by revising the "*Reason for Control*" and "*Special Licenses Available*" paragraphs of those entries to read as follows:

1460A Aircraft and helicopters, aero-engines, and aircraft and helicopter equipment.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to paragraphs (c), and (d) as applicable to (c), of the List below for lightweight turbojet and turbofan engines (including turbocompound engines) that are small and fuel efficient.

Special Licenses Available: None for commodities defined in paragraphs (a) and (b) of the List below nor for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1460A.

* * * * *

1485A Compasses, gyroscopes (gyros), accelerometers and inertial equipment and specially designed components therefor. (See also ECCN 1385A.)

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes.

Special Licenses Available: None available for commodities defined in paragraphs (f), (g), (h), and (i) of the List below. None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1485A.

* * * * *

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCNs 1501A, 1516A, 1517A, 1518A, 1519A, 1522A, 1529A, 1531A, 1564A, 1565A, 1568A, 1587A, and 1595A are amended by revising the *"Reason for Control"* paragraphs of those entries to read as set forth below. In addition, the *"Special Licenses Available"* paragraphs of those ECCNs, except for 1516A, are revised to read as set forth below.

1501A Navigation, direction finding, radar and airborne communication equipment.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to: 1. Paragraphs (a), (b)(1), and (c)(1) for Libya; and 2. nuclear weapons delivery non-proliferation controls. Nuclear weapons delivery non-proliferation controls apply to commodities described in paragraphs (b) (2) through (5) and (c) of the List below for launch and ground support equipment, including precision tracking systems usable for complete rocket systems and unmanned air vehicle systems described in § 376.18(a).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1501A.

* * * * *

1516A Receivers, and specially designed components and accessories therefor. (For instruments using time compression of the input signal or FFT techniques associated with receivers, see ECCN 1529A(b)(4).

* * * * *

Reason for Control: National security; foreign policy including crime control and nuclear weapons delivery non-proliferation controls. Nuclear weapons delivery non-proliferation controls apply to commodities described in paragraph (c) under the List below for telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

* * * * *

1517A Radio transmitters, except radio relay communications equipment (for which see ECCN 1520A), and specially designed components therefor.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls only apply to commodities described in paragraph (c) of the List below for telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1517A.

1518A Telemetering and telecontrol equipment suitable for use with aircraft (piloted or pilotless) or space vehicles, and test equipment specially designed for such equipment, except equipment specially designed to be used for remote control of toys such as model planes and boats and having electric field strength of not more than 200 microvolts per meter at a distance of 500 meters; and specially designed parts and accessories therefor. (Specify by name and model number.)

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery non-proliferation purposes. Nuclear weapons delivery non-proliferation controls apply to: 1. Telemetering and telecontrol equipment usable for: 1. Complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kg payload to a range of at least 300 km; and 2. launch and ground support of the above missiles.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1518A.

* * * * *

1519A Single- and multi-channel communications transmission equipment, including terminal, intermediate amplifier or repeater equipment and multiplex busses and multiplex equipment used for communications within or between communication or other equipment and systems by line, cable, optical fiber or radio means, and associated modems and multiplex equipment.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to single- and multi-channel communications transmission equipment described in paragraph (c) under the List below as follows: 1. Telemetering and telecontrol equipment usable with complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. precision tracking systems usable for the above systems.

Special Licenses Available: None available for commodities controlled under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1519A.

* * * * *

1522A Lasers and laser systems including equipment containing them.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply for nuclear weapons delivery non-proliferation purposes to commodities that are described in paragraphs (b) and (c) under the List below as follows: 1. Test and alignment equipment for flight control systems usable in the systems described in § 376.18(a); and 2. precision tracking systems usable with the above systems.

Special Licenses Available: Special licenses are *not* available for equipment of the following description: Machine tools containing or designed to contain lasers described in ECCN 1522A; single aperture lasers with an output greater than one thousand Joules per nanoseconds; and tunable diode lasers. Special licenses are also not available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1522A.

* * * * *

1529A Electronic measuring, calibrating, counting, testing, or time interval measuring equipment, whether or not incorporating frequency standards.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Paragraphs (g) and (h) of the List below are controlled for national security and nuclear non-proliferation reasons. Foreign policy controls apply for nuclear weapons delivery purposes to: 1. Commodities described in paragraph (a) under the List below for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. commodities described in paragraph (b)(4) under the List below when part of a test system described in ECCN 1361A or 1362A.

Special Licenses Available: Certain items under paragraph (b)(4) of the List below are excluded from special licenses—see 1529, Supplement No. 1 to Part 373. No special licenses are available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1529A.

* * * * *

1531A Frequency synthesizers.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to nuclear weapons delivery non-proliferation controls on commodities described in paragraphs (a) and (c) through (e) as follows: 1. Avionics equipment usable in complete rocket systems and unmanned air vehicle systems described in § 376.18(a); 2. Vibration test equipment (ECCN 1362A) and wind tunnels (ECCN 1361A); and 3. launch and ground support equipment usable for the systems described in § 376.18(a).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1531A.

* * * * *

1564A Electronic component assemblies, sub-assemblies, printed circuit boards, substrates and microcircuits, including packages therefor.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to A–D converters described in paragraph (d)(2)(D)(m)(1) under the List below for nuclear weapons delivery purposes and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1564A.

* * * * *

1565A Electronic computers, "related equipment," equipment or systems containing electronic computers; and specially designed components and accessories for these electronic computers and "related equipment".

* * * * *

Reason for Control: National security; foreign policy; nuclear non-proliferation. Foreign policy controls include nuclear weapons delivery non-proliferation controls on: 1. Specially designed analog computers or specially designed hybrid (combined analog/digital) computers that are described in paragraphs (c), (d), and (h) as applicable to (d), under the List below. Controls apply when these computers are combined with specially designed software, for modeling, simulation, or design integration of the following: complete rocket systems and unmanned air vehicle systems described in § 376.18(a); 2. analog or digital computers and related equipment that contain design features as described in paragraphs (a), (b), and (f) under the List below; and 3. digital computers used as ancillary equipment for test facilities and equipment that are controlled by ECCNs 1361A and 1362A for nuclear weapons delivery non-proliferation purposes.

Special Licenses Available: None available for electronic computers exceeding a processing data rate of 20 million bits per second, except as noted below. None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). Electronic computers, analog or digital (including digital differential analyzers), are excluded from the Project License procedure.

* * * * *

1568A Equipment as defined in the List below.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Nuclear non-proliferation controls apply to paragraphs (b), (d), (f), (g), (j), (k), and (m) of the List below. (Nuclear non-proliferation controls do not apply to those countries listed in Supp. No. 2 or 3 to Part 373.) Foreign policy controls apply to A–D converters described in paragraph (k) for nuclear weapons delivery non-proliferation purposes when usable in systems described in § 376.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1568A.

* * * * *

1587A Quartz crystals and assemblies thereof in any stage of fabrication (i.e., worked, semi-finished or mounted).

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls only apply to commodities described in paragraph (c) under the List below when usable as launch and ground support equipment.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1587A.

* * * * *

1595A Gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, *except gravity meters for land use having static accuracies of 100 microgal or less accurate, and land gravity meters of the Worden type.*

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, designed or modified for airborne or marine use, and having a static or operational accuracy of one milligal or better, with a time to steady-state registration of two minutes or less.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1595A.

* * * * *

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1715A is amended by revising the *"Reason for Control"* and *"Special Licenses Available"* paragraphs to read as follows:

1715A Boron, as described in this entry.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Nuclear controls do not apply to paragraphs (c) (2) and (3). Foreign policy controls apply for nuclear weapons delivery purposes to propellants and constituents as follows: high energy density fuels such as Boron Slurry, having an energy density of 40×10^6 joules/kg or greater.

Special Licenses Available: None available for paragraphs (a), (b) and (c)(1) of the List below. None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1715A.

* * * * *

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 8 (Rubber and Rubber Products), ECCN 1801A is amended by revising the *"Reason for Control"* and *"Special Licenses Available"* paragraphs to read as follows:

1801A Synthetic rubber.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to propellants and constituents as follows: Polymeric substances, specifically: 1. Carboxy-terminated polybutadiene (CTPB), and 2. hydroxy-terminated polybutadiene (HTPB).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1801A.

* * * * *

Dated: July 27, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–17299 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Parts 385 and 399

[Docket No. 70636–7136]

Export Controls on Certain Chemicals to Iran, Iraq, Syria and Worldwide Destinations

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is imposing foreign policy controls on the export of certain chemicals to prevent their use in chemical warfare. Five chemicals will be controlled to all destinations except 18 industrialized nations and the export of eight other chemicals will be added to those already controlled to Iran, Iraq, and Syria. The five chemicals being controlled worldwide are: Dimethyl methylphosphonate, methyl phosphonyldichloride, methyl phosphonyldifluoride, phosphorous oxychloride, and thiodiglycol.

The eight additional chemicals being controlled to Iran, Iraq, and Syria are N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethyl phosphite (dimethyl hydrogen phosphite); 3-hydroxy-1-methylpiperidine; phosphorous trichloride; 3-quinuclidinol; thionyl chloride; and trimethyl phosphite.

The licensing policy on exports of the chemicals being added by this rule will be to deny licenses to Iran, Iraq, and Syria unless the export is being made pursuant to a contract entered into before July 6, 1987.

Dimethyl phosphite, methyl phosphonyldichloride, and 3-quinuclidinol are also already controlled to all Country Groups for national security reasons.

The purpose of the worldwide foreign policy control on the five chemicals is to prevent their use in chemical warfare and to harmonize U.S. export controls with the controls of the 18 industrialized nations. The 18 industrialized nations are Australia, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, and the United Kingdom. Because they already have controls,

these countries are excepted from the U.S. licensing controls being imposed on the five chemicals. The policy on export of these five chemicals to destinations other than Iran, Iraq, Syria, and Country Groups S and Z will be to generally approve licenses.

These regulations will restrict access by Iran, Iraq and Syria to U.S.-origin chemicals for use in chemical warfare, while publicly conveying U.S. opposition to the use of chemical weapons. The regulations are issued in consultation with the Department of State and in compliance with the requirements of the Export Administration Act of 1979, as amended (the Act). The foreign policy report to Congress regarding the imposition of the controls, which is required by section 6 of the Act, was submitted on July 6, 1987.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Jim Seevaratnam, Capital Goods Technology Center, Office of Technology and Policy Analysis, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–2279.

SUPPLEMENTARY INFORMATION

Savings Clause

Shipments of dimethyl methylphosphonate, methyl phosphonyldifluoride, phosphorous oxychloride, and thiodiglycol to Country Groups T & V, except Iran, Iraq, or Syria, that were removed from general license authorizations as a result of this regulation and were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before August 14, 1987, may be exported under the previous general license provisions up to and including August 28, 1987. Any such commodity not actually exported before midnight August 28, 1987, requires a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection of information has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects

15 CFR Part 385

Communist countries, Exports, Iran, Iraq, Syria.

15 CFR Part 399

Exports, Iran, Iraq, Recordkeeping and reporting requirements, Syria.

Accordingly, Parts 385 and 399 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for 15 CFR Parts 385 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1961 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1958); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

PART 385—[AMENDED]

2. In § 385.4, paragraph (e) is revised to read as follows:

§ 385.4 Country Groups T & V.

* * * * *

(e) *Iran, Iraq, and Syria.* In support of U.S. foreign policy, and particularly U.S. policies of opposing prohibited use of chemical weapons and maintaining neutrality in the Iran/Iraq war and of promoting a mediated end to that war, an individual validated license is required to export from the United States N,N-diisopropylaminoethane-2-thiol, N,N-diisopropylaminoethyl-2-chloride, dimethylamine, dimethylamine hydrochloride, dimethyl phosphite (dimethyl hydrogen phosphite), ethylene chlorohydrin (chloroethanol), 3-hydroxy-1-methylpiperidine, phosphorous trichloride, potassium fluoride, 3-quinuclidinol, thionyl chloride, and trimethyl phosphite to Iran, Iraq, and Syria. Applications for validated licenses will be considered on a case-by-case basis. Applications will generally be denied where there is reason to believe that these chemicals will be used in producing chemical weapons or will otherwise be devoted to chemical warfare purposes. However, applications for export of dimethylamine, dimethylamine hydrochloride, ethylene chlorohydrin (chloroethanol), and potassium fluoride to Syria will generally be approved when the export is in performance of a contract or agreement entered into before April 28, 1986. Applications for export of N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethyl phosphite (dimethyl hydrogen phosphite); 3-hydroxy-1-methylpiperidine; phosphorous trichloride; 3-quinuclidinol; thionyl chloride; and trimethyl phosphite to Iran, Iraq, and Syria will generally be approved when the export is in performance of a contract or agreement entered into before July 6, 1987. In the absence of a contract as described above, applications to export chemicals listed in this section to Iran, Iraq, or Syria will generally be denied. The reexport provisions of 15 CFR Part 374 and the provisions of § 376.12 are not applicable to the foreign policy controls covered by paragraph (e) of this section. However, the export of these commodities from the United States to any destination with knowledge that they will be reexported, directly or indirectly, in whole or in part, to Iran, Iraq or Syria is prohibited without a validated license.

PART 399—[AMENDED]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids,

Petroleum Products and Related Materials), ECCN 4707B is amended by revising the *Reason for Control* paragraph to read as follows:

4707B (a) Chemicals, as described in this entry; (b) Synthetic organic agricultural chemicals, as described in this entry.

Controls for ECCN 4707B

* * * * *

Reason for Control: National security. Foreign policy controls also apply to dimethyl phosphite (dimethyl hydrogen phosphite) and 3-quinuclidinol for export to Iran, Iraq, and Syria and methyl phosphonyldichloride for export to all destinations except Australia, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Japan, Luxemburg, the Netherlands, New Zealand, Norway, Portagal, Spain, Switzerland, and the United Kingdom.

* * * * *

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), a new entry 4798B is added (in numerical order, disregarding the first digit), to read as follows:

4798B Dimethyl methylphosphonate, methyl phosphonyldifluoride, phosphorous oxychloride, and thiodiglycol.

Controls for ECCN 4798B

Unit: Report in "$ value."

Validated License Required: All destinations except Australia, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Japan, Luxemburg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, and the United Kingdom.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special Foreign Policy Controls: This validated licensing requirement is maintained for all destinations except those countries cited above to prevent diversion to Iran, Iraq, and Syria for use in chemical warfare. Applications for export to Iran, Iraq, and Syria will be denied.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5799D is amended by replacing the "D" in the ECCN heading and "Controls for ECCN 5799D" heading with "C", and by revising the *Validated License Required* and *Reason for Control* paragraphs to read as follows:

5799C Other chemicals, chemical materials and products, plastic materials, regenerated cellulose, artificial resins, and miscellaneous related materials and products, n.e.s., except those listed in Supp. No. 1 to § 399.2, Interpretation 24.

Controls for ECCN 5799C

* * * * *

Validated License Required: Country Groups QSWYZ, Afghanistan and the People's Republic of China. A validated license also is required for export of N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethylamine hydrochloride; 3-hydroxy-1-methylpiperidine; and trimethyl phosphite to Iran, Iraq, and Syria.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply only to exports of N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethylamine hydrochloride; 3-hydroxy-1-methylpiperidine; and trimethyl phosphite to Iran, Iraq, and Syria.

* * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 6799G is amended by revising the *Validated License Required* paragraph to read as follows:

6799G Chemicals, chemical materials and products, plastic materials, regenerated cellulose, artificial resins, and miscellaneous related materials and products, n.e.s., listed in Supp. No. 1 to § 399.2, Interpretation 24.

Controls for ECCN 6799G

* * * * *

Validated License Required: Country Groups SZ, *except that a validated license is not required for exports to Libya (Country Group S) of medicines and medical products.* A validated license also is required for exports of dimethylamine, ethylene chlorohydrin (chloroethanol), phosphorous trichloride, potassium fluoride, and thionyl chloride to Iran, Iraq, and Syria.

* * * * *

7. In Supplement No. 1 to § 399.2, in Interpretation 24, in the list entitled "Organic Chemicals," the entry for "thiodiglycol" is removed, and in the list entitled "Inorganic Chemicals, Elements, Acids, Oxides, Hydroxides, Peroxides, and Halogen Salts," the entry "phosphorus oxychloride" is removed and footnotes are added to the entries "phosphorous trichloride" and "thionyl chloride" to read as set forth below.

* * * * *

Interpretation 24: Chemicals

* * * * *

Inorganic Chemicals, Elements, Acids, Oxides, Hydroxides, Peroxides, and Halogen Salts

* * * * *

Phosphorous trichloride [1]

* * * * *

Thionyl chloride [2]

* * * * *

Dated: July 27, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-17298 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DT-M

[1] A validated license is required for export of phosphorous trichloride to Iran, Iraq, and Syria

[2] A validated license is required for export of thionyl chloride to Iran, Iraq, and Syria

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 83C-0127]

Confirmation of Effective Date for D&C Red No. 9; Identity

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of July 7, 1987, for the final rule that amended the color additive regulations to modify the manufacturing process for D&C Red No. 9.

EFFECTIVE DATE: Effective date confirmed: July 7, 1987.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 5, 1987 (52 FR 21302), FDA amended 21 CFR Part 74 of the color additive regulations in 21 CFR 74.1309 by revising paragraph (a) to clarify the removal of excess soluble barium in the manufacture of D&C Red No. 9.

FDA gave interested persons until July 6, 1987, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA concludes that the final rule published in the **Federal Register** of June 5, 1987, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the June 5, 1987, final rule. Accordingly, the amendments promulgated thereby became effective July 7, 1987.

Dated: July 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–17372 Filed 7–30–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 74 and 82

[Docket No. 83N–0009]

FD&C Blue No. 2; Termination of Stay and Establishment of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is terminating the stay and establishing the effective date of the final rule permanently listing FD&C Blue No. 2 as a color additive for use in food and ingested drugs. The regulations had been stayed by the filing of objections.

DATE: This document terminates the stay of, as well as establishes the effective date of July 31, 1987, for, 21 CFR 74.102, 74.1102, and 82.102.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 4, 1983 (48 FR 5252), FDA published a final rule that amended the color additive regulations by permanently listing FD&C Blue No. 2 for use in food and ingested drugs. The final rule added new § 74.102 (21 CFR 74.102) to allow for the use of FD&C Blue No. 2 in coloring foods except where standards of identity preclude such use. Additionally, the final rule amended the color additive regulations by revising § 74.1102 (21 CFR 74.1102) to conform the identity to § 74.102(a)(1) and to allow for the use of FD&C Blue No. 2 as a color additive for use in ingested drugs and to conform the specification for this use to § 74.102(b). The final rule also amended § 82.102 (21 CFR 82.102) by conforming the identity and specifications to the requirements of § 74.102 (a)(1) and (b) respectively.

In the **Federal Register** of April 29, 1983 (48 FR 19364), FDA announced that it had received objections and a request for a hearing on those objections. Because of the objections, under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(2)), the regulations (48 FR 5252) that permanently listed FD&C Blue No. 2 were stayed pending the agency's review of the objections. FDA stayed the effectiveness of §§ 74.102, 74.1102, and 82.102 in the April 29, 1983, final rule (see 48 FR 19365).

In the **Federal Register** of November 7, 1983 (48 FR 51145), the Commissioner of Food and Drugs announced the Commissioner's decision to grant a formal evidentiary public hearing in accordance with 21 CFR Part 12 to Public Citizen's Health Research Group pursuant to its timely objection and request for a hearing.

In the **Federal Register** of March 16, 1987 (52 FR 8113), FDA published a notice announcing the availability of the Commissioner's decision on the petition seeking permanent listing of FD&C Blue No. 2 as a color additive for general use in food and ingested drugs. In that decision, the Commissioner determined that FD&C Blue No. 2 has been shown to be safe for these uses.

Because the Commissioner has taken final action upon the objections, the effectiveness of the final rule is no longer stayed by the provisions of section 701(e)(2) of the act. Thus, the Commissioner hereby terminates the stay of the regulations and establishes the effective date of July 31, 1987, for the regulations.

On June 2, 1987, the Health Research Group filed a petition for review of the Commissioner's decision with the United States Court of Appeals for the District of Columbia Circuit. However, the filing of this petition for review does not affect the effective date for the regulation. The Commissioner's decision and the notice of availability inadvertently omitted a reference to the effective date. The Commissioner is hereby amending the order to make clear that the effective date is July 31, 1987.

List of Subjects

21 CFR Part 74

Color additives, Foods, Drugs.

21 CFR Part 82

Color additives, Foods, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706 (b), (c), and (d), 70 Stat. 919 as amended, 74 Stat. 399–403 (21 U.S.C. 371(e), 376 (b), (c), and (d)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the stay of effectiveness of §§ 74.102, 74.1102, and 82.102 is terminated. Accordingly, the amendments promulgated thereby become effective July 31, 1987.

Dated: July 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–17370 Filed 7–30–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–87–11]

Special Local Regulations; Stroh's Montreux Detroit Jazz Festival Fireworks, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Stroh's Montreux Detroit Jazz Festival Fireworks Display. This event will be held on the Detroit River on September 3, 1987 from 9:45 P.M. to 10:15 P.M. In case of inclement weather, the event will be held on September 4, 1987. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 7:00 P.M. on September 3, 1987, to 11:00 P.M. on September 4, 1987.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

SUPPLEMENTARY INFORMATION: On June 8, 1987 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (52

FR 21604). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Stroh's Montreux Detroit Jazz Festival Fireworks Display will be conducted on the Detroit River on September 3, 1987. This event will have falling ash and debris and an unusually large concentration of spectator boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group, Detroit, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

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

PART 100—[AMENDED]

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

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

2. Part 100 is amended to add a temporary § 100.35–0911 to read as follows:

§ 100.35–0911 Stroh's Montreux Detroit Jazz Festival Fireworks Display, Detroit River.

(a) *Regulated Area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 7:00 P.M.(local time) until 11:00 P.M. on September 3, 1987:

The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle.

(2) The following portion of the Detroit River will be closed to all vessel traffic, from 8:00 P.M.(local time) until 11:00 P.M. on September 3, 1987:

The area bound on the south by the International Boundary, on the west by 083 degrees 03 minutes West, on the east by 083 degrees 02 minutes West, and the north by the U.S. shoreline.

(b) *Special Local Regulations.* (1) Vessels under 65 feet shall begin clearing the shipping channels at 11:00 P.M. local or when the fireworks display ends, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 6:30 P.M. on September 3, 1987, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: Cobo Hall, Veterans Memorial Bldg., and the Ford Auditorium. Vessel masters shall pass with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange buoy with horizontal white bands will mark each special mooring.

(3) If the weather on September 3, 1987 is inclement, the fireworks display and the river closure will be postponed until 7:00 P.M. to 11:00 P.M. on September 4, 1987. If postponed, notice will be given on September 3, 1987 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) This section is effective from 7:00 P.M on September 3, 1987, to 11:00 P.M. on September 4, 1987.

Dated: July 22, 1987.

A.M. Danielsen,

RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 87–17354 Filed 7–30–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CCGD9 87–06]

Safety Zone; Lake Michigan Waters Offshore at Michigan City, the Michigan City Entrance Channel and Washington Park Marina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Safety Zone for the Lake Michigan waters offshore of Michigan City, IN, the Michigan City entrance channel, and Washington Park Marina. Within the Safety Zone, the Commander, Ninth Coast Guard District may restrict or prohibit movement of vessels and control other maritime activities. This rule will promote the safety of Pan American Games competitors, ancillary personnel, and spectators.

EFFECTIVE DATE: This temporary regulation is effective from August 1, 1987 through and including August 18, 1987.

FOR FURTHER INFORMATIONN CONTACT: Commander Francis X. Owens or Lt(jg) George H. Burns III, Marine Safety Division, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, (216) 522–3994.

SUPPLEMENTARY INFORMATION: On Friday, May 29, 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (52 FR 20113). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of these regulations are Commander Dallas G. Schmidt, project officer, Marine Safety Office Chicago, and Commander Michael A. Leone, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

The single comment received was from Marine Safety Office Chicago, and addressed harbor congestion and the safety of swimmers in the area.

On the subject of harbor congestion, it was suggested that a statement be included within the Final Rule that specified additional limitations to be imposed on harbor traffic. This recommendation is considered to be repetitive. The Coast Guard already has sufficient authority to control any traffic situation that may develop.

The expected increase in Michigan City vessel traffic will represent a threat to skin divers, snorkelers and scuba divers. Vessels will transit improperly marked or unmarked diving sites, endangering the divers. Marked dive sites will be obstructions within the Safety Zone. This point is agreed with and § 165.T0906(c)(8) has been added to this regulation. This regulation is issued pursuant to 33 U S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The regulation is of limited duration, limits access to certain areas without denying access to those who require it, and will not adversely affect commercial traffic. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation, Lake Michigan waters offshore Michigan City, Indiana, the Michigan City entrance channel, and Washington Park Marina.

Final Regulations

In consideration of the foregoing, the Coast Guard proposes to temporarily amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1 6.04–6 and 160 5.

2. Section 165.T0906 is added to read as follows:

§ 165.T0906 Lake Michigan waters offshore of Michigan City, IN, the Michigan City Entrance Channel and Washington Park Marina.

(a) *Effective dates.* Unless otherwise indicated in an individual subsection below, this temporary regulation is effective from August 1, 1987 through and including August 18, 1987.

(b) *Regulated areas.* All waters and waterfront facilities within the following boundaries constitute a Safety Zone:

(1) The water area in Lake Michigan beginning at latitude 41°51'00" N., longitude 87°02'00" W.; thence east to latitude 41°51'00" N., longitude 86°52'00" W.; thence south to the intersection of longitude 86°52'00" W. and the natural shoreline; thence along the natural shoreline and structures, across the Michigan City, Indiana channel entrance, to the intersection of latitude 41°43'00" N. and the natural shoreline; thence west to latitude 41°43'00" N., longitude 87°02'00" W.; thence north to the starting point; and

(2) All navigable waters and waterfront facilities within the Michigan City channel area bounded on the north by the Michigan City channel entrance and on the east by the western edge of the Franklin Street bridge.

(c) *Regulations.* The regulations listed below apply to all Pan American Games yachting events.

(1) No vessels, other than participants, U.S. Coast Guard operated or employed small craft, public vessels, state and local law enforcement agency vessels and event committee boats shall remain in or enter those portions of the Pan American Games race areas which lie within Lake Michigan during the periods set forth for each event, unless cleared for such entry by a Coast Guard official.

(i) Pan American Games Race Areas:

(A) Area Alpha: Area Alpha will be bounded by the following coordinates:

Center—latitude 41°45.1' N.; longitude 86°55.8' W.
North—latitude 41°46.0' N.
South—latitude 41°44.4' N.
East—longitude 86°54.7' W.
West—longitude 86°56.5' W.

(B) Area Bravo: Area Bravo will be bounded by the following coordinates:

Center—latitude 41°46.5' N.; longitude 86°59.1' W.
North—latitude 41°48.1' N.
South—latitude 41°44.8' N.
East—longitude 86°56.4' W.
West—longitude 87°01.5' W.

(C) Area Charlie: Area Charlie will be bounded by the following coordinates:

Center—latitude 41°48.5' N.; longitude 86°54.8' W.
North—latitude 41°50.3' N.
South—latitude 41°46.6' N.
East—longitude 86°52.6' W.
West—longitude 86°57.0' W.

(D) Area Delta: Area Delta will be bounded by the following coordinates:

Center—latitude 41°46.0' N.; longitude 86°54.0' W.
North—latitude 41°46.7' N.
South—latitude 41°45.2' N.
East—longitude 86°52.8' W.
West—longitude 86°55.0' W.

(ii) Competition period: Approximately 8:00 a.m. to 4:00 p.m. daily, August 9, 1987 to August 18, 1987, inclusive.

(iii) Buoys, stake boats, and Coast Guard spectator control boats will mark the actual race courses within each designated race area.

(2) Between August 1 and August 18, 1987, no person may set fishing gear, nets, marker buoys or similar obstructions within the area of the defined Safety Zone. Any such obstructions shall be removed by their owners prior to August 1, 1987 and shall not be re-set until after August 18, 1987.

(3) When hailed by Coast Guard or Coast Guard Auxiliary vessels patrolling the Safety Zone, vessels shall come to an immediate stop. Vessels shall comply with all directions of Coast Guard official and local law enforcement authorities.

(4) No vessel may approach within 100 yards of a competition vessel.

(5) No vessel may approach within ¼ mile of the race course within each race area.

(6) No vessel may block, loiter in, or impede the through transit of vessels in the Michigan City channel entrance, channel, and Washington Park marina.

(7) Additional safety and crowd control restrictions during Pan American Games race periods may be imposed as circumstances require. These restrictions will be announced in the Local Notice to Mariners and by Marine Safety Broadcasts.

(8) No person may engage in any skin diving, scuba diving, or snorkeling within the defined Safety Zone, except with the permission of the Commander, Ninth Coast Guard District.

Dated: July 22, 1987.

A.M. Danielsen,

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

[FR Doc. 87–17355 Filed 7–30–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area; Rhode Island Sound Off Newport, RI

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing a naval restricted area in the Atlantic Ocean, Rhode Island Sound, approximately 4 nautical miles due south of Lands End in Newport, Rhode Island. The purpose of the restricted area is a practice minefield for U.S. Navy training.

EFFECTIVE DATE: August 31, 1987.

ADDRESS: USACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard or Mr. Sam Collinson at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The U.S. Navy has requested the Corps of Engineers to establish a restricted area in the waters of Rhode Island Sound. The Navy will use the area as a practice minefield 2–3 days each training session, 10–15 times a year. During these training sessions no vessels or other watercraft will be allowed to enter the restricted area. The Navy will limit its use of the area during the time period of July 1 to mid-October each year to allow maximum public access to the area. The practice minefield will consist of six inert drill mines and concrete sonar target within the designated area. The sonar target will be permanently located in the extreme northeast corner within the designated drill minefield area. The six drill mines will be steel with all internal mechanisms and explosives removed and concrete filled. Drill mines will be removed from the designated area within 72 hours after each minehunting training exercise.

Notes

1. The Department of the Army has determined that notice of proposed rulemaking in this instance is unnecessary and impractical for the following reasons:

(a) A military function is involved in the proposal, since the United States Navy intends to establish a practice minefield in the designated area and conduct mine detection and mine sweeping exercises there.

(b) Vessels will be able to pass freely through the area except during the exercises, and the Navy is required to give mariners suitable notice 6 to 8 weeks before an exercise begins.

(c) A public notice advising interested parties of the proposed activity has already been issued as part of the public interest review of the proposal by the Corps of Engineers. After publication of the notice the Navy met with persons who objected to the placement of a minefield in the area and satisfied those objections by making changes to the proposal.

2. This regulation is issued with respect to a military function of the Defense Department and provisions of E.O. 12291 do not apply.

3. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

For the reasons set forth in the preamble, Title 33, Chapter II, Part 334 is amended as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.78 is added to read as follows:

§ 334.78 Rhode Island Sound, Atlantic Ocean, approximately 4.0 nautical miles due south of Lands End in Newport, Rhode Island; restricted area for naval practice minefield

(a) *The area.* The open waters of Rhode Island Sound approximately 4.0 nautical miles due south of Lands End, Newport, Rhode Island, within an area bounded as follows: Beginning at latitude 41°20'29" N., longitude 71°19'54" W.; thence 2000 yards easterly to latitude 41°20'29" N., longitude 71°18'34" W.; thence 3000 yards southerly to latitude 41°18'57" N., longitude 71°18'34" W.; thence 2000 yards westerly to latitude 41°18'57" N., longitude 71°19'54" W.; thence 3000 yards northerly to the point of beginning.

(b) *The regulations.* (1) No vessels or other watercraft will be allowed to enter the designated area during minefield training.

(2) The practice minefield will consist of six inert drill mines each 16 inches in diameter and 5 feet long and one concrete sonar target 48 inches in diameter and 48 inches high located within the designated area. The sonar target will be permanently located in the extreme northeast corner within the designated drill minefield area. The six drill mines will be steel with all internal mechanisms and explosives removed and concrete filled. Drill mines will be removed from the designated area within 72 hours after each minehunting training exercise.

(3) Training activities will be limited to minehunting operations using only onboard sonar. Neither variable depth sonar devices or mechanical minesweeping operations will be utilized in the area.

(4) Training periods will be 2–3 days in length and 10–15 times a year, however during the time period July 1–mid-October, minehunting exercises will be held to minimum.

(5) Notice to mariners will be issued 6–8 weeks in advance of a scheduled practice exercise by the Commander, U.S. Naval Base, Newport, Rhode Island.

(6) The regulations of this section shall be enforced by the Commander, U.S. Naval Base, Newport, Rhode Island, and such agencies as he/she may designate.

Date: July 1, 1987.

John S. Doyle, Jr.,

Acting Assistant Secretary of the Army (Civil Works).

[FR Doc. 87–17391 Filed 7–30–87; 8:45 am]

BILLING CODE 3710–06–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–8

[FIRMR Amdt. 10]

Implementation of Federal Information Processing Standards (FIPS) and a Federal Telecommunications Standard (FED–STD) in the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation updates FIRMR provisions by implementing four Federal Information Processing Standards (FIPS) and one Federal Telecommunications Standard (FED–STD) to provide associated standard terminology that shall be used in requirements documents, including solicitations, as applicable. FIPS 120, 121, 123, 125, and FED–STD 1005A (changed from original issuance) are added to the FIRMR. In addition, the requirement statements for FIPS 14–1 and 111 are changed. The intended

effect of this regulation is to enhance economy and efficiency in the acquisition of automatic data processing and telecommunications resources (information resources).

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Mary B. Anderson, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: 1. Four new sections, with implementation provisions, including solicitation requirements statements, are being added to FIRMR Part 201–8 in order to implement the following new standards: FIPS 120, 121, 123, and 125. In addition, three sections are being changed in order to update FED–STD 1005 to 1005A and to change the standard terminology of FIPS 14–1 and 111. The changes being made are explained in the following paragraphs.

a. Section 201–8.105–6 is amended to remove the reference to FIPS 15 and update the reference for FIPS 1–1 to 1–2 in the solicitation standard terminology.

b. Section 201–8.105–37 is amended to incorporate the waiver procedures of FIPS 60–2 into the solicitation standard terminology for FIPS 111.

c. Section 201–8.105–43 is added to incorporate FIPS PUB 121, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS).

d. Section 201–8.106–6 is added to incorporate FIPS PUB 120, Graphical Kernel System (GKS).

e. Section 201–8.106–7 is added to incorporate FIPS PUB 123, Specification for a Data Descriptive File for Information Interchange (DDF).

f. Section 201–8.107–6 is added to incorporate FIPS PUB 125, MUMPS Programming Language.

g. Section 201–8.112–4 is revised to add FED–STD 1005A, Telecommunications: Coding and Modulation Requirements for 2,400 Bit/Second Modems, replacing FED–STD 1005.

2. A notice of proposed rulemaking for this amendment was published in the **Federal Register** (52 FR 3671, February 5, 1987) indicating the availability of the proposed final rule for review and comment by interested parties. All comments received have been considered.

3. The General Services Administration (GSA) has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. Therefore, the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 201–8

Computer technology, Telecommunications, Information resources activities, and Standards for information resources.

PART 201–8—IMPLEMENTATION AND USE OF FEDERAL STANDARDS

1. The table of contents for Part 201–8 is amended by adding and revising the following entries and the authority citation for the part is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

2. Section 201–8.105–6 is amended to revise the requirement statement, to read as follows:

§ 201–8.105–6 FIPS PUB 14–1, Hollerith Punched Card Code.

* * * * *

(b) The standard terminology for use in requirements documents, including solicitations, is:

Punched Card Equipment—Code (May 87 FIRMR)

All punching or reading equipment utilizing 12-row 3¼-inch-wide rectangular hole punched cards used in data processing, communications, and similar operations must be capable of punching or reading the Code for Information Interchange, FIPS PUB 1–2 in the hole pattern specified in FIPS PUB 14–1, Hollerith Punch Card Code.

(End of requirement statement)

3. Section 201–8.105–37 is amended to revise the requirement statement, to read as follows:

§ 201–8.105–37 FIPS PUB 111, Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces).

* * * * *

(d) The standard terminology for use in requirements documents, including solicitations, is:

Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces) (MAY 87 FIRMR)

Unless a waiver is granted following the waiver procedures specified in FIPS 60–2, ADP systems and disk storage subsystems that may result from this requirement may conform to FIPS PUB 111 as an alternative to FIPS PUBS 60–2, 61–1, and either 63–1 or 97, for those instances where FIPS 60–2 would otherwise be applicable. At the option of the Government, the correct operation of these systems' conforming interfaces must be verified before the acceptance of all applicable ADP equipment.

(End of requirement statement)

4. Section 201–8.105–43 is added, to read as follows:

§ 201–8.105–43 FIPS PUB 121, Videotex/Teletext Presentation Level Protocol (North American PLPS).

(a) FIPS PUB 121 defines the data syntax for user by OSI presentation layer protocols and the semantics for use at the application layer in videotex and teletext applications. It is based upon the American National Standard Code for Information Interchange (ASCII) and is intended for use in Federal information processing systems, communications systems, and associated videotex and teletext equipment.

(b) The standard applies to the representation of pictorial information and associated alphanumeric text at the interface between host computers and videotex terminals or between teletext data and teletext decoders. FIPS PUB 121 adopts the technical specifications contained in the American National Standard, ANSI X3.110–1983, ANS Videotex/Teletext Presentation Level Protocol (North American PLPS).

(c) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 121, Videotex/Teletext Presentation Level Protocol (North American PLPS) (May 87 FIRMR)

All equipment and services acquired to accept, process, store, transmit, or interchange pictorial information and/or associated alphanumeric text that is required to be displayed or printed on videotex or teletext terminals shall comply with the requirements set forth in FIPS PUB 121.

(End of requirement statement)

5. Section 201–8.106–6 is added, to read as follows:

§ 201–8.106–6 FIPS PUB 120, Graphical Kernel System (GKS).

(a) FIPS PUB 120 specifies a library of subroutines which can be incorporated within a program to produce and manipulate two-dimensional pictures. It allows graphics applications programs to be transported between installations. FIPS PUB 120 adopts the technical specifications contained in American National Standard, ANSI X3.124–1985, Computer Graphics—Graphical Kernel System (GKS). Although this standard was not developed specifically for the printing/graphics arts industry or highly interactive applications, it may be used in these applications whenever desirable.

(b) The standard terminology for use in requirements documents including solicitations, is:

Applicability of FIPS PUB 120, Graphical Kernel System (GKS) (May 87 FIRMR)

All two-dimensional graphics libraries/packages to be used as a programming interface to application programs offered as a result of a requirement in this requirements document shall comply with FIPS PUB 120.

(End of requirement statement)

6. Section 201–8.106–7 is added, to read as follows:

§ 201–8.106–7 FIPS PUB 123, Specification for Data Descriptive File for Information Interchange (DDF).

(a) FIPS PUB 123 specifies media-independent and system-independent file and record formats for the interchange of information between compatible and non-compatible computer systems. It adopts ANSI/ISO 8211–1985, Specification for a Data Descriptive File for Information Interchange (DDF).

(b) FIPS PUB 123 contains a number of considerations and recommendations which should be carefully reviewed before determining its applicability to a given solicitation. When FIPS PUB 123 is applicable, one of three interchange levels must be included in the standard terminology, based on the agency's determination of its current and future data interchange needs. These interchange levels, included in FIPS PUB 123, range from elementary data fields with non-hierachical structures (level 1) to compound data fields with descriptions of hierarchical structures (level 3).

(c) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 123, Specification for a Data Descriptive File for Information Interchange (DDF) (May 87 FIRMR)

When computer application programs or systems are developed or acquired as a result of the requirements of which this is a part and where the interchange of large volumes of data are required between compatible as well as non-compatible systems, the developed application or acquired system shall comply with the level [insert level here] specifications defined in FIPS PUB 123.

(End of requirement statement)

7. Section 201–8.107–6 is added, to read as follows:

§ 201–8.107–6 FIPS PUB 125, MUMPS Programming Language.

(a) FIPS PUB 125 specifies the use of American National Standard MUMPS, ANSI/MDC X11.1–1984, as a FIPS.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 125, Acquisition of MUMPS Language Compilers (May 87 FIRMR)

MUMPS compilers offered as a result of the requirements of which this is a part shall implement MUMPS (FIPS PUB 125), as well as any additional language elements as specified elsewhere in this requirements document [insert reference here].

(End of requirement statement)

8. Section 201–8.112–4 is revised, to read as follows:

§ 201–8.112–4 FED–STD 1005A, Telecommunications: Coding Modulation Requirement for 2,400 Bit/Second Modems.

(a) FED–STD 1005A establishes coding and modulation requirements for 2,400 bit/second modems owned or leased by the Federal Government for use over analog transmission channels other than those derived from high frequency radio facilities. It is based upon techniques described in CCITT Recommendations V.22 bis, V.26, and V.26 bis. This standard is to facilitate interoperability between telecommunications facilities and systems of the Federal Government.

(b) FED–STD 1005A shall be used by all Federal Agencies in the design and procurement of 2,400 bit/second modems for use with switched or dedicated 4kHz channels with the following exception: Secure (encrypted) voice terminals conforming to North Atlantic Treaty Organization (NATO) Standardization Agreement 4291 may deviate from the requirements of this standard.

(c) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FED–STD 1005A, Telecommunications: Coding Modulation Requirement for 2,400 Bit/Second Modems (May 87 FIRMR)

All nondiversity 2400 bit per second modems offered as a result of this requirement for use with 4kHz channels derived from either switched or dedicated lines shall comply with FED–STD 1005A.

(End of requirement statement)

Dated: July 1, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–17393 Filed 7–30–87; 8:45 am]

BILLING CODE 6820–25–M

VETERANS ADMINISTRATION

48 CFR Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852

Acquisition Regulations Concerning the Competition in Contracting Act

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: This rule implements the CICA (Competition in Contracting Act) and the FAC (Federal Acquisition Circular) 84–5. The CICA, as implemented by the FAR (Federal Acquisition Regulation) significantly changes the acquisition process. Specifically, a formalized justification and approval process is prescribed for noncompetitive acquisitions; notice requirements for synopsizing in the Commerce Business Daily are established; each agency is required to establish a "Competitive Advocacy" program; an annual report to Congress regarding enhancing competition is required; and major revisions were made to protest procedures. This regulation prescribes necessary procedures and policies for implementing these various CICA provisions.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Chief, Policy Division, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2334.

SUPPLEMENTARY INFORMATION: The Veterans Administration published an interim final rule implementing the Competition in Contracting Act (CICA) on pages 23065–23073 of the **Federal Register** on June 25, 1986. The interim final rule is amended by revising legal and technical review requirements for proposed contracts and by adding a new provision emphasizing the need to publish acquisition policies pursuant to the Small Business and Federal Procurement Competition Enhancement Act. These additional changes, which were not included in the interim final

rule, are internal VA management policies and therefore do not require public comment.

When the interim final rule was published, the VA provided a comment period for interested persons. The VA received two comments in support of the rule; and one comment from the Office of Management and Budget (OMB) which pointed out the need to process "justification and approval" documents even if the contract is authorized by statute. The final rule incorporates OMB's recommendation.

Other revisions to the interim final rule include changes in the legal and technical review requirements for proposed contracts, addition of requirements for public rulemaking and other technical corrections.

This final rule has been reviewed in conjunction with Executive Order 12291, Federal Regulation, and has been determined not to be a "major rule" as defined therein.

Because this final rule does not come within the term "rule" as defined in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions implement the requirements of the CICA as set forth by the FAR. The provisions are primarily internal procedures which will not impact the private sector.

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

List of Subjects in 48 CFR Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842, and 852

Government procurement.

Approved: June 24, 1987.

Thomas K. Turnage,

Administrator.

Accordingly, the interim final rule amending 48 CFR, Chapter 8, Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852 which was published at 51 FR 23065–23073 on June 25, 1986, is adopted as a final rule with the following changes:

1. The authority citation for Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852 continues to read as follows:

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

PARTS 801, 802, 815, and 833 [AMENDED]

2. In 48 CFR Parts 801, 802, 815, and 833 all references to "Office of Construction" are revised to read "Office of Facilities".

PART 801—VETERANS ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

3. Section 801.301 is amended by adding paragraph (c) to read as follows:

801.301 Policy.

* * * * *

(c) As required by the Small Business and Federal Procurement Competition Enhancement Act (Pub. L. 98–577), any acquisition policy, form or procedure must be published in the **Federal Register** for public comment if it has:

(1) A significant effect beyond the internal procedures of the agency issuing the procurement policy, regulation, procedure or form, or

(2) A significant cost or administrative impact on contractors or offers.

Any facility or Central Office element having or proposing to issue a policy, form or procedure requiring public comment shall arrange for the necessary **Federal Register** publication through the Director, Office of Procurement and Supply (91).

4. In section 801.602–70, (a)(4)(ii) is removed and paragraphs (a)(4)(iii) through (a)(4)(xi) are redesignated as (a)(4)(ii) through (a)(4)(x), respectively; paragraphs (b) and (d) are revised and paragraph (i) is added to read as follows:

801.602–70 Legal/technical review requirements to be met prior to contract execution.

* * * * *

(b) The following categories of proposed contractual actions require the concurrence of the General Counsel:

(1) Contract modifications, terminations (including final decision (cure) letters), disputes and claims in excess of $25,000.

(2) Contract modifications granting a time extension of more than 20 days.

(3) Assignment of claims.

(4) Proposed awards to other than the low evaluated bidder/offeror.

* * * * *

(d) Utility construction and connection contracts which are developed in the Office of Facilities and cost $50,000 or more will be reviewed by the General Counsel and the Director, Office of Facilities.

* * * * *

(i) If a change order (unilateral agreement) is essential for the logical process of the contract, the Office of Procurement and Supply (93B) shall be called prior to issuing the document. (This requirement does not apply to change orders issued by the Office of Facilities.)

5 a. In 801.602–71, paragraph (b)(1) is amended by removing "(vi)" and adding, in its place, "(v)".

b. In 801.602–71, paragraph (b)(2) is amended by removing "(vii)" and "(viii)" and adding, in their place, "(vi)" and "(vii)" respectively.

c. In 801.602–71, paragraph (b)(3) is amended by removing "(ix)" and adding, in its place, "(viii)".

d. In section 801.602–71, paragraphs (a) and (b)(5) are revised to read as follows:

801.602–71 Processing contracts for legal/technical review.

(a) All competitively awarded solicitations requiring legal and/or technical review will have such reviews completed prior to opening of bids or proposals. The contracting officer will fully evaluate technical and legal review comments prior to opening bids or proposals. Potential bidders/offerors will be advised of changes to the solicitation by amendment and afforded sufficient time for evaluation prior to opening of bids or offers.

(b) * * *

(5) Proposed facility-level modification specified in 801.602–70(b) will be forwarded by the contracting officer directly to the Director, Facilities Engineering Service (085). The Director, Facilities Engineering Service (085), will review the submissions and forward them to the General Counsel (025) through the Director, Office of Procurement and Supply (93B).

* * * * *

6 a. In 801.602–72, paragraph (a) is amended by removing the word "a" and adding, in its place, the word "one".

b. In section 801.602–72, paragraph (d) is revised to read as follows:

801.602–72 Documents to be submitted for legal review.

* * * * *

(d) For contract modifications described in 801.602–70(b) and 801.602–71(b)(5) and (d):

(1) A draft of the proposed modification. This shall be prepared on an SF (Standard Form) 30, Amendment of Solicitation/Modification of Contract, and shall specify the exact language to be used. Changes in work, time and cost must be specifically described;

(2) A statement describing the need for the changed work. This should also be accompanied by any backup documentation, including a copy of the general statement of work in the original contract plus any existing contract language which will be modified. Include a statement that the work covered by the proposed modification is

or is not within the original scope of the contract, setting forth fully the facts considered in reaching the conclusion;

(3) A statement containing an analysis on what necessitated the modification, e.g., design error, technical change, medical center requirements;

(4) The COTR's (contracting officer's technical representative) technical evaluation of the proposed change;

(5) For construction modifications and, where applicable for A/E (architect-engineer) modifications, a copy of drawings which the COTR has marked up to delineate the proposed changed work. If appropriate, include a copy of the pertinent technical specifications. Whenever a proposed contract modification involves numerous changes to drawings and specifications for a Central Office project, the drawings and specifications will be available for review in the office of the Project Director;

(6) Costing information including:

(i) The contractor's cost proposal in the format required by the contract.

(ii) The COTR's independent cost evaluation.

(iii) The A/E's independent cost evaluation.

(iv) Contracting officer's PNM (Price Negotiation Memorandum) in accordance with VAAR 815.808. For Office of Facilities contracts, the PNM may be submitted by either the contracting officer or COTR.

(v) For A/E contracts, a listing of the fees awarded in the original contract and previous modifications.

(vi) For A/E working drawing contracts, a statement regarding the actual or estimated cost of the original construction and any estimated change to the overall project cost as a result of the proposed modification.

(vii) Any other relevant costing information, such as independent market research, which was or will be used as negotiation criteria.

(7) A concurrence on the memorandum from the appropriate office indicating that funds are available or a statement concerning the actions which must be taken to secure the required funds; and

(8) The names and telephone numbers of the contracting officer and COTR.

PART 806—COMPETITION REQUIREMENTS

806.302-5 [Amended]

7a. In 806.302-5, paragraph (a) is amended by removing the words "38 U.S.C." and "not required" and adding, in their place, the words "38 U.S.C. 4101" and "still applicable", respectively.

b. In 806.302-5, paragraph (b) is amended by removing the words "not required" and adding, in their place, the words "still applicable".

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8. In 808.304-1, paragraph (b) introductory text, the first sentence is revised to read as follows:

808.304-1 GSA long-term contracts.

* * * * *

(b) The request will be submitted to General Services Administration, Public Building Service, Public Utilities Service Division (PPU), Washington, DC 20405. * * *

* * * * *

9. Section 808.307-2 is revised to read as follows:

808.307-2 Precontract review by GSA.

Except as provided in FAR 8.307-3, proposed utility procurements meeting the criteria of FAR 8.307-1 will be forwarded to the General Services Administration, Public Building Service, Public Utilities Service Division (PPU), Washington, DC 20405.

PART 813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

813.103 [Amended]

10. In section 813.103, paragraph (a) is amended by removing "41 U.S.C. 253(c)" and "(815.507-70)" and adding, in their place, "41 U.S.C. 253(g)" and "(815.7001)", respectively.

11. Section 813.506-70 is revised to read as follows:

813.506-70 Oral purchase orders.

Oral purchase orders, when considered advantageous to the Veterans Administration, may be used for transactions not in excess of $2,500. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against FSS Contracts. The transaction will be assigned a purchase order number and receipt documentation will be obtained on the copies of the purchase request utilized as a property voucher and receiving report. Documentation as to competition will be in accordance with FAR 13.106c.

PART 814—USE OF SEALED BIDDING

11. In section 814.404-1, the first sentence of paragraph (b) revised to read as follows:

814.404-1 Cancellation of invitations after opening.

* * * * *

(b) The authority to approve cancellation of invitations for bid after opening and the authority to approve the acquisition after cancellation as provided in FAR 14.404-1(e) is delegated to the head of the contracting activity. * * *

PART 833—PROTESTS, DISPUTES, APPEALS

13. In section 833.103, paragraph (d) is revised to read as follows:

833.103 Protests to the agency.

* * * * *

(d) *Letter to protester.* When a protest has been lodged with the contracting officer and has been subsequently denied by the contracting officer, the letter to the protester along with copies to interested parties detailing the contracting officer's reasons for denying the protest will conclude with the following statement, naming the appropriate VA officials:

Should you disagree with this decision, you may file an appeal with*_____. Any such appeal must be received within 10 working days after receipt of this letter. In the alternative, you may file an appeal with the General Accounting Office (GAO) at the following address: General Counsel, General Accounting Office, Washington, DC 20548, ATTN: Procurement Law Control Group. Any GAO appeal must be filed within 10 workdays of this formal notification of or actual or constructive knowledge of initial adverse agency action (as determined in 4 CFR 21.0(e)). It should be noted that if you file an appeal with the Director, Office of Procurement and Supply or the Director, Office of Facilities, you may waive your right of further appeal to the Comptroller General at a later date.

14. In section 833.104, the last sentence of paragraph (c) is revised to read as follows:

833.104 Protests to GAO.

* * * * *

(c) * * * When the VA receives from GAO, *within ten calendar days after award,* a notice of protest filed directly with GAO, and it is determined by the head of the contracting activity pursuant to FAR 33.104(c)(2) that contract performance should be authorized, the written findings will first be approved by the Director, Office of Procurement and Supply (93B) (or the Director, Office of Facilities, as appropriate), and the GAO must be notified as required by FAR 33.104(c)(3).

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*The Director, Office of Procurement and Supply (93B), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 or (for contracts awarded by the Office of Facilities), Director, Office of Facilities (08), 811 Vermont Avenue, NW., Washington, DC 20420.

15. Section 833.106 is revised to read as follows:

833.106 Solicitation provision.

The contracting officer shall insert the VAAR provision 852.233–2, Service of Protest (July 1985) (Deviation FAR 52.233–2) and VAAR provision 852.233–70, Protest Content (March 1987) in all solicitations other than small purchases.

16. In § 833.211, the paragraph following the introductory text of paragraph (c) and the first paragraph following the introductory text of paragraph (d) are amended by adding the following sentence at the end of each paragraph to read as follows:

833.211 Contracting officer's decision.

* * * * *

(c) * * *

* * * The address of the Board is 810 Vermont Avenue, NW., Washington, DC 20420.

(d) * * *

* * * The address of the Board is 810 Vermont Avenue, NW., Washington, DC 20420.

* * * * *

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. In section 852.233–2, the footnote designated** is revised to read as follows:

852.233–2 Service of protest.

* * * * *

**For all contracts, except those awarded by the Office of Facilities, insert the Director, Office of Procurement and Supply (93B), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

18. Section 852.233–70 is added to read as follows:

852.233–70 Protest content.

As prescribed in 833.106, insert the following provision in solicitations for other than small purchases:

Protest Content (Jan 1987)

(a) Any protest filed by an interested party shall:

(1) Include the name, address, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or his/her representative, and at least one copy;

(4) Set forth a detailed statement of the legal and factual ground of the protest including copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served; and

(6) State the form of relief requested.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(End of Provision)

3. In section 852.236–88, the introductory text is amended by adding a sentence at the end, the clause to paragraph (a) is amended by revising paragraphs (b) and (c) and adding paragraph (d); and the clause to paragraph (b) is amended by revising paragraphs (b) and (c) and the last sentence of paragraph (g) to read as follows:

852.236–88 Contract changes.

* * * The clauses are a result of an approved FAR deviation pursuant to Subpart 801.4.

(a) Applicable to changes costing over $500,000: * * *

* * * * *

(b) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal for cost of changes in work within 30 calendar days.

(c) The contracting officer will consider issuing a settlement by determination to the contract, if the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached.

(d) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of Clause)

(b) Applicable to changes costing $500,000 or less: * * *

* * * * *

(b) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal for cost of changes in work within 30 calendar days.

(c) The contracting officer will consider issuing a settlement by determination to the contract, if the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached.

* * * * *

(g) * * * The contractor's fee is limited to the net increase to contractor of subcontractors' portions cost computed in accordance herewith.

* * * * *

[FR Doc. 87–17207 Filed 7–30–87; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. T84–01; Notice 12]

Technical Amendment; Certification of Compliance With Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: This agency has discovered that it inadvertently omitted a phrase from the vehicle certification requirements when it amended those requirements in connection with the new Federal motor vehicle theft prevention standard. That statute that required the agency to promulgate the vehicle theft prevention standard also requires that all 1987 *and subsequent* model year vehicles be certified as complying with the theft prevention standard. However, the amendments to the vehicle certification regulation that were made in connection with the vehicle theft prevention standard only require vehicle manufacturers to certify that their 1987 model year passenger vehicles comply with the motor vehicle theft prevention standard. The agency inadvertently omitted the phrase "and subsequent model years" from the amendment to the vehicle certification regulation. This notice corrects that error.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, NHTSA, 400 Seventh Street SW., Washington, DC 20590, (202–366–2992).

SUPPLEMENTARY INFORMATION: To carry out the mandates of Title VI of the Motor Vehicle Information and Cost Savings Act (added to that Act by the Motor Vehicle Theft Law Enforcement Act of 1984 (the Theft Act; Pub. L. 98–547)), NHTSA published a final rule on

October 24, 1985; 50 FR 43166. This final rule established a new Federal motor vehicle theft prevention standard and made corresponding changes to the vehicle certification regulation (49 CFR Part 567).

One of the sections of Title VI, codified at 15 U.S.C. 2026(c)(1), reads as follows: "Every manufacturer of a motor vehicle subject to the [Federal motor vehicle theft prevention] standard . . . shall furnish at the time of delivery of such vehicle . . . a certification that such vehicle . . . conforms to the applicable motor vehicle theft preention standard." Further, 15 U.S.C. 2023(d) makes clear that, except for a specified exemption procedure, the agency "may not render the standard inapplicable to any line which at any time has been subject to the standard." These statutory provisions clearly require the theft prevention standard to apply to all subject car lines from one model year to the next, unless and until the statute is amended, and require that manufacturers continue to certify compliance from one model year to the next.

To implement these statutory requirements, the notice of proposed rulemaking for this subject proposed to amend 49 CFR 567.4(g)(5) by adding a subparagraph that would apply to all passenger cars manufactured on or after the effective date of the theft prevention standard. Such a requirement would have clearly required all 1988 and subsequent model year cars covered by the theft prevention standard to be certified as complying. However, the certification provisions adopted in the final rule reads as follows:

> § 567.4(g)(5)(ii) In the case of *1987 model year* passenger cars manufactured on or after April 24, 1986, the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety". (Emphasis added)

A literal reading of this language suggests that *only* 1987 model year vehicles must be certified as complying with the theft prevention standard. The rule was intended to specify that these requirements apply to 1987 *and subsequent* model year passenger cars manufactured on or after April 24, 1986, but this emphasized language was inadvertently omitted from the final rule. This amendment corrects that error, by amending Part 567 to specify that 1987 and subsequent model year passenger cars must be certified as complying with the theft prevention standard.

To repeat, passenger car manufacturers are required by law to certify that their 1988 and subsequent model year cars manufactured after April 24, 1986, comply with the requirements of the Federal motor vehicle theft prevention standard, regardless of the requirements specified in 49 CFR Part 567. This statutory obligation to certify compliance is self-executing and therefore *not* predicated on the agency issuing a regulation. Hence, the vehicle manufacturers have a statutory responsibility to certify compliance with the theft prevention standard for 1988 and subsequent model year passenger cars, whether or not this correction is made. Accordingly, this correction would not impose any additional responsibilities on vehicle manufacturers. It would only ensure that *all* of a vehicle manufacturer's certification responsibilities are set forth in Part 567. Accordingly, the NHTSA finds for good cause that notice and opportunity for comment on this correction are unnecessary. Based on these same facts, the agency finds for good cause that this correction should be effective as soon as it is published.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles, National Highway Traffic Safety Administration, Reporting requirements.

In consideration of the foregoing, 49 CFR Part 567 is amended as follows:

PART 567—[AMENDED]

1. The authority citation for Part 567 continues to read as follows:

> Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2026; delegation of authority at 49 CFR 1.50.

2. Section 567.4 is amended by revising paragraph (g)(5)(ii) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *

(5) * * *

(ii) In the case of 1987 and subsequent model year passenger cars manufactured on or after April 24, 1986, the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety".

* * * * *

Issued on July 28, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-17398 Filed 7-30-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

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

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

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces a three-day closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Cape Falcon to Cape Blanco, Oregon, beginning 2400 hours local time, July 28, 1987, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Pacific Fishery Management Council, and representatives of the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Game (CDFG), that 80 percent of the commercial fishery quota of 401,700 coho salmon for the area south of Cape Falcon will be reached by that time. The closure is required by the preseason announcement of 1987 management measures. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the EEZ from Cape Falcon to Cape Blanco, Oregon to commercial salmon fishing is effective at 2400 hours local time, July 28, 1987. The fishery will reopen at 0001 hours local time, August 1, 1987. Comments on this closure will be received until August 17, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, or E. Charles Fullerton at 213-514-6196.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR Part 661. In its preseason notice of 1987

management measures (52 FR 17264, May 6, 1987), NOAA announced that—

> When 80 percent of the coho quota for the area south of Cape Falcon is reached, the entire Cape Falcon to Point Delgada area will close to all ocean troll fishing for three days to assess landings and project the remaining all-species fishing period. (Table 1, footnote h)

The 1987 troll catch quota for the area south of Cape Falcon is 401,700 coho salmon. Based on the best available information, the commercial catch in the area is projected to reach 80 percent of the coho quota by midnight, July 28, 1987. The area from Cape Blanco, Oregon, to Point Delgada, California, was closed to commercial fishing on June 25, 1987, the projected date of attainment of the subarea chinook quota (52 FR 24297, June 30, 1987).

Therefore, NOAA issues this notice to close the commercial fishery in the EEZ from Cape Falcon to Cape Blanco, Oregon, from 2400 hours local time, July 28, to 0001 hours local time, August 1, 1987. This notice does not apply to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Pacific Fishery Management Council and representatives of ODFW and CDFG regarding a closure of the commercial fishery between Cape Falcon and Cape Blanco. The ODFW representative confirmed that Oregon will close the commercial fishery in state waters adjacent to this area of the EEZ for three days beginning midnight, July 28, 1987.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: July 28,1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-17444 Filed 7-28-87; 4:16 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 147
Friday, July 31, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-85-AD]

Airworthiness Directives: Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires structural inspections and repair, as necessary, of the aft lower cargo doorway frames. This proposal would permit repairs to be made in accordance with Boeing Service Bulletin 737-53-1096, Revision 1, dated April 2, 1987, and provides an optional terminating action for the inspections required by the AD.

DATE: Comments must be received no later than September 15, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-85-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 37-NM-85-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On March 5, 1987, FAA issued AD 87-06-08, Amendment 39-5584 (52 FR 7566; March 12, 1987), to require visual inspections for cracks of the aft lower cargo doorway frames on certain Model 737 series airplanes. Continued operation with cracks could result in rapid decompression, possible blowout of the aft cargo door, or the inability to carry fail-safe loads. The AD requires parts found cracked to be repaired in accordance with FAA-approved methods. Specific repairs were not cited. Also, the AD did not provide terminating action for the inspections required by the AD.

The FAA has reviewed and approved Boeing Service Bulletin 737-53-1096, Revision 1, dated April 2, 1987, which now includes procedures for specific repairs for cracked frames, and also includes procedures for repairs and modifications which, if accomplished, would allow the repetitive inspections to be terminated.

The FAA proposes to amend AD 87-06-08 to specify that repairs be made in accordance with Boeing Service Bulletin 737-53-1096, Revision 1, dated April 2, 1987, and to provide an optional terminating action for the repetitive inspections required by that AD.

It is estimated that 475 airplanes of U.S. registry would be affected by this AD. Since this action specifies repair procedures which are FAA-approved and provides an optional terminating action, there is no additional cost impact to U.S. operators.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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 amending AD 87-06-08,

Amendment 39–5584 (52 FR 7566; March 12, 1987), to revise paragraph B. and add a new paragraph E., as follows:

Boeing: Applies to all Model 737 series airplanes listed in Boeing Service Bulletin 737–53–1096, dated July 24, 1986, certificated in any category.

To prevent rapid loss of cabin pressure resulting from undetected frame cracking, accomplish the following prior to the accumulation of 20,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 3,000 landings:

A. Conduct a close visual inspection of the forward and aft body frames adjacent to the aft lower cargo door for cracks, in the areas identified in Boeing Service Bulletin 737–53–1096, dated July 24, 1986, or later FAA-approved revisions. Thereafter, repeat the close visual inspections at intervals not to exceed 4,000 landings.

B. If cracks are found, repair prior to further flight in accordance with Boeing Service Bulletin 737–53–1096, Revision 1, dated April 2, 1987, or later FAA-approved revisions.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance or adjustment of compliance times, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, Seattle, Washington.

E. Repair or modification of the forward and aft frames in accordance with Boeing Service Bulletin 737–53–1096, Revision 1, dated April 2, 1987, or later FAA-approved revision, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

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

Issued in Seattle, Washington, on July 18, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–17358 Filed 7–30–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–CE–25–AD]

Airworthiness Directives; Gulfstream Aerospace Corporation Model 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Corporation Model 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B airplanes, herein referred to as "690 and 695" airplanes, which would supersede AD 86–24–12; Amendment 39–5483, by further prohibiting some airplanes from flight into known icing conditions. AD 86–24–12 required the use of continuous ignition during flight in meteorological conditions shown to result in engine flameouts. The FAA has further examined the ignition systems in these airplanes and has determined that the limitations of those airplanes with ignition systems having a continuous duty cycle of less than one hour do not allow the pilot to provide engine ignition for the expected duration of these meteorological conditions. The requirements of this AD will further provide additional protection against inadvertent engine flameout by prohibiting these airplanes from flight into know icing conditions.

DATE: Comments must be received on or before September 3, 1987.

ADDRESSES: Information pertinent to AD 86–24–12 and this notice may be examined at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87–CE–25–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., FAA, Central Region, Project Support Section Foreign, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932 or Ms. Alma Ramirez-Hodge, Airplane Certification Branch, DOT, FAA, Fort Worth, Texas 76193–0150, Telephone (817) 624–5147.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87–CE–25–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 86–24–12, Amendment 39–5483, (51 FR 44046–44048), was issued November 28, 1986, to revise the Airplane Pilot's Operating Handbook and Airplane Flight Manual (POH/AFM) by requiring that when flying in any actual or potential icing conditions, continuous ignition be assured by selecting manual "IGN" or IGN Override" or "IGN OVRD" on the ignition switch as appropriate.

The airplanes affected by AD 86–24–12 were originally certificated for flight into known icing conditions. However, AD 86–24–12 placed additional requirements on these airplanes for such flight. The FAA has determined that some airplanes to which the AD 86–24–12 applied have ignition systems with duty cycle limitations that prevent use of continuous ignition for the probable duration of exposure to actual or potential icing conditions. These ignition systems have a maximum duty cycle of 5 minutes on, followed by 55 minutes off whereas other Gulfstream 690 and 695 series airplanes have ignition systems with continuous duty cycles of at least one hour. The FAA has further determined that these airplanes

equipped with ignition systems having a continuous duty cycle of less than one hour, even though previously approved for flight into known icing, have insufficient ignition duration to allow the pilot to comply with the additional requirements of AD 86–24–12 for the time duration required to permit flight into known icing conditions. Therefore, FAA is proposing that these airplanes having ignition systems with a duty cycle of less than one hour be prohibited from flight into known icing conditions.

Since the condition described is likely to exist or develop in other Gulfstream Aerospace Model 690 and 695 series airplanes of the same design, the proposed AD would require the use of continuous ignition when operating in actual or potential icing conditions and additionally would prohibit those airplanes equipped with ignition systems having a duty cycle of less than one hour from flight into known icing conditions. The applicability statement in this AD has been clarified with respect to AD 86–24–12 to ensure that the aircraft operators understand that this AD, as well as AD 86–24–12, applies to all Model 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B airplanes and not just the Models 690 and 695.

The FAA has determined that there are approximately 898 airplanes affected by AD 86–24–12, and it is estimated that only a small percent of these airplanes will be affected by the proposed AD. The cost of the proposed AD, fabrication and installation of the placard, is estimated to be negligible.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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 the following new AD:

Gulfstream Aerospace Corporation: Applies to Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B (all serial numbers) airplanes certificated in any category. Compliance: Required within the next 50 hours' time-in-service after the effective date of this AD, unless already accomplished.

(a) To prevent engine flameout when in or departing an icing environment, accomplish the following:

(1) Revise the airplane POH/AFM by inserting Appendix 1 of this AD in the "LIMITATIONS" Section of the POH/AFM. Appendix 1 procedures supersede any other POH/AFM procedures which may be contradictory.

(2) For those airplanes with ignition systems having a continuous duty cycle of less than one hour: Fabricate and install a placard on the instrument panel, in clear view of the pilot, stating, "This airplane is prohibited from flight into known icing," and operate the airplane in accordance with this limitation. This placard must consist of a minimum of 0.1 inch high letters with white and red contrasting letter and background colors and may be of a plastic adhesive type.

(b) The requirements of paragraph (a) of this AD are no longer applicable when the airplane is modified by the addition of an FAA approved automatic-relite ignition system for both engines. **Note:** Automatic-relite ignition is a system which automatically energizes engine ignition without pilot action when engine RPM or torque decays below a specified level, and de-energizes engine ignition when RPM or torque exceeds the specified level. It is not synonymous with CONTINUOUS IGNITION.

(c) The requirements of paragraph (a) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the FAR on any airplane owned or operated by the pilot. The person accomplishing these actions must make the appropriate airplane maintenance record entry as prescribed by FAR 91.173.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, DOT, FAA, Fort Worth, Texas 76193–0150; Telephone (817) 877–5150.

This AD supersedes AD 86–24–12, Amendment 39–5483.

Issued in Kansas City, Missouri, on July 20, 1987.

James O. Robinson,

Acting Director, Central Region.

Appendix I—Supplement to the POH/AFM Gulfstream Aerospace Corporation Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B Airplanes

Continuous ignition switch shall be assured by selecting Manual IGN or IGN Override or IGN OVRD on the ignition switch as appropriate during all operations in actual or potential icing conditions described herein:

(1) During takeoff and climb out in actual or potential icing conditions.

(2) When ice is visible on, or shedding from propeller(s), spinner(s), or leading edge(s).

*(3) Before selecting ENG INLET, when ice has accumulated.

(4) Immediately, any time engine flameout occurs as a possible result of ice ingestion.

(5) During approach and landing while in or shortly following flight in actual or potential icing conditions.

***Note:** If icing conditions are entered in flight without the engine anti-icing system having been selected, switch one ENGINE system to ENG INLET ON position. If the engine runs satisfactorily, switch the second ENGINE system to the ENG INLET ON position and check that the second engine continues to run satisfactorily.

Caution

Flight in actual or potential icing conditions will be limited by duty cycle of the ignition system. Ignition system time limits must be observed to prevent exceeding duty cycle times. Operator should verify these limits for his particular installation.

For the purpose of this supplement, the following definition applies:

"Potential icing conditions in precipitation or visible moisture meteorological conditions:

(1) Begin when the OAT is +5 °C (+41 °F) or colder, and

(2) End when the OAT is +10 °C (+50 °F) or warmer."

The procedures and conditions described in this appendix supersede any other POH/AFM procedures and conditions which may be contradictory.

[FR Doc. 87–17359 Filed 7–30–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–49–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Through –50, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all McDonnell Douglas DC–9–10 through

–50, and C–9 (Military) series airplanes, which currently requires inspection and repair, as necessary, of wing rear spar lower tee cap at wing station X_{RS}=164.00. This proposal would require expanding the inspections to include the wing rear spar upper caps, and incorporate an additional provision for optional eddy current inspections. This action is prompted by recent reports of cracks found in the wing rear spar upper caps. If this condition is not corrected, spar cracks may develop and progress to a point where the structural integrity of the wing is affected.

DATES: Comments must be received no later than September 15, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–49–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–49–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On June 5, 1981, FAA issued Airworthiness Directive (AD) 81–13–02, Amendment 39–4136 (46 FR 31878; June 18, 1981), to require inspection for cracks and repair, as necessary, of the wing rear spar lower caps, at wing station X_{RS}=164.00 on certain DC–9 series airplanes. That AD was prompted by reports of cracks in the wing lower spar caps. A cracked spar cap, if not repaired, could result in extensive damage to the rear spar, spar web, and adjacent skin structure, and could affect the structural integrity of the wing.

Since the issuance of that AD, cracks in the wing rear spar upper caps at wing station X_{RS}=164.00 have recently been reported.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A57–146, Revision 2, dated January 2, 1987, which provides instructions to inspect the wing rear spar upper cap, and incorporates additional provisions for intermediate visual and eddy current inspections, for those aircraft incorporating a rear spar temporary repair. The FAA has also reviewed and approved McDonnell Douglas Service Bulletin 57–146, dated May 18, 1987, which describes a preventative modification for aircraft that have been modified with a temporary or permanent repair of the wing rear spar lower and upper caps.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would expand the requirements of AD 81–13–02 to include wing rear spar upper cap inspections, and incorporate additional inspections for the temporary repairs, to be accomplished in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A57–146–R2, dated January 2, 1987. Accomplishment of the repetitive inspections or replacement of wing rear lower and upper spar caps will ensure the structural integrity of the wing rear spar and minimize the potential of extensive structural damage.

It is estimated that 530 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,400.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC–9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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 superseding AD 81–13–02, Amendment 39–4136 (46 FR 31878; June 18, 1981), with the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–10 through –50 and C–9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fatigue cracking and possible structural failure of the wing rear spar upper and lower tee caps, accomplish the following:

A. Inspect the right and left-hand wing rear spar caps in the area of the No. 2 flap hinge attachment bracket at wing station X_{RS}=164.00 in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A57–146, Revision 2, dated January 2, 1987 (hereinafter referred to as ASB 57–146), or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, as follows:

1. For airplanes with 60,000 or more landings on the effective date of this AD, accomplish the inspection in accordance with

ASB 57–146, within the next 300 landings, unless already accomplished within the last 2,000 landings.

2. For airplanes with less than 60,000 landings and more than 34,999 landings on the effective date of this AD, unless already accomplished within the last 2,000 landings, inspect in accordance with ASB 57–146, in accordance with the following initial inspection schedule:

Accumulated landings	Initial inspection
35,000–44,999	2,000 landings.
45,000–54,999	1,000 landings.
55,000–59,999	500 landings.

3. For airplanes with less than 35,000 landings on the effective date of this AD, inspect in accordance with ASB 57–146, prior to the accumulation of 37,000 landings.

B. If no cracks are found, repeat the inspections required by paragraph A., above, as applicable, at intervals not to exceed 4,000 landings until such time as the preventative modification is accomplished in accordance with paragraph D., below.

C. If cracks in either the upper or lower spar caps have progressed beyond the limits indicated in paragraph 5 of "Accomplishment Instructions," ASB 57–146, prior to further flight, accomplish the permanent repair of the spar caps, identified in ASB 57–146 as J060165 "G" Change or later service rework drawing.

D. If cracks in either the upper or lower spar caps have not progressed beyond the limits indicated in paragraph 5 of "Accomplishment Instructions," ASB 57–146, prior to further flight, accomplish one of the following:

1. The permanent repair of the spar caps, identified in ASB 57–146 as J060165 "G" Change or later FAA-approved service rework drawing; or

2. The temporary repair of the spar caps, identified in ASB 57–146 as J060271 "A" Change or later FAA-approved service rework drawing.

a. Subsequent to the accomplishment of the temporary repair of the spar caps, perform visual inspections of the spar caps at intervals not to exceed 1,500 landings, and perform eddy current inspections of the spar caps at intervals not to exceed 3,000 landings, in accordance with ASB 57–146, until such time the crack preventative modification described in paragraph E., below, is accomplished.

b. If crack progression in either the upper or lower spar caps are identified during repetitive inspections, repair within 3,000 additional landings in accordance with ASB 57–146.

c. If new crack(s) are found in the rear spar, wing panel (skin), and/or temporary repair angles or doublers on airplanes with a temporary repair incorporated, prior to further flight, repair in accordance with an FAA-approved method.

E. Accomplishment of crack preventative modification in accordance with McDonnell Douglas DC–9 Service Bulletin 57–146, dated May 18, 1987, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, constitutes terminating action for this AD.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

G. Upon request of the operator, an FAA maintenance inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

H. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on July 18, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–17360 Filed 7–30–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Counselors

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed Amendment of Rule.

SUMMARY: This proposed rule would amend DoD 6010.8–R (32 CFR Part 199) regarding authorized mental health providers. This amendment is necessary to add mental health counselors as authorized mental health providers and to state the specific requirements that must be met. The amendment is intended to help assure that CHAMPUS beneficiaries have greater access to quality mental health services.

DATES: Written public comments must be received on or before August 31, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Reta M. Michak, Policy Branch, OCHAMPUS, telephone (303) 361–4078.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8–R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

A mental disorder is an increasingly pervasive and devastating illness affecting not only the patient but the whole family. The treatment of mental disorders is a significant benefit under the CHAMPUS, for reasons which include the fact that the Uniformed Services medical treatment facilities have limited capacity to provide such services. Military dependents and retirees who might have access to the Uniformed Services medical treatment facilities for most of their medical care must more often rely on civilian providers when in need of treatment for mental disorders.

Section 199.4 paragraph (c)(3)(ix) states that qualified mental health providers are: Psychiatrists or other physicians; clinical psychologists; certified psychiatric nurse specialists or clinical social workers; and marriage and family and pastoral counselors under a physician s supervision. All of these mental health providers must meet the CHAMPUS criteria for his or her respective profession. Additionally, for the purposes of the payment of CHAMPUS benefits, a mental disorder is a nervous or mental condition that involves a clinically significant behavioral or psychological syndrome or pattern that is associated with a painful symptom, such as distress, *and* that impairs a patient's ability to function in one or more major life activities. The mental disorder must be one of those conditions listed in the DSM–III.

The following professional benefits are payable when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license:

a. Individual psychotherapy;

b. Group psychotherapy;

c. Family or conjoint psychotherapy;
d. Psychoanalysis;
e. Psychological testing and assessment;
f. Administration of psychotropic drugs;
g. Electroconvulsive treatment; and
h. Collateral visits.

Counseling services that are not medically necessary in the treatment of a diagnosed medical condition; for example, educational counseling, vocational counseling, and counseling for socio-economic purposes are not covered.

Although CHAMPUS has not recognized mental health counselors as a separate category of authorized providers, a mental health counselor who meets the CHAMPUS-requirements for education, experience and licensure as one of the currently recognized mental health providers can be reimbursed for otherwise covered mental health services. Because CHAMPUS is already reimbursing services provided by some mental health counselors and because the education and experience requirements for mental health counselors are equivalent to those required for marriage and family and pastoral counselors, we have decided to recognize mental health counselors as authorized mental health providers. Mental health counselors meeting specific education and experience requirements will be included as qualified mental health providers under the referral and supervision of a physician. In the absence of state licensure, the mental health counselor must be certified by, or be eligible for, membership in a CHAMPUS-approved national association that sets standards for mental health counselors equivalent to or greater than those required by CHAMPUS.

CHAMPUS will cost-share otherwise covered mental health services provided by mental health counselors. Vocational, rehabilitation, or socio-economic counseling will not be authorized.

CHAMPUS has established utilization review guidelines for all mental health services. In addition to special review requirements for specific diagnoses and treatment modalities, all outpatient mental health services are reviewed at the 48th session, and all inpatient cases at the 30th day. Like marriage and family counselors and pastoral counselors, all mental health counselor claims will be reviewed at the established review points by the CHAMPUS Fiscal Intermediaries.

This amendment will also clarify the existing CHAMPUS requirement for physician referral and supervision for services provided by paramedical providers and certain extramedical providers.

We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

Although there are approximately 1,000 Certified Clinical Mental Health Counselors who would potentially meet the proposed requirements, only a small number of these counselors will likely apply for CHAMPUS approval. There are approximately 100,000 CHAMPUS beneficiaries who utilize mental health services. Attending physicians and psychiatrists now provide more than 50 percent of these services while extramedical counselors provide approximately 0.2 percent. The average amount paid by the government for an outpatient visit provided by an extramedical counselor is approximately $44. We would anticipate that less than 1 percent of the CHAMPUS user beneficiaries will use mental health counselors. Because of the small number of CHAMPUS beneficiaries who will potentially use mental health counselors, and the limited amount paid for an outpatient visit, the net impact on the average mental health counselor will not be significant. Accordingly, the Secretary certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense, the Department of Health and Human Services, and other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C 1079, 1086, 5 U.S.C. 301.

2. Section 199.2 is amended by adding a definition for mental health counselors in the proper alphabetical order to paragraph (b) to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Mental Health Counselor. An individual who meets the requirements established by § 199.6 (c)(3)(iv)(A) of this part.

* * * * *

2. Section 199.4 is amended by revising paragraphs (c)(3)(ix)(A) and paragraph (g)(39) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(3) * * *

(ix) * * *

(A) *Covered diagnostic and therapeutic services.* Subject to the requirements and limitations stated, CHAMPUS benefits are payable for the following services when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license. Qualified mental health providers are: Psychiatrists or other physicians; clinical psychologists, certified psychiatric nurse specialists or clinical social workers; and marriage and family, pastoral, and mental health counselors, under a physician's supervision. No payment will be made for any service listed in this paragraph (c)(3)(ix)(A) rendered by an individual who does not meet the criteria of § 199.6 of this part for his or her respective profession, regardless of whether the provider is an independent professional provider or an employee of an authorized professional or institutional provider.

* * * * *

(g) *Exclusions and limitations.*

* * * * *

(39) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical condition; for example, educational counseling, vocational counseling, and counseling for socio-economic purposes. Services provided by a marriage and family, pastoral or mental health counselor in the treatment of a mental disorder are covered only as specifically provided in § 199.6. Services provided by alcoholism rehabilitation counselors are covered only when rendered in a CHAMPUS-authorized alcohol rehabilitation facility and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost-rate.

3. Section 199.6 is amended by adding paragraph (c)(1)(iv), by revising paragraphs (c)(3)(iv)(A) introductory text, (c)(3)(iv)(A) (*1*), (*2*), (*3*), (*4*) introductory text; by redesignating and revising paragraph (c)(3)(iv)(A)(*4*)(*iii*) as (c)(3)(iv)(A)(*6*); and by adding a new paragraph (c)(3)(iv)(A)(*5*) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(c) * * *

(1) * * *

(iv) *Physician referral and supervision.* Physician referral and supervision is required for the services of paramedical providers as listed in paragraph (c)(3)(iii)(H) of this section and for marriage and family counselors, pastoral counselors, and mental health counselors. Physician referral means that the physician must actually see the patient, perform an evaluation, and arrive at an initial diagnostic impression prior to referring the patient. Documentation is required of the physician's examination, diagnostic impression, and referral. Physician supervision means that the physician provides overall medical management of the case. The physician does not have to be physically located on the premises of the provider to whom the referral is made. Communication back to the referring physician is an indication of medical management.

* * * * *

(3) * * *

(iv) * * *

(A) *Marriage and family counselors, pastoral counselors, and mental health counselors.* The services of certain extramedical marriage and family counselors, pastoral counselors, and mental health counselors are coverable on a fee-for-service basis, under the following specified conditions:

(*1*) The CHAMPUS beneficiary must be referred for therapy by a physician.

(*2*) A physician is providing ongoing oversight and supervision of the therapy being provided.

(*3*) The marriage and family counselor, pastoral counselor, and mental health counselor must certify on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communication will be made at the end of the treatment, or more frequently, as required by the referring physician (refer to § 199.7).

(*4*) Marriage and family counselors and pastoral counselors shall have the following:

* * * * *

(*5*) Mental health counselors shall have the following:

(*i*) Minimum of a master's degree in mental health counseling or allied mental health field from a regionally accredited institution, and

(*ii*) Two years of post-master's experience which includes 3,000 hours of clinical work and 100 hours of face-to-face supervision.

(*6*) These providers must also possess a valid state license or certificate as a marriage and family counselor, pastoral counselor or mental health counselor, or a license or certificate that allows the counselor to provide therapy in states that require such licensing or certification.

* * * * *

3. Section 199.7 (e)(3) is revised to read as follows:

§ 199.7 Claims submission, review, and payment.

* * * * *

(e) * * *

(3) *Claims involving the services of marriage and family counselors, pastoral counselors, and mental health counselors.* CHAMPUS requires that marriage and family counselors, pastoral counselors, and mental health counselors make a written report to the referring physician concerning the CHAMPUS beneficiary's progress. Therefore, each claim for reimbursement for services of marriage and family counselors, pastoral counselors, and mental health counselors must include certification to the effect that a written communication has been made or will be made to the referring physician at the end of treatment, or more frequently, as required by the referring physician.

* * * * *

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1987.

[FR Doc. 87-17277 Filed 7-30-87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3240-7]

Approval and Promulgation of Implementation Plans; Illinois; Correction

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking; correction notice.

SUMMARY: In the June 26, 1987, **Federal Register** (52 FR 24037), USEPA proposed, inter alia, the promulgation into the Illinois State Implementation Plan (SIP) of rules for issuance of construction permits to new and modified air pollution sources located in or affecting nonattainment areas in Illinois (New Source Review rules). USEPA's proposed promulgation is based upon a request from the state of Illinois and will provide Illinois with New Source Review rules. Today's notice provides the proposed codification for a Federal promulgation of New Source Review rules for Illinois. This proposed codification was inadvertently left out of USEPA's June 26, 1987 proposed rulemaking. All other elements in the June 26, 1987, proposal remain unchanged.

DATES: An informal public hearing will be held on USEPA's proposed promulgation, as printed full text today, at the address listed below. It will be held on August 6, 1987, starting at 11:00 a.m. (This hearing will not cover USEPA's June 26, 1987, proposed action on the State of Illinois New Source Review rules.)

Written comments on USEPA's promulgation of rules for the State as proposed on June 26, 1987, and as printed full text today; the State of Illinois New Source Review rules as proposed on June 26, 1987; and on USEPA's proposed actions as also proposed on June 26, 1987, and today must be received by September 7, 1987.

ADDRESSES: The public hearing on USEPA's proposed promulgation will be held in the: Lakeview Conference Room, 16th Floor, Room No. 1680, John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of the SIP revision proposed for approval and additional copies of the rules proposed for promulgation are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on these proposed rules should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental

Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is proposed to be amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.736 is revised by amending paragraph (a) and adding new paragraph (b) as follows:

§ 52.736 Review of new sources and modifications.

(a) Part D Disapproval—USEPA disapproves the Illinois pollution Control Board's Rule 203, as adopted on July 14, 1983, and submitted to USEPA on August 23, 1983.

(b) *Major Stationary Source Construction and Modification.* The requirements of this section shall apply to any person constructing or modifying a new major stationary source or modification that is major for the pollutant for which the area is nonattainment defined at section 171 (of the Clean Air Act (42 U.S.C. 7501(2))

(1) *General Provisions*—(i) *Definitions*—(A) *Actual construction.* In general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and erection of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(B) *Actual emissions.* The actual rate of annual emissions of a pollutant from an emissions unit as of a particular date. That rate is equal to the average annual rate (in tons per year) at which the emissions unit actually emitted the pollutant either during the 2-year period which immediately precedes the particular date, or during such other period which is determined by the United States Environmental Protection Agency (Agency) to be representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(1) The Agency shall allow the use of a different time period upon a determination by the Agency that it is more representative or normal source operation. The burden shall be on the applicant to demonstrate that another time period is more representative.

(2) The Agency may presume in the absence of reliable data on actual emissions, that the source-specific allowable emissions for the emissions unit are equivalent to the actual emissions of the emissions unit.

(3) For any emissions unit which has not begun normal operation on the particular date, the Agency shall presume that the actual emissions of the emissions unit on that date is equivalent to the source's potential to emit.

(C) *Allowable emissions. (1)* The allowable emissions rate of a stationary source is calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable permit conditions or other such federally enforceable limits which restrict the operating rate, or hours of operation or both) and the most stringent of the following:

(i) The applicable standard set forth in 40 CFR Part 60 or 40 CFR Part 61;

(ii) The applicable emission standard or limitation contained in the Illinois State Implementation Plan (SIP), including those with a future compliance date; or

(iii) The emission rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2) The allowable emission may be expressed as a permit condition limiting material or fuel throughput.

(3) If a source is not subject to an emission standard under provision *(1)* and is not conditioned pursuant to provision *(2)* above, the allowable emissions shall be the source's potential to emit.

(D) *Available growth margin.* The portion which remains of any emission allowance for new or modified major stationary sources expressly identified in the attainment demonstration approved by the Agency under section 172(b)(5) of the Clean Air Act for a particular pollutant and area.

(E) *Commence.* As applied to construction of a major stationary source or major modification, "commence" means that the owner or operator has obtained all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(F) *Construction.* Any physical change or change in the method of operation, (including but not limited to fabrication, erection, installation, demolition, or modification of an emissions unit), which would result in a change in actual emissions.

(G) *Emission baseline.* The starting point or reference level from which increases and decreases in emissions are measured. The rules herein governing determination of emission offsets and calculations of net emission increases specify the particular emission baseline that applies for that purpose.

(H) *Emission offset.* A creditable emission reduction used to compensate for the increase in emissions resulting from a new major source or a major modification.

(I) *Emissions unit.* Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(J) *Fugitive emissions.* Those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(K) *Lowest Achievable Emission Rate (LAER).* That rate of emissions for any source which reflects the more stringent of either the most stringent emission limitation which is contained in any State Implementation Plan for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance. The applicable LAER requirements are presented in § 52.736(b)(3)(i).

(L) *Potential to emit.* The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall

be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(M) *Reasonable Further Progress.* The annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under Part D and section 110(a)(2)(I) of the Clean Air Act and regular reductions thereafter) which are sufficient in the judgement of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 172(a) of the Clean Air Act (42 U.S.C. 7502(a)).

(N) *Secondary emissions.* Emissions which would occur as a result of the construction of operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train or from a vessel.

(O) *Stationary source.* Any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(1) The terms "building", "structure", "facility" and "installation" mean all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), including dockside vessel emissions as determined on a case-by-case basis by the Agency.

(2) Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

(P) *Volatile organic compound.* Any chemical compound of carbon, released to or present in the atmosphere in a gaseous state, including compounds which are liquids at standard conditions, but excluding the following compounds and other compounds exempted by the Agency by appropriate final action in the **Federal Register.** methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbide, metallic carbonates, ammonium carbonate, 1,1,1 trichloroethane (methyl cloroform), methylene chloride, trichlorotrifluoroethane (Freon 113), trichlorofluoromethane (CFC–11), dichlorodifluoromethane (CFC–12), chlorodifluoromethane (CFC–22), trifluorumethane (FC–23), trichlorotrifluoroethane (CFC–113), dichlorotetrafluoroethane (CFC–114), chloropentafluoroethane (CFC–115).

(ii) *Public participation.* Prior to the initial issuance of a permit for a major new source or modification subject to paragraph (2) (Major Stationary Sources in Nonattainment Areas), the Agency shall provide public participation pursuant to its procedures at 40 CFR 51.161.

(A) Such procedures shall provide that prior to approving or disapproving the construction or modification of a facility, building, structure, or installation pursuant to this section, the State or local agency will provide opportunity for public comment on the information submitted by the owner or operator and on the Agency's analysis of the effect of such construction or modification on ambient air quality, including the Agency's proposed approval or disapproval.

(B) For purposes of paragraph (A) of this section, opportunity for public comment shall include, as a minimim:

(1) Availability of the information submitted by the owner or operator and the State and local agency's analysis of the effect on air quality for public inspection in at least one location in the affected region;

(2) 30-day period for submittal of public comment; and

(3) Notice by prominent advertisement in the region affected of the location of the source information and analysis specified in paragraph (B)*(1)* of this section.

(C) Where the 30-day comment period required in paragraph (B) of this section would conflict with existing requirements for acting on requests for permission to construct or modify, the State may submit for approval a comment period which is consistent with such existing requirements.

(D) A copy of the notice required by paragraph (B) of this section shall also be sent to the Administrator through the appropriate regional office, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The notice also shall be sent to any other agency in the region having responsibility for implementing the procedures required under this section.

(iii) *Delegation.* The Agency may delegate all or part of its authority under this rule to the Illinois Environmental Protection Agency. Where the Illinois Environmental Protection Agency has been delegated authority, it shall act for the Agency and make those determinations which would otherwise be made by the Agency. Where the Agency has so delegated its authority, the Illinois Environmental Protection Agency shall sent a copy of the public comment notice on every permit application to the USEPA.

(2) *Major Stationary Sources In Nonattainment Areas*—(i) *Prohibition.* In any nonattainment area as defined at section 171(2) of the Clean Air Act (42 U.S.C. 7501(2)), no person shall cause or allow the construction of a new major stationary source of major modification that is major for the pollutant for which the area is nonattainment except as in compliance with this rule for that pollutant.

(ii) *Construction permit requirement and application.* (A) A construction permit is required prior to having begun or having caused to begin actual construction of a major new source or major modification.

(B) Applications for construction permits required under this subparagraph shall contain sufficient information to demonstrate compliance with the requirements of this rule including, but not limited to, paragraph (b)(3), *Requirements For Major Stationary Sources In Nonattainment Areas.*

(C) The permit shall include conditions specifying the manner in which the requirements of paragraphs (b)(2) *Major Stationary Sources* and (b)(3) are satisfied.

(D) No permittee shall violate any condition contained in construction permit issued for a new major stationary source or major modification which is subject to this subparagraph (ii).

(iii) *Effect of permits.* The issuance of a permit to a source subject to the requirements of this rule shall not relieve any person of the responsibility to comply fully with applicable provisions of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111 ½, pars. 1001 *et seq.*); the regulations

contained in 35 Ill. Adm. Code: Subtitle B, Chapter I; the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal regulations adopted thereunder including the Illinois State Implementation Plan; or other applicable requirements under local, State or Federal laws.

(iv) *Major stationary source.* For purposes of this regulation dealing with new source review in Illinois nonattainment area, the following constitutes a major stationary source:

(A)*(1)* Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act for which the area is nonattainment under section 171(2) of the Act; or

(2) Any physical change that would occur at a stationary source not qualifying under paragraph (A)*(1)* as a major stationary source, if the change would constitute a major stationary source by itself.

(B) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(C) The fugitive emissions of a stationary source shall not be included in determining (for any of the purposes of this subsection) whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers),

(2) Kraft pulp mills,

(3) Portland cement plants,

(4) Primary zinc smelters,

(5) Iron and steel mills,

(6) Primary aluminum ore reduction plants,

(7) Primary copper smelters,

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day,

(9) Hydrofluoric, sulfuric, or nitric acid plants,

(10) Petroleum refineries,

(11) Lime plants,

(*12*) Phosphate rock processing plants,

(*13*) Coke oven batteries,

(*14*) Sulfur recovery plants,

(*15*) Carbon black plants (furnance process),

(*16*) Primary lead smelters,

(*17*) Fuel conversion plants,

(*18*) Sintering plants,

(*19*) Secondary metal production plants,

(*20*) Chemical process plants,

(*21*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input,

(*22*) petroleum storage transfer units with a total storage capacity exceeding 300,000 barrels,

(*23*) Taconite ore processing plants,

(*24*) Glass fiber processing plants,

(*25*) Charcoal production plants,

(*26*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input,

(*27*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(v) *Major modification.* Any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulations under the Clean Air Act, except that a physical change or change in the method of operating shall not include an activity listed below. Any net emissions increase that is considered significant for volatile organic material shall be considered significant for ozone.

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of any order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791), the Power Plant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. 791, *et seq.).*

(C) Use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act (42 U.S.C. 7425).

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a stationary source which:

(*1*) The source was capable of accommodating before december 21, 1976, and has continuously remained capable, unless such change would be prohibited under any federally enforceable permit condition which was established December 21, 1976, pursuant to 40 CFR 52.21, as amended at 45 FR 25735, August 7, 1980, 40 CFR Part 51, Subpart I, 35 I11. Adm. Code 201.142 or 201.413, ot this rule; or

(*2*) Is approved for use under any permit issued pursuant to 35 I11. Adm. Code 201.142, 201.143, or this rule.

(F) An increase in the hours of operation or in the production rate, unless such change in prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 as amended at 45 FR 52735, August 7, 1980, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, 35 I11. Adm. Code 201.142 or 201.143, or this rule.

(G) Any change in ownership at a stationary source.

(vi) *Net emission determination.* A net emissions increase is the amount by which the sum of any increase in actual emissions from a particular physical change or change in method or operation at a source, and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable, exceeds zero. The following steps determine whether the increase or decrease in emissions is available.

(A) Net emissions increase means the amount by which the sum of the following exceeds zero:

(*1*) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(*2*) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change, only if it occurs before the date that the increase from the particular change occurs.

(C) An increase or decrease in actual emissions in creditable only if:

(*1*) It occurs within five years of the commencement of construction of the particular change; and

(*2*) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase in actual emissions is creditable only to the exent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(*1*) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(*2*) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(*3*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the State has not relied on it in demonstrating attainment or reasonable further progress.

(*4*) It is approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(vii) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emission Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

(viii) *Relaxation of a source-specific limitation.* (A) No person shall cause or allow the operation of a source so as to exceed any enforceable limitation which affects or defines the applicability of the requirements of this rule to a stationary source or modification, by specifying the permissible emission rate, operating hours, type or amount of material processed, stored or combusted, or other aspects of source operation.

(B) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a realization in, or expiration of, any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply as though construction had not yet commenced on the source or modification.

(ix) *Permit exemption based on fugitive emissions.* The provisions of this rule do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the categories of sources listed in subparagraph (iv)(C).

(3) *Requirements for major stationary sources in nonattainment areas.*—(i) *Lowest achievable emission rate.* (A) For any source, lowest achievable emission rate (LAER) will be the most stringent rate of emissions based on the following:

(1) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are now achievable; or

(2) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achiveable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under any applicable new source standard of performance.

(B) The owner or operator of a new major stationary source shall demonstrate that the control equipment and process measures applied to the source will produce LAER.

(C) The owner or operator of a major modification shall demonstrate that the control equipment and process measures applied to the major modification will produce LAER. This requirement applies to each emissions unit at which a net increase in emissions of the pollutant has occurred or would occur as a result of a physical change or change in the method of operation in the unit.

(D) The owner or operator shall provide a detailed showing that the proposed emission limitations constitute LAER. Such demonstration shall include:

(1) A description of the manner in which the proposed emission limitation was selected, including a detailed listing of information resources.

(2) Alternative emission limitations, and

(3) Such other reasonable information as the Agency may request as necessary to determine whether the proposed emission limitation is LAER.

(ii) *Maintenance of reasonable further progress and emission offsets.* (A) Credit for an emissions reductions can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the State has not relied on it in demonstrating attainment or reasonable further progress. Only intrapollutant emission offsets will be acceptable (e.g., volatile organic compound increases may not be offset against SO_2 reductions).

(B) The Agency shall allow the use of all or some portion of the available growth margin to satisfy subparagraph (A) if the owner or operator can show that possible sources of emission offsets were investigated and none were reasonably available at that time.

(iii) *Baseline and emission offsets determination.* (A) An emission offset must be obtained from a source in operation prior to the permit application for the new or modified source. Emissions offsets must be effective prior to start-up of the new or modified source.

(B) The emission offsets provided must:

(1) Be intrapollutant offsets of a type with approximately the same qualitative significance for public health and welfare as that attributed to the increase in a particular change;

(2) In the case of a fuel combustion source, be based on the type of fuel being burned at the time the permit application is filed, and, if offset is to be produced by a future switch to a cleaner fuel, be accompanied by a demonstration that long-term supplies of the clean fuel are available and a commitment to a specified alternative control measure which would achieve the same degree of emission reduction if return of the dirtier fuel is proposed;

(3) In the case of a shutdown of a source or permanent curtailment of production or operating hours occurring on or after the date a permit application is filed for a new or modified source, have been made known to the affected work force;

(4) In the case of a past shutdown of a source or permanent curtailment of production or operating hours, have occurred since April 24, 1979, or the date the area is designated by the Agency as a nonattainment area for the pollutant, whichever is more recent, and the proposed new or modified source must be a replacement for the shutdown or curtailment; and

(5) Be federally enforceable. Federally enforceable offsets are those limitations and conditions which are enforceable by the Administrator.

(C)*(1)* The baseline for determining the extent to which emission reductions are creditable as offsets shall be the actual emissions of the source from which the offset is to be obtained, to the extent they are within any applicable emissions limitations of 35 Ill. Adm. Code: Subtitle B, Chapter I, or 40 CFR Part 60 and 40 CFR Part 61 except as provided in subparagraph (2).

(2) If the demonstration of reasonable further progress and attainment of ambient air quality standards approved by the Agency as part of the Illinois SIP is based on the applicable emission limitations of 35 Ill. Adm. Code: Subtitle

B, Chapter I, or 40 CFR 60 and 40 CFR 61, for sources within an area, and the source from which the offset is to be obtained is subject to such limitations, the baseline for offsets is to be either such limitations or the potential to emit of the source, whichever is less.

(D) The location of sources providing the emission offests must be consistent with the guidelines in 40 CFR Part 51, Appendix S, Section IV D.

(E) Replacement of one volatile organic compound with another lesser reactivity does not constitute an emission reduction credit.

(iv) *Compliance by existing sources.* The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in Illinois are in compliance with all applicable emission limitations and standards under the Clean Air Act (or are in compliance with an expeditious schedule which is Federally enforceable or contained in a court decree).

(v) *Analysis of alternatives.* For emissions of volatile organic compounds or carbon monoxide, the owner or operator shall demonstrate that benefits of the new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification, based upon analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source.

(4) *Operation of a major stationary source or major modification*—(i) Lowest achievable emission rate compliance requirement. No person shall cause or allow the operation of a new major stationary source or major modification subject to the construction requirements of subparagraph (3), except as in compliance with applicable LAER provisions established pursuant to subparagraph (3)(i) for such source or modification.

(ii) *Emission offset maintenance requirement.*—No person shall cause or allow the operation of a new major stationary source or major modification which is required to demonstrate that it would not interfere with reasonable further progress, or which must include emissions offsets in a demonstration pursuant to subparagraphs (3) (ii) and (iii) without maintaining those emission offsets or other equivalent offsets.

(5) *General maiantenance of emission offsets.* No person shall cease to maintain emission offsets which were provided for a source or modificaiton subject to the requirements of paragraph (3).

Opportunity for Public Hearing

USEPA will hold an informal public hearing on the promulgation of New Source Review rules in Illinois. The hearing will be held at 11:00 a.m. on August 6, 1987, in Room 1680, 230 S. Dearborn Street, Chicago, Illinois.

Public Comment

USEPA is soliciting public comment on both its June 26, 1987, proposed promulgation of New Source Review rules into the Illinois SIP (as printed full text today) and on its June 26, 1987, proposed approval of the New Source Review rules currently under development by the IPCB. Public comments should be sent to the Region V office listed in the beginning of the **Federal Register** notice. Comments received by September 7, 1987, will be considered in USEPA's final rulemaking.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposal or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if USEPA certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over a population of less than 50,000.

USEPA believes that these rules, if finally promulgated, will not have a significant negative economic effect on a substantial number of small entities. Although some new requirements will be placed on Illinois sources requesting permits under the New Source Review rules, the requirements to be imposed have not been approved in Illinois primary nonattainment areas. Although the costs and benefits of imposing these requirements are difficult to accurately quantify, USEPA believes that the benefit of ending the construction moratorium greatly outweighs the costs.

USEPA expressly solicits any information available to the contrary. Such information should be submitted to the above listed address for public comments. If instead, USEPA grants final approval to the State's New Source Review rule, then the plan approval would be addressed by the Administrator's certification that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Executive Order 12291, today's correction action is not "Major". The proposed codification language in today's notice was submitted to the Office of Management and Budget (OMB) for review at the same time as the notice of proposed Federal promulgation of a Illinois New Source Review plan and the proposed rulemaking on the Illinois New Source Review plan, both of which were published in the same notice on June 26, 1987 (52 FR 24037).

Authority: 42 U.S.C. 7401–7642.

Dated: July 24, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 87–17399 Filed 7–30–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 65

[A–6–FRL–3240–4]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements; Proposed Disapproval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed disapproval.

SUMMARY: The Environmental Protection Agency proposes to disapprove a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to General Motors Corporation (GM) Arlington, Tarrant County, Texas, on January 16, 1987. The DCO purports to require GM to bring air emissions of volatile organic compounds from their automobile topcoat painting and final paint repair application process into compliance with the Texas State Implementation Plan (SIP) by August 28, 1987. The SIP required compliance by December 31, 1986. Tarrant County is presently not attaining the National Ambient Air Quality Standard for ozone. The DCO, as submitted to the EPA by the TACB, does not meet the requirements of EPA policy, section 113 of the Clean Air Act and cannot be approved by EPA. Because the order has been issued to a "major" stationary source and permits a delay in compliance with the Texas SIP, section 113 of the Clean Air Act requires it to be approved by EPA before it can become effective. If approved by EPA, the DCO will become an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO. This notice invites public comment on EPA's proposed disapproval of the DCO.

DATE: Interested persons are invited to submit comments on the proposed action on or before August 31, 1987.

ADDRESSES: Written comments should be submitted to the following address: Air Enforcement Branch (6T–E), Air, Pesticides, & Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

The State order, supporting material, evaluation report and any public comments received in response to this notice are available for inspection during normal business hours at the address above (as Docket number R6–87–DCO–1) and at the following locations: Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, DC 20460, and the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Rich Raybourne, ALO Enforcement Section (6T–EA), Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6 Office, (214) 655–7223.

SUPPLEMENTARY INFORMATION: On March 25, 1980, (45 FR 19231), EPA approved TACB Regulation V, Rule 115.191, "Surface Coating Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties," as a revision to the Texas SIP. Rule 115.191(8) (A) and (B) prohibits operation of certain automobile and light-duty truck coating (painting) facilities unless they limit emissions of volatile organic compounds (VOC) on the basis of solvent content per gallon of coating (minus water), or by the use of "add-on" control equipment such as carbon absorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1979, and were to be in compliance by December 31, 1986.

GM's Arlington plant is a "major" stationary source, which emits more than 100 tons of VOC per year from automobile coating processes, and as such is subject to Rule 115.191. Based on GM's contention that they were unable to comply with the VOC limits in Rule 115.191(8)(B) by December 31, 1986, except by shutting down the affected automobile coating processes, on January 16, 1987, the TACB issued an order to GM extending their SIP compliance date until August 28, 1987. This order was subsequently submitted to the EPA as a DCO pursuant to section 113(d) of the Clean Air Act. On May 12, 1987, EPA notified GM under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. In anticipation of this notification the TACB developed the January 16, 1987, DCO that is now proposed for disapproval under this notice. The TACB transmitted the DCO to EPA on January 20, 1987. EPA has reviewed the DCO,[1] and found that it does not satisfy the requirements of section 113(d) of the Clean Air Act and EPA policy.

Briefly stated, the DCO deficiencies are as follows:

- The DCO does not have a schedule to control emissions from all of the affected paint application areas.
- The DCO does not demonstrate final compliance with the applicable regulations.
- The DCO allows monthly averaging of VOC content in coatings, which does not establish compliance with the short term standard.
- The TACB has not documented communication with local governments and the Federal Land Manager regarding the DCO.

If the DCO is approved by EPA, compliance with its terms would preclude federal enforcement action under section 113 of the Clean Air Act against GM of violations covered by the DCO during the period that the DCO is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act would be similarly precluded. If approved, the DCO would constitute an addition to the Texas SIP. However, compliance with an approved DCO will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed disapproval action. Written comments received by the date specified above will be considered in determining EPA's final action on the DCO. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the DCO and the corresponding addition to 40 CFR Part 65.

This DCO affects only one entity and involves an "Order", rather than a "Rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to Executive Order 12291.

[1] "EPA Review of Texas State Delayed Compliance Order for General Motors Corporation, Tarrant County, Texas, February 1987". This detailed evaluation is available at the addresses given previously in this Notice.

This notice of proposed disapproval is issued under the authority of sections 113 and 301 of the Clean Air Act, 42 U.S.C. 7413 and 7601.

List of Subjects in 40 CFR Part 65

Air pollution control.

Date: July 17, 1987.

Robert E. Layton, Jr.,

Regional Administrator, Region 6.

The text of the Delayed Compliance Order is set forth below. Final agency action on the order will be published in Subpart SS of Part 65 of Title 40 of the Code of Federal Regulations.

Texas Air Control Board

6330 Highway 290 East, Austin, Texas 78723

Board Order—General Motors Corporation

[No. 87–01]

Whereas, General Motors Corporation (hereinafter referred to as GM) owns and operates an automobile assembly plant (hereinafter referred to as the plant) in Arlington, Tarrant County, Texas. The assembly of automobiles at the plant results in the emission of volatile organic compounds (VOCs) into the air from the plant's topcoat facility; and

Whereas, the GM plant in Tarrant County is a major stationary source of VOCs within the meaning of 40 CFR 65.01(d); and

Whereas, the VOCs emitted from the automobile and light duty truck coating processes at GM are subject to the requirements of Rule 115.191(8)(B) of Regulation V; and

Whereas, Rule 115.191(8)(B) requires coating emissions not to exceed a VOC content of 5.2 pounds per gallon (lbs/gal), excluding water, by December 31, 1982 and 2.8 lbs/gal, excluding water, by December 31, 1986 and requires the plant's final repair facility to achieve 4.8 lbs/gal, excluding water, by December 31, 1986. Both the topcoat and final repair facilities at the plant use lacquer based paint.

Whereas, Rule 115.191(8)(B) has been approved by the administrator of the Environmental Protection Agency (hereinafter referred to as EPA) pursuant to section 110 of the Federal Clean Air Act (42 U.S.C. 7410) as a requirement of the applicable implementation plan for Texas; and

Whereas, Texas Air Control Board (hereinafter referred to as TACB) Rule 115.194(c) requires that persons affected by Rule 115.191(8)(B) submit compliance schedules and that such persons be in compliance with the requirements of

Rule 115.191(8)(B) as soon as practicable but not later than December 31, 1986; and

Whereas, on October 28, 1985, GM received a construction permit for a new plant shop which have met the December 31, 1986 deadline through use of the best available control technology. However, due to prevailing market conditions, construction on the new paint shop ceased on January 13, 1986 after a substantial expenditure of funds.

Whereas, GM thereafter worked with the TACB on a site-specific reasonably available control technology (RACT) determination; however, EPA has indicated that the proposed site-specific RACT determination is unapprovable.

Whereas, GM is unable to comply with the limits in Rule 115.191(8)(B) by December 31, 1986, except by shutting down the source listed above; and

Whereas, startup of the topcoat and final repair facilities may result in a violation of Rule 115.191(8)(B) continuing for more than 30 days until the completion of rulemaking reflecting the extension of compliance date under this order; and

Whereas, on September 26, 1986, GM submitted a schedule which demonstrates that compliance can be achieved by August 28, 1987; and

Whereas, GM has not operated the plant since December 8, 1986; and

Whereas, the Texas Air Control Board gave notice to the public and to the EPA on December 12, 1986, that it proposed to issue the following Order to GM; and

Whereas, the public notice contained the contents of the following Order, invited comment, and scheduled a public hearing; and

Whereas, a public hearing was held on January 12, 1986 at 7:00 p.m. in Arlington, Tarrant County, Texas; and

Whereas, an investigation of all relevant facts, including public comment, has demonstrated that this Order requires compliance as expeditiously as practicable and that this Order requires the best practicable system of interim emission reduction; and

Whereas, the TACB has consulted with the Arlington Health Department, Tarrant County Health Department and North Central Texas Council of Governments pursuant to section 121 of the Federal Clean Air Act (42 U.S.C. 7421); and

Whereas, the public interest in continued operation of the source listed above outweighs the environmental cost of the additional period of noncompliance provided in this Order because there are no discernible effects associated with the emissions from GM's automobile and light duty truck coating processes which exceed the level of emissions allowed under Rule 115.191(8)(B), and strict compliance with such rule would require cessation of certain operations with attendant adverse economic effects for which there is insufficient corresponding environmental benefit.

Now, therefore, it is the decision and order of the Board that:

1. GM is hereby directed to comply with TACB Rule 115.191(8)(B) by not later than August 28, 1987, in accordance with the following schedule for compliance:

A. First Color Oven Incinerator

Complete construction, February 2, 1987
Begin operation, Before plant recommences operation

B. First Color Booth Regenerative Incinerator

Begin on-site construction, February 16, 1987
Complete construction and begin operation, August 28, 1987

2. Performance verification testing on the First Color Oven Incinerator shall be completed by May 1, 1987 and the testing documentation shall be submitted to the staff by July 1, 1987. That performance verification testing on the First Color Booth Regenerative Incinerator shall be completed by December 4, 1987 and the testing documentation shall be submitted to the staff by December 21, 1987.

3. GM shall install and maintain a collection and incineration system such that a 95% destruction efficiency of VOCs is achieved from the First Color Oven Incinerator and a 93% destruction efficiency of VOCs is achieved from the First Color Booth Regenerative Incinerator.

4. Prior to final compliance with Rule 115.191(8)(B) of Regulation V, GM shall continue topcoat and final repair application operations in such a manner as to maximize paint transfer efficiencies and minimize VOC emissions. In no event, shall VOC emissions from the topcoat application operation exceed the 5.2 lbs/gal (material 1207 shall not exceed 6.8 lbs/gal) or VOC emissions from the final repair application operation exceed the 6.5 lbs/gal limitations contained in Rule 115.191(8)(A) of Regulation V, except as provided in any alternate means of control approved pursuant to TACB Rule 115.401.

5. From and after entry of this Board Order until August 28, 1987, GM shall maintain the recordkeeping system contained in Attachment "A" demonstrating that the air emissions from the topcoat application and final repair application systems do not exceed the emission limitations contained in Rule 115.191(8)(A), except as provided in any alternate means of control approved pursuant to TACB Rule 115.401. From and after August 28, 1987, GM shall maintain any recordkeeping system required by any TACB permit for the above facilities or contained in any alternate means of control approved pursuant to TACB Rule 115.401.

6. GM shall submit a written report on April 1, July 1, October 1, 1987 and January 1, 1988 documenting compliance with the increments of progress set forth in paragraphs 1 and 2 above.

7. If any delay is anticipated in meeting the milestones set forth in paragraph 1 above, GM shall immediately notify the TACB in writing. Notification of the delay shall not excuse the delay, unless it is caused by the action of a national or local government, body or court, an act of God, war, strike, riot or catastrophe as to any of which the negligence or willful misconduct on the part of GM was not the proximate cause.

8. This Order is issued pursuant to the Texas Clean Air Act, Article 4477-5 V.A.C.S. This Order fulfills the requirements for a Delayed Compliance Order provided for by section 113 of the Federal Clean Air Act (42 U.S.C. 7413). GM is protected by Sections 113(d)(10) and 304 of the Federal Clean Air Act, 42 U.S.C. 7413(d)(10) and 7604, for noncompliance with the Texas State Implementation Plan until the date for final compliance in the Order is passed, where GM is in compliance with the terms of this Order. The Order has full force and effect upon execution by the Board.

9. All notices, reports, and documents which GM is required to file pursuant to this Order shall be submitted to Eli Bell, Executive Director, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. If the deadline for filing falls upon a Saturday, Sunday or holiday, the document must be filed on the next business day.

10. No statement or assertion underlying this Order or any commitments herein or actions taken by GM hereunder, shall, under any circumstances, constitute evidence of or be construed as an admission by GM of any wrongdoing or violation of law or breach of duty in any case, cause, controversy, or court of law or equity.

11. Nothing in this Order shall in any way limit or preclude GM from seeking and obtaining approval of a transaction pursuant to TACB Rule 101.23 (Alternate Emission Reduction Policy), and EPA's

Controlled Trading Policy as in effect at the time any such transaction is submitted to EPA as a revision to the State Implementation Plan in lieu of demonstrating compliance with Rule 115.191(8)(B) pursuant to this Order.

12. Nothing in the Order shall in any way limit or preclude GM from seeking and obtaining approval of an alternate method of control pursuant to TACB Rule 115.401 in lieu of demonstrating compliance with Rule 115.191(8)(B) pursuant to this Order.

Notice

Pursuant to the provisions of section 113(d)(1)(E) of the Federal Clean Air Act (42 U.S.C. 7413(d)(1)(E)), GM is hereby notified that, unless excepted under section 120(a)(2) (B) or (C) of the Federal Clean Air Act, if it fails to achieve full compliance by December 31, 1986, it may be required to pay a noncompliance penalty. This Notice does not constitute a "notice of noncompliance" as that term is used in section 120(b)(3) of the Federal Clean Air Act (42 U.S.C. (b)(3)) and 40 CFR 66.11.

Passed and approved at the regular meeting of the Texas Air Control Board in Austin, Texas on this the 16th day of January, 1987.

Texas Air Control Board.

John L. Blair,
Chairman.
Charles R. Jaynes,
Vice Chairman, (Absent).
Vittorio K. Argento, P.E.,
Member.
Bob G. Bailey,
Member.
Fred Hartman,
Member.
D. Jack Kilian, M.D.,
Member (Absent).
Otto R. Kunze, Ph.D., P.E.,
Member.
R. Hal Moorman,
Member (Absent).
Hubert Oxford, III,
Member.

Attest:

Allen Eli Bell,
Executive Director.

GM shall maintain monthly summaries documenting the number of cars and the surface area coated with color topcoats and ground coat and usage (in gallons) of color topcoats and ground coat, waste paint generated from topcoats and ground coat, usage of material 1207, and usage of coatings in the final repair application system. These records shall be retained until January 1, 1988 and must be made available upon request to representatives of the TACB and local air pollution control agencies having jurisdiction.

[FR Doc. 87-17400 Filed 7-30-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87-6]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of time to comment.

SUMMARY: The Federal Maritime Commission is extending the period for filing comments in this proceeding.

DATE: Comments due on or before August 10, 1987.

ADDRESS: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Commission instituted this proceeding by Notice of Proposed Rulemaking ("Proposed Rule") published in the **Federal Register** on April 13, 1987 (52 FR 11832), to address apparent conditions unfavorable to shipping in the United States/Peru trade ("the Trade") pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46, U.S.C. app. 876(1)(b) ("Section 19"). Comments on the Proposed Rule were originally due on May 13, 1987. However, by Notice of May 11, 1987 ("May Notice") (52 FR 18408), this period was extended until July 3, 1987.

It its May Notice, the Commission noted that a Memorandum of Understanding ("MOU"), signed on May 1, 1987 between the Governments of Peru and the United States, appeared to be a significant development which may be expected to affect access of non-Peruvian-flag carriers to the Trade. Accordingly, the Commission extended the comment period in order to obtain the views of interested persons on this development.

On June 26, 1987, a Petition was filed by Compania Peruana de Vapores, Empresa Naviera Santa, and Naviera Neptuno, S.A. ("Petitioners") for a further extension of time to comment. The Petitioners contended that while the Government of Peru's proposed regulations to implement the MOU were under active consideration, it was not anticipated that the regulations would be promulgated sufficiently in advance of July 3, 1987, the due date for comments, to allow interested persons to comment. The U.S. Department of Transportation advised the Commission that it had no objection to a brief extension. The Commission granted a further extension of time until July 31, 1987, or a date fourteen (14) days after receipt by the Commission of the MOU regulations promulgated by the Government of Peru, whichever date was earlier (52 FR 26027).

These same Petitioners have now filed a request for a further extension of time for commenting "from July 31, 1987, to a date fourteen (14) days after the receipt by the Commission of the regulations promulgated by the Government of Peru to implement the MOU or August 21, 1987, whichever is the earlier." Petitioners advise that the Governments of Peru and the United States are discussing the implementation of the MOU regulations in a "cordial and constructive manner." They further state that the promulgation of the regulations has been delayed because of efforts to fashion regulations that are mutually satisfactory to the Governments of the United States and Peru.

Petitioners contend that "[i]t will probably be at least seven (7) to ten (10) days[1] before the MOU regulations can be promulgated, transmitted to the Government of the United States and by the relevant United States executive agency to the Commission." They suggest that interested persons should be given at least fourteen (14) days to comment on the regulations and that comments received by the Commission prior to their promulgation "would be incomplete and possibly irrelevant."

Discussion

The Commission recognizes that the regulations to be promulgated by the Government of Peru to implement the MOU may affect access of non-Peruvian-flag carriers to the Trade. The Commission further recognizes the utility of receiving comments on these regulations in connection with its Proposed Rule. Moreover, given the ongoing diplomatic negotiations and the interests to be served by achieving a non-confrontational resolution of the matter which gave rise to this proceeding, the Commission has been

[1] The Commission calculates this 7 to 10-day period to begin from the date the instant Petition was filed, *i.e.*, July 20, 1987.

patient and cooperative throughout, particularly with regard to the pace of the Governments' efforts to eliminate the apparent conditions unfavorable to shipping in the Trade. In that spirit, the Commission has twice extended the comment period at Petitioners' urging, the last time for essentially the same reasons as advanced in the instant request. Nevertheless, based on Petitioners' assertion that "meaningful discussions continue with evidence of progress and anticipation of successful agreement, " and that the MOU regulations could be received sometime between July 27 and July 30, 1987, the Commission will again extend the comment period, but only until August 10, 1987, rather than August 21, 1987, as requested by Petitioners.

Notwithstanding the general desirability of diplomatic solutions, there comes a point when the Commission must proceed to a final resolution of a matter pending before it under section 19. This is particularly true, where as here, there exists an initial finding, reflected in a proposed rule, that U.S. trades are being disadvantaged by foreign cargo reservation laws.

The Commission further advises that no requests for further extensions will be entertained unless extreme and unforeseeable circumstances exist and that, barring such circumstances, it will proceed to determine whether final action under Section 19 is necessary in this matter on the basis of the existing record.

Therefore, the time within which interested parties may file comments in this proceeding is extended to August 10, 1987.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-17411 Filed 7-30-87; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 52, No. 147
Friday, July 31, 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

Office of the Secretary

[Docket No. 87-014N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held from 9:00 a.m. to 5:00 p.m. on Wednesday, August 26, 1987, and Thursday, August 27, 1987, in Conference Room MO9 of the Old Post Office Pavilion Building, 12th and Pennsylvania Avenue, NW., Washington, DC. The purpose of the Committee is to provide the Secretary with advice and recommendations on matters pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, and 301(a) of the Federal Meat Inspection Act (21 U.S.C. 607(c) 624, 645, and 661(a)) and sections 5(a), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a), 457(b), and 460(e)).

The August 1987 meeting will include a discussion of the following topics:

1. Standards for Frankfurters and Similar Cooked Sausages
2. Sulfite Labeling
3. Mechanically Separated (Species) Petition
4. Implementation of Discretionary Inspection
5. National Academy of Sciences' Study on Poultry Inspection
6. Listeria Testing Program
7. Species Testing Program
8. European Economic Community Third Country Directive
9. European Economic Community Hormone Directive

The current members of the National Advisory Committee on Meat and Poultry Inspection are:

Dr. Robert W. Bray, Former Associate Dean of Agriculture, University of Wisconsin, 4823 County Trunk M, Middleton, WI 53562

Dr. William L. Brown, President, ABC Research Corportion, P.O. Box 1557, Gainesville, FL 32602

Mr. George J. Cocoma, Vice President, Research and Development, Wilson Foods, 4545 North Lincoln Blvd., Oklahoma City, OK 73105

Dr. Charles F. Cook, Manager, Regulatory Affairs, Oscar Mayer, P.O. Box 7188, Madison, WI 53707

Ms. Nancy E. Cronmiller, Director, Nutrition Service, Emory University School of Medicine, 1365 Clifton Road, NE, Atlanta, GA 30322

Mr. Travis P. Enmon, Route 1, Box 1695, Center, TX 75935

Dr. Alan L. Forbes, Director, Office of Nutrition and Food Science, Center for Food Science and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, Washington, DC 20204

Mr. John B. Glaus, Glaus Angus Ranch, Inc., RR 1, Box 8, Chamberlain, SD 57325

Mr. Alex Grant, Associate Commissioner for Consumer Affairs, HFE-1, Room 1685, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

Mr. Mark Gustafson, Vice President of Technical Affairs, U.S. Meat Exporters Federation, 7200 Stapleton Plaza, 3333 Quebec Street, Denver, CO 80207

Dr. Norman D. Heidelbaugh, Department of Veterinary Public Health, Texas A&M University, Room 81 VMS Building, College Station, TX 77843

Dr. Phil Hudspeth, Vice President, Research and Quality Assurance, Holly Farms Poultry, P.O. Box 88, Wilkesboro, NC 28697

Ms. Carmen Jorgensen, Jorgensen Farms, Route 1, Box 451, Dover, AR 72837

Mr. Wilfred E. Kaney, Inland Empire Meat Company, 1433 Miller Drive, P.O. Box 590, Colton, CA 92324

Honorable Charles E. Kruse, Director, Department of Agriculture, P.O. Box 630, Jefferson City, MO 65102-3359

Mr. Stephen F. Krut, Executive Director, American Association of Meat Processors, 224 East High Street, Elizabethtown, PA 17022

Dr. James Marion, Department Head, Department of Poultry Science, North Carolina State University, Raleigh, NC 27695-7608

Mr. Derrill McAteer, Vice President, Lykes Development, 6100 Commercial Way, WeekiWachee, FL 34606

Dr. Janet McNaughton, Associate Professor of Nutrition, Home Economics Department, Mississippi State University, Drawer HE, Mississippi State, MS 39762

Dr. David Miller, Director, Animal Health Services and State Veterinarian, P.O. Box 1163, Richmond, VA 23209

Mr. Richard B. Nichols, Nichols Brothers, Inc., 1750 Highway 42, Winston, OR 97496

Dr. Thelma Njaka, Assistant Division Director, Animal Health Division, West Virginia Department of Agriculture, State Capitol Building, Charleston, WV 25305

Dr. R. B. Sleeth, Director, Research and Technical Services, Armour Foods, 15101 North Scottsdale, Scottsdale, AZ 85254

Dr. Terry D. Strueh, Assistant to the Dean of Agriculture, Purdue University, Agricultural Administration Building, West Lafayette, IN 47907

Mr. Douglas P. Yauger, Esquire, Deputy Attorney General, Commonwealth of Pennsylvania, 564 Forbes Avenue, Pittsburge, PA 15219

The meeting is open to the public on a space available basis. Comments of interested persons may be filed with the Committee before or after the meeting, and should be sent to Catherine DeRoever, Director, Executive Secretariat, Room 335-E, Administration Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 447-3002.

Done at Washington, DC, on July 28, 1987.

Donald L. Houston,

Vice Chairman.

[FR Doc. 87-17373 Filed 7-30-87; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Members of the Bureau of the Census Performance Review Board

The following individuals will serve as members of the Bureau of the Census Performance Review Board:

(1) Barbara A. Bailar

(2) Bryant Benton
(3) William P. Butz
(4) Charles D. Jones
(5) C.L. Kincannon
(6) Roland H. Moore
(7) Charles A. Waite
(8) Katherine K. Wallman.

Dated: July 27, 1987.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 87-17407 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 8-87]

Foreign-Trade Zone 106, Oklahoma City, OK; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of Oklahoma City (Port Authority), grantee of Foreign-Trade Zone 106, requesting authority to expand the zone to include 4 sites in Oklahoma City, within the Oklahoma City Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 15, 1987

On September 14, 1984, the Board authorized the Port Authority to establish a foreign-trade zone in Oklahoma City (Board Order 271, 49 FR 37133, 9/21/84). The project currently covers 640 acres at the Will Rogers World Airport.

The expansion would involve a privately-owned site and 3 tracts of airport property totalling 236 acres. The three airport tracts are designated as Tracts 1, 3, and 5. The private site is owned by Aero-Meridan Corp. and consists of a 100,000 sq. ft. warehouse and 6 acres of land located at 3501 Melcat Drive in the Lakeside Business Park. Tract 1 of the 3-tract airport property is 143 acres at SW. 59th St. and Portland Ave., adjacent to the northwest corner of the existing zone. Tract 3 is 31 acres at Highway 152 and MacArthur Blvd. and Tract 5 is 62 acres at Portland Ave. and Highway 62.

A manufacturing operation for Organon Teknika, a manufacturer of medical devices, is also included in the application. The company produces dialysis machines, absorbent cartridges and spare parts for all manufactured devices, employing 200 workers. Materials sourced abroad include chemicals, medical equipment, dialyzers and disposable blood sets. Manufacturing under zone procedures would be for export only.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donald Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe St., Houston, TX 77057; and Colonel Franklin T. Tilton, District Engineer, U.S. Army Engineer District Tulsa, P.O. Box 61, Tulsa, OK 74121.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 11, 1987.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Will Rogers World Airport, P.O. Box 599406, Oklahoma City, OK 73159

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 1529, Washington, DC 20230.

Dated: July 24, 1987.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 87-17430 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-427-098]

Preliminary Results of Antidumping Duty Administrative Review; Anhydrous Sodium Metasilicate From France

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise and the periods January 1, 1983 through December 31, 1983 and January 1, 1984 through December 31, 1984. The review indicates the existence of dumping margins for the firm during the 1984 period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Since information received in response to our questionnaire for the 1984 period was inadequate, we used the best information available for assessment purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATES: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 43733) the final results of its last administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. We began the current review of the order under our old regulations. After the promulgation of our new regulations, PQ Corporation, the petitioner, requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on July 9, 1986 (51 FR 24883). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item

number(s) as well as that TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na2Si03) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. Anhydrous sodium metasilicate is currently classifiable under TSUSA number 421.3400 and HS item number HS 2839.11.00 and 2839.19.00.

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the periods January 1, 1983 through December 31, 1983 and January 1, 1984 through December 31, 1984.

Rhone Poulenc provided an inadequate response to the Department's questionnaire for the 1984 period. Rhone Poulenc did not submit its response in accordance with the format outlined in the Department's questionnaire. Despite several requests the firm failed to submit computer tapes of its home market sales. Furthermore, home market sale dates were missing and explanations of claimed home market expenses were inadequate. Rhone Poulenc did not adequately identify or quantify U.S. expenses. Therefore, for the 1984 period the Department used the best information available, which is the margin from the fair value investigation.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Since the one U.S. sale during the 1983 review period was made through a related sales agent in the U.S. to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For this sale the Department determined that purchase price, rather than exporter's sales price, was the more appropriate indicator of United States price based on the following elements:

1. The merchandise in questions was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the U.S. acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the U.S., where the sales agent performs them. Whether these functions are done in the U.S. or abroad does not change the substance of the transactions or the functions themselves.

Purchase price was based on the packed delivered price with deductions for foreign inland freight, ocean freight, marine insurance, customs duties, customs brokerage charges, and wharfage. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed delivered price with adjustments, where applicable, for foreign inland freight, differences in credit, and packing costs. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Rhone Poulenc	1-12/83	0
	1-12/84	60

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice, and may request disclosure and/or an administrative protective order within 5 days of the date of publication. Any request for a hearing must be made no later than 8 days after the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

The above margin shall not change the current rate for cash deposit of estimated antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17431 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-038]

Preliminary Results of Antidumping Duty Administrative Review, Bicycle Speedometers From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and seven respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers eleven manufacturers and/or exporters of this merchandise to the United States and generally the period April 1, 1978 through October 31, 1984. The review indicates the existence of dumping margins for certain firms during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 11720) the final results of its last

administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, the petitioner and seven respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on May 30, 1986 (51 FR 19580). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annonated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of bicycle speedometers, currently classifiable under TSUSA items 711.9300, 711.9820 and 732.4200. These products are currently classifiable under HS item numbers 9029.20.20, 9029.90.40 and 9029.10.80.

The review covers eleven manufacturers and/or exporters of Japanese bicycle speedometers to the United States and generally the period April 1, 1978 through October 31, 1984.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b., c.i.f., or delivered, packed price to either the first unrelated purchaser in the United States or an unrelated Japanese trading company for export to the United States. We made adjustments, where applicable, for foreign and U.S. inland freight, ocean freight, marine insurance, U.S. Customs duties, brokerage and handling charges. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the packed, delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight, differences in packing costs, and differences in the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter/importer	Time period	Margin (percent)
Asahi Keiki Mfg. Co./Noma Enterprises Co., Ltd.	04/01/78-10/31/81	6.62
	11/01/81-10/31/82	0
Asahi Keiki Mfg. Co./Royal Industries Ltd.	04/01/78-10/31/81	5.83
	11/01/81-10/31/82	0
Asahi Keiki Mfg. Co./Yagami Corporation.	04/01/80-10/31/81	6.15
	11/01/81-10/31/82	3.14
	11/01/82-10/31/83	.15
	11/01/83-10/31/84	0
Asahi Keiki Mfg. Co./N.S. International/Perfection Company.	04/01/78-10/31/80	0.05
	11/01/80-10/31/81	0
	11/01/81-10/31/82	0
	11/01/82-10/31/83	0
Asahi Keiki Mfg. Co./N.S. International/Diversified Products Corp.	11/01/81-10/31/82	0
	11/01/82-10/31/83	0
	11/01/83-10/31/84	0.26
Asahi Keiki Mfg. Co./N.S. International/Allegheny International.	11/01/82-10/31/83	0
	11/01/83-10/31/84	0
Asahi Keiki Mfg. Co./N.S. International/Roadmaster Corporation.	11/01/82-10/31/83	0
	11/01/83-10/31/84	0
Asahi Keiki Mfg. Co./N.S. International/Chaparal Co.	04/01/78-10/31/81	0
Asahi Keiki Mfg. Co./N.S. International/Ajay Co.	04/01/78-10/31/81	0
	11/01/81-10/31/84	0
Asahi Keiki Mfg. Co./N.S. International/Frabil Corporation.	04/01/78-10/31/81	1.52
	11/01/81-10/31/82	0
Asahi Keiki Mfg. Co./N.S. International/AMF/Wheel Co.	04/01/78-10/31/81	0
Tsuyama Mfg. Co., Ltd.	11/01/82-10/31/83	0
	11/01/83-10/31/84	0
Tsuyama Mfg. Co., Ltd./Kozaki Trading Co., Ltd.	11/01/82-10/31/83	0
	11/01/83-10/31/84	0
Tsuyama Mfg. Co., Ltd./Yagami Corporation.	11/01/82-10/31/83	0
	11/01/83-10/31/84	0
Tsuyama Mfg. Co., Ltd./Kuwahara Co., Ltd.	11/01/83-10/31/84	0
Tsuyama Mfg. Co., Ltd./H. Tano & Co., Ltd.	11/01/82-10/31/83	0
	11/01/83-10/31/84	0.14
Tsuyama Mfg. Co., Ltd./Mitsui & Co.	11/01/82-10/31/83	0
	11/01/83-10/31/84	0
Tsuyama Mfg. Co., Ltd./Shinwa Trading Co., Ltd.	11/01/82-10/31/83	0
	11/01/83-10/31/84	0

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by CFR 353.48(b), since there were no margins for the following manufacturers/exporters/importers for the most recent period covered by this review, the Department shall not require a cash deposit of estimated antidumping duties for these manufacturers/exporters/importers:

Asahi Keiki Mfg. Co./Royal Industries., Ltd.
Asahi Keiki Mfg. Co./Noma Enterprises Co., Ltd.
Asahi Keiki Mfg. Co./N.S. International/Perfection Company
Asahi Keiki Mfg. Co./N.S. International/Chaparal Co.
Asahi Keiki Mfg. Co./N.S. International/Ajay Co.
Asahi Keiki Mfg. Co./N.S. International/Frabil Corporation
Asahi Keiki Mfg. Co./N.S. International AMF/Wheel Co.

For the remaining manufacturers/exporters/importers covered by this review or by earlier reviews, the cash deposit will continue to be at the rate published in the final results of the last administrative review (52 FR 11720, April 10, 1987). Those final results covered a period more recent than that covered by this review, but did not cover all manufacturers/exporters/importers covered by this review.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after October 31, 1985, a cash deposit of 17.74 percent, as established in the final results of the most recent review, shall be required.

These deposit requirements are effective for all shipments of Japanese bicycle speedometers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17432 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-036]

Final Results of Antidumping Duty Administrative Review and Revocation; Instant Potato Granules from Canada

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty administrative review and revocation.

SUMMARY: On June 19, 1987, the Department of Commerce published the preliminary results of its administrative review and intent to revoke the antidumping finding on instant potato granules from Canada. The review covers two producers and/or exporters of this merchandise to the United States and the period September 1, 1983 through November 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments. The final results of review are unchanged from those presented in the preliminary results and we revoke the antidumping finding on instant potato granules from Canada.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202)377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23329) the preliminary results of its administrative review and intent to revoke the antidumping finding on instant potato granules from Canada (37 FR 20175, September 27, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of instant potato granules, currently classifiable under items 140.5000, 140.7000 and 141.8610 of the Tariff Schedules of the United States Annotated.

The review covers two producers and/or exporters of instant potato granules to the United States and the period September 1, 1983 through November 30, 1984.

Final Results of the Review and Revocation

We invited interested parties to comment on the preliminary results and intent to revoke. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review, and we determine that no margins exist for the period September 1, 1983 through November 30, 1984.

For the reasons set forth in the preliminary results of review and intent to revoke, we are satisfied that there is no likelihood of resumption of sales at less than fair value by McCain Foods Limited and Vauxhall Foods Limited. Accordingly, we revoke the antidumping finding on instant potato granules from Canada. This revocation applies to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 30, 1984, the date of our tentative determination to revoke the finding.

The Department will instruct the Customs Service not to assess antidumping duties on all appropriate entries.

This administrative review, revocation, and notice are in accordance with section 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1) and (c)) and 19 CFR 353.53a and 353.54.

Date: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17433 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. A-580-010]

Final Results of Antidumping Duty Administrative Review; Certain Rectangular Welded Carbon Steel Pipes and Tubes from Korea

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On June 8, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order that was in effect prior to October 1, 1984 on certain rectangular welded carbon steel pipes and tubes from Korea. The review covers one exporter of this merchandise and the period October 24, 1983 through September 30, 1984

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1985, the Department of Commerce ("the Department") revoked the antidumping duty order on certain rectangular welded carbon steel pipes and tubes from Korea, effective October 1, 1984 (50 FR 42583). On June 8, 1987, the Department published in the **Federal Register** (52 FR 21609) the preliminary results of its administrative review of the antidumping duty order that was in effect prior to October 1, 1984. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain rectangular welded carbon steel pipes and tubes, currently classifiable under items 610.3955 and 610.4976 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer/exporter of Korean rectangular welded carbon steel pipes and tubes to the

United States, Union Steel Mfg. Co., Ltd., and the period October 24, 1983 through September 30, 1984.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments or requests for a hearing. Based on our analysis, the final results of review are unchanged from those we presented in the preliminary results. We determine that a margin of 1.47 percent exists for Union Steel Mfg. Co., Ltd. for the period October 24, 1983 through September 30, 1984.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

This administrative review, covering the period October 24, 1983 through September 30, 1984, does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17434 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-045]

Final Results of Antidumping Duty Administrative Review; Steel Wire Rope From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 5, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan. The review covers 19 manufacturers and/or exporters of this merchandise to the United States and generally the period from January 1, 1977 through March 31, 1978. We deferred review of Mitsui & Co. Ltd. We will cover that firm in a separate review.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Shinko Wire Company, Ltd. Based on our analysis of the comments received, the final results of review are changed from those presented in the preliminary results with respect to Shinko Wire Corp./Shinsho Corp.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 7601) the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such steel wire rope is currently classifiable under items 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700 of the Tariff Schedules of the United States Annotated.

The review covers 19 manufacturers and/or exporters of Japanese steel wire rope to the United States and generally the period January 1, 1977 through March 31, 1978.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from a respondent, Shinko Wire Corporation, which we address below.

Comment 1: The Department erred in using an exporter's sales price ("ESP") analysis for Shinko's U.S. sales through Shinsho as the degree of ownership between Shinko and Shinsho is too small to establish a related party relationship.

Department's Position: Even though Shinko owns less than 5% of Shinsho and Shinsho owns less than 5% of Shinko, we considered them to be related parties pursuant to 19 U.S.C. 1677(13)(D) since Kobe Steel owns 60% of Shinko and 50% of Shinsho. Furthermore, we considered Shinsho Corporation (Japan) sales to Shinsho American as sales to a related party. Therefore, we analyzed Shinsho American sales to the first unrelated party in the United States.

Comment 2: If the Department continues to use an ESP analysis for sales through Shinsho, Shinko is entitled to deduct its selling expenses from home market prices.

Department's Position: We agree. We have adjusted our analysis to allow for selling expenses for Shinko's home market sales.

Comment 3: The Department should use ocean freight and marine insurance charges of another responding company as best information available for Shinko sales through Shinsho.

Department's Position: We agree. Since shipping rates tend to be uniform throughout the industry, we used actual ocean freight and marine insurance charges of another respondent during the review as best information available for Shinko.

Final Results of Review

Based on our analysis of the comments received, we have revised our preliminary results for Shinko Wire Corp./Shinsho Corp. and we determine that the following margins exist during the periods indicated:

Manufacturer/exporter	Time period	Margin (percent)
Kokoku Steel Wire/Itoh-take.	1/1/77-3/31/78	17.43
Kokoku Steel Wire/Kane-matsu-Gosho.	1/1/77-3/31/78	0.35
Kokoku Steel Wire/ Maruka Machinery.	1/1/77-3/31/78	3.89
Kokoku Steel Wire/Nichi-men Co.	1/1/77-3/31/78	2.32
Kokoku Steel Wire/ Nissho-Iwai, Ltd.	1/1/77-3/31/78	0.19
Kokoku Steel Wire/Shin-sho Corp.	1/1/77-3/31/78	8.94
Kokoku Steel Wire/UNA	1/1/77-3/31/78	31.76
Shinko Wire Corp./Ataka & Co.	1/1/75-7/31/76	0.10
	8/1/76-3/31/78	0
Shinko Wire Corp./Kane-matsu-Gosho.	1/1/75-3/31/78	0
Shinko Wire Corp./Nissho-Iwai, Ltd.	1/1/71-7/31/76	*0
	8/1/76-3/31/78	0
Shinko Wire Corp./Shin-sho Corp.	1/1/75-10/31/76	0.10
	11/1/76-9/30/77	36.18
	10/1/77-3/31/78	3.25
Shinko Wire Corp./T. Cha-tani.	8/1/76-3/31/78	0
Shinko Wire Corp./Yuasa Trading.	8/1/76-3/31/78	0
Teikoku-Sangyo/C. Itoh	1/1/77-3/31/78	5.01
Teikoku-Sangyo/Nissho-Iwai, Ltd.	1/1/77-3/31/78	8.84
Teikoku-Sangyo/Shinsho	1/1/77-3/31/78	26.80
Teikoku-Sangyo/Showa Boeki.	1/1/77-3/31/78	0
Teikoku-Sangyo/ Sumitomo Corp.	1/1/77-3/31/78	8.56
Teikoku-Sangyo/Tosho Co.	1/1/77-3/31/78	61.05
Tokyo Rope/Ataka & Co.	1/1/77-3/31/78	0.23
Tokyo Rope/C. Itoh	1/1/77-3/31/78	1.25
Tokyo Rope/Mitsubishi & Co.	1/1/77-3/31/78	0

*No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

The above margins shall not change the current rates for cash deposits of estimated antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17435 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments; Hawaii Institute of Geophysics et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultrual Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-059. Applicant: Hawaii Institute of Geophysics, Honolulu, HI 96822. Instrument: X-ray Mode Unit, Model H-7011. Manufacturer: Nissei Sangyo, Japan. Intended use: See notice at 51 FR 45793, December 22, 1986. Advice submitted by: National Institutes of Health, March 26, 1987.

Docket Number: 87-060. Applicant: Hawaii Institute of Geophysics, Honolulu, HI 96822. Instrument: EDX Interface Parts Kit, Model H-6015. Manufacturer: Nissei Sangyo, Japan. Intended use: See notice at 51 FR 45793. Advice submitted by: National Institutes of Health, March 26, 1987.

Docket Number: 87-061. Applicant: Hawaii Institute of Geophysics, Honolulu, HI 96822. Instrument: Digital Scan Interface, Model EMO-0500. Manufacturer: Nissei Sangyo, Japan. Intended use: See notice at 51 FR 45793. Advice submitted by: National Institutes of Health, March 26, 1987.

Docket Number: 87-074. Applicant: Veterans Administration Lakeside Medical Center, 333 East Huron Street, Chicago, IL 60611. Instrument: Electron Microscope Accessories consisting of H-5001B Specimen Holder and H-6017 SEM Alignment Power Supply Unit. Manufacturer: Nissei Sangyo, Japan. Intended use: See 52 FR 2126, Janaury 20, 1987, Advice submitted by: National Institutes of Health, March 26, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-17437 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; NASA Lewis Research Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86-080. Applicant: NASA Lewis Research Center, Cleveland, OH 44135. Instrument: ARC Lamp System. Manufacturer: Vortek Industries Limited, Canada. Intended Use: See notice at 51 FR 4647.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an arc heat source with a power flux of 100 kilowatts. The National Bureau of Standards advises in its memorandum dated October 10, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-17438 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; University of Nevada School of Medicine, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-109. Applicant: University of Nevada School of Medicine, Reno, NV 89557. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands, Intended Use: See 52 FR 8495, March 18, 1987.

Docket No.: 87-112. Applicant: University of Texas Health Science Center at Houston, Houston, TX 77030. Instrument: Electron Microscope, Model CM 12/STEM with Accessories. Manufacturer: N.V. Philips, The Netherlands, Intended Use: See 52 FR 8495, March 18, 1987.

Docket No.: 87-113. Applicant: Thomas Jefferson University, Philadelphia, PA 19107. Instrument: Electron Microscope, Model JEM-100CS. Manufacturer: JEOL Co., Ltd., Japan. Intended Use: See notice at 52 FR 8634, March 19, 1987.

Docket No.: 87-115. Applicant: New Mexico State University, Las Cruces, NM 88003. Instrument: Electron Microscope, Model H-7000 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: See notice at 52 FR 8634, March 19, 1987.

Docket No.: 87-116. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Electron Microscope, Model JEM-2000EX with Accessories. Manufacturer: JEOL Co., Ltd., Japan. Intended Use: See notice at 52 FR 8634, March 19, 1987.

Docket No.: 87-123. Applicant: Case Western Reserve University, Cleveland, OH 44106. Instrument: Electron

Microscope, Model JEM–1200EX/SEG/DP/DP. Manufacturer: JEOL Co., Ltd., Japan. Intended Use: See notice at 52 FR 10395, April 1, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–17439 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review on Certain Flat-Rolled Products; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain steel plate used in the manufacture of tension-leg well platforms.

EFFECTIVE DATE: Comments must be submitted no later than August 10, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington DC 20230, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in certain Steel Products provides that if the United States ". . .determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular category of sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category. . . ."

We have received a short-supply request for certain steel plate, ¾ inch to 3 inches in thickness, and made by the thermomechanical control process. It will be used for the fabrication of tension-leg well platforms.

Any party interested in commenting on this request should send written comments as soon as possible, but no later than August 10, 1987. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 27, 1987.

[FR Doc. 87–17436 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Denial of Permit; Mr. S. Jonathan Stern (P281B)

On November 18, 1986, notice was published in the **Federal Register** (51 FR 41651) that an application has been filed by Mr. S. Jonathan Stern, Department of Biological Sciences, San Francisco State University, 1600 Halloway, San Francisco, California 94132 for a scientific research/scientific purposes permit to take an unspecified number of gray whales (*Eschrichtius robustus*) by harassment.

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (MMPA) and the Endangered Species Act of 1973 after having considered all pertinent information and facts, the National Marine Fisheries Service has determined that the permit request submitted by Mr. S. Jonathan Stern should not be issued since the activities to be studied are likely to be unlawful under the MMPA. The request is denied without prejudice. The Applicant was notified on July 27, 1987.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: July 27, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–17443 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Charter Instruments

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Charter Instruments, having a place of business in Lafayette, IN 46250, an exclusive right in the United States to practice the invention embodied in U.S. Patent 3,938,02l," Battery Charging Circuit with Full-Charge Cutoff." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87–17385 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Meridian Diagnostics, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Meridian Diagnostics, Inc., having a place of business in Cincinnati, OH 45244 and Genetic Systems, having a place of business in Seattle, WA 98121, a shared exclusive right in the United States and Canada to practice the invention embodied in U.S. Patent Application S.N. 6–938,716, "Monoclonal Antibody Against Human Pneumocystis Carinii." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associte Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87–17389 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 3, 1987. For further information contact Chris Lazano, Assistant International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

On December 22, 1986 a notice was published in the **Federal Register** (51 FR 45795), which announced import restraint limits for wool textile products, produced or manufactured in Hungary and exported during the current agreement year which began on January 1, 1987 and extends through December 31, 1987. The Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic, under the terms of which these limits were established, also includes provisions for the carryover of shortfalls from the previous year in certain categories (carryover).

Under the foregoing provisions of the bilateral agreement and at the request of the Government of the Hungarian People's Republic, the limits established for Categories 433, 435, 443, 444, 445/446 and 448 are being increased for carryover for goods exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983, (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 28, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 16, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain wool textile products, produced or manufactured in the Hungarian People's Republic and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

Effective on Aug. 3, 1987, the directive of December 16, 1986 is hereby amended to adjust the previously established limits for wool textile products in the following categories, as provided under the terms of the bilateral agreement of February 15 and 25, 1983, as amended.[1]

Category	Adjusted 1987 limit [1]
433	8,407 dozen.
435	10,234 dozen.
443	8,076 dozen.
444	5,411 dozen.
445/446	45,292 dozen of which not more than 33,969 dozen shall be in Category 445 and not more than 33,969 dozen shall be in Category 446.
448	21,729 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–17404 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–DR–M

Establishment of Guaranteed Access Levels and a Visa and Certification Requirement for Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products from Trinidad and Tobago

July 28, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's Februray 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs to be effective on August 3, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 337–4212.

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Background

As announced in the Federal Register on January 13, 1987 (52 FR 1372), the Governments of the United States and Trinidad and Tobago have exchanged diplomatic notes on a new bilateral agreement concerning trade in cotton, wool, man-made fiber, silk blends and other vegetable fiber textiles and textile products, produced or manufactured in Trinidad and Tobago and exported during the period which began on October 1, 1986 and extends through December 31, 1989.

The Governments of the United States and Trinidad and Tobago also have exchanged letters establishing a visa and certification system, as an administrative arrangement under the terms of the bilateral agreement. Pursuant to the terms of the arrangement, the visa and certification requirement applies to textile and apparel products exported from Trinidad and Tobago on or after August 3, 1987. Textile products that have been exported from Trinidad and Tobago before August 3, 1987 shall not be denied entry for lack of a visa or certification. Exports from Trinidad and Tobago of products qualifying for the Special Accesss Program for entry under TSUSA 807.0010, exported on or after October 1, 1986 must be accompanied by a properly completed CBI Export Declaration (Form ITA–370P).

In addition to the designated consultation levels previously announced, the bilateral agreement establishes guaranteed access levels for properly certified textile products assembled in Trinidad and Tobago from fabric formed and cut in the United States within categories 336/636 (cotton and man-made fiber dresses), 338/339 (cotton knit shirts), 340/640 (cotton and man-made fiber non-knit shirts), 347/348/647/648 (cotton and man-made fiber trousers), and 352/652 (cotton and man-made fiber underwear), exported from Trinidad and Tobago during the first agreement year which began on October 1, 1986 and extends through December 31, 1987.

Pursuant to 51 FR 21208 (June 11, 1986), which established the requirements for participation in the Special Access Program and guaranteed access levels, products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA 807.0010, shipments must be accompanied by a certification issued by the appropriate Trinidad and Tobago authorities and a completed CBI Export Declaration (Department of Commerce form ITA–370P, stock number 003–009–00505–1, available from the Government Printing Office, Washington, DC 20402). Each shipment of textile products of Trinidad and Tobago not accompanied by a properly issued certification and CBI Export Declaration must be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original commercial invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

Orders for the Special Access Program CBI Export Declaration (Form ITA–370P) may be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (202/783–3238). Request stock number 003–009–00505–1. The form is being sold for $29 per package of 100.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the foregoing provisions shall be denied entry unless the Government of Trinidad and Tobago authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared as TSUSA 807.0010 but found not to qualify for the Special Access Program shall be denied entry into the United States.

Each shipment of textile products of Trinidad and Tobago not subject to the Special Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original commercial invoice. The visa must contain the 9-digit visa number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of Trinidad and Tobago for the personal use of the importer and not for resale do not require a visa or certification for entry into the United States.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Trinidad and Tobago, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported on or after August 3, 1987 will meet the stated certification and visa requirements.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 28, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 23, 1986, between the Governments of the United States and Trinidad and Tobago; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), you are directed, effective on August 3, 1987, and until further notice, to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Trinidad and Tobago and exported on or after August 3, 1987 which are not visaed or certified in accordance with the procedures outlined below. Textile products that were assembled in Trinidad and Tobago from fabric formed and cut in the United States and exported from Trinidad and Tobago before August 3, 1987 shall not be denied entry for lack of a visa or certification.

Products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA number 807.0010, shipments must be accompanied by a certification issued by the appropriate Trinidad and Tobago authorities and a completed CBI Export Declaration. Each shipment of textile products of Trinidad and Tobago not accompanied by a properly issued certification and a CBI Export Declaration shall be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original commercial invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the foregoing

provisions shall be denied entry unless the Government of Trinidad and Tobago authorizes the entry into the United States.

The following guaranteed access levels have been established for properly certified textile products assembled in Trinidad and Tobago from fabric formed and cut in the United States and exported during the period October 1, 1986 through December 31, 1987:

Category	Guaranteed access level (doz.)
336/636	375,000
338/339	281,250
340/640	125,000
347/348/647/648	375,000
352/652	375,000

Each shipment of textile products of Trinidad and Tobago not subject to the Special Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original commercial invoice. The visa must contain the 9-digit visa number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of Trinidad and Tobago for the personal use of the importer and not for resale do not require a visa or certification for entry into the United States, regardless of value.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of textile and apparel products, produced and manufactured in Trinidad and Tobago and exported to the United States, nothwithstanding the designated merchandise does not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

In carrying out of the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17405 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Mauritius on Categories 337/637 and 342/642

July 28, 1987.

FOR FURTHER INFORMATION CONTACT: Kim Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212. For information on categories on which consultations have been requested call (202) 377-3740.

On June 18 and 22, 1987, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance with section 204 of the Agricultural Act of 1956, requested the Government of Mauritius to enter into consultations concerning exports to the United States of certain cotton and man-made fiber textile products in Categories 337/637 and 342/642, respectively, produced or manufactured in Mauritius.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Mauritius, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber playsuits and sunsuits in Category 337/637 and cotton and man-made fiber skirts in Category 342/642, produced or manufactured in Mauritius and exported to the United States during the twelve-month periods, which began, in the case of Category 337/637, on June 18, 1987 and extends through June 17, 1988; and, in the case of Category 342/642, on June 22, 1987 and extends through June 21, 1988, at levels of 75,900 dozen (Category 337/637) and 67,783 dozen (Category 342/642).

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Mauritius—Market Statement

Category 337/637—Playsuits, Sunsuits and Washsuits

June 1987.

Summary and Conclusions

U.S. imports of Category 337/637 from Mauritius were 75,900 dozen during the year ending March 1987, more than 60 times the 1,228 dozen imported a year earlier. During the first three months of 1987, imports of Category 336/637 from Mauritius reached 27,671 dozen, 36 times the 758 dozen imported during the same period of 1986. In 1986, Category 337/637 playsuit, sunsuit, and washsuit imports from Mauritius were 48,987 dozen; in 1985, imports totaled 555 dozen.

The market for Category 337/637 has been disrupted by imports. The sharp and substantial increase in imports from Mauritius has contributed to this disruption.

U.S. Production and Market Share

U.S. production of playsuits, sunsuits, and washsuits declined 13 percent from 7,959 thousand dozen in 1983 to 6,934 thousand dozen in 1985. The domestic manufacturers' share of this market fell from 75 percent in 1983 to 61 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 337/637 grew from 2,647 thousand dozen in 1983 to 4,370 thousand dozen in 1985, a 65 percent increase. Imports continued to grow reaching 5,778 thousand dozen in 1986, a 32 percent increase over 1985. Imports are up five percent in the first three months of 1987. The ratio of imports to domestic production increased from 33 percent in 1983 to 63 percent in 1985.

Duty-Paid Value and U.S. Producers' Price

Approximately 88 percent of Category 337/637 imports from Mauritius during the first three months of 1987 entered under TSUSA numbers 384.5234—women's and girls' cotton woven playsuits, sunsuits and washsuits, other than those of corduroy or yarn dyed fabric, not ornamented; and 384.9416 (formerly a part of 384.9415)—women's and girls' man-made fiber woven playsuits, sunsuits and washsuits, not ornamented. TSUSA number 384.9416 alone represents 52 percent of Category 337/637 imports from Mauritius.

These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Mauritius—Market Statement

Category 342/642—Cotton and Man-Made Fiber Skirts

June 1987.

Summary and Conclusions

U.S. imports of Category 342/642 from Mauritius were 67,783 dozen during the year ending March 1987, over nine and one half times the 6,951 dozen imported a year earlier. During the first three months of 1987, imports of Category 342/642 from Mauritius reached 43,483 dozen, over eight and one half times the 4,957 dozen imported during the same period of 1986 and 49 percent above the amount imported during calendar year 1986.

The market for Category 342/642 has been disrupted by imports. The sharp and substantial increase in imports from Mauritius has contributed to this disruption.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber skirts declined five percent from 8,233 thousand dozen in 1983 to 7,805 thousand dozen in 1985. Comparison of government cuttings [1] data for 1986 and 1985 indicate that 1986 production will be down four percent. The domestic manufacturers' share of this market fell from 75 percent in 1983 to 67 percent in 1985. The U.S. market share is expected to decrease further in 1986, to around 57 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 342/642 doubled between 1983 and 1986, growing from 2,798 thousand dozen in 1983 to 5,995 thousand dozen in 1986. During the first three months of 1987, imports of Category 342/642 reached 2,335 thousand dozen, 17 percent above the level imported during the same period in 1986. The ratio of imports to domestic production increased from 34 percent in 1983 to 49 percent in 1985. The ratio is expected to reach 77 percent in 1986.

Duty Paid Value and U.S. Producers' Price

Approximately 79 percent of Category 342/642 imports from Mauritius during the first three months of 1987 entered under TSUSA numbers 384.5251—women's cotton woven skirts, not of corduroy, denim or velveteen, not ornamented; 384.5239 (formerly a part of 384.5237)—women's and girls' cotton woven divided skirts and culottes, not ornamented; and 384.8660—women's man-made fiber knit skirts and culottes, not ornamented. TSUSA number 384.5251 alone represents 52 percent of Category 342/642 imports from Mauritius.

These skirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable skirts.

[FR Doc. 87-17406 Filed 7-30-87; 8:45am]

BILLING CODE 3510-DR-M

[1] U.S. cuttings data are for women's cotton, wool and man-made fiber skirts and include both woven and knit skirts.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Addition and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1987 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 31, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 5, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (52 FR 21344) of addition to and deletion from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987:

Service

Janitorial/Custodial, Federal Building, Post Office and Courthouse, 200 East Broadway, Missoula, Montana.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Service

Janitorial Service, Smith Building (New Wing Only), 900 W. Grand Avenue, Porterville, California.

C.W. Fletcher,

Executive Director.

[FR Doc. 87-17413 Filed 7-30-87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1987 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: August 31, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the

Federal Government will be required to procure the commodity and the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodity

Towel, Paper
7920-00-823-9772
(Requirements for New Cumberland, Pennsylanvia Army Depot)

Services

Food Service Attendant
914th Tactical Airlift Group (AFRES)
Niagara Falls International Airport
Niagara Falls, New York

Janitorial/Custodial
Marine Corps Development and Education Command
MCCDPA Building 3041A, SABRS Annex
Quantico, Virginia

C.W. Fletcher,

Executive Director.

[FR Doc. 87-17414 Filed 7-30-87; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the Shelf Stocking and Custodial function at Patrick AFB, FL will be examined for possible conversion to contract.

For further information contact Mr. Jack Flenner, HQ AFCOMS/XPMO, Kelly AFB, TX 78241-6290, telephone (512) 925-6692.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-17386 Filed 7-30-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Performance Review Boards; Membership

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: July 20, 1987.

FOR FURTHER INFORMATION CONTACT: Carol D. Smith, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office, Secretary of the Army are:

1. Ms. Susan J. Crawford, General Counsel
2. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research)
3. Mr. J. Douglas Sizelove, Operations Research Analyst for Command, Control, Communications and Intelligence, Office of the Deputy Under Secretary of the Army
4. Brigadier General George A. Bombel, Director, Joint Tactical Command, Control, and Communications Agency
5. Mr. Stephen R. Burdt, Deputy for Program Evaluation, Office of the Assistant Secretary of the Army (Research, Development and Acquisition)
6. Mr. Neil R. Ginnetti, Deputy for Planning, Programming, Budgeting and Budget Execution, Office of the Assistant Secretary of the Army (Financial Management)
7. Ms. Judy Ann F. Miller, Deputy Assistant Secretary of the Army (Civilian Personnel, NAF, and Personnel Security Policy), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)
8. Mr. Lewis D. Walker, Deputy for Environment, Safety and Occupational Health, Office of the Assistant Secretary of the Army (Installations and Logistics)
9. Mr. Steven Dola, Deputy for Management and Budget, Office of the Assistant Secretary of the Army (Civil Works)
10. Mr. Charles C. O'Donnell, Director, Defense Supply Service, Office of the Administrative Assistant to the Secretary of the Army

The members of the Performance Review Board for the Office, Chief of Staff of the Army are:

1. Dr. Julius Bellaschi, Deputy Director, Program Analysis and Evaluation, Office, Chief of Staff
2. Mr. Edgar B. Vandiver, III, Director, U.S. Army Concepts Analysis Agency
3. Birgadier General Donald W. Hansen, Assistant Judge Advocate General for Military Law
4. Brigadier General John Fugh, Assistant Judge Advocate General for Civil Law
5. Major General Donald E. Eckelbarger, Assistant Deputy Chief of Staff for Personnel
6. Mr. Joseph E. Galbraith, Chief, U.S. Army Civilian Personnel Center
7. Dr. Charles N. Davidson, Technical Director, U.S. Nuclear and Chemical Agency
8. Brigadier General Jerome H. Granrud, Director of Force Requirements, Office, Deputy Chief of Staff for Operations
9. Mr. Joseph P. Cribbins, Special Assistant to the Deputy Chief of Staff for Logistics
10. Brigadier General Joseph S. Laposata, Director for Plans and Operations, Office, Deputy Chief of Staff for Ligistics
11. Dr. Louis M. Cameron, Director of Army Research and Technology, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
12. Brigadier General William S. Chen, Director for Program Management Oversight, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
13. Dr. Harry M. West, III, Deputy Comptroller of the Army, Office, Assistant Secretary of the Army (Financial Management)
14. Mr. Arthur Walker, Deputy Director of the Army Budget, Office, Assistant Secretary of the Army (Financial Management)
15. Major General James McCall, Director of the Army Budget, Office, Assistant Secretary of the Army (Financial Management)
16. Mr. Edward J. Dandar, Deputy Directory, U.S. Army Intelligence Agency
17. Mr. Henry J. Fischer, Director, Audit Policy, Plans and Resources, U.S. Army Audit Agency
18. Mr. Thomas A. Grant, Director, Personnel and Force Management Audits, U.S. Army Audit Agency
19. Dr. Lewis H. Blakey, Special Assistant for Theater Defense, Operations, U.S. Army Strategic Defense Command
20. Dr. William O. Davies, Director, System Analysis/Battle Management Directorate, U.S. Army Strategic Defense Command

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. Major General George K. Withers, Jr., Deputy Chief of Engineers, Headquarters, U.S. Army Corps of Engineers
2. Brigadier General Peter J. Offringa, Deputy Director, Civil Works, Headquarters, U.S. Army Corps of Engineers
3. Brigadier General C.E. Edgar, III, Division Commander, South Atlantic Division
4. Mr. William P. Todsen, Chief, Engineering Division, Missouri River Division
5. Mr. William R. Murden, Chief, Dredging Division, U.S. Army Corps of Engineers Water Resources Support Center
6. Mr. William L. Robertson, Deputy Chief Counsel, Headquarters, U.S. Army Corps of Engineers
7. Mr. Jack E. Kiper, Chief, Construction-Operations Division, Ohio River Division
8. Mr. Dan M. Mauldin, Chief, Planning Division, Directorate of Civil Works, Headquarters, U.S. Army Corps of Engineers
9. Brigadier General James W. Ray, Division Commander, Europe Division
10. Major General Thomas A. Sands, Division Commander, Lower Mississippi Valley Division
11. Mr. Bob O. Benn, Assistant Director for Research and Development (Military Programs), Headquarters, U.S. Army Corps of Engineers
12. Dr. Robert W. Whalin, Technical Director, U.S. Army Engineer Waterways Experiment Station
13. Mr. Edward T. Watling, Chief, Facilities Engineering Division, Headquarters, U.S. Army Corps of Engineers
14. Mr. Herbert H. Kennon, Chief, Engineering Division, North Pacific Division
15. Mr. Kenneth Murdock, Chief, Planning Division, North Central Division

The members of the Performance Review Board for the U.S. Army Surgeon General are:

1. Major General Robert H. Buker, M.D., Deputy Surgeon General
2. Major General Billy B. Lefler, D.D.S., Assistant Surgeon General for Dental Services/Director of Personnel
3. Major General Philip K. Russell, M.D., Commander, U.S. Army Medical Research and Development Command
4. Brigadier General Connie L. Slewitzke, R.N., Chief, Army Nurse Corps
5. Brigadier General Walter F. Johnson, III, Director of Health Care Operations
6. Brigadier General Robert R. Jorgensen, Assistant Surgeon General for Veterinary Services
7. Dr. Gunter F. Bahr, Chairman, Department of Cellular Pathology, Armed Forces Institute of Pathology
8. Dr. Louis S. Baron, Chief, Department of Bacterial Immunology, Walter Reed Army Institute of Research
9. Dr. Michael A. Chirigos, Deputy for Science, U.S. Army Institute of Infectious Diseases
10. Dr. Daniel H. Connor, Chairman, Department of Infectious and Parasitic Disease Pathology, Armed Forces Institute of Pathology
11. Dr. Bhupendra P. Doctor, Director, Division of Biochemistry, Walter Reed Army Institute of Research
12. Dr. Robert R. Engle, Deputy Director, Division of Experimental Therapeutics, Walter Reed Army Institute of Research
13. Dr. Franz Enzinger, Chairman, Department of Soft Tissue Pathology, Armed Forces Institute of Pathology
14. Dr. Samuel B. Formal, Chief, Department of Bacterial Diseases, Walter Reed Army Institute of Research
15. Dr. Elson D. Helwig, Chairman, Department of Skin and Gastrointestinal Pathology, Armed Forces Institute of Pathology
16. Dr. Nelson S. Irey, Chairman, Department of Environmental and Drug Induced Pathology, Armed Forces Institute of Pathology
17. Dr. Frank B. Johnson, Chairman, Department of Chemical Pathology, Armed Forces Institute of Pathology
18. Dr. Arthur D. Mason, Jr., Chief, Laboratory Division, U.S. Army Institute of Surgical Research
19. Dr. Fathollah K. Mostofi, Chairman, Center for Advanced Pathology, Armed Forces Institute of Pathology
20. Dr. Henry J. Norris, Chairman, Department of Gynecologic and Breast Pathology, Armed Forces Institute of Pathology
21. Dr. Howard E. Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research
22. Dr. Joseph V. Osterman, Special Assistant for Biotechnology, U.S. Army Medical Research and Development Command
23. Dr. Donald E. Sweet, Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology
24. Dr. James A. Vogel, Director, Exercise Physiology Division, U.S. Army Research Institute of Environmental Medicine
25. Dr. Kamal G. Ishak, Chairman, Department of Hepatic Pathology, Armed Forces Institute of Pathology

The members of the Performance Review for the U.S. Army Materiel Command are:

1. Mr. John B. Jury, Assistant Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command
2. Mr. Edward J. Korte, Deputy Command Counsel, Headquarters, U.S. Army Materiel Command
3. Mr. Barry W. McDaniel, Assistant Deputy Chief of Staff for Readiness, Headquarters, U.S. Army Materiel Command
4. Mr. A. David Mills, Assistant Deputy Chief of Staff for Supply, Maintenance and Transportation, Headquarters, U.S. Army Materiel Command
5. Mr. Michael C. Sandusky, Assistant Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Materiel Command
6. Mr. Benjamin Halperin, Chief Counsel, U.S. Army Armament Research, Development, and Engineering Center
7. Mr. Donald L. Lathrop, Comptroller, U.S. Army Armament, Munitions and Chemical Command
8. Mr. Charles C. Crawford, Jr., Technical Director, U.S. Army Aviation Systems Command
9. Mr. Joseph R. Varady, Director of Procurement, U.S. Army Communications-Electronics Command
10. Dr. John T. Frasier, Director, Ballistics Research Laboratory, U.S. Army Laboratory Command
11. Dr. Clarence G. Thornton, Director, Electronic Technology & Devices, U.S. Army Laboratory Command
12. Dr. Richard G. Rhoades, Associate Director for Technology, U.S. Army Missile Command
13. Dr. Robert E. Yates, Director for Guidance and Control, U.S. Army Missile Command
14. Mr. Lowell H. Barnett, Director for Product Assurance, U.S. Army Tank Automotive Command
15. Mr. Douglas R. Newberry, Comptroller, U.S. Army Tank Automotive Command
16. Dr. Lothar L. Salomon, Scientific Director, Dugway Proving Ground
17. Mr. Harold L. Mabrey, Director for Procurement and Production, U.S. Army Troop Support Command
18. Mr. Paul Donovon, Principal Deputy, U.S. Army Security Affairs Command
19. Mr. Seymour J. Lorber, Deputy Chief of Staff for Product Assurance and Testing, Headquarters, U.S. Army Materiel Command
20. Mr. Victor Lindner, Associate Technical Director, System Development and Engineering, U.S. Army Armament Research, Development and Engineering Center
21. Dr. Edward J. Poziomek, Director, Research Directorate, U.S. Army

Chemical Research, Development and Engineering Center
22. Mr. Daniel W. McEneany, Director of Engineering, Research, Development and Engineering Center, U.S. Army Aviation Systems Command
23. Mr. Victor J. Ferlise, Chief Counsel, U.S. Army Communications-Electronics Command
24. Mr. Billy R. Gilliland, Comptroller, U.S. Army Communications-Electronics Command
25. Mr. Bruce M. Fonoroff, Associate Technical Director for Research and Technology, U.S. Army Laboratory Command
26. Dr. John D. Weiz, Director, Human Engineering Laboratory, U.S. Army Laboatory Command
27. Mr. Walter B. Jennings, Jr., Deputy Director for Directed Energy, U.S. Army Missile Command
28. Mr. Billie D. Storey, Director for Test and Evaluation, U.S. Army Missile Command
29. Mr. Ernest A. Young, Deputy for Procurement and Readiness, U.S. Army Missile Command
30. Mr. Henry B. Jones, Director for Procurement and Production, U.S. Army Tank Automotive Command
31. Brigadier General George H. Akin, Deputy Commanding General, Procurement and Readiness, U.S. Army Communications-Electronics Command
32. Brigadier General Ronald K. Anderson, Project Manager, Light Helicopter Experiment, U.S. Army Aviation Systems Command
33. Brigadier General Terrence Arndt, Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Materiel Command
34. Brigadier General David A. Nydam, Project Manager for Chemical Demilitarization, U.S. Army Armament, Munitions and Chemical Command
35. Brigadier General Donald R. Williamson, Deputy Chief of Staff, Readiness, Headquarters, U.S. Army Materiel Command
36. Brigadier General Paul L. Greenberg, Deputy Commanding General, Procurement and Readiness, U.S. Army Armament, Munitions, and Cheimcal Command
37. Brigadier General Walter W. Kastenmayer, Deputy Chief of Staff for Chemical and Nuclear Matters, Headquarters, U.S. Army Materiel Command.
38. Major General William S. Flynn, Chief of Staff, U.S. Army Materiel Command

The members of the Performance Review Board for the Consolidated Commands are:

1. Mr. Larry C. Hanson, Assistant Chief of Staff for Resource Management, Headquarters, U.S. Army Training and Doctrine Command
2. Brigadier General James W. Wurman, Deputy Chief of Staff for Personnel Administration and Logistics, U.S. Army Training and Doctrine Command
3. Mr. Raymond V. Michael, Assistant Deputy Chief of Staff for Personnel Administration and Logistics (Civiliam Personnel), U.S. Army Training and Doctrine Command
4. Mr. William S. Fraim, Civilian Personnel Director, U.S. Army Forces Command
5. Mr. William Wilkinson, Deputy Director of Resource Management, U.S. Army Forces Command
6. Mr. Thomas D. Collinsworth, Special Assistant for Transportation Engineering, Military Traffic Management Command
7. Brigadier General Charles A. Vickery, Vice Commander, Military Traffic Managment Command
8. Mr. Leonard Mabius, Technical Director to Commanding General, U.S. Army Information Systems Command
9. Brigadier General Alonzo Short, Jr., Deputy Commanding General, Information Systems Engineering Command
10. Mr. Andrew F. Foreman, Assistant Deputy Chief of Staff, Personnel (Civilian Personnel), U.S. Army Europe
11. Mr. C. Cary Jones, Assistant Deputy Chief of Staff, Engineer, U.S. Army Europe.

Carol D. Smith,

Chief, Senior Executive Service Office.

[FR Doc. 87-17390 Filed 7-30-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chaper 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning the Make or Buy Program.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523-3775.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Price, performance, and/or implementation of socioeconomic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, Subpart 15.7, Make-or-Buy Programs, of the Federal Acquisition Regulation (FAR)—

(a) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(b) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(c) Prescribes the contract clause at FAR 52.215-21, Changes or Additions to Make-or-Buy Program, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *300;* responses per respondent, *3;* total annual responses, *900;* hours per response, *8;* and total burden hours, *7,200.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0078, Make or Buy Program.

Dated: July 17, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87-17392 Filed 7-30-87; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Debarment and Suspension.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward C. Loeb, Office of GSA Acquisition Policy and Regulations on (202) 523–4764.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm, or its principals, have been indicted, convicted, suspended or debarred, or had a contract terminated for default are critical factors to be considered by the contracting officer in making a responsibility determination. This certification would require the disclosure of this information.

This provision requires any offeror for a contract requirement over $25,000 to certify as to whether the firm, or its principals, have been indicated, convicted, suspended, debarred or had a contract terminated for default. The certifications are used by the contracting officer in evaluating a firm's responsibility for contract award.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *2,073,835;* responses per respondent, *1;* total annual responses *2,073,835;* subcontracts *2* minutes per response, prime contracts *5* minutes per response; and total burden hours, *131,343.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–00XX, Debarment and Suspension.

Dated: July 27, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–17352 Filed 7–30–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Annual Operating Plan for Fiscal Year 1988

AGENCY: Department of Education.

ACTION: Request for comments on Annual Operating Plan for Fiscal Year 1988.

SUMMARY: The Secretary of Education invites comments on the proposed FY 1988 Annual Operating Plan for the Office for Civil Rights.

DATES: Interested persons are invited to submit comments, suggestions, and objections regarding the proposed plan on or before September 14, 1987.

ADDRESS: Written comments should be addressed to Alicia Coro, Acting Assistant Secretary for Civil Rights, Department of Education, 400 Maryland Avenue, SW., Mail Stop 2516, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Fred Tate, (202) 732–1526.

I. Introduction

The Office for Civil Rights (OCR) is responsible for ensuring that no person is unlawfully discriminated against on the basis of race, color, national origin, sex, handicap, or age in the delivery of services or the provision of benefits in programs or activities receiving financial assistance from the Department of Education (ED). The authorities under which OCR operates are Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

These authorities cover ED-funded programs and activities carried out by 50 State educational and rehabilitation agencies, the District of Columbia, the U.S. territories and possessions, approximately 16,000 local educational agencies, approximately 3,300 institutions of higher education, as well as certain subrecipients of the foregoing entities. In addition, OCR's civil rights authorities cover programs and activities in other institutions, such as libraries and museums, that receive ED funds.

OCR ensures compliance with Federal civil rights statutes by the recipients of ED financial assistance through two basic types of activities: Compliance activities and technical assistance activities. OCR's compliance activities (including complaint investigations, compliance reviews, and monitoring the implementation of some voluntary compliance plans) are generally subject to time frames imposed by a court order, *Adams* v. *Bennett* (*Adams*), Civil Action No. 3095–70 (D.D.C. December 29, 1977, as modified January 17, 1985). However, OCR has discretion over the location and scope of its compliance reviews and other monitoring activities. For the most part, OCR concentrates its compliance review activities on those recipients that have been identified as having possible compliance problems. OCR also provides tednical assistance, including the transfer of information, materials, and skills, to facilitate ED recipients' voluntary compliance with civil rights laws and to inform beneficiaries of their rights.

Technical assistance may be provided in the course of OCR's compliance activities to assist in achieving voluntary corrective action. OCR may provide technical assistance to recipients at any time after the initiation of a compliance review or complaint investigation, or following its conclusion, either in response to a request from a recipient or through an offer of such assistance from investigative staff. As a result, compliance issues may be resolved in a nonconfrontational manner that facilitates closer cooperation at the recipient level, while ensuring that the rights of beneficiaries are protected.

During FY 1988, OCR will continue to use two operational techniques designed to improve the efficiency of the case-handling process. The first, Early Complaint Resolution (ECR), is a process in which OCR acts as a mediator between an individual complainant and a recipient to negotiate a settlement between them. If mediation is successful, OCR closes the complaint without an investigation. If the parties cannot reach an agreement, OCR investigates the complaint. During the first half of FY 1987, ECR was offered in 89 complaints (3 of the 89 offers were still pending as of March 31, 1987), attempted and completed in 54 complaints (one of which had been initiated before the beginning of the fiscal year). Of the 54 cases in which ECR was completed, 40 (74 percent) were resolved successfully through mediation.

The second technique is pre-letter of findings (LOF) settlement. Under this process, OCR reviews its findings with the recipient on each of the issues raised in the complaint or covered by the compliance review, in an attempt to reach a settlement prior to the issuance of the LOF. If settlement is reached, OCR sets forth the terms of the settlement, along with the applicable statutory requirements, in the violation corrected LOF sent to the recipient. Where the settlement results from a complaint, the complainant is also sent a copy of the LOF. When an area of noncompliance has been resolved, the LOF cites the basis for the violation findings and, for each identified violation, either the remedy adopted by the recipient or the plan by which the recipient proposes to correct the violation. OCR then monitors the implementation of corrective action plans.

The activities planned by OCR in FY 1988, outlined below, are projected to be consistent with the appropriations authorized by Congress and approved by the President.

II. Compliance and Enforcement Activities

OCR's compliance and enforcement responsibilities are divided into three general categories: Complaint investigations, compliance reviews, and monitoring activities.

A. Complaint Investigations

OCR's primary compliance activity is the investigation and resolution of complaints alleging discrimination. Each timely, complete complaint must be resolved in accordance with established procedures and time frames established pursuant to the requirements of the *Adams* order.

OCR received 898 complaints and closed 1,128 (some of which had been filed before the beginning of the fiscal year) during the first half of FY 1987. OCR had 647 pending complaints as of March 31, 1987. Alleged discrimination against handicapped persons was the basis of approximately 51 percent of the complaints received; race, multiple bases, other,[1] sex, national origin, and age complaints followed in descending order of frequency. During the first half of FY 1987, 67 percent of the complaints received involved elementary and secondary institutions, 25 percent involved postsecondary institutions, 2 percent involved vocational rehabilitation institutions, and 6 percent involved other institutions. During this same time period, 77 percent of the complaints received involved issues of service delivery to students, 18 percent involved various employment issues, 2 percent involved both, and 3 percent involved other issues.

[1] "Other" consists of complaints over which OCR does not have jurisdiction.

B. Compliance Reviews

OCR's compliance review program complements its complaint investigation activities. Compliance reviews differ from complaint investigations in that, while some review activities are required by the *Adams* order, OCR has flexibility in selecting the location and scope of a review. Selection of review sites is based on various sources of information, including survey data indicating potential compliance problems and information provided by complainants, interest groups, the media, and the general public. Compliance reviews permit OCR to target resources on problems that appear to be serious or national in scope and that may not have been raised by complaints.

During the first half of FY 1987, OCR initiated 40 compliance reviews and closed 96 reviews, some of which had been initiated before the end of FY 1986. OCR had 60 open compliance reviews as of March 31, 1987. OCR plans to conduct an appropriate number of compliance reviews during FY 1988 to ensure proper enforcement of the civil rights laws.

C. Monitoring Activities

OCR closes many of the complaints and compliance reviews in which it has identified violations of civil rights statutes on the basis of a commitment by the recipient institution to complete corrective action at a future date. To ensure that agreements to complete such corrective actions are carried out, OCR may require a recipient to submit one or more progress reports detailing efforts to come into compliance with applicable laws and, in some cases, OCR may go on-site to monitor a recipient's compliance with a negotiated corrective action plan. OCR monitors higher education desegregation plans and vocational education Methods of Administration. In FY 1988, OCR will monitor various activities including the following:

- Implementation by recipient institutions of corrective action plans resulting from OCR complaint investigations and compliance reviews;
- Implementation of *Adams* higher education desegregation plans;
- Review and implementation of corrective action plans to provide educational opportunities to national origin minority students who are limited-English-proficient (*i.e.*, Title VI *Lau* plans); and
- Activities of recipients conducting vocational education programs to ensure that they fulfill their Methods of Administration responsibilities under the Vocational Education Guidelines and the July 1979 Memorandum of Procedures regarding the civil rights compliance of their vocational education subrecipients.

III. Technical Assistance Activities

Technical assistance complements OCR's compliance activities because it encourages voluntary compliance. Through technical assistance, OCR is able to reach a far greater number of recipients than it could solely through complaint investigations or compliance reviews. OCR provides technical assistance to recipients to inform them of their responsibilities under the civil rights statutes and the ED implementing regulations and of the means to meet these responsibilities. OCR provides technical assistance to beneficiaries to inform them of their rights under the civil rights statutes and to explore voluntary methods of securing those rights. During FY 1987, in addition to responding to requests for technical assistance, OCR regional offices were encouraged to provide technical assistance outreach efforts based on existing staff resources and ongoing assessments of recipient and beneficiary needs.

In FY 1988, OCR will conduct various technical assistance activities including the following:

- Actions to implement Memoranda of Understanding with State and local educational and human rights agencies to facilitate meeting mutual civil rights compliance objectives and to promote the sharing of information;
- Coordination with other ED program offices on the provision of civil rights-related technical assistance;
- Exchange of information, materials, technical assistance strategies, techniques, and successful compliance practices and procedures among OCR staff providing technical assistance;
- Provision of materials and courses to OCR regional investigators and legal staff to facilitate the provision of technical assistance training to educational institutions and State and local governments;
- Provision of training to State and local educational agencies to enhance their capabilities to carry out civil rights activities; and
- Preparation of materials for dissemination to recipients and beneficiaries, summarizing and

explaining the civil rights statutes enforced by OCR and OCR policies and regulations.

IV. Program Management Activities

In conducting its compliance, enforcement, and technical assistance activities, OCR continues to implement a comprehensive program that includes:

- Formulating or updating regulations, policies, and investigative manuals;
- Providing technical guidance on complaints and compliance reviews referred from regional offices;
- Conducting hearings before Administrative Law Judges on the compliance of Federal financial recipients with civil rights requirements;
- Meeting with Congressional staffs, U.S. Department of Justice attorneys, school district representatives, college and university officials, complainants, and civil rights groups to discuss OCR activities;
- Conducting and analyzing OCR surveys and data collection projects to obtain information on recipients and beneficiary populations for enforcement purposes;
- Providing in-house programmatic training to investigators and legal staff engaged in civil rights compliance and technical assistance activities;
- Conducting a quality assurance program to ensure that a high level of quality is maintained in OCR compliance activities; and
- Operating a Management-by-Objectives program designed to enhance management planning and to track performance in meeting organizational goals.

V. Summary

While regional programs will vary due to considerations such as the number and type of complaints received, compliance reviews conducted, and requests for technical assistance, all OCR activities will be guided by national policies, priorities, and direction. As in previous years, each Regional Director will be responsible for timely fulfillment of OCR's obligations in handling complaint investigations and compliance reviews, monitoring corrective action plans, and providing technical assistance to recipients and beneficiaries of ED financial assistance. A large part of each region's compliance program will involve the investigation of complaints of discrimination. During FY 1988 each regional office will conduct compliance reviews, in the geographic areas it serves, under each of the civil rights statutes enforced by OCR. Monitoring activities will focus on ensuring that recipients comply with corrective action plans and fulfill their vocational education Methods of Administration responsibilities. OCR will design technical assistance activities to respond to recipient and beneficiary needs.

Paperwork Reduction Act of 1980

The information collection activity to be undertaken pursuant to this plan includes the Fall 1988 Elementary and Secondary School Civil Rights Survey. A notice will be published in the **Federal Register** in the Fall of 1987, prior to submission of the survey to OMB, notifying the public of OCR's intention to gather the data. This survey is scheduled to be approved by OMB in April 1988. Distribution to selected local educational agencies will follow. In addition to the above survey, OCR jointly sponsors two surveys with the Center for Statistics, the Fall Enrollment Survey (OMB control number 1850–0582) and the Completions of the Integrated Postsecondary Education Data System (OMB control number 3086–0238).

VI. Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed plan. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the end of the comment period will be considered in the development of the final plan.

All comments submitted in response to the proposed plan will be available for public inspection, during and after the comment period, at the Department of Education, Room 5074, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–17380 Filed 7–30–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E 87–57; Certification Notice—2]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as amended (42 U.S.C. 8311 Section 201(d))

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Three owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Mega-watt capacity	Location
Caterpiller Capitol, Ltd., York, PA	7–9–87	Combined Cycle	67	York, PA.
Peter J. Pitchess, Honer Rancho, Saugus, CA	7–8–87	....do	25	Saugus, CA.
SJE Investments, Inc., Chicago, Ill.	7–1–87	....do	176	Woodstock, VA.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure. Pertinent provisions are restated in the appendix to this notice.

Issued in Washington, DC on July 23, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix

SEC. 201. Coal Capability of New Electric Powerplants: Certification of Compliance.

(a) General Prohibitions—Except to such extent as may be authorized under subtitle B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability To Use Coal or Alternate Fuel—An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability To Base Load Powerplants—(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-Certification—(1) In order to meet the requirement of subsection (a), the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b).

Such certification shall be affective to establish compliance with the requirement of subsection (a) as the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the **Federal Register** a notice reciting that the certification has been filed.

(2) The Secretary within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

[FR Doc. 87-17447 Filed 7-30-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the week of June 26 Through July 3, 1987

During the Week of June 26 through July 3, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 24, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 26 through July 3, 1987]

Date	Name and location of applicant	Case No.	Type of submission
June 26, 1987	New Jersey, Newark, New Jersey	RM8-69, RM5-70	Motion for modification/rescission. If granted: The December 21, 1983 and May 23, 1984 Decisions and Orders (Case Nos. RQ8-85 & RQ5-27) issued to New Jersey would be modified regarding the state's application for refund submitted in the Palo Pinto and Belridge second stage refund proceedings.
Do	Sellers Oil Company, Bainbridge, Georgia	KEE-0144	Exception to the reporting requirements. If granted: Sellers Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."
June 29, 1987	Missouri Pacific Railroad Company, Washington, DC	RR271-3	Request for modification/rescission in stripper well proceeding. If granted: The June 19, 1987 Decision and Order (Case No. RF271-58) issued to Missouri Pacific Railroad Company would be modified regarding the firm's application for refund submitted as a Rail & Water Transporter in the Stripper Well Proceeding.
Do	Site Oil Company, St. Louis, Missouri	KEE-0145	Exception to the reporting requirements. If granted: Site Oil Company would not be required to file EIA-782B, "Reseller/Retailer Monthly Petroleum Products Sales Report."
June 30, 1987	Economic Regulatory Administration, Washington, DC	KEG-0014	Petition for special redress. If granted: The Office of Hearings and Appeals would review the July 31, 1979 Consent Order entered into between the Economic Regulatory Administration and GHR Energy Corporation regarding the amount to be remitted.
Do	Economic Regulatory Administration, Washington, DC	KRD-0471	Motion for discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. KRO-0471) issued to LaJet, Inc.
Do	David Rodriquez Soler, Cranbury, New Jersey	KFA-0106	Appeal of an information request denial. If granted: The June 18, 1987 Freedom of Information Request Denial issued by Mr. Johnson, DOE/Princeton Area Office, would be rescinded and David Rodriquez Soler would receive access to information on individuals who performed the FY'83 Contractor System Procurement Review.
July 1, 1987	W.F. Lawless, Augusta, Georgia	KFA-0107	Appeal of an information request denial. If granted: W.F. Lawless would receive access to certain unspecified DOE documents.
July 2, 1987	Joseph L. Redding, Jr., Hazleton, Pennsylvania	KFA-0108	Appeal of an information request denial. If granted: The June 26, 1987, Freedom of Information Request Denial issued by the Office of Classification would be rescinded and Joseph L. Redding, Jr., would receive access to "The 1983 Topical Conference on the Physics of Radiatively-Driven ICF Targets."

REFUND APPLICATIONS RECEIVED

[Week of June 26 to July 3, 1987]

Date received	Name of refund applicant	Case No.
06/26/87	Bethlehem Steel Corp	RF277-56
06/26/87 thru 07/03/87	Crude Oil	RF272-852 thru RF272-1161
06/29/87	Dave's Getty	RF262-3
06/24/87	Dick and Hank Automotive	RF225-10854
06/26/87	Eastern Stainless Steel	RF277-55
06/26/87 thru 07/03/87	Getty	RF265-2052 thru RF265-2308
06/26/87	Mangum Oil and Gas	RF253-24
06/29/87	George Pappas	RF276-292
06/29/87	New Jersey Zinc Co	RF277-57
06/30/87	Reynolds Electrical & Eng. Co	RF225-10853
06/29/87	Southland Oil Co	RF245-16
07/02/87	Westport Energy Corp	RF116-10

[FR Doc. 87-17448 Filed 7-30-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of June 8 Through June 12, 1987

During the week of June 8 through June 12, 1987, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Francis Ryan, Inc., 6/10/87; KEE-0128

Francis Ryan, Inc. filed an Application for Exception from the requirement to file Form EIA-821, the "Annual Fuel and Kerosene Sales Report." In evaluating the request, the DOE found that the firm had not shown that it was more adversely affected by the reporting requirement than other reporting firms or that any burden placed upon it by filing the report outweighed the benefit to the nation provided by the EIA-821 survey results. Accordingly, the Office of Hearings and Appeals issued a final Decision and Order denying exception relief to the firm.

Graziano Oil Company, Inc., Appel Oil Corporation, 6/8/87; KEE-0126, KEE-0127

Graziano Oil Company, Inc. and Appel Oil Corporation filed Applications for Exception from the reporting requirements of Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the requests, the DOE found that the firms had not shown that they were more adversely affected by the reporting requirements than other reporting firms. Accordingly, exception relief was denied.

Hahn Oil Company, Inc., Petroleum Sales, Inc., 6/8/87; KEE-0124, KEE-0125

Hahn Oil Company, Inc. and Petroleum Sales, Inc. filed Applications for Exception from the reporting requirements of Form EA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the request, the DOE found that the firms had not shown that they were more adversely affected by the reporting requirements than other reporting firms. Accordingly, exception relief was denied.

Request for Modification and/or Rescission

Economic Regulatory Administration, 6/11/87; KRR-0026

The Economic Regulatory Administration (ERA) filed a Motion for Modification with the Office of Hearings and Appeals (OHA) concerning a Remedial Order (RO) issued to Brio Petroleum, Inc. (Brio) and L.B. White on April 16, 1987. *Brio Petroleum, Inc.*, 15 DOE ¶ 83,033 (1985). In its Motion, the ERA sought to modify Subparagraph 5 of Ordering Paragraph (5) to reflect DOE's present policy of assessing interest. The RO ordered that simple interest should be used for the period October 1, 1979 through January 31, 1980. The OHA determined that this manner of calculating interest for that period was incorrect. The OHA therefore granted ERA's Motion and modified Ordering Paragraph (5), Paragraph 5 so that the stated interest earned on the illegal overcharges by Brio between October 1, 1979 through January 31, 1980 would be compounded quarterly.

Supplemental Order

South Central Terminal Co., Inc., 6/11/87; KRX-0035

The Office of Hearings and Appeals issued a Supplemental Order to South Central Terminal Company, Inc. OHA issued the Order in response to South Central's requests that the Office clarify the firm's exact refund obligation under a Supplemental Order issued to the firm on April 30, 1987. *South Central Terminal Co.*, 15 DOE ¶ 83,034 (1987).

Refund Applications

All State Auto Rent, Inc., 6/11/87; RF270-1151

The DOE issued a Decision and Order denying a vehicle rental company's application for a Surface Transporters Refund. The DOE determined that the Surface Transporters Escrow's exclusion of car rental companies applies to truck and van rental companies as well. The Surface Transporters Escrow was intended for transporters who are end-users of petroleum products. Since most rental companies, regardless of the vehicle rented, act as retailers of petroleum products they are ineligible for Surface Transporter Refunds.

Beacon Oil Company/San Francisco Four Wheel Brake Service, et al., 6/8/87; RF 238-3 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers 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 pursuant to a December 17, 1979 Consent Order. Since all of the applicants 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 $42,901, representing $22,131 in principal and $20,770 in accrued interest.

Dunning Sand & Gravel Co., Inc., 6/11/87; RF270-1089

The DOE issued a Decision and Order denying a sand and gravel company's application for a Surface Transporters Refund. The DOE determined that the company's use of construction equipment for digging, loading, and screening gravel were not transportation functions. Although the company also operated a private fleet of trucks, this fleet used far less than the 250,000 gallon minimum threshold.

Gulf Oil Corporation/James T. Franklin et al., 6/9/87; RF40-3275 et al.

The DOE issued a Decision and Order concerning fifteen Applications for Refund filed by retailers and resellers of Gulf refined petroleum products. The claimants applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that the claimants should receive refunds totalling $34,371 ($27,772 principal plus $6,599 interest).

Gulf Oil Corp./Palmer Gulf, 6/10/87; RF40-3022

The DOE issued a Decision and Order concerning the Application for Refund filed by Palmer Gulf (Palmer) in connection with the Gulf Oil Corp. special refund proceeding. Palmer, a Gulf consignee, demonstrated that it had lost potential sales of motor gasoline and therefore had been injured as a result of Gulf's pricing practices. Palmer did not demonstrate injury with respect to consigned middle distillates. Accordingly, a refund of $211 ($170 in principal plus $41 in interest) was approved only for consigned motor gasoline.

Louisiana and North West Railroad Co. et al 6/8/87; RF271-99 et al

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by six railroad companies for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. Five of the firms calculated their gallonage claims from actual purchase records. The Louisiana and North West Railroad Co. calculated its gallonage claim based on actual purchase records from 1977 through January 1981, and estimates for the previous years claimed based on the average gallons per month purchased between 1977 and January 1981. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

Marathon Petroleum Company/Angola Marathon et al., 6/10/87; RF250-1830, et al.

The DOE issued a Decision and Order concerning 19 Applications for Refund filed

by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant submitted information indicating the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $11,273.19, requesting $10,437.26 in principal and $835.93 in interest.

Marathon Petroleum Company/Apollo Oil Company, 6/11/87; RF250–2208, RF250–2209

The DOE issued a Decision and Order concerning two Applications for Refund filed by Apollo Oil Company (Apollo), a reseller of Marathon motor gasoline and diesel fuel. Apollo elected to limit its claim to $5,000, the small claims injury presumption set forth in the decision implementing procedures for disbursing the Marathon consent order fund. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Apollo should receive a refund of $5,000 in principal and $407.27 in accrued interest for a total refund of $5,407.27.

Marathon Petroleum Company, Bennett Distributing, Inc., 6/11/87; RF250–2233, RF250–2224

Bennett Distributing, Inc. (Bennett) 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). Bennett demonstrated that purchased 6,978,266 gallons of refinded petroleum covered products from Marathon during the consent order period. Using a volumetric methodology, the DOE determined that Bennett's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Bennett a refund of $2,930.87 in principal and $234.74 in accrued interest for a total refund of $3,165.61.

Marathon Petroleum Company/Michigan Crystal Flash Petroleum Corp., Crystal Flash Petroleum Corp., 6/11/87; RF250–2122 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed on behalf of Michigan Crystal Flash Petroleum Corporation and Crystal Flash Petroleum Corporation, purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The two firms requested refunds on the basis of presumptions of injury established in the Marathon refund proceeding. However, because the two firms are related by common ownership, the DOE determined that they should be considered together for the purposes of those presumptions. The firms were granted a combined refund of $12,323, representing $11,203 in principal and $1,120 in interest, on the basis of the thirty-five percent presumption of injury.

Marathon Petroleum Company Okerson's Marathon Service, 6/10/87; RF250–2661

Okerson's Marathon Service (OMS) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). OMS demonstrated that it purchased 722,400 gallons of refined petroleum covered products from Marathon during the consent order period. Using a volumetric methodology, the DOE determined that OMS's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted OMS a refund of $303.41 in principal and $23.64 in accrued interest for a total refund of $327.05.

Mobil Oil Corporation/Carter Bros., Inc. et al, 6/9/87; RF225–8374 et al

The DOE issued a Decision granting 28 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 the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $92,692 ($75,737 principal plus $16,955 interest).

Mobil Oil Corporation/Nicholas Carouba Halls's Auto Service Community Service Station, 6/19/87; RF225–2637, RF225–5003, RF225–5004, RF225–6734

The DOE issued a Decision and Order granting four Applications for Refund from the Mobil Oil Corporation escrow account filed by Nicholas Carouba, Hall's Auto Service and Community Service Stations. The applicants were retailers of Mobil 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 $22,677.

Mobil Oil Corporation/West Side Mobil, 6/9/87; RF225–10825

On April 16, 1987, the Office of Hearings and Appeals issued a Decision authorizing the payment of $2,850 to West Side Mobil from the Mobil Oil Corporation escrow account. As a result of an inadvertent error, the payment was authorized on the basis of 29,198,981 gallons of gasoline. It should have been granted on the basis of 2,919,881 gallons of gasoline. The original refund was therefore rescinded and a refund for the correct amount, $288 ($235 in principal and $53 in interest), was granted.

Nobel/Sysco Food Services, Inc., 6/10/87; RF270–1539

The Department of Energy (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 firm based its refund application on diesel fuel used in its private fleet of tractor/trailers, including fuel for the trucks' refrigeration units. In applying the two-pronged test for Surface Transporter refund eligibility, DOE first found that the firm utilized a product refined from crude oil. Second, the DOE found that, since refrigeration units were necessary to the transportation of perishable food products, fuel utilized for that purpose was used for surface transportation. Accordingly, DOE approved Nobel/Sysco's entire claim. 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 firms' refunds will be determined at a later date. The total number of gallons approved in this Decision is 6,573,209.

Santa Maria Railroad, Co., 6/9/87; RF271–4

The Office of Hearings and Appeals issued an Order granting Santa Maria Railroad's Application for a refund from the Rail and Water Transporters Escrow established by Order of the U.S. District Court for the District of Kansas in *In Re: Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378. In considering that application, OHA found that the firm had established both its status as a rail transporter for purposes of the proceeding, as well as the basis for its claim to have purchased 558,458 gallons of petroleum products during the settlement period. Accordingly, OHA ordered that Santa Maria's eventual refund will be based on that figure.

Service Cab, et al, 6/9/87; RF270–2290 et al

The DOE issued a Decision and Order concerning six Applications for Refund from the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it was either a "for hire" carrier or a private fleet operator for the purposes of this proceeding. In addition, each applicant demonstrated that it purchased a certain volume above the 250,000 gallon minimum prescribed in the Order establishing the Surface Transporters Escrow. Accordingly, all six applications were approved, and the respective volumes will be used to calculate each company's final refund. The total number of gallons approved in this Decision is 8,003,039.

Suburbia Bus Stop et al, 6/10/87; RF270–339 et al

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow account established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by six private bus companies and will use those volumes as the bases for the refunds that will ultimately be issued to the six firms. The Decision states 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.

Tresler Oil Company/Hudson & Hudson Fuel Oil Inc., 6/10/87; RF295–2

The DOE issued a Decision granting a refund from the Tresler Oil Company escrow account to a retailer of Tresler motor gasoline. The Applicant elected to apply for a refund based upon the presemptions set forth in the *Tresler* decision. *Tresler Oil Company*, 15 DOE ¶ 85,522 (1987). The DOE granted a refund of $517 ($463 principal and $54 interest).

Turner Trucking Company, Inc., et al., 6/9/87; RF270-1081, et al.

The DOE issued a Decision and Order approving 22 transportation companies for refunds from the Surface Transporters Escrow. The DOE determined that each company is a Surface Transporter that used refined petroleum products in eligible vehicles during the Settlement Period. After making a few adjustments to correct errors in some of the companies' volume claims, the DOE's Decision approved each company's purchase volumes.

Warren Oil Transportation Co. et al., 6/8/87; RF270-330 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow account established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by 13 trucking companies which operated as common carriers and will use those volumes as the bases for the refunds that will ultimately be issued to the 13 firms. The DOE states 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 13 firms' refunds will be determined at a later date.

Dismissals

The following submission were dismissed:

Name and Case No.
A.B.F. Freight Systems, Inc.; RF270-53
Camas Prairie Railroad Company; RF270-33
Cross Petroleum; RF270-826
East China Township School District; RF270-334
G.N. Renn, Inc.; RF238-45
Johnny Dilorenzo; RF270-1291
Liberty Cab Company; RF270-1291
Mary's Taxi Service; RF270-351
Metropolitan Transit Commission; RF270-30
Oil Marketing Co., Inc.; KEE-0138
Peoples Service, Inc.; RF225-10647 thru RF225-10650
T&G Auto; RF225-10813
The East Ohio Gas Co.; RF225-784

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. Brenznay,

Director, Office of Hearings and Appeals.

July 24, 1987.

[FR Doc. 87-17449 Filed 7-30-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3240-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 20, 1987 Through July 24, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870250, Draft, FHW, MS, MS-301 Reconstruction, MS-304 to Tennessee State Line, DeSoto County, Due: September 20, 1987, Contact: James Iverson, (601) 965-4222

EIS No. 870251, Final, FHW, MN, TH-77/I-494 Improvements, TH-77/Cedar Avenue from 70th Street to 86th Street and I-494 from West 12th Avenue to East 34th Avenue, Hennepin County, Due: August 31, 1987, Contact: Stephen Bahler, (612) 349-5230

EIS No. 870252, Final, FRC, ID, Salmon River Basin, Fifteen Hydroelectric Projects, Construction, Operation and Maintenance, Licenses, Due: August 31, 1987, Contact: Frank Karwoski, (202) 376-1761

EIS No. 870253, Draft, NOA, NH, New Hampshire Coastal Program, Ocean, Harbor and Great Bay Areas, Approval, Due: September 14, 1987, Contact: Kathryn Cousins (202) 637-5152

EIS No. 870254, Draft, BLM, CO, Uncompahgre Basin Planning Area, Resource Management Plan, Wilderness Recommendations, Camel Back, Adobe Badlands and Gunnison Gorge Wilderness Study Areas, Due: November 4, 1987, Contact: Robert Vecchia, (303) 349-2244

EIS No. 870255, Report, COE, LA, Louisiana Flow-Regulating Structures Project, Mississippi River, Baton Rouge to the Gulf of Mexico, Engineering and Environmental Information, Contact: David Carney, (504) 862-2528

EIS No. 870256, Draft, COE, IA, Des Moines Recreational River and Greenbelt Area, Development, Operation and Maintenance, Due: September 14, 1987, Contact: Richard Makinen, (202) 272-0166

EIS No. 870257, Draft, USN, NJ, Naval Weapons Station Earle, Family Housing Development, Construction, Colts Neck, Monmouth County, Due: September 14, 1987, Contact: Thomas Peeling, (202) 325-7344

EIS No. 870258, Report, COE, OK, Mingo Creek Watershed and Flood Protection Plan, Updated Information, Tulsa County, Contact: Richard Makinen, (202) 272-0166.

Dated: July 28, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-17409 Filed 7-30-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3240-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 13, 1987 through July 17, 1987 pursuant to the environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-COE-K36091-CA, Rating EO2, Coyote and Berryessa Creeks Flood Control Improvement, CA. EPA expressed environmental objections because the Clean Water Act section 404(b)(i) evaluation in the draft EIS is inadequate. Specifically, EPA objected to the Army Corps' designation of the "prefered" alternatives because EPA believes that other "practicable" alternatives which are less damaging to the aquatic ecosystem are available. EPA requested that the final EIS more fully discuss whether other "practicable" alternatives could be implemented. EPA also requested more discussion on the flood control project's impacts to air and water quality.

ERP No. D-DOE-J22003-CO, Rating EC2, Old and New Rifle Uranium Mill Sites Remedial Actions, Contaminated Material Cleanup, CO. Summary: EPA concurs with proposed off-site disposal of tailings and other contaminated materials. EPA requested additional information on disposal site radon barrier design.

ERP No. D-FHW/g40118-TX, Rating EC2, TX-71/US 290 Improvements, R.M. 1826 to R.M. 973, Right-of-Way Acquisition, TX. Summary: EPA expressed environmental concerns regarding potential impacts to the Edwards Aquifer and requested that measures to minimize these impacts be incorporated into the final EIS. This information is needed to more fully satisfy NEPA requirements.

Final EISs

ERP No. F-AFS-J65136-00, Custer Nat'l Forest, Land and Resource Mgmt. Plan, ND, SD, and MT. Summary: EPA requested that specific operating procedures or references to existing procedures be placed in the Management Plan in order to clarify and support the monitoring and evaluation section of the EIS.

ERP No. F-COE-E300332-FL, Palm Beach County Beach Erosio Control Project, FL. Summary: During the timeframe between the draft and final EIS, the extent of the beach erosion control project more than doubled which makes this project take on environmental significance beyond Palm Beach County. Both the draft and the final EIS failed to adequately quantify and address the significance of the unique biological and recreational resources, viz., shoreline limestone outcrops, which would be destroyed by this project. EPA is not opposed to beach nourishment projects when shoreline erosion is a significant factor, and where construction can be accomplished while avoiding significant environmental impacts. Since the environmental objections vary from segment to segment, EPA has elected to consider each segment separately under the section 404 permitting process.

ERP No. F-COE-L36100-OR, Malheur Lake Flood Damage Reduction Plan, OR. Summary: EPA made no formal comments. EPA's objections at the draft EIS stage were due to the water quality effects of structural alternatives. EPA finds the project satisfactory now that "no action" is now proposed as the preferred alternative.

ERP No. F-DOE-J08022-MT, Conrad—Shelby 230 kV Transmission Line Project, Construction, Operation and Maintenance, MT. Summary: EPA made no formal comments. EPA notes that the final EIS states "no wetlands will be lost due to the proposed projects". Since this addresses EPA's primary comment on the draft EIS, EPA has no further comment or objections to this project.

ERP No. F-SFW-L64014-AK, Kodiak Nat'l Wildlife Refuge, Comprehensive Mgmt. Plan and Wilderness Review, AK. Summary: EPA made no formal comments. EPA reviewed the final EIS and believes that the project as proposed will not result in significant adverse environmental impacts.

Regulations

ERP No. R-ASC-A31047-00, 7 CFR Part 702, Colorado River Basin Salinity Control Program, Interim Rule (52 FR 16738). Summary: While EPA is in full support of the objectives of the Colorado River Salinity Control Act, EPA believes that the implementing regulations need to be specific in describing: (1) Water quality and wetlands as specific values to be protected; (2) consistency of the interim regulation with other Acts, regulations etc., and; (3) requirements and procedures for monitoring and evaluating project implementation and results. EPA offers to work with ASCS in addressing these issues.

Amended Notice

The following review should have appeared in the FR Notice published on July 24, 1987.

ERP No. D-COE-F36152-IN, Rating EC2, Fort Wayne and Vicinity Flood Control Plan, IN. Summary: EPA's review resulted in concerns regarding water quality impacts. EPA requested that water quality impacts be determined for each alternative.

Dated: July 28, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-17410 Filed 7-30-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59246; FRL-3239-5]

Polyalkylsiloxane Resin With Alkoxy and Hydroxy Groups; Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of an application for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATE: Written comments by August 17, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59246]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the TME application received by EPA. The complete non-confidential application is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87-20

Close of Review Period. August 23, 1987.

Importer. Confidential.

Chemical. (G) Polyalkylsiloxane resin with alkoxy and hydroxy groups.

Use/Import. (G) Open, non dispersive use. Import range: Confidential.

Dated: July 21, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-17188 Filed 7-30-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51685; FRL-3239-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-three such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-1392, 87-1393, 87-1394, 87-1395, 87-1396, 87-1397, 87-1398, 87-1399, and 87-1400; October 7, 1987

P 87-1401, and 87-1402; October 10, 1987

P 87-1403, 87-1404, 87-1405, 87-1406, 87-1407, 87-1408, 87-1409, 87-1410, 87-1411, 87-1412, 87-1413, 87-1414, 87-

1415, 87–1416, 87–1417, 87–1418, 87–1419, 87–1420 and 87–1421; October 11, 1987

P 87–1422, 87–1423, 87–1424, 87–1425, 87–1426, 87–1427, 87–1428 and 87–1429; October 12, 1987

P 87–1430, 87–1431, 87–1432, 87–1433 and 87–1434; October 13, 1987

Written comments by:

P 87–1392, 87–1393, 87–1394, 87–1395, 87–1396, 87–1397, 87–1398, 87–1399 and 87–1400; September 7, 1987

P 87–1401 and 87–1402; September 10, 1987

P 87–1403, 87–1404, 87–1405, 87–1406, 87–1407, 87–1408, 87–1409, 87–1410, 87–1411, 87–1412, 87–1413, 87–1414, 87–1415, 87–1416, 87–1417, 87–1418, 87–1419, 87–1420 and 87–1421; September 11, 1987

P 87–1422, 87–1423, 87–1424, 87–1425, 87–1426, 87–1427, 87–1428 and 87–1429; September 12, 1987

P 87–1430, 87–1431, 87–1432, 87–1433 and 87–1434; September 13, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51685]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1392

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1393

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1394

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1395

Manufacturer. Confidential.

Chemical. (G) Ammonium salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1396

Manufacturer. Confidential.

Chemical. (G) Ammonia salt of an aqueous acrylic emulsion.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1397

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous acrylic emulsion.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–139B

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous acrylic emulsion.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1399

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous acrylic emulsion.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1400

Importer. Confidential.

Chemical. (G) Vinylresin or vinylchloride-acrylic acid ester copolymer with OH-functional sites.

Use/Import. (S) Binders for laquers, primer for silicone elastomers and binder resp. cobinder in magnetic storage media. Import range: Confidential.

P 87–1401

Importer. CIBA-GEIGY Corporation.

Chemical. (G) Triazine substituted metal complex formazane.

Use/Import. (G) Textile dye. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer; LC_{50} 96 hr (Zebrafish): 620 mg/l; EC_{50} 24 hr (Daphnia magna): 123.4 mg/l; COD: 855.0 mg/g°2; BOD_5: 0 mg/g°2; Micronucleus test: Negative; NOEL: >1,000 mg/kg; NTEL: 1,000 mg/kg.

P 87–1402

Importer. Takeda USA, Incorporated.

Chemical. (G) Polyester polyurethane.

Use/Import. (S) Industrial and commercial coating. Import range: Confidential.

P 87–1403

Importer. Nuodex Incorporated.

Chemical. (G) Copolyester of 1,4-butanediol, terephthalic acid and an aliphatic comonomer.

Use/Import. (S) Industrial injection molding and extrusion. Import range: Confidential.

P 87–1404

Manufacturer. Confidential.

Chemical. (G) Amine salt.

Use/Production. (G) Oil additive. Prod. range: Confidential.

P 87–1405

Importer. Confidential.

Chemical. (G) Blocked aliphatic urethane.

Use/Import. (S) Textile finish. Import range: Confidential.

P 87–1406

Manufacturer. Confidential.

Chemical. (G) Fatty acid polyamine condensate.

Use/Production. (G) Oil additive. Prod. range: Confidential.

P 87–1407

Manufacturer. Confidential.

Chemical. (G) Olefin-ester-anhydride polymer.

Use/Production. (G) Oil additive. Prod. range: Confidential.

P 87–1408

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Urethane-modified silicone polyester-acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1409

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (G) Organopolysiloxane.

Use/Import. (S) Industrial coating and textile finishing agent. Import range: 1,200 to 2,000 kg/yr.

P 87-1410

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Organopolysiloxane containing hydroxy-group.
Use/Import. (S) Industrial reactive ingredient for plastic compound. Import range: 800 to 1,000 kg/yr.

P 87-1411

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Cyclotetrasiloxane, 2,4,6,8-tetramethyl-2-[3-(oxiranylmethoxy)-propyl]-
Use/Import. (S) Industrial cross-linking agent and adhesion promoter for silicone rubber. Import range: 300 to 600 kg/yr.

P 87-1412

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Dimethyl polysiloxane, hydrogen terminated allyl glycidyl ether.
Use/Import. (S) Industrial reactive ingredient for plastic compounds and textile finishing agent. Import range: 100 to 500 kg/yr.
Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Slight-irritant.

P 87-1413

Manufacturer. Confidential.
Chemical. (G) Poly(vinyl ester co-unsaturated dicarboxylic acid ester co-olefin).
Use/Production. (G) Laminating adhesive. Prod. range: Confidential.

P 87-1414

Manufacturer. Henkel Corporation.
Chemical. (G) Alkyl polymercaptan.
Use/Production. (G) Curing agent. Prod. range: Confidential.

P 87-1415

Importer. Confidential.
Chemical. (G) Propoxylated sucrose esters.
Use/Import. (S) Defoaming agent. Import range: Confidential.

P 87-1416

Importer. Confidential.
Chemical. (G) Substituted-terminated siloxanes and silicones.
Use/Import. (S) Industrial auxiliary for leather. Import range: Confidential.

P 87-1417

Manufacturer. Confidential.
Chemical. (G) Substituted diethylsuccinate.
Use/Production. (S) Agricultural chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 275 mg/kg; Acute dermal: 168 mg/kg; Irritation: Skin—Moderate, Eye—Corrosive; Ames test: Non-mutagenic.

P 87-1418

Manufacturer. Confidential.
Chemical. (G) Acetate of modified fatty acid polyamine condensate.
Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

P 87-1419

Manufacturer. Confidential.
Chemical. (G) Propoxylated formaldehyde resin.
Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

P 87-1420

Manufacturer. Confidential.
Chemical. (G) Cyanoacrylate ester polymer.
Use/Production. (G) Intermediate for adhesive. Prod. range: Confidential.

P 87-1421

Manufacturer. Hach Company.
Chemical. (S) 1,2-Cyclohexanediaminetetraacetic acid trisodium salt.
Use/Production. (S) Commercial and consumer used as a chelating reagent in various powder blends. Prod. range: 200 kg/yr.

P 87-1422

Importer. Cray Valley Products, Incorporated.
Chemical. (G) Epoxyacrylic resin solution.
Use/Import. (S) Industrial paint. Import range: 10,000 to 40,000 kg/yr.

P 87-1423

Importer. Cray Valley Products, Incorporated.
Chemical. (G) Carboxylic acrylic resin solution.
Use/Import. (S) Industrial paint. Import range: Confidential.

P 87-1424

Manufacturer. E.I. du Pont de Nemours Company, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-1425

Importer. Confidential.
Chemical. (G) Water based acrylic copolymer solution.
Use/Import. (G) Temporary coating. Import range: Confidential.

P 87-1426

Importer. Confidential.
Chemical. (G) Quaternary ammonium salt.
Use/Import. (S) Antistatic agent. Import range: Confidential.

P 87-1427

Importer. Confidential.
Chemical. (G) Quaternary ammonium salt.
Use/Import. (S) Industrial antistatic agent. Import range: Confidential.
Toxicity Data. Acute oral: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe; Skin sensitization: No sensitization.

P 87-1428

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Water dispersible polyester urethane.
Use/Production. (G) Coating. Prod. range: Confidential.

P 87-1429

Manufacturer. Confidential.
Chemical. (G) Blocked urethane.
Use/Production. (G) Open use industrial coating. Prod. range: 35,500 to 116,800 kg/yr.

P 87-1430

Manufacturer. Confidential.
Chemical. (G) Acrylic solution copolymer.
Use/Production. (G) Coating additive in open, non-dispersive use. Prod. range: Confidential.

P 87-1431

Importer. Confidential.
Chemical. (G) Acrylate methacrylic acid copolymer.
Use/Import. (S) Industrial, commercial and consumer dispersing agent. Import range: Confidential.

P 87-1432

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene sulfonic acid, calcium salt.
Use/Production. (S) Lube oil additive. Prod. range: Confidential.

P 87-1433

Importer. Hodogaya Chemical [USA], Incorporated.
Chemical. (S) Xanthylium, 9-[2-(methoxycarbonyl)phenyl]-3,6-bis(ethylamino) 2,7-dimethyl-, salt with 2(or 5)-dodecyl-5(or 2)-(sulfophenoxy)benzensulfonic acid (2:1).
Use/Import. (S) Industrial, commercial and consumer ingredient of ballpoint pen ink and colorant for toner. Import range: 1,000 to 1,500 kg/yr.

Toxicity Data. Acute oral: 4.7 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Mutagenic.

P 87-1434

Importer. Mortell Company.
Chemical. (S) 7,12 dimethyl, 7,11-octadecadiene-1,18 dicarboxylic acid-bis (2,3 epoxypropyl).
Use/Import. (S) Industrial internal plastizer in sealer adhesive formulations for metal joining. Import range: 5,000 to 10,000 kg/yr.

Date: July 21, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-17189 Filed 7-30-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59825; FRL-3239-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provides the summary of each.

DATES: Close of Review Period:

Y 87-192, 87-193 and 87-194—July 30, 1987
Y 87-195, 87-196 and 87-197—July 28, 1987
Y 87-198 and 87-199—August 4, 1987
Y 87-200—August 5, 1987

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-192

Importer. King Industries.
Chemical. (G) Polyacrylate.
Use/Import. (G) Additive for paints, ink and alhesives.
Import range: Confidential.

Y 87-193

Manufacturer. Confidential.
Chemical. (G) Ethylene acrylic copolymer.
Use/Production. (G) Molding and extrusion compounds, packaging, textiles, adhesives. Prod. range: Confidential.

Y 87-194

Manufacturer. C.J. Osborn.
Chemical. (G) Alkyd.
Use/Production. (S) Pigmented finishes. Prod. range: 5,000 to 10,000 kg/yr.

Y 87-195

Manufacturer. Emery Chemicals.
Chemical. (S) Polymer of adipic acid, phthalic anhydride, propylene glycol pelargonic acid.
Use/Production. (S) Industrial plasticizer for polyvinyl chloride resin. Prod. range: 1,000,000 to 2,000,000 kg/yr.

Y 87-196

Manufacturer. Emery Chemicals.
Chemical. (S) Polymer of caprylic-capric acids, adipic acids, phthalic anhydride, propylene glycol.
Use/Production. (S) Industrial plasticizer for polyvinyl chloride resin. Prod. range: 500,000 to 1,000,000 kg/yr.

Y 87-197

Manufacturer. Emery Chemicals.
Chemical. (S) Polymer of adipic acid, phthalic anhydride, ethylene glycol iso octanol.
Use/Production. (S) Industrial plasticizer for polyvinyl chloride resin. Prod. range: 500,000 to 1,000,000 kg/yr.

Y 87-198

Manufacturer. Confidential.
Chemical. (G) Linseed fatty acid modified alkyd resin.
Use/Production. (S) Industrial protective coating. Prod. range: 36,000 to 73,000 kg/yr.

Y 87-199

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd resin.
Use/Production. (S) Industrial component for finishes. Prod. range: 41,000 to 83,000 kg/yr.

Y 87-200

Importer. Confidential.
Chemical. (G) Modified polyvinyl alcohol.
Use/Import. (S) Industrial textile sizing agent, paper coating agent and emulsifier in emulsion polymerization. Import range: Confidential.

Date: July 21, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-17190 Filed 7-30-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Application To Engage de Novo in Permissible Nonbanking Activities; Comerica Inc.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's 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 the Board has determined to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governments. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated,* Detroit, Michigan; to expand the current fiduciary activities of its subsidiary, Comerica Trust Company of Florida N.A., Boca Raton, Florida, to include deposit-taking and the origination of consumer loans.

Board of Governors of the Federal Reserve System, July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17361 Filed 7-30-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; Fairfax Bancshares, Inc.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 21, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fairfax Bancshares, Inc.,* Fairfax, Missouri; to acquire 25–30 percent of the voting shares of The Farmers & Valley Bank, Tarkio, Missouri.

Board of Governors of the Federal Reserve System, July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17362 Filed 7-30-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Acquisitions of Shares of Banks or Bank Holding Companies; William C. Hess; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-10093) published at page 16450 of the issue for Tuesday, May 5, 1987.

Under the Federal Reserve Bank of Chicago, the entry for William C. Hess is revised to read as follows:

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *William C. Hess,* Coon Rapids, Iowa; to acquire 92.76 percent of the voting shares of Sac City Limited, Sac City, Iowa, and thereby indirectly acquire Sac City State Bank, Sac City, Iowa.

Comments on this application must be received by August 10, 1987.

Board of Governors of the Federal Reserve System, July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17365 Filed 7-30-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Security Pacific Corp.

The organization listed in this notice has applied under § 225.23(a) of the Boards Regulation of (12 CFR § 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105.

1. *Security Pacific Corporation,* Los Angeles, California and SPC/RAB Acquisition Corp., Los Angeles, California; to conduct, pursuant to section 4(c)(8) (D) and (A) of the Bank Holding Company Act, the insurance agency activities of Rainier Mortgage Company, Seattle, Washington, a wholy-owned subsidiary of Rainier Bancorporation, Seattle, Washington.

The Insurance Activities include acting as insurance agent for property and casualty insurance on personal and real property (including homeowners' insurance), and performance bonds in the States of Alaska, Washington, Oregon, Idaho and (with the exception of property and casualty insurance) Colorado. The Insurance Activities also include acting as agent in the States of Idaho, Wyoming, Montana and California for the sale of credit-related insurance. In Washington, Rainier Mortgage will sell consumer credit related property and casualty insurance with respect to personal property collateral for extensions of credit by Rainier affiliates. Rainier Mortgage will also sell consumer credit property and casualty insurance on personal property collateral with respect to its extensions of credit in the States of Alaska, Washington, Oregon, California, Idaho, Nevada, Arizona, Montanan, Colorado, Wyoming, New Mexico, Texas, Oklahoma, Nebraska, Kansas and Hawaii. Rainier Mortgage will also conduct the Insurance Activities in

Washington and all States adjacent to Washington.

Board of Governors of the Federal Reserve System, July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17363 Filed 7-30-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 17, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

1. Application for Parent's Insurance Benefits—0960-0012—This form is used by the Social Security Administration to determine whether an applicant is entitled to monthly parent's insurance benefits. Respondents: Individuals or households. Number of Respondents: 1,400; Frequency of Response: Occasionally; Estimated Annual Burden: 350 hours.

2. Worker's Compensation/Public Disability Benefit Questionnaire—0960-0274—This form will be used by the Social Security Administration to help determine if the receipt by a worker of a workmen's compensation or public disability benefit will reduce his or her social security benefit. Respondents: Individuals or households. Number of Respondents: 100,000; Frequency of Response: Occasionally; Estimated Annual Burden: 25,000 hours.

OMB Desk Officer: Elaina Norden.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)

1. Request for Medical Review Information for Part F Intermediary Outpatient Therapy Bills—0938-0227—Medicare contractors will request certain medical information outpatient therapy bills that are selected for medical review activities. This will be used to verify the medical necessity of services rendered to establish payment under the Medicare program. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions. Number of Respondents: 5,020,000; Frequency of Response: Occasionally; Estimated Annual Burden: 2,510,000 hours.

2. ICRs Contained in 42 CFR, Sections 441,56,58,60,61—EPSDT—0938-0354—Regulation requires States to inform eligible EPSDT recipients of the availability of screening services, disgnosis and corrective treatment of health problems detected. Respondents: Individuals or households, State or local governments. Number of Respondents: 54; Frequency of Response: Occasionally; Estimated Annual Burden: 3002 hours.

3. Hospice Survey Report Form—0938-0378—This survey form is an instrument used by the State agency to record data collected in order to determine provider compliance with individual conditions of participation and to report it to the Federal government. Respondents: State or local governments. Number of Respondents: 50; Frequency of Response: Occasionally; Estimated Annual Burden: 1500 hours.

OMB Desk Officer: Allison Herron.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. April 1988 Supplement on Child Support and Alimony—NEW—This supplement will collect data on Women who are eligible for child support and/or alimony payments, whether such payments were agreed or awarded amounts supposed to be and actually received, and whether child support enforcement efforts were instrumental in helping. Respondents: Individuals or households. Number of Respondents: 27,000; Frequency of Response: One-time; Estimated Annual Burden: 1,125 hours.

OMB Desk Officer: Elana Norden.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. Small Business Innovation Research Program Phase I Proposal Cover Sheet—NEW—The Small Business Innovation Development Act requires that participating agencies utilize a uniform process for Small Business Innovation Research Solicitations. This form implements requirements contained in the Small Business Administration Policy. Directive issued in September. Respondents: Small businesses or organizations. Number of Respondents: 500; Frequency of Response: One-time; Estimated Annual Burden: 500 hours.

OMB Desk Officer: Elana Norden.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

National Institutes of Health

1. The Baseline Survey and Instrument, and Approach to Assessing the Intervention Trial for Smoking Cessation (COMMIT)—NEW—The National Cancer Institute (NCI) has initiated design of the Community Intervention Trial for Smoking Cessation (COMMIT). This large-scale trial will test community-based strategies designed to produce long-term cessation among smokers. Clearance is requested for the pretesting and fielding of a survey to develop baseline data related to smoking and the communities prior to the intervention trial and concept clearance is requested for the approach for monitoring the trial. Respondents: Individuals or households. Number of Respondents: 250,488; Frequency of Response: Single-time; Estimated Annual Burden: 12,174 hours.

Food and Drug Administration

1. Investigational Use of New Animal Drugs—0910-0117—An investigated new animal drug application is required to permit the use of unapproved new animal drugs. A drug is not approved until these investigations are completed and safety/effectiveness data obtained. Applications are filed by drug manufacturers, veterinarians, and state universities. Respondents: Businesses or other for-profit. Number of Respondents: 230; Frequency of Response: Occasionally; Estimated Annual Burden: 176,272 hours.

2. Nutritions Labeling—0910-0177—Nutrition labeling of processed loads helps consumers make appropriate choices of foods that provide nutrients necessary for good health. Respondents: Businesses or other for-profit. Number of Respondents: 3495; Frequency of Response: Occasionally; Estimated Annual Burden: 4,860,585 hours.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
FDA: 202-245-2100
HCFA: 301-594-8650
SSA: 301-594-5706
HDS: 202-472-4415
FSA: 202-245-0652

Written comments and recommendations for the proposed

information collections should be sent directly to the appropriate OMB Desk

Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer)

Date: July 27, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87-17429 Filed 7-30-87; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 87N-0169]

Studies of Reported Adverse Effects of Marketed Drugs; Availability of Grants; Request for Applications; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the Request for Applications (RFA) number that was inadvertently introduced in a request for applications notice in the **Federal Register** of July 10, 1987. By correcting the number from "RFA-FDA-CDB-XX-X" to "RFA-FDA-CDB-88-1", FDA will indicate the appropriate RFA number to be used by prospective applicants submitting an application for a Public Health Service Grant.

FOR FURTHER INFORMATION CONTACT: Dianne Washington, Grants and Assistance Agreements Section (HFA-522), Food and Drug Administration, Park Bldg., Rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-15694, appearing on page 26086 in the issue of Friday, July 10, 1987, in the third column on page 26087 under "VII. Method of Application", line 5, and in the first column on page 26088 under "C. Application Submission", second paragraph, line 4, the RFA number "RFA-FDA-CDB-XX-X" should be corrected to read "RFA-FDA-CDB-88-1."

Dated: July 24, 1987.

William L. Schwemer,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-17371 Filed 7-30-87; 8:45 am]

BILLING CODE 4160-01

Public Health Service

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of July 13, 1987, by the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration (HRSA), (52 FR 27264, July 20, 1987), the Administrator, HRSA, has delegated to the Director, Bureau of Health Professions, with authority to redelegate, the authorities under the Health Care Quality Improvement Act of 1986, Title IV, Public Law 99-660, excluding the authorities pertaining to the imposition and collection of civil money penalties, and the authorities to issue guidelines or regulations and submit reports to Congress.

This delegation was effective on July 24, 1987.

Date: July 24, 1987.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87-17369 Filed 7-30-87; 8:45 am]

BILLING CODE 4160-15-M

Public Health Emergencies; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of January 14, 1981 (46 FR 10016) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Director, Centers for Disease Control, with authority to redelegate, all the authorities delegated to the Assistant Secretary for Health under section 319, Title III, of the Public Health Service Act, as amended, concerning Public Health Emergencies, as it pertains to the functions assigned to the Centers for Disease Control. This delegation excludes the authorities to issue regulations and to submit reports to the Congress.

The delegation to the Director, Centers for Disease Control, became effective on July 23, 1987.

Date: July 23, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-17403 Filed 7-30-87; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory Care Statistics (formerly the Subcommittee on Statistical Aspects of Physician Payment System) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, August 19, 1987 from 8:30 a.m. to 3:00 p.m. in Room 339-A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will discuss review of the Uniform Ambulatory Medical Care Minimum Data Set and receive updates from the Health Care Financing Administration.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Marjorie Greenberg, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7122.

Date: July 21, 1987.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 87-17279 Files 7-30-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-010-07-4133-17]

Availability of Final Environmental Impact Statement (FEIS); Wolf Ridge Corporation Mine Plan; Colorado

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of FEIS.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, BLM has prepared a FEIS on Wolf Ridge Corporation's (WRC) mine plan for a nahcolite solution mine in the Piceance Basin, Rio Blanco County, Colorado.

ADDRESS: Comments and/or questions should be sent to William Frank, Project Coordinator, White River Resource Area, PO Box 928, Meeker, Colorado 81641. Telephone: (303) 878-3601.

SUPPLEMENTARY INFORMATION: BLM has prepared an abbreviated FEIS on WRC's proposal for a commercial nahcolite

solution mine on existing sodium leases they hold in northwest Colorado. The bulk of the Draft EIS has been incorporated by reference into the abbreviated FEIS, since public comments on the draft did not, for the most part, require extensive changes in the data, analyses, or conclusions. Therefore, both documents constitute the complete FEIS and must be used in conjuction.

WRC's proposed action involves phased-approach development with initial production of nahcolite at a rate of 50,000 tons/year increasing in the second or third year to a maximum production of 125,000 tons/year. The proposed 30-year project includes a well field for in-situ solution mining of nahcolite; a handling and processing plant, including evaporation ponds; and associated transportation, access, and support facilities.

The FEIS analyzes the environmental and socioeconomic impacts of the proposed action and three project alternatives. It also identifies mitigative measures and stipulations that will be incorporated into the approved plan to (1) alleviate or minimize potential environmental impacts from their proposal, and (2) ensure compliance of their proposal with existing sodium lease terms. The FEIS identifies WRC's proposed action as BLM's preferred alternative.

The FEIS is not the BLM's decision on WRC's mine plan. The decision on the plan will be based on the analysis in the FEIS, public concerns and comments, and other multiple-use objectives or programs applicable to WRC's proposed project. No action will be taken for at least 30 days following filing of the FEIS with the Environmental Protection Agency and distribution to the public. A Record of Decision that outlines the decision and rationale for the decision will be prepared and made available to the public.

Availability

Single copies of the FEIS may be obtained from the above BLM address, or from:

Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Ralph Smith,

Acting State Director.

Dated: July 9, 1987.

[FR Doc. 87-17038 Filed 7-30-87; 8:45 am]

BILLING CODE 4310-JB-M

[NV-040-07-4322-12]

Ely District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Ely District Grazing Advisory Board will be held on Thursday, September 10, 1987.

The meeting will convene at 9:30 a.m. in the Conference Room of the Ely District Office located on the Pioche Highway one mile south of Ely, Nevada.

The agenda will be the election of officers and the discussion of district programs to include: Status of land use plans, activity planning efforts, the wild horse program, and the range improvement program.

Public comment time is scheduled for 11 a.m. The public is invited to attend this meeting and may, at the designated time, submit written or oral statements for the advisory board's consideration.

Minutes of the meeting will be available for public inspection and reproduction during regular office hours within 30 days following the meeting.

DATE: July 22, 1987.

ADDRESS: Comments and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Kathy Lindsey, (702) 289-4865.

Date: July 22, 1987.

Kenneth G. Walker,

District Manager.

[FR Doc. 87-17387 Filed 7-30-87; 8:45 am]

BILLING CODE 4310-HC-M

[WY920 07 4121-10]

Public Meeting Announcement, Call for Expressions of Leasing Interest, and Request for Public Comments on Long-Range Market Analysis; Powder River Coal Team Activities

ACTION: Public notice.

SUMMARY: The Powder River Regional Coal Team (RCT) calls for expressions of coal leasing interest within the Powder River Coal Region by September 30, 1987. The RCT also requests public comments on a Powder River long-range market analysis by September 30, 1987. The RCT will review the leasing interest, long-range market analysis, and public comments during a public meeting on October 29, 1987. The primary purpose of this RCT meeting will be to assess the need to resume Federal coal leasing in the Powder River Coal Region. The full agenda for this RCT meeting is set out below.

DATE: The RCT will meet at 8:30 a.m. on October 29, 1987. Expressions of interest and long-range market analysis comments must be submitted by September 30, 1987, in order to assure full consideration.

ADDRESS: The RCT meeting will be held at the Holiday Inn of Sheridan, 1809 Sugarland Drive, Sheridan, WY, 82801, telephone (307) 672-8931. The expressions of coal leasing interests and comments on the Powder River long-range market analysis should be sent to Don Brabson, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003.

FOR FURTHER INFORMATION CONTACT: Don Brabson, telephone (307) 772-2571 or (FTS) 328-2571.

SUPPLEMENTARY INFORMATION: Concerning the call for expressions of coal leasing interest, the public is invited to submit written expressions by September 30, 1987. Expressions are to be submitted to Don Brabson at the above specified address. This call is being issued in accordance with the RCT recommendation of December 4, 1986. In order for any public body tracts to be considered, an expression of interest from a public body must be submitted. Proprietary data should not be submitted as part of the expression of leasing interest; however, if any party wishes to supplement its expression with proprietary data then such data may be submitted to the Bureau of Land Management, Deputy State Director for Mineral Resources, Cheyenne, WY 82001. Such data should be clearly labeled proprietary and confidential.

Expressions of interest must be confined to those areas available for competitive leasing consideration as set out in BLM's resource management plans. The Bureau's Casper District Office and Miles City District office can supply these plans for Wyoming and Montana portions of the region, respectively. The addresses and telephone numbers for these offices are Casper District Office, 1701 East E Street, Casper, Wyoming 82601, (307) 261-5101 and Miles City District Office, P.O. Box 950, Miles City, Montana 59301, (406) 232-4331.

An expression of interest is not an application. The size and/or location of a proposed tract as indicated by an expression of interest may be modified or changed if there is sufficient reason to do so.

Examples of the types of concerns that may make such action necessary include: the competitive nature of the tract, access needs, mining efficiency, future coal development potential, resources conservation, and State preference and priorities.

These expressions of leasing interest should include the following data where applicable:

1. Quantity needs (total tonnage, average tons per year, and year during which production should commence) for both coal producers and users.

2. Quality needs (types and grade of coal) for both producers and users.

3. Location:

a. Tracts desired by mining companies (narrative description with delineation on surface minerals management quad map, available from the Montana State Office).

b. Public and private industry user facilities in region.

c. If no location is indicated, but other specified data are provided, the expression will be considered. In such cases the delineation team will locate the tract.

4. Type of mine:

a. Surface or underground.

b. Technique of mining (i.e., longwall, room and pillar, stripo mining, etc.).

5. Proposed uses of coal:

a. By mining companies.

b. By public and private industries.

6. Where coal is consumed (include extra-regional markets).

7. Transportation needs (i.e., railroads, pipelines, etc.):

a. Existing facilities.

b. Proposed facilities and development timing.

8. Available sources of coal

a. Presently operative.

b. Contingency of other sources.

9. Information relating to mineral ownership:

a. Information on surface owner consents previously granted, e.g., a description of the location of the property, whether consents are transferable, etc.

b. Commitments from fee coal owner or for associated non-Federal coal.

10. Special qualifications for public bodies requesting special leasing opportunities. These specific requirements are listed in 43 CFR 2472.2–5.

A summary of all expressions and the results of the Bureau's screening of these expressions will be made available during the RCT meeting on October 29, 1987. The full text of each expression will be made available for public inspection or copying, upon request.

Concerning the Powder River long-range market analysis, please be advised that copies may be obtained from Don Brabson at the above specified address or telephone numbers. Public comments received by September 30, 1987, will be reviewed by the RCT during the meeting on October 29, 1987. This document and public comments thereon will be major factors weighed by the RCT in recommending whether or not to resume coal leasing activity planning.

Concerning the RCT meeting on October 29, 1987, public input opportunities will be provided on all agenda items. The agenda for this meeting is as follows:

1. Introductions.

2. Approval of Minutes of December 4, 1987, RCT meeting.

3. Regional Coal Activity Status:

a. Current production.

b. Preference Right Lease Applications:

c. Exchanges.

d. Emergency leasing.

e. Other activity.

4. Round I Leases:

a. Status.

b. Supplemental EIS.

5. Expressions of Leasing Interest:

a. Expressions summary.

b. Screening results.

6. Long-Range Market Analysis:

a. Summarize document.

b. Review comments.

7. RCT Activity Planning Recommendation:

a. Resumption or deferral of activity planning.

b. Establish leasing schedule, if necessary.

8. Data Adequacy:

a. Adopt data adequacy standards.

b. Science advisor appointments, if necessary.

c. Geographic Information System.

F. William Eikenberry,

Associate State Director.

[FR Doc. 87–17388 Filed 7–30–87; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Jefferson National Expansion Memorial Commission; Open Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Jefferson National Expansion Memorial Commission will be held August 11, 1987, at 9:30 a.m. The meeting will be held at the Old Courthouse, Jefferson National Expansion Memorial National Historic Site, 11 North Fourth Street, St. Louis, Missouri 63102.

The commission was originally established on August 24, 1934, pursuant to provisions of the Jefferson National Expansion Memorial Amendments Act of 1984, 98 Stat. 1469, 16 U.S.C. 450jj–6, to implement and support the conceptual plan.

Matters to be discussed at the August 11 meeting will include the report on fundraising/design competition, reviewing of final National Park Service draft report, the status of binding commitments, and the future role of the commission.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Date: July 23, 1987.

John Kawamoto,

Acting Regional Director, Midwest Region.

[FR Doc. 87–17395 Filed 7–30–87; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86–80]

Revocation of Registration; Lynn L. Pearson, M.D.

On October 20, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Lynn L. Pearson, M.D. (Respondent), c/o Warden, Federal Corrections Institution, Fort Worth, Texas 76119. A copy of the Order to Show Cause was also sent to Respondent's counsel. The Order to Show Cause sought to revoke Respondent's DEA Certificate of Registration AP0906252 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated upon Respondent's felony conviction on May 22, 1986, in the United States District Court for the Southern District of Texas of two counts of illegal dispensing of a Schedule II controlled substance in violation of 21 U.S.C. 841(a)(1).

Respondent, proceeding through counsel, requested a hearing on the issues raised by the Order to Show Cause. The matter was docketed before Administrative Law Judge Francis L. Young. In lieu of further administrative proceedings for the revocation of Respondent's DEA Certificate of Registration, Dr. Pearson and counsel for the Drug Enforcement Administration entered into an agreement whereby Respondent agreed to the suspension of his DEA Certificate of Registration pending the outcome of the appeal of his criminal conviction. The Memorandum of Agreement stipulated that should Dr. Pearson's conviction be upheld, he would consent to the revocation of his registration without the benefit of a hearing. The Memorandum further stated that should Dr. Person's conviction be overturned, Respondent's registration would be reinstated and the Government would at that time determine whether or not it would proceed administratively against his DEA Certificate of Registration. In a letter dated June 10, 1987, counsel for Respondent notified DEA that the United States Court of Appeals for the Fifth Circuit affirmed Dr. Pearson's conviction and denied his motion for rehearing. Respondent will not file a Petition for Certiorari, therefore his appeal from his conviction is completed. Accordingly, pursuant to the terms of the memorandum of agreement entered into by Respondent and Government counsel, Dr. Pearson is deemed to have waived his opportunity for a hearing under 21 CFR 1301.54(e) and consented to the revocation of his DEA Certificate of Registration. Based upon his felony conviction relating to controlled substances in violation of 21 U.S.C. 841(a)(1), there is a lawful basis for such revocation.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP0906252, previously issued to Lynn L. Pearson, M.D. be, and it hereby is, revoked. The Administrator further orders that any pending applications for registration be, and they hereby are, denied. This order is effective immediately.

John C. Lawn,

Administrator.

Date: July 27, 1987.

[FR Doc. 87-17367 Filed 7-30-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

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 Officer 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 the recordkeeping/reporting requirement is 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, if 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 also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer 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.

Revision

Employment and Training Administration.
New Jersey Reemployment Demonstration Project.
1205-0248; ETA RC 87.
One-time survey.
Individuals or households.
5,800 respondents; 2,900 burden hours; no forms.

This demonstration project is designed to evaluate whether displaced workers can be identified early in the unemployment spell, test the ability of alternative employment services to reemploy the displaced and how such a program could be implemented.

President's Committee on Employment of the Handicapped.
Job Accommodation Network Project.
JAN-PCEH.
On occasion.
State or local governments; businesses or other for profit; Federal agencies or employees, small businesses or organizations.
5200 responses; 2600 hours; 1 form.

The collection of data with the proposed direct-mail questionnaire will permit the development of a computer-based information resource which may be accessed by representatives of business for the purpose of identifying accommodations which will assist handicapped persons in obtaining employment.

Extension

Employment and Training Administration.
Domestic Agricultural IN-Season Wage Report.
1205-0017; ETA 232 & ETA 232A.
Annually.
Individuals or households; State or local governments; Farms 6,200 respondents; 3,825 burden hours; 2 forms.

State employment agencies need prevailing wage rates in order to process employers' applications for intrastate and interstate workers. The rates cover agricultural and logging jobs. Migrant and local seasonal farmworkers are hired for these jobs.

Employment Standards Administration.
Application for a Certificate to Employ Learners at Subminimum Wages.
1215-0012; WH209.
Annually.

State or local governments; businesses or other for profit; small businesses or organizations.
15 responses; 7.5 hours; 1 form.

Employers are required by DOL to submit an application for authorization to pay learners subminimum wages under the provisions of Section 14(a) of the Fair Labor Standards Act. DOL reviews this information to determine whether the statutory and regulatory provisions for each authorization have been met.

Employment Standards Administration.
Mail Haul Contract Wage Rate Survey.
1215–0050; WD–21.
Annually.
Businesses or other for-profit; Small businesses or organization 2,875 responses; 1,438 hours; 1 form.

Form WD–21 is used by the Department of Labor to elicit wage and fringe benefit data from mail haul contractors. This data is used to determine locally prevailing wages and fringe benefits under the Service Contract Act.

Departmental Management, Office of the Assistant Secretary for Administration and Management.
Qualifications Inquiry for Positions in the Local 12 Bargaining Unit—DL 1–1104.
1225–0016; PERS–5.
On occasion.
Individuals or households.
1,000 responses; 250 hours; one form.

This form is required under the Department of Labor's negotiated Merit Staffing Plan for positions in the Local 12 bargaining unit to collect information by the Personnel Office from the applicants supervisor. The information will be used by raters to evaluate outside applicants against the requirements of the vacancy to be filled.

Signed at Washington, DC, this 28th day of July, 1987.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 87–17428 Filed 7–30–87; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Alabama:
AL87–8 (Jan. 2, 1987) ..... p. 16.
Connecticut:
CT87–1 (Jan. 2, 1987) ..... pp. 70, 74.
New York:
NY87–11 (Jan. 2, 1987) ..... p. 782.
Pennsylvania:
PA87–1 (Jan. 2, 1987) ..... p. 844, pp. 846–847, p. 853.
PA87–4 (Jan. 2, 1987) ..... p. 874.
Rhode Island:
RI87–1 (Jan. 2, 1987) ..... pp. 1024–1027.
Tennessee:
TN87–1 (Jan. 2, 1987) ..... p. 1078.
Virginia:
VA87–14 (Jan. 2, 1987) ..... p. 1156.

Volume II:

Illinois:
IL87–9 (Jan. 2, 1987) ..... p. 149.
New Mexico:
NM87–1 (Jan. 2, 1987) ..... pp. 690–692, pp. 695–696, pp. 698,703.

Volume III:

Idaho:
ID87–4 (Jan. 2, 1987) ..... pp. 162–163.
Montana:
MT87–1 (Jan. 2, 1987) ..... p. 180.
Oregon:
OR87–1 (Jan. 2, 1987) ..... pp. 278–292.
Utah:
UT87–3 (Jan. 2, 1987) ..... pp. 318–320.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The

Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 14th day of July 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-17212 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-19, 813]

Termination of Investigation; MacKintosh-Hemphill International, Inc.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 17, 1987 in response to a worker petition which was filed on behalf of workers at Mackintosh-Hemphill International, Incorporated, Pittsburgh, Pennsylvania.

An active certification covering the petitioning group of workers remains in effect (TA-W-19,631). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 23rd day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-17426 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19, 611]

Dismissal of Application for Reconsideration; Walled Lake Door Co.

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Walled Lake Door Company, Gilabend, Arizona. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19, 611; Walled Lake Door Company, Gilabend, Arizona (July 23, 1987).

Signed at Washington, DC this 24th day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-17427 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-30-M

Office of Federal Contract Compliance Programs

Debarment; Bruce Church, Inc.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment, Bruce Church, Inc.

SUMMARY: This notice advises of the debarment of Bruce Church, Inc., as an eligible bidder on Government contracts and subcontracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Leonard J. Biermann, Acting Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-3325, Washington, DC 20210 (202-523-9475).

SUPPLEMENTARY INFORMATION: On June 30, 1987, pursuant to 41 CFR 60-30.37, the Secretary of Labor issued a final administrative Decision and Order: (1) Finding Bruce Church, Inc., in violation of Executive Order 11246, as amended (30 FR 12319, September 28, 1965; 32 FR 14303, October 13, 1967; 43 FR 46501, October 5, 1978), section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012), and their respective implementing regualtions; (2) cancelling all federal contracts and subcontracts and all federally-assisted construction contracts and subcontracts of Bruce Church, Inc., and of its officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise; and declaring Bruce Church, Inc., and its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise ineligible for the award of any Government contracts or subcontracts and ineligible for extensions or other modifications of any existing Government contracts or subcontracts. A copy of the Decision and Order is attached.

The debarment from future Government contracts and subcontracts is effective immediately. The contract cancellation part of the Order will not become effective until the relevant contracting agencies have been consulted in accordance with section 209(a)(5) fo Executive Order 11246, as amended by Executive Order 12086.

Signed July 22nd, 1987, Washington, DC.

William E. Brock,

Secretary of Labor.

Date: June 30, 1987.

Case No. 87-OFC-7.

In The Matter of United States Department of Labor, Office of Federal Contract Compliance Programs, *Plaintiff*, v. *Bruce Church, Inc.*, Defendant.

Before: The Secretary of Labor.

Final Decision and Order

This action was filed by Plaintiff Office of Federal Contract Compliance Programs (OFCCP) under Executive Order No. 11,246, as amended, section 503 of the Rehabilitation Act of 1973, as amended (section 503), 29 U.S.C. 793 (1982), section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (section 402), 38 U.S.C. 2012 (1982), and the expedited hearing procedures at 41 CFR 60-30.31-60-30.37 (1986). Plaintiff alleged that Defendant Bruce Church, Inc., a grower of lettuce and other produce, was a government contractor covered by Department of Labor regulations implementing Executive Order 11,246, section 503, and section 402 and that Defendant failed to submit its written affirmative action program (AAP) upon request. *See* 41 CFR Chapter 60; 41 CFR 60-1.40, 60-2.2 60-250.5, 60-741.5, 60-60.3. Defendant asserted that it is not covered by the requirement to develop, maintain, implement and submit upon request, affirmative action programs under the Executive Order, these statutes and the Department of Labor Regulations because it does not have and has not had, during the relevant time period, a government contract for $50,000 or more.

After a hearing, Administrative Law Judge (ALJ) Alexander Karst submitted a Recommended Decision and Order (R.D. and O.) to me rejecting Defendant's arguments and recommending that Defendant's contracts be cancelled and that Defendant be declared ineligible for future contracts. R.D. and O. at 4. The

ALJ found that Defendant was covered by the written affirmative action program requirement of the regulations by virtue of Blanket Purchase Agreements (BPA) between Defendant and the Defense Department since 1981, under which the annual value of orders varied from about $180,000 to over $1 million. R.D. and O. at 2–3. The ALJ held that, under the authority of the Secretary's decision in *OFCCP* v. *Star Machinery Co.*, 83–OFCCP–4 (September 21, 1983), the Blanket Purchase Agreements, rather than individual orders placed under them, are contracts, the value of which is measured by the total amount of orders the parties reasonably anticipated to be placed during the life of the contract.

Defendant filed exceptions to the ALJ's recommended decision, asserting that *Star Machinery* is inapplicable to the facts of this case (Exception No. 2), that *Star Machinery* was incorrectly decided (Exceptions 1 and 3) and that the sanction recommended by the ALJ (referred to by Defendant as a "remedy") was improper (Exception No. 4). Plaintiff filed exceptions to the ALJ's recommended sanction and to one finding of fact.

The only distinction between the Blanket Purchase Agreements here and those in *Star Machinery* urged by Defendant is that the price of goods is not specified in the BPA. I would note that it is not entirely clear that the price to be paid by the government for the goods involved in *Star Machinery* was specified in the BPA's. Defendant there was obligated to charge the government the price charged to its most favored customers for each item. *Star Machinery* at 3. Presumably, that price could vary depending on such factors as the manufacturer's cost of production or volume discounts.

In any event, however, failure to specify price in a contract does not necessarily make it unenforceable. Uncertainty as to price is not fatal if the parties agree on a practical, objective method of setting the price. 1 A. Corbin, Contracts, § 97 at 424 (1963). "If there is a 'market price' for the goods or services that are the subject of agreement, it is sufficient that the agreement is for payment at the market price." *Id.* § 98 at 435 (citing numerous cases). That was precisely the manner in which prices were set here, that is, they were set by the prices published in the produce industry's Market News. R. D. & O. at 2.

Defendant argues that *Star Machinery* was incorrect in holding that the BPAs constitute a contract for purposes of coverage under the written affirmative action program requirement, but that each individual call placed under a BPA is a separate contract. Defendant also asserts that, by specifying in the regulations that individual contracts aggregating over $10,000 in any 12 month period triggers applicability of the Equal Opportunity Clause, 41 CFR 60–1.5, the necessary implication is that such contracts may not be aggregated for purposes of the written affirmative action program requirement.

Defendant's first argument was fully considered and squarely rejected in *Star Machinery*, at 4–5, and Defendant has not presented any new arguments on that point to persuade me to reach a different conclusion. An argument similar to the textual analysis Defendant urges here was made in *Star Machinery*, i.e., that by specifying in 41 CFR 1.40(a)(2) and 60–2.1(a)(2) which kinds of contracts may be aggregated to reach $50,000, the implication is that aggregation of other kinds of contracts is not permitted. But, as the Secretary said in *Star Machinery*, at 4, "the Blanket Purchase Agreement *itself* constitutes *one* contract which could reasonably be expected, based on past experience, to exceed $50,000." (Emphasis added.) Thus, there is no aggregation of contracts other than that provided for in the regulations.

Defendant suggests that the intent of the regulations was to limit applicability of the written affirmative action program requirement because it is an expensive, time consuming obligation. I agree that considerations of time and expense of compliance were factors considered in establishing the $50,000 threshold. But those factors suggest that contractors such as Defendant, doing hundreds of thousands of dollars of business with the government each year, were intended to be covered by the AAP requirement because they are more capable of carrying the burden that obligation imposes. It would be incongruous, indeed, if a small business with one contract for just $50,000 had to develop an AAP, but Defendant, with over three and a half million dollars of business with the government under its BPAs since 1981 did not. *See United Biscuit Company of America* v. *Wirtz*, 359 F.2d 206, 210, n.7 (D.C. Cir. 1965); *reh'g denied* (1966), *cert. denied*, 86 S.Ct. 1861 (1966). For these reasons, I reject Defendant's argument that the AAP requirement puts an undue burden on it.

Finally, Defendant offers no support for its assertion that the sanction recommended by the ALJ is too harsh. Here, unlike *Star Machinery*, the question of coverage was well settled when OFCCP requested Defendant's AAP. As the court held in *Uniroyal, Inc.* v. *Marshall*, 482 F.Supp. 364 (D.D.C. 1979) upholding immediate debarment of a contractor for refusal to comply with discovery orders in an administrative hearing under Executive Order 11,246 "[e]ffective enforcement, in turn, depends, first, on access to the employment, personnel, and similar records of the contractors; and second, on the availability of meaningful sanctions when such access is denied." Id. at 375.

Accordingly, Plaintiff's exception to the recommended sanction of the ALJ is granted.[1] Defendant's exceptions to the Recommended Decision and Order of the ALJ are denied, and it is ordered that all of Bruce Church, Inc.'s Federal and federally assisted contracts and subcontracts shall be cancelled and Bruce Church, Inc., its officers, subsidiaries, and successors, shall be ineligible for the award of any government contracts or subcontracts and shall be ineligible for extensions or other modifications of any existing Government contracts or subcontracts until Defendant has satisfied the Secretary of Labor that it is in compliance with the provisions of Executive Order 11,246, section 503, and section 402, and the rules, regulations, and orders issued thereunder which have been found to have been violated in this case.

So ordered.

William E. Brock,

Secretary of Labor.

Washington, DC.

Certificate of Service

Case Name: *United States Department of Labor, Office of Federal Contract Compliance Programs*, v. *Bruce Church, Inc.*

Case No.: 87–OFC–7

Document: Final Decision and Order

A copy of the above-referenced document was sent to the following persons on *June 30, 1987.*

Pam Horton.

Certified Mail

Office of Federal Contract Compliance Programs, U.S. Department of Labor.

[1] The record supports OFCCP's exception to the ALJ's finding of fact that all the BPAs since 1981 contained the notation "N.A." next to the AAP requirement on the printed standard form BPA. Only the BPA for 1985 contains that notation. Plaintiff's exception on this point is granted. On the other hand, Defendant is correct in pointing out that the other contracts in the record had a box checked which said "the contractor has not previously had contracts subject to the written affirmative action programs requirement. . . ." In any event, the ALJ was correct in holding that the contracting agency had no authority to waive these requirements of the regulations.

FPB, Room C-3325, 200 Constitution Avenue NW., Washington, DC 20210
Daniel Teehan, Esq., Regional Solicitor, Office of the Solicitor, U.S. Department of Labor, P.O. Box 36017, Federal Bldg., 450 Golden Gate Avenue, San Francisco, CA 94102
Judith A. Kaufman, Esq., Office of the Solicitor, U.S. Department of Labor, Room N-2464, FPB, 200 Constitution Avenue NW., Washington, DC 20210
M.T. Payne, Vice President, Bruce Church, Inc., P.O. Box 80599, Salinas, CA 93912-0599
Marion I. Quesenbery, Esq., Pressler & Quesenbery, P.O. Box 2130, Newport Beach, CA 92658
Joseph M. Hogan, Asst. Regional Administrator for OFCCP/ESA/USDOL, Room 9418, 450 Golden Gate Avenue, San Francisco, CA 94102
Arnold B. Myers, Esq., Abramson, Church & Stave, 17 East Gabilan Street, Salinas, CA 93901
Honorable Alexander Karst, Office of Administrative Law Judges, 211 Main Street, San Francisco, CA 94105
Honorable Nahum Litt, Office of Administrative Law Judges, Suite 700, 1111 20th Street NW., Washington, DC 20036.

[FR Doc. 87-17424 Filed 7-30-87; 8:45 am]
BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-171-C]

Petition for Modification of Application of Mandatory Safety Standard; BethEnergy Mines Inc.

BethEnergy Mines Inc., P.O. Box 143, Eighty-Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75-305 (weekly examinations for hazardous conditions) to its Mine No. 33 (I.D. No. 36-00840) located in Cambria County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that certain areas of the mine have experienced bad roof conditions, roof falls, bottom heaves and water accumulations and cannot be safely traveled. Rehabilitation of these areas would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish monitoring stations where certified persons would make methane and air readings on a weekly basis. Methane will not be allowed to accumulate in the return air course beyond legal limits. Access to and from the measuring stations will be kept in a travelable and safe condition. A date board will be located at each measuring station. Date, time, area, velocity, and quantity of air, as well as methane percentages will be recorded in an official book on the surface.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Acting Associate Assistance Secretary for Mine Safety and Health.

Date: July 22, 1987.

[FR Doc. 87-17417 Filed 7-30-87; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-87-146-C]

Petition for Modification of Application of Mandatory Safety Standard; Bowling Mountain Coal Co.

Bowling Mountain Coal Company, P.O. Box 1006, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.C. No. 15-14701) and its Mine No. 3 (I.D. No. 15-15792), both located in Whitley County, Kentucky. The petition if filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuing monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 21, 1987.

[FR Doc. 87-17418 Filed 7-30-87; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-87-152-C]

Petition for Modification of Application of Mandatory Safety Standard; Buck Mountain Coal Company No. 2

Buck Mountain Coal Company No. 2, R.D. #4, Box 357 B, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its Buck Mountain Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes undergound a self-contained self-rescue device approved by the Secretary which is adequate to protect such persons for one hour or longer.

2. The mine is always damp to wet. There are only two pieces of electrical equipment, one of which is a small pump located at the foot of the slope.

3. Petitioners states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: July 21, 1987.

[FR Doc. 87-17419 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-161-C]

Petition for Modification of Application of Mandatory Safety Standard; Colket Coal Co.

Colket Coal Company, P.O. Box 32, Saint Clair, Pennsylvania 17970 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Sharp Mount No. 2 Mine (I.D. No. 36-07761) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed, they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 22, 1987.

[FR Doc. 87-17420; Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-173-C]

Petition for Modification of Application of Mandatory Safety Standard; Consolidation Coal Co.

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Shoemaker Mine (I.D. No. 46-01436) located in Marshall Country, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that the area of the mine in which the pump is located is part of the main haulage line through which coal, supplies, and equipment are transported and part of the work force travels. This area of the mine is wet. The pump operates daily, and when it is broken down or off, water can rise over the track rails within a few hours.

3. As an alternate method, petitioner proposes that:

(a) The pump will be totally enclosed in a fireproof housing. The doors on the enclosure will be fireproof;

(b) An automatic fire suppression device will be installed in the pump house which will be activated by heat sensors;

(c) Electrical circuits will be installed and maintained; and

(d) No oil or combustible materials will be stored in the pump station.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: July 22, 1987.

[FR Doc. 87-17421 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-157-C]

Petition for Modification of Application of Mandatory Safety Standard; Wilton Contracting

Wilton Contracting, HC 81, Box 2114, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Wilton Contracting Mine (I.D. No. 15-15786) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three-wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualifed person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 21, 1987.

[FR Doc. 87-17422 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-147-C]

Petition for Modification of Application of Mandatory Safety Standard; Wolf-Creek Collieries Co.

Wolf-Creek Collieries Company, P.O. Box 179, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 4 Mine (I.D. No. 15-04020) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar-workings.

2. Petitioner states that the longwall mining systems will increase in width, which will require additional horsepower to power the longwall system, nominally 1950 to 2500 horsepower. In order to supply power to such a mining system from a power system limited to 1,000 volts, the following problems arise.

(a) The ampacity requirements at 1,000 volts are such that very large and heavy cables must be used. These large, heavy cables can cuase congested work space and handling problems. Accident information indicates that a large number of electrical-related injuries are strains and sprains incurred during cable handling;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be applied to the face conveyor; and

(c) A diminished safety factor as the interrupting limits of the available circuit breakers at 1,000 volts is approached.

3. As an alternate method, petitioner proposes to use high-voltage (not to exceed 2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 22, 1987.

[FR Doc. 87-17423 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting; Correction

Notice was given on July 20, 1987 in the **Federal Register** (Vol. 52, No. 138 page 27267) that the Advisory Committee on Construction Safety and Health, established under section

107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (26 U.S.C. 656) will meet on August 4 and 5 (and August 6 if necessary), 1987 in Room C2318 Francis Perkins Building, Department of Labor, Washington, DC. The meeting is open to the public and will start at 9:00 a.m. each day.

The agenda for this meeting is corrected to read as follows: A briefing/update by The National Institute for Occupational Safety and Health (NIOSH) on confined spaces; an update on the building collapse in Bridgeport, Connecticut; proposed rules on respiratory protection; review of draft revision to existing rule on steel erection; and a review of proposed rule on excavations. Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, Third Street and Constitution Avenue NW. Washington, DC. 20210. Telephone: 202-523-8615.

The official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N-3670, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of July 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87-17534 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-7052] et al.

Proposed Exemptions; Sechrist-Hall Company Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4075(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Sechrist-Hall Company Profit Sharing Plan (the Plan) Located in Corpus Christi, Texas

[Application No. D-7052]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain unimproved real property (the Real Property) to Sechrist-Hall Company (the Employer), provided the price paid for the Real Property is not less than the greater of its fair market value on the date of sale or the total acquisition and holding costs incurred by the Plan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 65 participants and total assets having a fair market value of $1,100,537 as of September 30, 1986. The trustee of the Plan and decision-maker with respect to the Plan's investments is Citizens State Bank of Corpus Christi, Texas. The Employer, which is principally located in Corpus Christi, Texas, is engaged in the roofing and sheet metal work business.

2. Since 1967, the assets of the Plan have been heavily invested in real estate. In 1983, the Plan's real estate-related holdings were placed in three parcels of real property, three real estate-related notes and interests in a bank collective investment fund which had approximately one-half of its assets invested in mortgage notes. Pursuant to an investigation of the Plan conducted in 1983 by the Dallas Area Office (the Dallas Area Office) of the Department, the Plan fiduciaries were advised to refrain from engaging the Plan in additional local real estate-related investments until such time as the real estate investments, in conjunction with

the Plan's other investments, did not represent more than 25 percent of the Plan's assets. In furtherance of this recommendation, the Plan fiduciaries agreed to reduce the Plan's real estate holdings and to diversify the Plan's investments.

3. The Plan is in the process of divesting and diversifying its real estate holdings. At present, the Plan holds an unimproved parcel of land containing seven vacant lots. The Real Property, which is referred to as the "Southview Lots", is located in the 4500 Block of Southview Drive, Corpus Christi, Texas in the Russell Industrial Park. The Real Property is adjacent to the Employer's business premises and to other property owned by the Employer. The Plan acquired the Real Property for investment purposes on March 29, 1977 from Southview Corporation, an unrelated entity. The Plan made a lump sum cash payment of $34,060.

Since the time it has owned the Real Property, the Plan has paid total real estate taxes of $4,399 and total appraisal fees of $321. In addition, since the time it has held the Real Property, the Plan has not permitted such property to be used or leased by anyone including parties in interest. At present, the Real Property is unencumbered.

4. Because the Plan's original investment objectives of either reselling the Real Property at a profit to an unrelated party or of developing and leasing the Real Property to an unrelated lessee have not materialized, an administrative exemption is requested to permit the Plan to sell the Real Property to the Employer. The Plan will sell the Real Property to the Employer for a cash price equal to the higher of the: (a) the fair market value of the Real Property, the appraisal of which takes into account any value attributable to proximity of the Real Property to the Employer's premises; or (b) $38,780, consisting of the Plan's cost of such land ($34,060), the total real estate taxes the Plan has paid on the Real Property since 1977 ($4,399) and the total appraisal fees with respect to the Real Property ($321). The Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale. In addition, the Employer represents that the proposed sale of the Real Property for the sum of the acquisition price plus the holding costs incurred by the Plan will not result in a contribution to the Plan exceeding the limitations set forth in section 415(c) of the Code.

5. The Real Property was initially appraised by Mr. Terrence F. Wood (Mr. Wood), M.A.I., S.R.A. and Ms. Claire Collins (Ms. Collins), R.M. Candidate, independent appraisers affiliated with Terrence F. Wood and Company of Corpus Christi, Texas. In an appraisal report dated December 3, 1985, Mr. Wood and Ms. Collins determined that the Real Property had a fair market value of $37,400 as of November 11, 1985.

In addition to the Wood-Collins appraisal, the Real Property was valued by Messrs. Paul J. Koepke, M.A.I., S.R.E.A. and David Cheek, Staff Appraiser (Messrs. Koepke and Cheek), both of whom are independent appraisers associated with Corpus Christi Appraisal Service (formerly, Koepke and Associates) of Corpus Christi, Texas. On December 6, 1985, Messrs. Koepke and Cheek placed the fair market value of the Real Property at $35,000.

In an updated appraisal report dated May 7, 1987, Mr. Koepke appraised the Real Property at $29,750 and he stated that the recession in the oil and gas industry had had an adverse effect on business in the Corpus Christi area as well as on industrial use property such as the subject Real Property. Mr. Koepke was also of the opinion that the Real Property has a unique value to the Employer by reason of its proximity to the Empoloyer's business premises. he said it is probable to concede that a premium should be required of the Employer since the Real Property adjoins other property owned by the Employer and will permit additional street access to the Employer. In addition, Mr. Koepke indicated that he believes the Real Property will enhance the overall value of the Employer's business premises. However, he cautioned that in no event should the premium increase the sales price to such an extent that the total cost for the Real Property exceeds $35,000.

6. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time Transaction for cash, (b) the Plan will not incur any real estate fees or commissions in connection therewith; (c) the Real Property will be sold for the greater of its fair market value as determined by an independent appraiser or the total acquisition and holding costs incurred by the Plan; and (d) the sale will enable the Plan to comply with a diversification recommendation of the Dallas Area Office and allow the Plan to achieve greater liquidity.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523– 8883. (This is not a toll-free number.)

G. Snidow, Inc., Restated Employee Pension Benefit Plan (the Plan) Located in Ruidoso, New Mexico

(Application No. D–7087)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a purchase of unimproved real property by the Plan from g. Snidow, Inc. (the Employer), a disqualified person with respect to the Plan, provided the Plan pays no more than fair market value for the property and the transaction represents no more than 25 percent of the assets of the Plan at the time of purchase.[1]

Summary of Facts and Representations

1. The Employer was incorported in July 1976 for the purpose of producing, owning and selling art work. Gordon Snidow (Snidow) is the sole owner of the Employer. The Plan is a defined benefit pension plan which was established in July 1981. Snidow and his wife, Sue Snidow, are the only participants in the Plan. Investments in the Plan are commingled on behalf of the two Plan participants. The total assets of the Plan were $421,445 as of June 30, 1986.

2. The Employer owns two tracks of unimproved land (the Property) located four miles north of Ruidoso, New Mexico, consisting of approximately five acres each. The tracts are contiguous and were purchased in December 1982 from a party unrelated to Employer. The

[1] Because Gordon Snidow is the sole owner of the Employer and he and his wife are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

Property has been idle since the time of purchase. An appraisal was made on the Property on September 10, 1986, by Armand L. Smith (Smith), a real estate appraiser located in Clovis, New Mexico. Smith states that his firm is independent of the Employer and the Plan. According to Smith, the Property is located in a highly desirable upper income recreational home area, and its highest and best use would be for development of recreational or residential homes. The Property is in the general vicinity of Alto Village which has a golf course, club house and a number of luxury summer homes. Placing emphasis on the comparable sales approach to value, Smith estimates that the current fair market value of the Property is $120,000.

The Plan proposes to purchase one tract, approximately five acres, of the Property from the Employer for $60,000, i.e., one-half the appraisal price. The applicant believes that the proposed purchase will be advantgeous to the Plan because of the potential for appreciation in value. According to the applicant, the land will not be used by the Employer or any party in interest but represents a good investment because the land is located in a very desirable vacation and resort area which is expected to experience further development as the economies of Texas and Eastern New Mexico improve.

4. The purchase will be entirely for cash and the Plan will pay no fees or commissions in regard to the transaction. The Plan will pay one-half the appraisal price stated in the application or fair market value at the time of purchase, whichever is lower. A statement will be obtained from Smith at the time of the transaction as to whether the land has changed in value since the date of appraisal. Based on the most recent available data, the transaction will represent about 14.2 percent of the assets of the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (1) The Plan will pay no more than fair market value for the Property at the time of purchase, based on an independent appraisal; (2) the purchase will be for cash and the Plan will pay no fees or commissions in regard to the purchase; (3) the transaction will account for less then 25 percent of the assets of the Plan; and (4) the applicant believes that the purchase represents a good investmant for the Plan because of the potential for appreciation in value.

Notice to Interested Persons

Because Snidow is the applicant and he and his wife are the only participants in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Wabash-Lagrange Steel Company Plan and Trust (the Contribution Plan) Located in Toledo, Ohio

(Application No. D–7059)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Contribution Plan of real estate trust shares (the Shares) in Landsing Institutional Properties Trust V (LIPT–V) to Wabash-Lagrange Steel Company (the Employer), the sponsor of the Contribution Plan, for a sale price of $25,000; provided that such sales price is no less than the fair market value of the asked price for the Shares on the over-the-counter NASDAQ market, as published in the *Wall Street Journal (WSJ)* on the date of sale.

Summary of Facts and Representations

1. The Plan was originally established by the Employer as a defined benefit plan (the Benefit Plan). Subsequently, effective January 1, 1984, the Benefit Plan was amended and restated as a profit sharing defined contribution plan. The Contribution Plan covers all non-collective-bargaining-unit employees. As of December 31, 1986, there were 61 participants in the Contribution Plan, which had total assets of approximately $586,750. The trustees of the Contribution Play (the Trustees) are Gordon Levine and Joel Levine who are both participants in the Contribution Plan, are each 50% shareholders of the employer, and function as president and executive vice president, respectively, of the Employer.

2. In August 1983, the Trustees on behalf of the Benefit Plan purchased through an unrelated registered broker-dealer 2,500 Shares in LIPT–V, an unrelated party, for a total purchase price of $25,000. The LIPT–V portfolio consists of investments in business and shopping facilities in Oklahoma, Colorado, Texas, Washington, Oregon, and Idaho. Four (4) of the investments of LIPT–V are in directly owned parcels of real property and seven (7) are convertible loan investments in real property. Following the restatement of the Benefit Plan in 1984, the Contribution Plan became holders of the Shares in LIPT–V. On seventeen different occasions between October 14, 1983 and January 15, 1987, the 2,500 LIPT–V Shares held either by the Benefit Plan or the Contribution Plan were increased by a total of 690.799 Shares through dividend reinvestments. It is represented that the additional Shares were allotted by LIPT–V as dividend reinvestments and were not additional purchases made by the Trustees.[2] The Contribution Plan currently holds a total of 3,190.799 Shares which constitute approximately less than 3% of its assets.

3. It is represented that from August 1983, when the Benefit Plan initially acquired the Shares at a price of $10.00 per Share until December 1986, the value of the Shares rose to a high of $11.00 per share in January 1985. However, in January 1986, the price per Share dropped from $9.50 to a low in December 1986 of $5.00 per Share. Currently, the Employer represents that the fair market value of the Units is the asked price of $4.00 per Share on the NASDAQ over-the-counter market, as published in the *WSJ*. The Employer wishes to protect the participants in the Contribution Plan from the poor performance of LIPT–V since January 1986 and proposes to purchase all of the Shares held by the Contribution Plan on the date of sale for the higher of $25,000 or the fair market value of the Shares as published in the *WSJ* on the date of sale. At a price of $25,000 for 3,190.799 Shares, the approximate price per Share is $7.84 per Share. It is represented that the Trustees intend to invest the sale proceeds from the Shares in a mutual conversion fund with a fixed rate of return, which is currently 8.6%. It is represented that the Contribution Plan

[2] The Department is expressing no opinion herein as to whether or not the initial acquisition of Shares, the subsequent receipt of additional Shares as dividend reinvestments, or continued holding by the Benefit Plan or the Contribution Plan of the Shares constituted a violation of any of the fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act.

will not pay any commissions or other expenses in connection with the sale.

4. In summary, the Employer represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because:

(a) The sale of the Shares represents a one-time transaction for cash;

(b) The purchase price will be higher of the $25,000 original purchase price of the Shares or the fair market value of the Shares on the date of sale as published in *WSJ*;

(c) The Contribution Plan will not pay any commissions or other expenses in connection with the sale; and

(d) The sale proceeds from the Shares will be invested in a mutual conversion fund with a fixed rate of return.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provision of the Internal Revenue Code, including Sections 401(a)(4), 404, and 415.[3]

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Gary J. Guttmann, D.D.S., Inc., Profit Sharing Plan and Trust (the Profit Sharing Plan) and the Gary J. Guttmann, D.D.S., Inc. Pension Plan and Trust (the Pension Plan; Collectively, the Plans) Located in Cleveland, Ohio

[Application Nos. D-7164 & D-7165]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of certain parcels of undeveloped real estate (the Property) by the individually directed accounts (the Accounts) of Gary J. Guttmann, D.D.S. (Dr. Guttmann) in the Plans to Dr. Guttmann, a party in interest with respect to the Plans, provided that the sales price for the Property is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plans are a profit sharing plan and a money purchase pension plan which, as of June 30, 1986, had total assets of $149,667.63 and $180,297.68, respectively. Both of the Plans had four participants as of June 30, 1986. The trustee of the Plans is Bank One, Cleveland, N.A. (the Trustee).

2. The Plans are sponsored by Gary J. Guttmann, D.D.S., Inc. (the Employer). The Employer is an Ohio professional corporation, located at University Hospital Health Center, Willoughby, Ohio, engaged in the practice of clinical dentistry. Dr. Guttmann is an officer and director of the Employer. Dr. Guttmann also owns 100% of the outstanding shares of the voting common stock of the Employer.

3. Under the terms of the Plans, the participants have the right to direct the Trustee as to the investment of their plan account balances.

In October 1977 and September 1978, the Trustee acquired the Property for the Accounts, pursuant to Dr. Guttmann's direction, for a total purchase price of $142,400. An undivided 60% interest in the Property is held by the Trustee for the Account in the Profit Sharing Plan and the remaining 40% interest is held by the Trustee for the Account in the Pension Plan. All expenses associated with the holding of the Property are charged solely to the Accounts, in proportion to their respective ownership interests.

4. The Property consists of three parcels of undeveloped land, totalling approximately 54.17 acres, located at the intersection of Vrooman Road and Interstate Route 90, Leroy Township, Ohio. The applicant states that the Property is vacant and has not been leased to, or otherwise used by, Dr. Guttmann or any other party in interest. The applicant states further that all three parcels of the Property were acquired from unrelated parties.

The Property borders another parcel of unimproved land owned by Dr. Guttmann individually (the Adjacent Property). The applicant states that in recent months, several offers have been received from unrelated parties to develop the Property and the Adjacent Property. All of the offers received would require equity participation by the landowner for the development project to proceed. The Trustee and Dr. Guttmann have concluded that the Accounts should not enter into such a project as a co-venturer with a party in interest.

5. The Property was appraised on March 12, 1987, by Thomas R. Bowen (Mr. Bowen) of Ostendorf-Morris Company, an independent real estate appraiser in Cleveland, Ohio, as having a fair market value of $158,000. By letter dated June 11, 1987, Mr. Bowen state that consideration was given in the appraisal to the possible special value of the Property to Dr. Guttmann as a result of his ownership of the Adjacent Property. Mr. Bowen represents that the appraised value of $158,000 incorporates the value to Dr. Guttmann considering his ownership of the Adjacent Property.

6. Dr. Guttmann proposes to purchase the Property from the Accounts for $158,000 in cash, in accordance with Mr. Bowen's appraisal. No brokerage commissions or other selling expenses will be incurred by the Accounts with respect to the sale. In addition, the transaction will allow the Accounts to reinvest the sale proceeds in investments which yield greater returns.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Accounts will receive the fair market value for the Property as determined by an independent, qualified appraiser; (c) the Accounts will not pay any commissions or other expenses in connection with the transaction; and (d) Dr. Guttmann, the only participant in the Plans to be affected by the proposed transaction, has determined that the transaction is in the best interests of the Accounts.

Notice to Interested Persons

Because Dr. Guttmann is the only participant in the Plans to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[3] It is represented that the difference between the purchase price and the fair market value of the LIPT-V Shares will be treated as trust earnings to be allocated like other trust earnings on the basis of participant account balances. The Employer maintains that even if the earnings on the sale are treated as an annual contribution to the Contribution Plan, a violation of the limits set by the Internal Revenue Code section 415 or the discrimination provisions of section 401(a)(4) will not result.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of July 1987.

Elliot E. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-17451 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 87-68; Exemption Application No. D-6757 et al.]

Grant of Individual Exemptions; David L. Smith Trust Fund-Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

David L. Smith Trust Fund-Profit Sharing Plan (the Plan) Located in Ramona, California

[Prohibited Transaction Exemption 87-68; Exemption Application No. D-6757]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease by the Plan of certain real property to David L. Smith (Mr. Smith) dba SMV Insurance Agency, a disqualified person with respect to the Plan,[1] provided that the terms and provisions of the lease are no less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 12, 1987 at 52 FR 22560.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Ralph Korte Enterprises Profit Sharing Plan (the Plan)

(Prohibited Transaction Exemption 87-69; Exemption Application No. D-6938)

Exemption

The restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of real property located at 822 Broadway, Highland, Illinois, to Mr. Ralph Korte, a party in interest with respect to the Plan, provided that all the terms of the transaction were as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the transaction was consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

[1] Since Mr. Smith, a self-employed individual, is the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510-3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

proposed exemption published on May 19, 1987 at 52 FR 18761.

EFFECTIVE DATE: April 30, 1987.

FOR FURTHER INFORMATION CONTACT: Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Dayton Area Building and Construction Industry Investment Plan (the Program) Located in Dayton, Ohio

[Prohibited Transaction Exemption 87–70; Exemption Application Nos. D–7003 and D–7004]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed participation by employee benefit plans in construction loans through the Program where such loans are already committed to by certain lending institutions to parties in interest with respect to such plans, provided that the terms of the loans are not less favorable to the plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described in the notice of proposed exemption, are complied with during the operation of the Program.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1987 at 52 FR 11783.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 5975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of July, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–17452 Filed 7–30–87; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources Section) to the National Council on the Arts will be held on August 18–20, 1987, from 9:00 a.m. to 5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

July 28, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–17454 Filed 7–30–87; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music/Solo Recitalists Presenters Section) to the National Council on the Arts will be held on August 26–28, 1987, from 9:00 a.m.–6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 28, 1987 from 10:00 a.m.–12:30 p.m. The topics for discussion will include guidelines, the Five-Year Planning Document and other policy issues.

The remaining sessions of this meeting on August 26–27, 1987, from 9:00 a.m.–6:00 p.m. and August 28, 1987 from 9:00 a.m.–10:00 a.m. and from 1:30 p.m.–6:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

July 28, 1987.

[FR Doc. 87–17453 Filed 7–30–87; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-369 and 50-370]

Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Duke Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF-9 and NPF-17, issued to Duke Power Company (the Licensee), for operating of the McGuire Nuclear Station, Units 1 and 2 located in Mecklenburg County, North Carolina.

The amendments would revise the Technical Specifications (TSs) to incorporate the ventilation system of the Equipment Staging Building (ESB) as a new gaseous effluent release point, to specify limiting conditions for operation and surveillance requirements for this ventilation system and its monitoring instrumentation, and to add associated requirements to the gaseous waste sampling and analysis program.

Specifically, TS Figure 5.1-3 "Site Boundary for Gaseous Effluents," which shows locations within the Exclusion Area Boundary for radioactive gaseous effluents released to unrestricted areas, would be revised to reflect the addition of the ESB. Changes to TS Table 3.3.-13 "Radioactive Gaseous Effluent Monitoring Instrumentation" would add minimum channel operability requirements applicable during gaseous effluent releases, and associated actions required with the number of operable channels less than specified, for the noble gas activity monitor (EMF-59), flow rate monitor, and sampler minimum flow device of the ESB ventilation system. Similarly, changes to TS Table 4.3-9 "Effluent Monitoring Instrumentation Surveillance Requirements" would add surveillance requirements (channel check, source check, channel calibration frequency, and analog channel operational test frequency) for these same three monitors, applicable at all times except when the ventilation system isolation valve is closed and locked. TS Table 4.11-2 "Radioactive Gaseous Waste Sampling and Analysis Program" would be revised to reflect the addition of the ESB as new item 4c, and to reflect sampling and analysis requirements corresponding to those presently specified for the Radwaste Facility Vent (item 4a) and Contaminated Materials Warehouse (item 4b).

An additional change would correct inconsistent names for the same structure; the reference to "Contaminated Materials Warehouse" in TS Table 4.11-2 (item 4b) and to "Contaminated Parts Storage Warehouse" in Figure 5.1-3 would both be changed to "Contaminated Parts Warehouse."

These requests are in accordance with the licensee's applications for amendment dated May 4 and July 2, 1987.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments 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 previosuly evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has recently completed construction of an ESB located outside the Unit 2 Containment equipment hatch and adjacent to the Fuel Building. The purpose of the ESB is to provide increased laydown area for the Containment during outages; storage of outage equipment; equipment decontamination; disassembly, servicing and assembly of reactor coolant system components; and environmental protection for equipment and personnel during an outage. The need for the ESB results from limited space for such activities required during an outage and which are presently performed in the Containment, Spent Fuel Building and Hot Machine Shop. Typical activities which would be conducted inside the ESB include vessel head stud cleaning, valve maintenance, cutting of discontinued piping (such as the upper head injection piping) into smaller sections for storage or shipment, and parts and component repair such as reactor coolant pump internals replacement or motor repair. The licensee finds that performing such activities in the ESB would result in a reduction in radiation exposure to workers, reduced outage time and a safer working environment.

Because the planned ESB activities involve dry brushing, cutting, grinding and welding of contaminated components and such activities create airborne contamination, the ESB includes a heating, ventilation and air conditioning (HVAC) system with a pre-filter and a high efficiency particulate absolute (HEPA) filter to collect and remove particulates prior to release of exhaust gases to the atmosphere through the new ESB HVAC discharge vent. The ESB also includes a contaminated parts wash down area with provisions to route potentially contaminated liquids to existing station liquid radwaste treatment systems. The planned ESB activities, if not conducted in the new ESB, would be performed elsewhere in the plant (as is presently the case). Thus, the proposed change would not result in a significant change in the amounts or types of radioactive material in effluents released from the station or associated doses. The only solid waste generated due to ESB usage, that would not otherwise be generated, would result from periodic changeout of the pre-filter and HEPA filter units; this would add less than 100 cubic feet of waste per year, which is an insignificant addition to McGuire's annual solid waste generation total which, in 1986, was 28,194 cubic feet.

The changes to Tables 3.3-13 and 4.3-9 would add the system noble gas activity monitor, flow rate monitor, and sampler minimum flow device to the TSs. The changes add TS requirements on the system identical to Items 8 and 9 of the tables (the Contaminated Parts Warehouse ventilation system and the Radwaste Facility ventilation system, respectively). The monitor on the ESB is of similar design and would function under similar conditions as the monitors on the Contaminated Parts Warehouse and the Radwaste Facility. The specification requires the operability of the monitor during gaseous effluent releases with sampling and flow estimates required if the monitor is inoperable. The surveillance required is the same as for the Contaminated Parts Warehouse and the Radwaste Facility ventilation systems and again, the system and operational conditions would be similar. This similarity is also the basis for the proposed change to Table 4.11-2 which would require additional sampling and analysis of the released effluents. This will require that total dose rate as calculated using methodology and parameters of the Offsite Dose Calculation Manual be maintained within the existing limits specified in TS 3.11.2.1. The proposed change to Figure 5.1-3 to designate the new gaseous effluent release point, coupled with the requirements of existing TS 3.3.3.9 (Tables 3.3-13 and

4.3–9) and 3.11.2.1 (Table 4.11–2) would ensure control of effluent releases from the facility to as low as is reasonably achievable levels.

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards consideration by providing certain examples (51 FR 7744). One of the examples (i) of actions involving no significant hazards consideration regards amendments for a purely administrative change to TSs, a change in nomenclature, or a change to achieve consistency throughout the TS. The change to TS Table 4.11–2 (item 4b) and to TS Figure 5.1–3 to correct the name of the Contaminated Parts Warehouse fits this example. The remaining changes do not match the examples. However, the staff has reviewed the licensee's submittal and finds that the ESB is an independent, free standing structure with no rigid connection to adjacent structures. It houses no safety related equipment and serves no function for accident prevention or mitigation. During fuel movement, the Containment equipment hatch will be closed in accordance with existing and unchanged TS 3.9.4 to prevent any release from Containment to the ESB in the event of a fuel handling accident. Therefore, the changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. As discussed above, the change also would not result in a significant increase in the amounts, or a significant change in the types, of any effluents that may be released offsite, and there would be no significant increase in individual or cumulative occupational exposure. Accordingly, the Commission proposes to determine that the requested license amendments involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail 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 the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 31, 1987, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, 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 petititons are filed during the last ten days (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to B.J. Youngblood, Director, Project Directorate II–3: Petitioner's name and telephone; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petititons and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspections at the Commissions Public Document Room, 1717 H Street NW., Washington, DC, and the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 28th day of July 1987.

For the Nuclear Regulatory Commission.

Darl Hood,

Project Manager, Project Directorate II–3, Division of Reactor Projects, I/II.

[FR Doc. 87–17416 Filed 7–30–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; General Public Utilities Nuclear Corp.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to facility operating license No. DPR–73 issued to General Public Utilities Nuclear Corporation (the licensee) for operation of Three Mile Island Nuclear Station Unit 2 located in Dauphin County, Pennsylvania.

The licensee requested the amendment, including associated changes in the Appendix A Technical Specifications for Unit 2, in a letter dated February 25, 1987 and revised by a letter dated April 13, 1987. The amendment would delete the current prohibition on disposal of accident-generated water imposed by Technical Specifications 1.17, 3.9.13 and 3/4.9.13.

As a result of the 1979 accident at Three Mile Island Unit 2, about 2.1 million gallons of radioactively contaminated water are projected to be accumulated at the TMI–2 site by the endpoint of the current cleanup program. The water, referred to as accident-generated water contains tritium, relatively small amounts of strontium–90 and cesium–137, trace amounts of other radionuclides, and nonradioactive boric acid and sodium hydroxide. The accident-generated water consists of water contaminated directly by the March 28, 1979 accident and additional water from system in-leakage and other additions which have become commingled with the original accident-contaminated water. Since the accident, this water has been processed through specially designed demineralizer systems to reduce its radioactivity content, and has been stored in the plant and utilized in carrying out various cleanup activities (e.g., decontamination flushes, and shielding). The licensee has now proposed a method for disposal of the entire volume of accident-generated water.

In March 1981, the NRC staff issued the Final Programmatic Environmental Impact Statement (PEIS) on the TMI–2 cleanup. In the PEIS the staff addressed, based on the available information, the impacts of future disposal of the accident-generated water. The Commission, in an April 27, 1981 Policy Statement (46 FR 24764) accompanying the issuance of the PEIS, stated that any future proposal for disposition of the accident-generated water shall be referred to the Commission for approval.

On July 31, 1986 the licensee proposed a plan to evaporate the accident-generated water by forced heating at the TMI site over a period of about 2½ years. On December 29, 1986 the NRC staff issued for comment an updated Draft Supplement No. 2 to the PEIS on this issue. The draft supplement assessed the environmental consequences of the licensee's proposed disposal method as well as a number of alternatives. Following a 90-day public comment period, the staff prepared the Final Supplement No. 2 which includes discussion and appropriate disposition of the public comments. In Final Supplement No. 2, dated June 1987, the NRC staff concluded that the licensee's proposed method of water disposal and eight alternative methods evaluated could each be implemented without significant environmental impact.

Prior to issuance of the proposed license amendment, which would remove the prohibition for disposal of the accident-generated water, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 3, 1987, the licensee may file a request for hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the peititioner's right under the Act 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 is required to 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, pursuant to 10 CFR 2.714(b). 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.

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 Services 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 addresed to Dennis M. Crutchfield, Director, Division of Reactor Projects III/IV/V & Special Projects, Office of Nuclear Reactor Regulation, Washington, DC 20555: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's proposal dated July 31, 1986, the licensee's application for amendment dated February 25, 1987 and revised April 13, 1987 and the NRC staff's Final Supplement No. 2 to NUREG-0683 dated June 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 27th day of July 1987.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, Three Mile Island Cleanup Project Directorate, Division of Reactor Projects III/IV/V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87–17415 Filed 7–30–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary Systems; Meeting;

The ACRS Subcommittee on Auxiliary Systems will hold a meeting on August 18, 1987, Room 1167, 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:

Tuesday, August 18, 1987–8:30 A.M. until 2:00 P.M.

The Subcommittee will discuss the heating, ventilating, and air conditioning (HVAC) system malfunctions and their impact on safety systems. In addition, it will discuss problems associated with instrument air systems, AEOD findings concerning the instrument air system malfunctions and its recommendations to alleviate this problem.

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.

Date: July 28, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–17442 Filed 7–30–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, Chapter 35), this notice announces a request to extend a public information collection. Mail Reinterview, OFI Form 10, is completed by individuals who have been interviewed by an OPM investigator during the course of a personnel investigation. It asks questions regarding the performance of the investigator. It is estimated that 3,500 individuals will respond annually for a total burden of 350 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received on or before August 14, 1987.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Peter Garcia, (202) 632–6181.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–17402 Filed 7–30–87; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 27, 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:

AT&T Credit Corporation
Currency Exchange Warrants (expiring July 1, 1992 (Yen) (File No. 7–0293))

E—II Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–0294)

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 August 17, 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. 87–17440 Filed 7–30–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 27, 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:

Lorimar-Telepictures Corporation
Common Stock, $1.00 Par Value (File No. 7–0295)

Navistar International Corporation (Holding Company)
Common Stock, No Par Value (File No. 7–0296)

UtiliCorp United Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7–0297)

Baker Hughes Incorporated (Holding Company)
Common Stock, $1.00 Par Value (File No. 7–0298)

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 August 17, 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. 87–17441 Filed 7–30–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15900; File No. 812–6796]

Community Program Loan Trust No. 1987 A; Application

July 29, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Community Program Loan Trust No. 1987 A ("Trust" or "Applicant").

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 6(e), from all provisions of the 1940 Act other than sections 26 (with certain exceptions), 36, 37 and (to the extent necessary to implement the above sections of the 1940 Act) 38 through 53 thereof.

Summary of Application: Webster & Sheffield, as attorneys on behalf of the Trust (to be formed) seek a conditional order of exemption to permit the issuance and sale by the Trust of senior and subordinated debt securities and senior and junior certificates of beneficial interest in the Trust, collateralized by certain loans originated by the Department of Agriculture, Farmers Home Administration ("FmHA"), in connection with the Federal government's pilot loan asset sale program.

Filing Date: The application was filed on July 17, 1987 and amended on July 24, and July 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on August 14, 1987. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues contested. Serve Applicants with the request, either personally, or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC: 450 Fifth Street, NW., Washington, DC 20549; Applicant: c/o Webster & Sheffield, 237 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Fran Pollack, Staff Attorney (202) 272–3024 or Karen L. Skidmore, Special Counsel (202) 272–3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3202 (in Maryland (301) 258–4300).

Applicant's Statements and Representations

1. The Applicant is a Trust to be created by a Declaration of Trust to be dated on and as of the date of the closing of the sale of the Bonds (as defined below) by Shawmut Bank N.A., as Trustee, (the "Trust Agreement") and the "Issuer Trustee," respectively). The Applicant will be formed to effect the sale to the private sector by the United States of America, acting through FmHA, of certain loans originated by FmHA and administratively designated as Community Facility loans and Water and Waste loans (the "Community Program Loans" or "Loans") and held in the Rural Development Insurance Fund administered by FmHA.

2. As part of the Federal government's pilot loan asset sale program described below, FmHA has been directed by Congress to sell a portion of the Community Program Loans prior to the closing of the Federal government's fiscal year ending September 30, 1987. Specifically, section 1001(a) of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, 100 Stat. 1874 ("Budget Act"), taken together with The Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub. L. 99–591, 100 Stat. 3341 (1986), require FmHA to sell the loans in such amounts as to realize not less than $1,025,500,000 in net proceeds. In addition, because the Budget Act anticipates that servicing of the Loans will be transferred from FmHA to the private sector, it requires prospective purchasers of the Loans to demonstrate an ability or resources to provide servicing of the Loans necessary to ensure the continued performance of borrowers thereunder. The Applicant will contract with General Electric Credit Corporation ("GECC") as the master servicer of the Loans.

3. The proposed transaction has been designed to implement the objectives of the Budget Act and the Guidelines developed by a Federal inter-agency task force by: (i) Providing for the sale of the Loans without recourse to the Federal government, other than for breach of certain representations and warranties with respect to the Loans, (ii) providing for the transfer of servicing responsibilities for the Loans from FmHA to a private sector loan servicer, as described below, and (iii) ensuring that interest on the securities issued to finance the acquisition of the Loans by the Applicant (and thus, in effect, the future interest payments on the Loans themselves) will be subject to full Federal income tax.

4. The proposed transaction that is the subject of this application involves the issuance of securities by the Applicant to finance the Applicant's purchase of the Loans from FmHA. First, the Loans will be selected at random from a pool consisting of each Community Program Loan that meets certain eligibility criteria. Among such criteria are: (1) That the Loan in question is not delinquent, (ii) that the proceeds of such Loan have been fully disbursed by FmHA, and (iii) that such loan is not subject to a request by the borrower that FmHA approve the assumption of the Loan by another party or the subordination of an FmHA lien. Pursuant to a loan sale agreement (the "Loan Sale Agreement") between FmHA and the Applicant to be executed on behalf of the Applicant by the Issuer Trustee, FmHA will sell the Loans to the Applicant in exchange for: (1) The cash proceeds from the issuance of certain senior debt securities (the "Class A Bonds") and subordinated debt securities (the "Class B Bonds") (the Class A Bonds and the Class B Bonds, collectively, the "Bonds"), and (ii) senior and junior certificates evidencing 100% of the beneficial interest in the Applicant (the "Certificates"). FmHA may itself receive the Class B Bonds rather than the cash proceeds depending upon market conditions at the time of the sale. If FmHA does initially receive the Class B Bonds, it would expect to sell them in the future. Although FmHA will be the initial owner of 100% of the Certificates, it intends to sell the entire beneficial interest as soon as in its judgment it is prudent to do so.

5. In the Loan Sale Agreement, FmHA will make certain representations and warranties as to the Loans and their transfer, and the Applicant will have the right to return non-conforming Loans ("Defective Loans") to FmHA and demand that FmHA transfer to the Applicant substitute Loans of at least equivalent bond value and, as nearly as practicable, with equivalent cash flow characteristics and maturities. The Federal government may require that certain representations and warranties capable of being specifically verified expire prior to maturity of the Bonds, and any Loan determined to be a Defective Loan as a result of the breach of an expired representation or warranty will not be eligible for substitution and will remain as asset of the applicant.

6. The Class A Bonds will be secured by a first priority perfected security interest in the Loans pursuant to an indenture (the "Class A Indenture") between the Issuer Trustee and the trustee for the holders of the Class A Bonds (the "Class A Indenture Trustee"). The Class A Indenture Trustee will be a bank meeting the requirements of section 26(a)(1) of the 1940 Act. The Class A Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization not affiliated with the Applicant (the "Rating Agencies") and will be offered and sold to the public by a group of underwriters managed by Shearson Lehman Brothers Inc., Salomon Brothers Inc. and Morgan Stanley & Co. Incorporated. The Class A Bonds will be issued in series having different maturities.

7. The Class A Bonds will bear interest at fixed rates and have maturity dates (subject to permitted prepayments). Payments will be made on semi-annual payment dates (each, a "Payment Date"). In addition to possessing rights to payment senior to the holders of the Class B Bonds and the holders of the Certificates, the Class A Bonds will benefit from the existence of a liquidity reserve fund (the "Liquidity Reserve Fund"). The Liquidity Reserve Fund will be funded in whole or in part with a portion of the proceeds of the Applicant's sale of the Bonds, and will be maintained over the life of the Class A Bonds at a specified percentage of the outstanding principal amount of the Class A Bonds (so that the amount of the Liquidity Reserve Fund will decline as the principal amount of the Class A Bonds decreases), which percentage may be reduced based on the payment performance of the Loans over time, all as specifically determined at the time of issuance of the Class A Bonds and disclosed in the related prospectus.

8. The Class B Bonds will be subordinated in right to payment to the claims of the Class A Bonds. The Class B Bonds will be secured by a subordinated lien on the Loans held by the Applicant pursuant to an indenture (the "Class B Indenture") between the

Issuer Trustee on behalf of the Applicant and the trustee for the holders of the Class B Bonds (the "Class B Indenture Trustee"). The Class B Indenture Trustee will be a bank meeting the requirements of section 26(a)(1) of the Act. Like the Class A Bonds, the Class B Bonds will bear interest at a fixed rate, and will have a definite maturity date (subject to certain prepayments). Principal and interest will be payable semi-annually, on the Payment Dates for the Class A Bonds. Until payment in full of the Class A Bonds, the holders of the Class B Bonds will not have the right to cause a default under the Class B Indenture if cash flows from the Loans are insufficient to make any payment of interest and principal in full when due. No decision has been made respecting a rating application for the Class B Bonds; they may be offered and sold without any rating from the Rating Agencies.

9. The Certificates will represent the beneficial interest in the Applicant and accordingly will entitle holders to shares of the cash flow of the Applicant after the funding of certain funds and all principal and interest payments on the Bonds then due. The Certificates will have no interest rate and will not have a definite maturity date.

10. Distributions with respect to the Certificates will be made annually on dates that coincide with Payment Dates for the Bonds. On and after each Payment Date that is not an annual distribution date for the Certificates, all amounts allocable to the Certificates will be held by the Class B Indenture Trustee as a reserve for the benefit of the Class B Bondholders until the next Payment Date, and will be applied to the payment of principal and interest on the Class B Bonds on such Payment Date to the extent that amounts for such payments are not otherwise available. Such amounts may be held by the Class B Indenture Trustee in a separate reserve fund, and to the extent such amounts are not needed on any such Payment Date to make payments to Class B Bondholders, they will be distributed to Certificateholders.

11. There will be two classes of Certificates, Senior and Junior. On each annual payment date, holders of Senior Certificates will be entitled to receive their pro-rata shares of the available funds up to an amount specified in the Trust Agreement with respect to such annual payment date. Holders of Junior Certificates will be entitled to their pro-rata shares of the remainder of the available funds. The Certificateholders are not expected to bear liability for expenses or other obligations of the Applicant. Deposits in the funds and accounts are expected to be sufficient to cover any and all expenses and other liabilities of the Applicant.

12. Collection of principal and interest payments on the Loans and other servicing functions will be performed by GECC or a successor servicer as master servicer (the "Master Servicer") under a master servicing agreement (the "Master Servicing Agreement") to be entered into among GECC, the Issuer Trustee, the Class A Indenture Trustee and Class B Indenture Trustee. The Master Servicer and the Issuer Trustee will contract with subservicers that will continue certain servicing activities currently carried out by FmHA, including inspections of security property, provision of technical assistance to borrowers, etc. designed to ensure the continued performance of the Loans.

13. Under the Master Servicing Agreement, amounts collected under the Loans by the Master Servicer will be promptly remitted to the Class A Indenture Trustee. These amounts will initially be deposited in an account designated the P&I Account under the Class A Indenture (the "P&I Account"). On each Payment Date, funds in the P&I Account will be applied in the following order or priority:

(a) Funding the Expense Fund form which certain expenses of the Applicant are to be paid, including trustees' fees, master servicer and any sub-servicers' fees, and legal accounting and auditors' fees.

(b) Payment of accrued interest and any overdue interest to the Class A Bondholders;

(c) Payment of principal and any overdue principal to Class A Bondholders then entitled to such payment;

(d) Maintenance of the Liquidity Reserve Fund to protect Class A Bondholders against cash flow shortfalls;

(e) Maintenance of a "Protective Advance and Extraordinary Expenses Fund" in order to continue FmHA's practice of providing protective advances to protect the value of Community Program Loan security property and in order to fund expenses incurred in enforcing remedies against defaulting Loan obligors;

(f) Payment of any indeminities owed by the Applicant to the Master Servicer, any of the Trustees or the underwriters except for indemnities against liability for a party's own willful misfeasance, bad faith, gross negligence or reckless disregard of duty;

On each Payment Date, after the above required payments, the amount remaining in the P & I Account will be transferred to an account maintained by the Class B Indenture Trustee, pursuant to the Class B Indenture, and will be applied in the following priority:

(a) Payment of accrued interest and any overdue interest to the Class B Bondholders;

(b) Payment of principal and any overdue principal to the Class B Bondholders; and

(c) Payment of residual cash flow to the holders of Certificates (subject to being retained in a reserve for the Class B Bondholders for six months).

14. In addition to the funds and accounts listed above and described in the application, the Class A Indenture Trustee will maintain a temporary account (the "Adjustment Account") in which a portion of the proceeds from the sale of the Bonds will be retained for a period expected not to exceed 90 days following the closing of the proposed transaction, in order to provide for a final accounting of amounts due to FmHA as of the closing date in consideration of the sale of the Loans. Pursuant to the Loan Sale Agreement, this accounting could result in a post-closing adjustment payment to either FmHA or the Applicant, depending upon the incidence of Loan prepayments and defaults between the date as of which a schedule of Loans to be sold will be prepared (currently expected to be June 30, 1987) and the closing date of the Loan sale. All amounts remaining in the Adjustment Account after the post-closing adjustment payment is made will be deposited in the P&I Account.

15. It is currently expected, on the basis of a written offer submitted by Morgan Guaranty Trust Company of New York ("Morgan"), that Morgan will enter into an investment agreement (the "Investment Agreement") at the closing of the sale of the Class A Bonds with the Applicant, the Class A Indenture Trustee and the Class B Indenture Trustee under which Morgan will agree to hold all amounts in the Expense Fund, the P&I Account, the Liquidity Reserve Fund and the Protective Advance and Extraordinary Expenses Fund. The rates under the Investment Agreement will be fixed and remain in effect for the term of the agreement. Morgan will not be able to assign its obligations under the Investment Agreement except to its parent corporation, and then only if its parent's long-term debt rating by the Rating Agencies is at least as high as Morgan's. The Investment Agreement will terminate if the Class A Indenture Trustee or the Issuer Trustee should

inform Morgan that any Rating Agency rating the Class A Bonds has indicated that such Rating Agency has determined that the continuation of the Investment Agreement with Morgan will adversely affect such Rating Agency's rating of the Class A Bonds. In the event of termination of the Investment Agreement, the Applicant, the Class A Indenture Trustee and the Class B Indenture Trustee will enter into a substitute investment agreement that would not result in a reduction in the rating of the Class A Bonds, if such an agreement can be procured. Any such substitute investment agreement would be permitted only with (i) a national bank or banking institution organized under the laws of any state or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State banking commission or similar official, or a foreign bank subject to substantially the same supervision under the International Banking Act of 1978 or (ii) an insurance company subject to the supervision of the insurance commissioner, bank commissioner or any agency or officer performing like functions of any State or the District of Columbia or (iii) the Federal National Mortgage Association or the Government National Mortgage Association or such other similar entity as will be identified in the prospectus relating to the Class A Bonds or amendment to the application.

16. If no such substitute investment agreement can be procured, amounts in the Expense Fund, the P&I Account, the Adjustment Account, and the Liquidity Reserve Fund will be held by the Class A Indenture Trustee and will be invested only in Eligible Investments. Such Eligible Investments will be limited to (a) obligations issued by, and supported by the full faith and credit of, the United States and (b) repurchase agreements with respect to such obligations and overcollateralized on a basis that will not result in a reduction in the ratings of the Class A Bonds. Amounts in the Protective Advance and Extraordinary Expenses Fund and any other other debt service or reserve fund or account for the benefit of the Class B Bondholders will be held by the Class B Indenture Trustee and may be invested only in Eligible Investments. Such Eligible Investments will be limited to (i) the investments described above that are held by the Class A Indenture Trustee and (ii) any demand or time deposit or certificate of deposit which is fully insured by the Federal Deposit Insurance Corporation.

17. The amount of principal and interest paid on each Payment Date with respect to Bonds may vary to some degree depending on the incidence of prepayments on the Loans. If Loans are prepaid, the amount of the prepayment will be allocated to the Class A Bonds and, assuming that the Liquidity Reserve Fund is fully funded, to the Class B Bonds in proportion to their respective initial principal balances. The amount allocated to each Class will then be used to pay Bonds, in the case of Class A Bonds in the order of maturity of each series. Because the Bonds will be initially sold at a discount, prepayments of principal at par resulting from Loan prepayments are expected to cover reinvestment risk under foreseeable market conditions, and thus should be to the Bondholders' advantage.

18. The Bonds will not be redeemable at the option of the Bondholders. Certificateholders will have the right to direct the Applicant to cause the redemption of all outstanding Bonds of either class at par (plus accrued interest) at any time after the aggregate outstanding principal balance of that class is not more than 10 percent of its original aggregate outstanding balance, and provided that no Class B Bonds will be redeemable while any Class A Bonds remain outstanding. In the view of the underwriters, this will not significantly affect Bondholders (to whom this right will be fully disclosed) because of the relatively small amounts and late redemptions involved.

19. The value of the Loan Collateral will be at least 107% of the aggregate principal amount of the Class A Bonds. Annual cash flow from the Loans is currently projected to range from 115% to 130% of annual debt service requirements on the Class A Bonds.

20. There will be no conflict of interest between (i) the Class A Bondholders and (ii) the Class B Bondholders or Certificateholders because (a) the Class A Bonds will be issued only if at least one of the Rating Agencies has rated such Bonds in one of the two highest rating categories; and (b) the Class A Indenture subjects the Loan collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any Loan to a first priority perfected security interest in the name of the Class A Indenture Trustee on behalf of the Class A Bondholders. Class B Bondholders and Certificateholders may not, without the consent of any Class A Bondholder affected, (a) change the stated maturity on any Class A Bond (subject to redemption rights described in #18 above); (b) reduce the principal amount, or the rate of interest on any Class A Bond; (c) change the priority of payment of any Class A Bond; (d) permit the creation of a lien ranking prior to or on parity with the lien of the Class A Indenture with respect to the Loans; (e) impair or adversely affect the Loans; or (f) otherwise deprive the Class A Bondholders of the security afforded by the lien of the Class A Indenture. Class B Bondholders and Certificateholders may not alter the Loan collateral. Except to the extent permitted by the limited right to substitute Loans, no substitution is permitted, and in no event will substitution result in a diminution in the value or quality of the Loan collateral. The sale of the Class B Bonds and Certificates will not alter the payment of cash flows under the Class A Indenture, including the amount to be deposited in any reserve fund or other funds or accounts created pursuant to the Class A Indenture to support payments of principal of, and interest on, the Class A Bonds. No Certificateholders will be affiliated with any of the Rating Agencies.

21. The Applicant expects to make certain payments to cover various costs to be paid or reimbursed at the closing of the sale of the Bonds and Certificates, as well as various ongoing costs and expenses, all such costs and expenses being fully described in the application. Should the Applicant expect to make any other payments not described in the application, Applicant will submit an amendment to this application to the Commission requesting that those fees be exempted from the provisions of section 26(a)(2) of the 1940 Act.

22. By its terms, the Trust Agreement will terminate and the Applicant will cease to exist not later than the annual payment date for Certificates following the date on which the last loan is liquidated or paid in full, except in the unlikely event that either of the indentures has not been discharged by such date. It is expected that the final Loan maturity and the final Bond maturity will occur in 2027.

Applicant's Legal Conclusions

1. Although the Applicant will not issue redeemable securities as defined under section 2(a)(32) of the 1940 Act, Applicant has agreed that it will be subject to section 26 as if it were a unit investment trust. However, the Applicant seeks to be exempt from sections 26(a)(2) (B) and (C) to the extent those provisions are inconsistent with the compensation arrangements and payment of costs and expenses described in the application. The Applicant believes that the payment of

those costs and expenses will be fair and reasonable in light of the requirements of the offering and sale of the Bonds and the ongoing servicing requirements for the Loans. Applicant also believes that granting of the requested order will satisfy the provisions of section 26(b) relating to substitution of collateral to the extent Loan substitution is made as described in the application.

2. The requested exemption is necessary or appropriate in the public interest because the Applicant's primary purpose will be to facilitate the sale by FmHA of the Loans as required by the Budget Act. The Budget Act requires the Loan sales both to meet congressional deficit reduction goals and to assist the overall program to reform Federal Credit programs.

3. The requested exemption is consistent with the purposes of the 1940 Act. The limited business purpose of the Applicant and its issuance of securities secured by the Loans obviate the need for the regulatory safeguards provided by the 1940 Act, because the operations of the Applicant do not lend themselves to the abuses against which the 1940 Act is directed.

4. The requested exemption would be consistent with the protection of investors. The Applicant is a limited purpose trust whose only significant assets will be the Loans pledged to secure the Bonds and the funds and accounts described above. The Bondholders' interest will be adequately protected by the disclosure and regulatory provisions of Securities Act of 1933, as amended (the "1933 Act") the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 (the "1939 Act"). The Certificateholders will be protected because the Certificates will be sold only to sophisticated institutional investors described below.

Conditions of the Order

Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Bonds

1. The Class A Bonds will be registered under the 1933 Act and will be rated in one of the two highest bond rating categories by at least one of the Rating Agencies. The Class A Indenture securing the Class A Bonds will be qualified pursuant to the 1939 Act.

2. The Class B Bonds will be either registered pursuant to the 1933 Act or offered and sold in a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act. In either case, the Class B Bonds will be offered and sold in the initial offering only to institutional investors qualifying as "accredited investors" as that term is defined in Rule 501(a) under the 1933 Act and having such knowledge and experience in financial and business matters as to be capable of evaluating the risks of the purchase of the Class B Bonds and with direct and significant experience in making investments in similar asset-backed securities. Such institutional investors may include: Mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other knowledgeable institutional investors as described above which customarily engage in the purchase of asset-backed securities. (Mutual funds will continue to be required to satisfy themselves that purchases of such obligations comply with the provisions of section 12(d)(1) of the 1940 Act.) If the Class B Bonds are registered under the 1933 Act, the Class B Indenture securing the Class B Bonds will be qualified pursuant to the 1933 Act. The Class B Bonds will be initially offered and sold in units of not less than $5,000,000 original principal amount, and subsequent resales or sales in any secondary market will be restricted to sales in units of not less than that original principal amount.

3. The Loans will be assigned to and held by the Class A Indenture Trustee or on behalf of such Indenture Trustee by an independent custodian. Neither the Class A Indenture Trustee nor the custodian will be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act) of the Applicant. The Class A Indenture Trustee will be granted a first priority perfected security interest in and to the Loans. The Class B Indenture Trustee will be granted a subordinated security interest in and to the Loans. No Master Servicer or sub-servicer for the Loans will be affiliated with either the Class A Indenture Trustee, the Class B Indenture Trustee or the Issuer Trustee.

4. The collateral securing the Class A Bonds and Class B Bonds will be limited to Community Program Loans, the funds and accounts as described above and reinvestment income thereon.

5. Other Loans may be substituted for Defective Loans initially pledged as security for the Bonds only in the event that a Loan fails to comply with the FmHA representatives and warranties in the Loan Sale Agreement and described fully and completely in the prospectus included in the registration statement filed in connection with the public offering of the Class A Bonds. If Loans are substituted as security for the Bonds, any substitute Loans must: (i) Be Community Program Loans of at least equivalent bond value and, as nearly as practicable, with equivalent cash flow characteristcs and maturities as the Loans replaced; and (ii) meet the conditions set forth in paragraph A.3. In no event will any such substitution adversely affect the level of collateralization for the Bonds or the quality of the Loan portfolio in terms of the expected payments thereon or other Loan characteristcs that provided a basis for the credit rating for the Class A Bonds.

6. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the 1940 Act.

7. No less often than annually, an independent public accountant will audit the books and records of the Applicant and will report on whether the scheduled payments of principal and interest on the Loans together with reinvestment income thereon at the assumed reinvestment rates will be adequate to pay the scheduled principal and interest on the Class A Bonds. Copies of the accountants' reports will be provided to the Class A Indenture Trustee.

8. If the Class B Bonds are sold in a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act, then each purchaser (other than FmHA if it should initially hold Class B Bonds) of Class B Bonds will represent that it is purchasing such Bonds for investment purposes and not with a view to distribution thereof, in whole or in part, and that it will hold such Bonds in its own name and not as nominee for undisclosed investors. Any purchasers in any resale or secondary market will be limited to institutional investors described above in A.2.

B. Conditions Relating to the Certificates

1. The Certificates will be offered and sold in the initial offering only to, and any subsequent resales and sales in the secondary market will be restricted to, institutional investors qualifying as "accredited investors" as defined in Rule 501(a) of the 1933 Act and having such knowledge and experience in financial and business matters as to be capable of evaluating the risks of the purchase of the Certificates and with direct and signifcant experience in making investments in similar asset-backed securities. Such institutional investors may include: mortage lenders, thrift institutions, commerical and investment banks, savings and loan associations, pension funds, employee

benefit plans, insurance companies, mutual funds, real estate investment trusts or other knowledgeable institutional investors as described above which customarily engage in the purchase of asset-backed securities. (Mutual funds will continue to be required to satisfy themselves that purchases of such obligations comply with the provisions of section 12(d)(1) of the 1940 Act.) The Certificates will be initially offered and sold in units selling for not less than $5,000,000 and subsequent resales and sales in the secondary market will be restricted to sales in units of the same size.

2. The sale of the Certificates will qualify as a transaction not involving any public offering within meaning of section 4(2) of the 1933 Act.

3. Sales of the Certificates in the initial offering will be limited to a maximum of 100 investors and the terms of each sale of a Certificates in the Applicant will prohibit the future transfer of such interest if as a result there would be more than 100 beneficial owners of the Certificates. (Restrictions on the transfer of Certificates to a maximum of 100 investors will be implemented through stop-transfer provisions in the Trust Agreement.)

4. Each purchaser (other than FmHA if it should initially hold Certificates) of Certificates will represent that it is purchasing such interest for investment purposes and not with a view to distribution thereof, in whole or in part, and that it will hold such Certificates in its own name and not as nominee for undisclosed investors.

5. No owner of a Certificate will be affiliated with either the Class A or Class B Indenture Trustee. No holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) interest in the Applicant may be affiliated with the Class A or Class B Indenture Trustee, the custodian of the Loans or the Rating Agency rating the Bonds.

C. Other Conditions

1. The Trust Agreement and/or the Indenture will provide that the Issuer Trustee or an Indenture Trustee shall keep such records and provide such notices as are required by section 26(a)(4) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17569 Filed 7-29-87; 4:29 pm]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. MC 87-13]

Driver's Record of Duty Status

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for exemption.

SUMMARY: In accordance with section 206(f) of the Motor Carrier Safety Act of 1984, 49 U.S.C. App. 2505(f), the FHWA hereby provides notice that it has received three requests for an exemption from the requirements of 49 CFR 395.8 that drivers of commercial motor vehicles in interstate or foreign commerce record their hours of service in their own handwriting on a "record of duty status." In all cases the motor carrier has requested that it be permitted to use an on-board computer which, among other things, will automatically record the driver's duty status.

The requests were made by Central Distribution System, Inc., St. Paul, Minnesota, Calzona Tankways, Inc., Phoenix/Tucson, Arizona, and Wetterau Transportation Inc., Greenville Division, Greenville, Kentucky.

Copies of the petitions for exemption have been placed in the notice number file identified above. Interested parties may comment on these requests.

DATE: Comments must be received on or before August 17, 1987.

ADDRESS: All comments should refer to the notice number at the top of this document and must be submitted (preferably in triplicate) to Room 4205, Office of the Chief Counsel, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2999, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1355, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

(49 U.S.C. App. 2505 and 3102; 49 CFR 1.48)

Issued on: July 23, 1987.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87-17382 Filed 7-30-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: A new routine use for portions of existing records, updated safeguards and authority for the system, an additional system manager for a portion of the records.

SUMMARY: The Department of the Treasury proposes to add a routine use to the Privacy Act system of records, Treasury/OS.002—Treasury Payroll Information System (TPIS) last published at 51 FR 19807 (June 2, 1986). TPIS and PERMITS data, which already includes information on procurement personnel, will be used in implementing the Treasury Acquisition Career System (TRAC). The proposed routine use for this portion of the records will permit the Departmental Offices to disclose procurement-related personnel information to contractors assisting Treasury in the performance of a TRAC function. This notice also includes the authority, safeguards, retention schedule, and system manager for the records included in the TRAC.

DATES: The proposed routine use will become effective as proposed without further notice, 30 days from the date of this publication unless we receive comments on or before that date which would result in a contrary determination.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS, CONTACT: Shirl G. Kinney, Department of the Treasury, Room 1458, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Telephone: (202) 566-9864.

SUPPLEMENTARY INFORMATION: The Treasury Acquisition Career System will allow the Treasury Procurement Executive to:

(1) Profile Treasury's procurement workforce;

(2) Identify procurement training needs;

(3) Determine qualifications for issuance of contracting officers' warrants;

(4) Identify intern positions and track individual progress;

(5) Monitor individual career development plans; and

(6) Assess program effectiveness.

This element of the career system will be implemented by the Department of the Treasury in response to the Office of Federal Procurement Policy (OFPP) Act, as amended (41 U.S.C. 401, et seq.) and Executive Order 12352. The Act (OFPP)

requires the head of each executive agency to "develop and maintain a procurement management program * * * to assure an adequate professional workforce." Executive Order 12352 further provides that such programs shall cover the full range of personnel management functions and result in a highly qualified, well-managed, professional procurement workforce. The Treasury Acquisition Career System is one element of the Procurement Career Development Program implemented by the Department of the Treasury in response to the OFPP Act and the Executive Order.

Additional information has not been added to TPIS or PERMITS as a result of TRAC. The existing data on Department-wide procurement personnel may at times be disclosed to Treasury contractors who may be engaged to assist Treasury in the performance of a function associated with TRAC and who need to have access to TRAC records in the performance of contract work. Although the contract provision of the Privacy Act (5 U.S.C. 522a(m)) requires appropriate wording in the contract for the maintenance of a system of records on behalf of the agency to accomplish an agency function, there may be instances when a disclosure to a contractor is required that may not be covered by the contract provisions of the Act. This routine use has been proposed for such an eventuality.

Disclosures under this proposed routine use are compatible with the Department's personnel management responsibility.

The TRAC data will be accessible only to the Treasury Procurement Executive and other Treasury procurement personnel who have the responsibility for managing Treasury's Career Development Program. Hard-copy files will be maintained in a locked cabinet. In addition, the TRAC records will be purged from TRAC upon an employee's separation from the procurement organization.

The system manager for TRAC is the Career Development Program Manager, Office of Procurement (MMK). The authority for maintenance of the system now also includes the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 401 et seq.) and Executive Order 12352 (March 17, 1982). The TRAC records will also be developed from Treasury procurement or personnel officials and training institutions, in addition to being furnished by the employees. All these minor changes have been reflected in the appropriate categories of the notice.

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

Treasury/OS.002

SYSTEM NAME:

Treasury Payroll Information System.

SYSTEM LOCATION:

The Treasury Payroll Information System and PERMITS systems are located at the ICC Building, 1201 Constitution Avenue, NW., Room 7329, Washington, DC 20220 and a contractor data processing facility, Johnstown Computing Resources, Inc., located at 90 Lulay Street, Johnstown, PA 15094. The Treasury Acquisition Career System is located at Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former personnel data on all employees of the Treasury. (2) Payroll data on all Treasury employees except IRS. (3) Payroll data on Executive Offices of the President; Federal Emergency Management Agency; Federal Trade Commission; National Gallery of Art; National Labor Relations Board; Farm Credit Administration; Commodities Futures Trading Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are two basic components to the system, a personnel component (PERMITS Application) and a payroll component (TPIS), which provide current, year-to-date and historical data on the individuals covered by the system. The separate files in the system consist of payroll records, personnel records, and time and attendance records. Information contained in these records, include such data as:

(1) Employee identification and status data such as name, social security number, date of birth, sex, race and national origin designator, awards received, suggestions, work schedule, type of appointment, education, training courses attended, veterans preference, and military service.

(2) Employee date data such as service computation date for leave, date probationary period began, date of performance rating, and date of within grade increases.

(3) Position and pay data such as position identification number, pay plan, grade, step, salary and pay basis, occupational series, position skill codes, organization location and accounting classification codes.

(4) Payroll data such as earnings, e.g., overtime and night differential; deductions, e.g., Federal, State, and local taxes; bonds and allotments; and time and attendance data.

(5) Tables of data for editing, reporting, and processing any or all personnel pay actions. These include nature of action codes, civil service authority codes, standard remarks, signature table, position title table, financial organization table and salary table.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

The Office of Personnel Management Manual, 50 U.S.C. App. 1705–1707; 31 U.S.C. and Departmental Circulars 115 and 830. The Department of the Treasury Fiscal Requirements Manual; 5 U.S.C. 301; FPM Letter 208–10, Office of Personnel Management; Federal Personnel Manual (Chapter 713 Subchapter 3A); the Office of Federal Procurement Policy Act, as amended (11 U.S.C. 101 et seq.) and Executive Order 12352 (March 17, 1982).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USE:

These records and information in these records may be used:

(1) To furnish the Internal Revenue Service and other jurisdictions which are authorized to tax the employee's compensation with wage and tax information in accordance with a withholding agreement with the Department of the Treasury pursuant to U.S.C. 5516, 5217, and 5520.

(2) To provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal Personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and applicable regulations.

(3) To furnish another federal agency information to effect interagency salary offset; to furnish another federal agency information to effect interagency administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to consumer reporting agencies to obtain credit reports and to debt collection agencies for collection services.

(4) To disclose information to a Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

(5) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena, or in connection with criminal law proceedings.

(6) To disclose information to foreign governments in accordance with formal or informal international agreements.

(7) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(8) To provide information to the news media in accordance with guidelines contained in 28 CFH 50.2 which relate to civil and criminal proceedings.

(9) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(10) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1078, 5 U.S.C. 7111 and 7114.

(11) To provide wage and separation information to another agency such as the Department of Labor or Social Security Administration as required by law for payroll purposes.

(12) To provide information to a Federal, State, or local agency so that the agency may adjudicate an individual's eligibility for a benefit, such as a state unemployment compensation board, housing administration agency and Social Security Administration.

(13) To disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing a statute, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(14) Disclosure of information about particular Treasury employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other monies owed under those programs (i.e., matching for delinquent loans or other indebtedness to the government).

(15) To provide information to Treasury contractors who may be engaged to assist Treasury in the performance of a function associated with TRAC and who need to have access to TRAC records in the performance of contract work. Contractors would be required to maintain the records in accordance with the requirements of the Privacy Act.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982; Debt information concerning a Government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97–385), to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, microfiche, and hard copy. Disbursement records are stored at the Federal Records Center. RETRIEVABILITY: Records are retrieved generally by social security number, position identification number within a bureau and region, or by name. Secondary identifiers are used to assure accuracy of data accessed.

SAFEGUARDS:

Entrance to data center is restricted to only those employees whose work requires them to be there for the system to operate. ID cards are verified to insure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel officers and are subject to the same privacy controls as other personnel documents of like sensitivity. Only the Treasury Procurement Executive and other Treasury procurement personnel with responsibility for managing Treasury's Career Development Program will have access to TRAC data. Hard-copy files will be maintained in a locked cabinet.

RETENTION AND DISPOSAL:

The Treasury Payroll Information System master file is kept on magnetic tape. Hard copies of reports are kept for a period of up to 3 years. Additional payroll data is maintained on microfiche. Employee records are retained in automated form as long as the employee is active on the system (separated employee records are maintained in an "inactive" status within PERMITS for 5 years). The master file is purged of inactive payroll records on a yearly basis. Files are purged in accordance with Treasury Directives Manual TD 80–05.5 "Records Disposition Schedule." Treasury Acquisition Career System automated and hardcopy records will be purged from TRAC upon the employee's separation from the procurement organization.

SYSTEM MANAGER AND ADDRESS:

The Treasury Payroll Information System (TPIS) and PERMITS System Manager is the Director, Office of Personnel/Payroll Systems, Department of the Treasury, Room 2426 Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The TRAC System Manager is the Career Development Program Manager, Office of Procurement (MMK), Department of the Treasury, Room 1458 Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURES:

Individuals wishing to be notified if they are identified in this system or gain access to records maintained in the system must submit a request containing the following elements: (1) Identification of the records system; (2) identification of the category and types of records sought; (3) at least two items of identification (e.g., name and date of birth, employee identification number, date of employment or similar information). Address inquiries to Chief, Disclosure Branch, Department of the Treasury, Room 1015 Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

(See notification procedures above).

CONTESTING RECORD PROCEDURES:

(See notification procedures above).

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record, supervisors, and

non-Federal sources such as private employers. TRAC records will also be developed from Treasury procurement or personnel officials and training institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87-17445 Filed 7-30-87; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Exempt Organizations Advisory Group; Open Meeting

The initial meeting of the Exempt Organizations Advisory Group will be held on Wednesday, September 16, 1987, from 1:00 p.m. to 5:30 p.m. and will continue on Thursday, September 17, from 9:00 a.m. to 3:00 p.m. The meeting will be held in Room M-09 of the Old Post Office Building (The Pavilion), 12th Street and Pennsylvania Avenue, NW., Washington, DC.

Agenda items for the meeting include discussions of the issues contained in proposed regulations under section 501(h) relating to lobbying by public charities and alternative approaches, administrative problems relating to unrelated business income tax compliance and reporting and ways to help solve them, Internal Revenue Code, provisions relating to churches and a determination of the proper role of the Service in interpreting and administering them, the status of proposed legislation affecting lobbying and political activities of charitable organizations, and future meetings and agenda topics.

The meeting on both days will be open to the public. Opportunity for public statements will be provided at the end of the meeting, or at other appropriate intervals, to the extent that time permits.

Brief written comments from members of the public of no more than two double-spaced pages relating to each announced agenda topic will be accepted by the Service for consideration as a discussion item by the Advisory Group. However, comments submitted previously regarding the proposed regulations under section 501(h) should not be resubmitted. Comments should be sent by August 14 to the Assistant Commissioner (Employee Plans and Exempt Organizations), Internal Revenue Service, Room 3408, 1111 Constitution Avenue, NW., Washington, DC 20224.

For additional information contact Robert I Brauer, Assistant Commissioner (Employee Plans and Exempt Organizations), telephone 202-566-3171 (not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 87-17357 Filed 7-30-87; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 147
Friday, July 31, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., August 7, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–17519 Filed 7–29–87; 1:37 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., August 11, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Applications of the Chicago Board of Trade for designation as a contract market in 100-ounce Gold futures and 5,000 ounce Silver futures contracts.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretay of the Commission.
[FR Doc. 87–17520 Filed 7–29–87; 1:37 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., August 11, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–17521 Filed 7–29–87; 1:37 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., August 14, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–17522 Filed 7–29–87; 1:37 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., August 18, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the New York Mercantile Exchange for designation as a contract market in Liquefied Propane Gas futures contracts.
New York Futures Exchange's Preannounced Trading Rules Submission.
Quarterly Objectives—First Quarter, FY 1988.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–17523 Filed 7–29–87; 1:37 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., August 18, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Quarterly Objectives
Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–17524 Filed 7–29–87; 1:37 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., August 21, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–17525 Filed 7–29–87; 1:37 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., August 28, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATERS TO BE CONSIDERED:

Market Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–17526 Filed 7–29–87; 1:37 pm]
BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, August 4, 1987 to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Royal Thrift & Loan Company, an operating noninsured industrial bank located at 11107 West Olympic Boulevard, Los Angeles, California.

Shelton Savings Bank, an operating noninsured savings association located at 427 Howe Avenue, Shelton, Connecticut.

Great Western Savings Bank, a proposed new bank to be located at 191 Mamaroneck Avenue, White Plains, New York.

Applications for Federal deposit insurance and for consent to exercise trust powers:

Thomas McKinnon Bank and Trust Company, an operating noninsured limited purpose trust company located at 188 Route 10, East Hanover, New Jersey, for Federal deposit insurance and for consent to exercise limited trust powers.

Mitsui Trust Bank (U.S.A.), a proposed new bank to be located at One World Financial Center (200 Liberty Street), New York City (Manhattan), New York, for Federal deposit insurance and for consent to exercise limited trust powers.

Taiyo Kobe Bank and Trust Company, a proposed new bank to be located at 350 Park Avenue, New York City (Manhattan), New York, for Federal deposit insurance and for consent to exercise full trust powers.

Request for modification of a condition imposed in granting Federal deposit insurance:

The Merchant Bank of Atlanta, Atlanta, Georgia.

Application for consent to purchase assets and assume liabilities:

The First National Bank of Carmichaels, Carmichaels, Pennsylvania, for consent to purchase certain assets of and assume the liability to pay deposits made in the Washington Branch of Community Savings Association, Monroeville, Pennsylvania, a non-FDIC-insured institution.

Application for consent to merge and to establish one branch:

Merchants and Planters Bank, Raymond, Mississippi, an insured State nonmember bank, for consent to merge, under its charter and title, with The Merchants Bank, Bolton, Mississippi, Bolton, Mississippi, and for consent to establish the sole office of The Merchants Bank, Bolton, Mississippi, as a branch of the resultant bank.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re:
Monthly Report of Actions Under Delegated Authority by the Committee on Liquidations, Loans and Purchases of Assets, June 1, 1987–June 30, 1987.

Memorandum re:
Report of Action Taken Under Delegated Authority

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Mendon State Bank, Mendon, Illinois (2591) (Memo dated July 8, 1987)

Audit Report re:
United Bank of Minneapolis, Minneapolis, Kansas (2592) (Memo dated July 15, 1987)

Audit Report re:
Bossier Bank and Trust Company, Bossier City, Louisiana (2566) (Memo dated July 15, 1987)

Audit Report re:
New Mexico National Bank, Albuquerque, New Mexico (2578) (Memo dated July 8, 1987)

Audit Report re:
St. Joseph Consolidated Office, St. Joseph, Missouri, Cost Center (306) (Memo dated June 15, 1987)

Audit Report re:
Portland Consolidated Office, Portland, Oregon, Cost Center (602) (Memo dated July 8, 1987)

Discussion Agenda:

Status Report on the FDIC's Total Asset Purchase and Assumption Transactions as they regard failed banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Ms. Margaret M. Olsen, Deputy Executive Secretary of the Corporation, at (202) 898–3812.

Dated: July 28, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–17498 Filed 7–29–87; 12:13 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, August 4, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticpated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension of removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that sustantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Applications for Federal deposit insurance:

Atico Bank, an operating noninsured institution located at 101 S.E. Second Avenue, Miami, Florida.

College Savings Bank, a proposed new bank to be located at 5 Vaughn Drive, West Windsor, New Jersey.

Applications for Federal deposit insurance and for consent to merge and to establish three branches:

First Security Bank of Maryland, Baltimore, Maryland, a proposed State nonmember savings bank, for Federl deposit insurance, for consent to merge, under its charter and title, with State Savings and Loan Association, Baltimore, Maryland, a noninsured State savings and loan association in organization which is to be a successor institution to Federal Savings Bank of Maryland, Baltimore, Maryland, a noninsured Federal savings bank, and for consent to establish the three existing branches of Federal Savings Bank of Maryland as branches of First Security Bank of Maryland.

Appeal from an initial denial of a request for records pursuant to the Freedom of Information Act and the Privacy Act of 1974.

Personnel actions regarding appointments, promotions, administatvie pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the

Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Ms. Margaret M. Olsen, Deputy Executive Secretary of the Corportation, at (202) 898–3812.

Dated: July 28, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–17499 Filed 7–29–87; 12:13 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, July 31, 1987.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, 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.

Date: July 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–17500 Filed 7–29–87; 12:13 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, August 5, 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:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Publication for comment of proposed revisions to the Board's Regulation F (Securities of State Member Banks).
2. Publication for comment of a proposed amendment to Regulation U (Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks) to exempt banks, when making loans of $100,000 or less, from executing Form U–1.
3. Proposed extension and revision of the bank merger form (FR 2070).
4. Proposed extension and revision of Notice of Change in Bank Control form (FR 2081).

Discussion Agenda

5. Proposed extension and revision of Forms FR 2083–2083E, Application for Membership in the Federal Reserve System.
6. Proposed amendments to Regulation E (Electronic Fund Transfers) regarding services initiated by non-account-holding financial institutions and processed through the automated clearing house system. (Proposed earlier for public comment; Docket No. R–0578)
7. Proposals regarding the Board's 1987 budget.
8. 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, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: July 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–17488 Filed 7–29–87; 11:27 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 12:30 p.m., Wednesday, August 5, 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. 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.

Date: July 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–17489 Filed 7–29–87; 11:27 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 27901 July 24, 1987].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, July 21, 1987.

CHANGE IN THE MEETING: Additional items.

The following additional items were considered at a closed meeting on Tuesday, July 28, 1987, at 2:30 p.m.

Formal order of investigation.
Status report of judical proceeding.
Post oral argument discussion.

Commissioner Peters, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272–3077.

Jonathan G. Katz,

Secretary.

July 29, 1987.

[FR Doc. 87–17568 Filed 7–29–87; 3:56 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 147
Friday, July 31, 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.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 70625-7125]

Revisions to the Export Administration Regulations Based on COCOM Review

Correction

In rule document 87-16372 beginning on page 27498 in the issue of Tuesday, July 21, 1987, make the following corrections:

1. On page 27501, in the second column, in the entry for item 1203A, in paragraph (c)(3), in the second line, "1,373k" should read "1,373K". In the same entry, in paragraph (d)(2), in the third line, "2,273k" should read "2,273K". In the same column, in the entry for item 1205A, in paragraph (a)(2)(i), in the last line, "297k" should read "297K".

2. On the same page, in the third column, in the fourth line from the bottom, "(a)(2)(i)" should read "(a)(2)(ii)".

3. On page 27504, in the first column, in the 15th line of text from the bottom, "bulldozers of" should read "bulldozers or".

4. On page 27504, in the second column, in the fourth line of text from the bottom, "4.2k" should read "4.2K".

5. On page 27505, in the second column, in the entry for item 1757A, in paragraph (e), in the fourth line, "99.00%" should read "99.99%".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 70626-7126]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronics and Precision Instruments

Correction

In rule document 87-16376 beginning on page 27505 in the issue of Tuesday, July 21, 1987, make the following corrections:

1. On page 27506, in the first column, in the first complete paragraph, in the seventh and eighth lines, "(two weeks after date of publication)" should read "August 4, 1987".

2. On the same page, in the third column, paragraph (a)(v) should read as follows:

* * * * *

"CO_2, CO or CO/CO_2 "lasers" having either of the following characteristics:."

* * * * *

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 70624-7124]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronic Component Assemblies

Correction

In rule document 87-16377 beginning on page 27512 in the issue of Tuesday, July 21, 1987, make the following corrections:

1. On page 27512, in the third column, in the seventh and eighth lines, "(two weeks after date of publication)" should read "August 4, 1987". In the 12th and 13th lines, "(four weeks after date of publication)" should read "August 18, 1987".

2. On page 27516, in the second column, in paragraph (r)(2)(A), "+0.1%" should read "±0.1%".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Benefits Review Board

20 CFR Parts 801 and 802

Organization of the Benefits Review Board and Rules of Practice and Procedure

Correction

In rule document 87-16139 beginning on page 27288 in the issue of Monday, July 20, 1987, make the following corrections:

1. On page 27289, in the second column, in paragraph "l8", in the sixth line, "8-120" should read "B-120".

2. On page 27290, in the first column, in the first paragraph, in the fifth line, "15 U.S.C. 553" should read "5 U.S.C. 553".

§ 801.2 [Corrected]

3. On the same page, in the second column, in § 801.2(a)(2), in the sixth line, "33 FR 90" should read "38 FR 90".

BILLING CODE 1505-01-D

federal register

Friday
July 31, 1987

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 9, 44, and 52
Federal Acquisition Regulation (FAR); Debarment and Suspension Procedures; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 44, and 52

Federal Acquisition Regulation (FAR); Debarment and Suspension Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) are considering changes to the FAR concerning debarment and suspension procedures. Among other things, the revisions would extend debarment and suspension ineligibility to subcontracting, require a certification of eligibility prior to contract or subcontract award, and render contractors ineligible for award Governmentwide upon issuance of a Notice of Proposed Debarment.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 28, 1987 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–24 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

On June 24, 1982, Office of Federal Procurement Policy (OFPP) Letter 82–1 was issued to promote uniform, Governmentwide debarment and suspension procedures. The provisions of the policy letter were implemented within the Defense Acquisition Regulation and the Federal Procurement Regulations and, in 1984, within their successor, the Federal Acquisition Regulation (FAR).

Based upon several years of experience in operating under FAR implementing regulations and pursuant to a study conducted by the General Accounting Office (GAO/NS AD–87–37BR; February 1987), it has been determined that certain revisions are warranted to strengthen debarment and suspension procedures in the public interest while further promoting the Governmentwide uniformity envisioned by OFPP Policy Letter 82–1. The proposed rule would accomplish these objectives by the following revisions:

1. Current provisions in the FAR provide that a contractor proposed for debarment is ineligible for award, pending a final debarment determination, only within the Federal agency proposing debarment. This enables a seriously nonresponsible contractor to continue to receive contract awards from other Federal agencies until a debarment decision is rendered. Consistent with recommendations made by the GAO in its report to Congress, above, the proposed rule provides for Governmentwide ineligibility upon issuance of a Notice of Proposed Debarment by any Federal agency, until such time as a final determination is made concerning a contractor's status. In addition, contractors proposed for debarment would be listed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors, maintained by GSA pursuant to FAR 9.403.

2. By statute, Government contracting officers may award contracts only to responsible contractors. In order to obtain information necessary for these determinations, several agencies require that prospective contractors render a certification concerning their eligibility for award and provide other information pertinent to responsibility. For example, since 1980 GSA has utilized a certification similar to that under consideration (see 48 CFR 552.209–71). The certification used by GSA was approved by OMB under the Paperwork Reduction Act. Recently, DoD published in the **Federal Register** on Thursday, March 6, 1986 (51 FR 7837), a proposed rule prescribing a certificate for use in DoD procurements, and comments received have been considered in drafting the proposed FAR rule which will provide a uniform certificate for use by all Federal agencies. The certificate requirement is consistent with guidelines recently promulgated by OMB for agency use in nonprocurement actions and published in the **Federal Register** on Friday, May 29, 1987 (52 FR 20360).

3. In those cases where subcontracts are made subject to Government consent, current regulations preclude Federal agencies from consenting to subcontracts with firms which are debarred or suspended, or which have been otherwise declared ineligible for award of subcontracts. The proposed rule would extend this policy of debarment/suspension ineligibility to all subcontracts exceeding $25,000 under Federal prime contracts in addition to those contracts made specifically subject to Government consent. The proposed rule includes a flowdown provision and contract clause for verbatim insertion in subcontracts, requiring a certification of eligibility status by prospective subcontractors, upon which higher-tier contractors may rely, unless they have knowledge to the contrary.

4. The proposed rule would enable a debarring or suspending official to simultaneously debar or suspend a contractor from the award of acquisition contracts and from the purchase of Federal personal property under Federal Property Management Regulation 101–45.6. Such coverage is proposed to eliminate dual exclusionary actions.

5. The proposed rule would revise and clarify the definition of affiliation to reflect indicia currently used by the Small Business Administration. Additionally, the definition of contractor has been revised to encompass contracts for carriage under Government and commercial bills of lading. Several other conforming and editorial changes have been made for consistency and clarity.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the U.S. Small Business Administration. The analysis concludes that the certification requirement will not have a significant economic impact because it does not require professional skills for completion, entail recordkeeping requirements, or concern information not normally available to small entities in the ordinary course of business. However, to simplify contract procedures for small purchases and subcontracts not exceeding $25,000, many of which involve small firms, no certification requirement has been imposed for those contract actions.

With respect to exclusion of debarred or suspended firms from subcontracting, and provisions extending ineligibility upon issuance of a Notice of Proposed Debarment, it has not been deemed appropriate nor feasible to establish differing criteria in the case of small entities. However, the number of small

entities who will be affected by these provisions is not deemed substantial, as: (1) Prime contractor purchasing practices generally tend to exclude debarred or suspended firms from acting as subcontractors; (2) Current regulations exclude such firms when prime contracts contain consent to subcontract provisions; and (3) Fewer than 1200 firms of all sizes are currently listed on the Consolidated List as debarred or suspended; available information suggests that the majority of those firms derived their primary Government revenues from direct, prime contractor relationships with the Government.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from the FAR Secretariat, Attn: Margaret A. Willis, Room 4041, GS Bldg., 18th & F Sts., NW., Washington, DC 20405. Comments are invited. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains recordkeeping or information collection requirements with respect to certain aspects of the proposed certification. Accordingly, an approval for paperwork clearance has been requested and submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 9, 44, and 52

Government procurement.

Dated: July 27, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 9, 44, and 52 be amended as set forth below:

1. The authority citation for Parts 9, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATION

2. Section 9.400 is amended by revising paragraph (a)(2) to read as follows:

9.400 Scope of subpart.

(a) * * *

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of "ineligible" in 9.403); and

* * * * *

3. Section 9.402 is amended by revising paragraph (c) and by adding paragraph (d) to read as follows:

9.402 Policy.

* * * * *

(c) When more than one agency has an interest in the debarment or suspension of a contractor, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

4. Section 9.403 is amended by adding alphabetically the definition "Civil Judgment" and by revising the definitions "Affiliates", "Consolidated List of Debarred, Suspended, and Ineligible Contractors", and "Contractor" to read as follows:

9.403 Definitions.

"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a contractor which has the same or similar management, ownership, or principal employees as the suspended or debarred contractor.

* * * * *

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Consolidated List of Debarred, Suspended, and Ineligible Contractors" means a list compiled, maintained, and distributed by the General Services Administration, in accordance with 9.404, containing the names of contractors debarred, suspended, or proposed for debarment by agencies under the procedures of this subpart, as well as contractors declared ineligible under other statutory or regulatory authority.

"Contractor," as used in this subpart, means any individual or other legal entity that (a) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract or (b) conducts business with the Government as an agent or representative of another contractor.

* * * * *

5. Section 9.404 is amended by revising paragraphs (a)(1), (b)(1), (b)(4), and (c)(4); by redesignating the existing paragraph (b)(6) as (b)(7); and by adding a new paragraph (b)(6) to read as follows:

9.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) * * *

(1) Compile and maintain a current, consolidated list of all contractors debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

* * * * *

(b) * * *

(1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;

* * * * *

(4) The effect of the action;

* * * * *

(6) The DUNS No.; and

* * * * *

(c) * * *

(4) In accordance with internal retention procedures, maintain records relating to each suspension, debarment, or proposed debarment taken by the agency;

6. Section 9.405 is amended by revising paragraph (a); by revising the second sentence in paragraph (b); and by adding paragraph (c) to read as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the acquiring agency's head or designee determines that there is a compelling reason for such action (see 9.405–2,

9.406–1(c), and 9.407–1(d)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) * * * Agencies shall not solicit offers from, award contracts to, consent to, or authorize subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from receiving subcontracts exceeding $25,000 unless the acquiring agency's head or designee states in writing that there is a compelling reason for such action (see 9.405–2, 9.406–1(c), and 9.407–1(d)).

7. Section 9.405–1 is revised to read as follows:

9.405–1 Continuation of current contracts.

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the acquiring agency's head or a designee directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) Agencies shall not renew current contracts, consent to subcontracts or waive the prohibition against entering into subcontracts with contractors debarred, suspended, or proposed for debarment or otherwise extend their duration, unless the acquiring agency's head or a designee states in writing the compelling reasons for renewal or extension.

8. Section 9.405–2 is revised to read as follows:

9.405–2 Restrictions on subcontracting.

When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract in excess of $25,000, contracting officers shall not consent to or waive the prohibition against entering into subcontracts with such contractors unless the acquiring agency's head or a designee states in writing the compelling reasons for this approval action. (See 9.405(b) concerning declarations of ineligibility affecting subcontracting.)

9. Section 9.406–1 is amended by revising paragraph (c) and by adding paragraph (d) to read as follows:

9.406–1 General.

* * * * *

(c) A contractor's debarment, or proposed debarment shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d)(1) When the debarring official has authority to debar contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101–45.6, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

10. Section 9.406–2 is amended by revising the introductory text of paragraph (a); by revising paragraph (b); and by redesignating paragraph (c) as (b)(2) to read as follows:

9.406–2 Causes for debarment.

(a) The debarring official may debar a contractor for a conviction of or civil judgment for—

* * * * *

(b) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—

(1) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(i) Willful failure to perform in accordance with the terms of one or more contracts; or

(ii) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

* * * * *

11. Section 9.406–3 is amended by revising paragraph (b)(2); by revising the introductory text of paragraph (c); and by revising paragraphs (c)(6) and (c)(7) to read as follows:

9.406–3 Procedures.

* * * * *

(b) * * *

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

* * * * *

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—

* * * * *

(6) Of the effect of the issuance of the notice of proposed debarment; and,

(7) Of the potential effect of an actual debarment.

12. Section 9.406–4 is amended by revising the third sentence in paragraph (a) and by revising paragraph (c)(2) to read as follows:

9.406–4 Period of debarment.

(a) * * * The period of the proposed debarment, or of any prior suspension, shall be considered in determining the debarment period.

* * * * *

(c) * * *

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

* * * * *

13. Section 9.407–1 is amended by adding paragraph (e) to read as follows:

9.407–1 General.

* * * * *

(e)(1) When the suspending official has authority to suspend contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to FPMR 101–45.6, that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When suspending a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the suspension notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

14. Section 9.408 is added to read as follows:

9.408 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.

(a) When an offeror, in compliance with the clause at 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, the contracting officer shall—

(1) Request such additional information from the offeror as the

contracting officer deems necessary in order to make a determination of the offeror's responsibility (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406–3(a) and 9.407–3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

15. Section 9.409 is added to read as follows:

9.409 Contract clause.

The contracting officer shall insert the clause at 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations and contracts other than those conducted using small purchase procedures of Part 13.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

16. Section 44.102 is amended by adding paragraph (c) to read as follows:

44.102 Policy.

* * * * *

(c) Contractors debarred, suspended, or proposed for debarment are precluded from award of a subcontract in excess of $25,000 (see 9.405–2) by operation of the clause at 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, unless the acquiring agency's head or a designee states in writing the compelling reasons for such a subcontract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. Section 52.209–5 is added to read as follows:

52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

As prescribed in 9.409, insert the following clause:

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Jul 1987)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this clause.

(ii) The Offeror has ( ) has not ( ), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals", for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this clause exist will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this clause. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The Contractor shall not knowingly enter into any subcontract under this contract expected to exceed $25,000 with a subcontractor debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, by any Federal agency, unless authorized by the Contracting Officer.

(f) The Contractor may rely upon the certification of a prospective subcontractor, that it is not debarred, suspended, or proposed for debarment, or declared ineligible for award of subcontracts, by any Federal agency, unless it has knowledge that the certification is erroneous.

(g) Except for awards authorized under paragraph (e) of this clause, if the Contractor knowingly enters into a subcontract expected to exceed $25,000 with a subcontractor debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, the Contracting Officer may terminate this contract for default.

(h) The certification in paragraph (a) of this clause is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate this contract for default.

(i) The Contractor agrees that it shall include the following clause, without modification, in all solicitations and subcontracts expected to exceed $25,000:

Certification Regarding Debarment, Suspension, Proposed Debarment and Ineligibility—Subcontractors (Date)

(1) The Offeror/Contractor, by submission of an offer and/or execution of a contract, certifies to the best of its knowledge and belief, that the Offeror/Contractor is not presently debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, by any Federal agency.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(2) The Offeror shall provide immediate written notice if, at any time prior to subcontract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(3) The Contractor shall not knowingly enter into any subcontract under this contract expected to exceed $25,000 with a subcontractor debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, by any Federal agency, unless authorized by the Government Contracting Officer. The Contractor may rely upon the certification in paragraph (i)(1) above provided by a subcontractor, unless it has knowledge that the certification is erroneous.

(4) Except for awards authorized under paragraph (i)(3) of this clause if the

Contractor knowingly enters into a subcontract expected to exceed $25,000 with a subcontractor debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, by any Federal agency, the Government Contracting Officer may direct, through higher-tier contractors, cancellation of this contract at no cost to the Government.

(5) The certification in paragraph (i)(1) of this clause is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Government Contracting Officer may direct, through higher-tier contractors, cancellation of this subcontract at no cost to the Government.

(6) The Contractor agrees to insert this clause, without modification, including this paragraph (i)(6), in all solicitations and subcontracts expected to exceed $25,000.

(End of clause)

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Friday
July 31, 1987

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 413, 430, and 447
45 CFR Parts 1 and 19
Medicare and Medicaid Programs; Limits on Payments for Drugs; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413, 430 and 447

45 CFR Parts 1 and 19

[BERC-356-F]

Medicare and Medicaid Programs; Limits on Payments for Drugs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule eliminates current Departmental procedures for setting limits on payments for drugs supplied under certain Federal health programs; and revises Medicaid rules concerning the methodology for determining upper limits for drug reimbursement. This rule enables the Federal and State governments to take advantage of savings that are currently available in the marketplace for multiple source drugs. It also maintains State flexibility in the administration of the Medicaid program.

EFFECTIVE DATE: The regulations are effective October 29, 1987. State agencies have 90 days from the publication date of this regulation until the effective date in which to submit a State plan amendment and the required attachment.

FOR FURTHER INFORMATION CONTACT: Anthony Lovecchio, (301) 594-4010.

SUPPLEMENTARY INFORMATION:

I. Background

A. Existing System

In 1976, the Department implemented drug reimbursement rules at 45 CFR Part 19 under the authority of statutes pertaining to upper payment limits for Medicaid and other programs. The authority to set an upper payment limit for services available under the Medicaid program is provided under section 1902(a)(30)(A) of the Social Security Act.

The Department rules are intended to ensure that the Federal government acts as a prudent buyer of drugs under certain Federal health programs. The rules set limits on payments for drugs supplied under Medicaid and other programs. Of the Federal programs involved, these rules have the greatest impact on the Medicaid program. Specifically, these regulations provide that the amount the Department recognizes for drug reimbursement or payment purposes will not exceed the lowest of—

- The maximum allowable cost (MAC) of the drug, as established by HCFA's Pharmaceutical Reimbursement Board for certain multiple source drugs (generic drugs), plus a reasonable dispensing fee;
- The estimated acquisition cost (EAC) of the drug (the price generally and currently paid by providers for a particular drug in the package size most frequently purchased by providers), as determined by the program agency, plus a reasonable dispensing fee; or
- The provider's usual and customary charge to the public for the drug.

The regulations provide that the MAC will not apply if the prescriber has certified in his own handwriting that a specific brand of that drug is medically necessary for the patient.

The regulations at 45 CFR Part 19 also establish within HCFA a Pharmaceutical Reimbursement Board (PRB). The PRB identifies multiple source drugs for which significant amounts of Federal funds are or may be expended and is responsible for establishing the MAC for those drugs. The process by which a MAC is established includes PRB consultation with the Food and Drug Administration (FDA), opportunity for public comment on a proposed notice of the MAC limit published in the **Federal Register**, a public hearing, and publication of the final MAC determination in the **Federal Register**. The PRB sets the MAC at the lowest unit price at which the drug is widely and consistently available. In addition to limiting the level of payment for multiple source drugs, the MAC program tends to promote substitution of lower cost (generic) drug products for brand-name drugs, since the latter are frequently available only at prices higher than the MAC limits.

Similar to the Department regulations (45 CFR Part 19) that set limits to Federal payments for drugs are the Medicaid regulations at 42 CFR 447.331 through 447.334. The regulations at §§ 447.331 through 447.334 limit the amounts that State Medicaid agencies may claim for Federal matching purposes under the Medicaid program. These limits are the same as those specified in 45 CFR Part 19. Thus. the Medicaid agency must claim no more for each drug than the lowest of —

- The MAC of the drug, as established by the HCFA PRB for certain multiple source drugs, plus a reasonable dispensing fee;
- The EAC of the drug (that is, the Medicaid State agency's best estimate of the price generally paid by providers) plus a reasonable dispensing fee; or
- The provider's usual and customary charge to the public for the drug.

The Medicaid regulations also provide that the MAC will not apply if the prescriber has certified in his own handwriting that a certain brand of that drug is medically necessary for the patient.

B. Problems and Concerns

In 1983, a Departmental Task Force was established to review the Department's drug reimbursement regulations at 45 CFR Part 19. Specific concerns presented to the Task Force included—

- The quality of multiple source drugs;
- The interpretation of "widely and consistently available" as related to the process used by the PRB in setting MAC limits;
- The adequacy of drug reimbursement; and
- Problems in administering the MAC and EAC programs (for example, the short time that the Medicaid agencies have to implement MAC limits once they become effective, and the lack of a mechanism for raising the MAC limits quickly when necessary due to changes in the market).

We agree that the process of approving a MAC for a specific drug is lengthy. This has been of concern particularly since the passage of the Drug Price Competition and Patent Term Extension Act of 1984 (Pub. L. 98-417). This law streamlines the FDA approval process for certain drugs. The result of this law is that therapeutically equivalent (generic) drugs will be coming into the marketplace more quickly than in the past. As evidenced by the current MAC program, we are interested in encouraging the use of therapeutically equivalent drugs. We would like to adopt a Medicaid drug policy that would allow us promptly to adjust payment upper limits to reflect the availability of new drug equivalents as they enter the marketplace.

Based on the concerns addressed above and the Department's desire to take advantage of savings that are currently available in the marketplace for multiple source drugs, we published a Notice of Proposed Rulemaking (NPRM) on August 19, 1986 (51 FR 29560). The NPRM announced proposed revisions to our procedures for establishing upper limits for drug payments and provided a 30-day public comment period. On September 18, 1986, we published a second notice in the **Federal Register** (51 FR 33086) announcing an extension of the comment period, the availability of new data to anyone wishing to perform an

independent review and analysis, and clarifications to the proposal.

II. Provisions of the Proposed Regulations

We proposed to remove the Departmental rules at 45 CFR Part 19 that limit drug reimbursement under certain Federal health programs including Medicaid, Medicare, Public Health Service (for example, Indian Health Services), and other Departmental grantees. We proposed the removal of these rules because they have little impact upon programs other than Medicaid and because similar rules exist in the Medicaid regulations. In the NPRM, we noted that to the extent that specific limits are useful for those other programs, other authorities exist for applying the limits.

We also proposed three alternative approaches to the current Medicaid rules (42 CFR 447.331 through 447.334) regarding upper limits for drug reimbursement and invited public comment on all three as well as suggestions for alternatives which would improve any of the three, including possible combinations of options. The three approaches were intended to enable the Medicaid program to take advantage of the savings available in the marketplace for therapeutically equivalent multiple source drugs. We proposed that all three approaches would be subject to "physician override". This means that the upper limits established for multiple source drugs would not apply if the prescribing physician certifies that a brand name drug is medically necessary.

We stated that under the final rule, which would adopt one of these approaches, State agencies would be required for purposes of Federal financial participation (FFP) to adhere to the upper limits set by the adopted approach. However, in accordance with State flexibility in the administration of the Medicaid program, a State agency would be permitted to utilize an alternative drug reimbursement system if aggregate payments under that system would not exceed the upper limits set by the adopted approach. Specifically, the maximum amount of State drug expenditures that would qualify for FFP could not exceed, in the aggregate, the upper limit of payment for certain drugs described in listings established by HCFA under the approach adopted under the final rule.

The three approaches are discussed below and include the Pharmacists' Incentive Program, a proposed revision of the existing MAC program, and the Competitive Incentive Program.

A. Pharmacists' Incentive Program (PhIP)

As proposed, PhIP would have replaced the current Federal MAC program for multiple source drugs. Other drugs would continue to be paid the EAC or the provider's usual and customary charge to the general public, whichever is lower.

We proposed to base PhIP on a specific formula that would establish payment levels above which Federal financial participation (FFP) would not be recognized. A PhIP limit would be established only for those multiple source drugs for which: (1) All of the formulations of the drug approved by FDA have been evaluated as therapeutically equivalent; and (2) at least three suppliers advertise the drug (which has been classified by the FDA as category "A" in the FDA's therapeutic equivalence evaluations publication) in either the *Red Book* or *Blue Book*, whichever we would choose to use. We proposed that the PhIP limit be set at 150 percent of the lowest priced multiple source drug advertised in the *Red Book* or *Blue Book*, whichever is lower. Thus, the pharmacist could be reimbursed the ingredient costs of a drug at 150 percent of the lowest priced multiple source drug plus the State-established dispensing fee. In order to ensure that the PhIP upper limits for multiple source drugs would be reasonable for extremely low cost and high cost drugs, we proposed to set minimum and maximum markups. We proposed a minimum markup of $1.50 over the cost of the least costly advertised drug product and a maximum markup of $4.00 over the cost of the least costly advertised drug product. While PhIP would reimburse drug ingredients at a rate that is slightly above the lowest cost at which they may be obtained, it would have the advantages of being easily administrable (once drug prices are obtained), easily updated for new drug prices, and likely to produce substantial savings for the Medicaid program.

B. Revisions to the MAC Program

We alternatively proposed to apply MAC limits to drugs purchased under the Medicaid program using a revised process. Under that process, we proposed to eliminate the PRB and to streamline the procedures for establishing MAC limits for selected multiple source drugs. Other drugs would continue to be paid for at the EAC plus a dispensing fee, or the provider's usual and customary charge to the general public, whichever is lower.

We proposed that the MAC program be operated directly by HCFA rather than under a special board. We also proposed to continue to use much of the current process for establishing MAC limits. We would continue to publish the proposed MAC limits in the **Federal Register**; utilize a comment period; and after considering all of the comments, publish the final notice in the **Federal Register**. However, the process would be shortened by not conducting a public hearing before the PRB and eliminating the requirement for specific PRB consultation with FDA for each drug.

We proposed three new requirements that we would consider before establishing a MAC limit. The first requirement would be that all of the formulations of the drug approved by the FDA have been evaluated as therapeutically equivalent. The second requirement would be that at least three suppliers advertise the drug (which has been classified by the FDA as category "A" in the FDA's therapeutic equivalence evaluations publication) in the *Red Book* or *Blue Book*. Finally, we specified that we would expect to reduce total State and Federal Medicaid expenditures by at least $50,000 annually for any drug for which a MAC limit is to be established.

We specified in the proposed regulations that we would survey drug wholesalers for assurances that they: (1) Are carrying the multiple source products at or below the proposed MAC limits; or (2) would carry the products in the event that limits are established. We also stated that, initially, we would conduct surveys to determine the prices at which the multiple source drugs that meet the MAC criteria are widely and consistently available.

In order to provide some flexibility in the MAC limits, we proposed to waive specific MAC limits in a State upon the State Medicaid agency's request and demonstration that the volume of the drug in that State is too low to justify administering the limit or that there are availability problems in that State for that particular product under the MAC limit. We also proposed to suspend or raise temporarily a MAC limit if the product becomes unavailable at or below the limit.

C. Competitive Incentive Program (CIP)

As proposed, CIP would have replaced the current MAC and EAC programs. Under CIP, the starting point for establishing an upper limit for reimbursement for all drugs would be the price that the pharmacy charges private retail customers for that drug, at that time, and in that quantity. Because

CIP payment would be based on the pharmacist's retail charge. Medicaid would participate in the retail pharmaceutical market in a way similar to that of a pharmacy's non-Medicaid customer or third party payor. CIP would depend upon the competitive market place to regulate prices.

Under CIP, we proposed to apply a mandatory discount to the pharmacist's retail charge and a screen of charges to protect the Medicaid program from excessive charges. The mandatory discount on leading brand name drugs would be greater than the discount applied to other drugs. Thus, an incentive would be created for the pharmacist to use non-brand multiple source drugs (generics). We proposed that the mandatory discount on leading brand name and multiple source drugs would apply only to certain drugs. These would be drugs for which: (1) All of the formulations of the drug approved by the FDA have been evaluated as therapeutically equivalent; and (2) at least three suppliers advertise the drug (which has been classified by the FDA as category "A" in the FDA's therapeutic equivalence evaluations publication) in the *Red Book* or *Blue Book*.

In the notice published on September 18, 1986, we clarified the proposal and proposed further alternatives relating to the screen of charges under CIP.

III. Discussion of Comments

We received approximately 123 timely items of correspondence in response to the proposed notice. The commenters represented trade associations, manufacturers, State pharmacy associations, State agencies and drug stores. In general, comments were negative to portions of all three proposals. For example, regarding the CIP proposal, 35 of the 39 State agencies responding indicated that CIP would be costly from an administrative viewpoint. Regarding PhIP, some State agencies questioned the use of the *Red Book* and *Blue Book*, stating that average wholesale prices listed in these publications are often overstated. With respect to the MAC proposal, commenters indicated that the MAC rate setting process would remain a time consuming and burdensome process.

After review of all comments and further deliberation within the Department, we decided that prescribing a preferred payment method would be unnecessary and counterproductive. Instead, we decided that encouragement of State flexibility is the most important aspect of reform in terms of avoiding disruption and bringing drug payments into conformance with the flexibility we allow States for other Medicaid services. In addition to this general conclusion, each option had significant weaknesses.

We have decided to eliminate the PhIP, CIP and MAC revisions as proposed. We decided to eliminate the MAC requirements because of the commenters and our concerns that the MAC rate setting process is too lengthy and time consuming. We determined that MAC would not achieve timely budget savings, simplified program administration, or increased State flexibility in the design and operation of drug payment systems.

We did not implement CIP as discussed in the NPRM due to the consensus expressed by many State agencies regarding administrative costs and implementation problems. However, in the context of State flexibility, we are allowing State agencies to use the CIP concept of competitive pricing should the State select this option.

For the purpose of determining an aggregate limit to State spending (but not as a payment method for individual prescriptions), we are adopting that part of PhIP that relates to the formula concept for setting upper limits for multiple source drugs because it is the least burdensome administratively for HCFA and the State agencies, responds to changes in drug pricing so that Medicaid program payments will reflect savings achievable from lower price multiple source drugs, and is readily updated. Furthermore, by setting an aggregate limit for multiple source drugs, we believe that we can provide more than adequate flexibility to States to use payment standards that reflect the prices and availability of particular drugs. Additionally, as we stated in the NPRM, based on a study of the 60 entities that would be listed initially, we can be assured of an adequate supply of the product at or below the limit. We note that this list of 60 entities includes those drugs for which a current MAC limit has been established.

A summary of the comments and our responses to them follows.

A. State Flexibility

Comment: The predominant themes expressed by the commenters were: The proposed rules were unnecessarily intrusive; the Medicaid State agencies should be allowed to design and develop their own payment systems, in order to respond to State-specific marketplace economics; and, Federal regulations should be kept to a minimum. Commenters were concerned that unnecessary Federal regulation would restrict price competition and stifle State innovation in the area of payment policies and practices. Further, commenters were concerned that the proposals would limit the ability of State agencies to monitor timely changes in drug availability, costs and usage patterns, as well as the ability to react to these changes. The commenters indicated that these issues are problems experienced by State agencies under the current regulations and expressed the desire to avoid continued Federal intrusion into existing programs that have proven to be cost-effective and innovative.

Response: Although it was not readily apparent judged by the tenor of the comments, we had intended to provide State Medicaid agencies with increased flexibility through the proposed rule. We proposed to establish an upper limit standard that would permit a State agency to design and operate, or maintain the current operation of, its own payment system. The responsibility of the State agency would be to make a finding that the maximum amount of State drug expenditures that would qualify for FFP could not exceed, in the aggregate, the upper limit payment level established by HCFA under the final rule. This approach would allow State agencies to maintain control over their pharmaceutical reimbursement programs while providing the Federal government needed oversight and control of expenditures. In order to clarify our intent, we are revising the language we had proposed.

Comment: Several commenters argued that HCFA could save $324 million in combined State and Federal expenditures for prescription drugs between 1986 and 1990 as the result of patents expiring on several drugs, and that no regulatory action was, therefore, necessary to achieve our savings objectives.

Response: As discussed in section V.E.3. of this preamble, implementing the 150 percent aggregate limit on listed drugs is estimated to save approximately $270 million over the next five years, taking into account drugs coming off patent and allowing for physician certification of brand named products as being medically necessary. We doubt whether States and HCFA would be assured of realizing those savings, or the savings that commenters estimate, without the kind of limits we are implementing in this rule. We believe that these limits will not operate to constrain dispensing or pricing behavior and it is both appropriate and necessary to establish upper payment limits in order to ensure that program payments reflect the savings available

from lower cost therapeutically equivalent drugs.

B. State Plans

Comment: Many commenters thought that if a State agency wished to use an alternative payment system to the one that would be established as the upper limit standard, the agency would have to secure a program waiver under the provisions of section 1915 of the Act. The perception was that this process was very rigorous and entailed considerable State efforts for justifying the waiver.

Response: It was our intent that, regardless of whether a State agency follows the approach established by HCFA or uses an alternative drug payment system, a State agency would not be required to obtain a program waiver. The NPRM proposed a process under which a State agency would be free to establish any payment system it would choose (except when freedom of choice or provider contracting is involved which would then require a waiver). The State agency must describe the methodology in its State plan which is subject to the usual State plan approval process.

Because the proposed language regarding the State plan approval process caused some confusion, we are revising it to make clear that drug payment methodologies must conform to all State plan requirements as must any other service. Under this final rule, we are clarifying that all State agencies are required to: (1) Describe comprehensively the agency's payment methodology for prescription drugs in its State plan; (2) make two findings, one for therapeutically equivalent multiple source drugs and one for all other drugs, through mathematical computation, analysis and comparison to determine that the payment levels under its payment methodology will not exceed the payment levels that would result from the application of the system promulgated by HCFA as the upper limit; (3) make an assurance to us that it has made such findings; and (4) maintain and make available to HCFA, upon request, documentation to support the finding.

The agency's assurance will serve as the basis for the approval of the State plan. The agency findings will be monitored through State assessments and other evaluations or auditing procedures to review the State documentation underlying the assurance without the need for specialized annual reporting by the States. Consistent with other aspects of the Medicaid program, if HCFA finds a problem with a State's assurance, HCFA can request the State to provide data to support its assurance and, if appropriate, HCFA will disallow FFP or consider whether the State ought to be subject to the statute's compliance procedures.

C. Implementation of PhIP or CIP

Comment: Many commenters expressed confusion or raised questions about the absence of operational details for PhIP and CIP. States were particularly concerned about the significant changes that would occur in current operations (for example, data collection, programming modifications, payment screens, monitoring price changes) and accompanying costs, to implement PhIP or CIP.

Response: We deliberately did not include specific technical details in the NPRM because the objective of the proposals was to establish a methodology for setting a standard for Medicaid upper payment limits for purposes of FFP. We did not intend to set forth or describe the intricate details of a particular payment system. Nonetheless, we did set forth a sufficient amount of technical detail to allow commenters to identify potential problems and solutions, and we took these into account in reaching the final decision. We do not intend to impose unnecessary or expensive operational requirements on States. Rather, it was our intent to permit State agencies to exercise maximum flexibility in designing a payment system subject only to the maximum payment levels established by this regulation.

D. Availability and Quality of Drugs

Comment: Several commenters wrote requesting that we demonstrate that the availability and quality of drugs would not be adversely affected under the proposed Medicaid drug reform alternatives.

Response: It is our belief that the application of the 150 percent upper limit standard that we are adopting for certain multiple source drugs will yield a payment level that will be great enough to assure widespread availability of drug products. Furthermore, because we are implementing aggregate upper limit standards on the State's Medicaid payments (expenditures) for drugs, a State will have the ability to make payment at levels above the specific standard for certain drugs, provided that the agency makes the payment at levels below the specific standard for other drug products. This added State flexibility will virtually guarantee widespread availability of all affected drugs provided that the State agency can determine that in the aggregate for those drugs, the State achieved savings equal to or greater than the HCFA upper limit standard.

In reference to the quality of those multiple source drugs to which we will apply the 150 percent markup, we believe that the FDA assurance that all of the formulations it has approved have been evaluated as therapeutically equivalent in the most current edition of their publication "Approved Drug Products with Therapeutic Equivalence Evaluations" is adequate.

E. Additional Compendia

Comment: One commenter requested inclusion of its publication, which is a national compendium of drug cost information, among the publications that will be used in determining the upper limit payment for multiple source drugs.

Response: We agree with the commenter that publications other than the *Red Book* and *Blue Book*, which were the only sources we proposed to use, can be used. Thus, we are revising the regulations. The final rules will state that in determining the upper limit payment levels for multiple source drugs, we will select from all available national compendia of drug cost information that reflect drug prices and availability on a national level. As we publish these upper limits in State Medicaid program issuances, we will identify the source of our drug price information. We periodically will publish these upper limits in our *Medicaid Manual* to assure comprehensive knowledge of upper limits for multiple source drugs and to reduce the need for State agencies to do independent research and computation.

F. Dispensing Fees

Comment: Several commenters suggested that either we delete the requirement in current regulations for State surveys of dispensing fee costs or require State agencies to update these fees in a periodic manner.

Response: In the interest of State flexibility and to avoid imposing unnecessary Federal procedural requirements as to how State agencies establish such fees, we are deleting the current requirement at § 447.333 regarding dispensing fees. State agencies will still be required to determine reasonable dispensing fees or, if dispensing fees are not paid separarely, to impute an amount equivalent to a reasonable dispensing fee, in order to include those amounts in the calculations and comparisons they make to meet the upper limit standard for FFP. We expect that most States wili continue their present activities to establish a reasonable dispensing fee

level and will document these and any new activities in their State plan. Such activities could include: (1) Audits and surveys of pharmacy operational costs; (2) compilation of data regarding professional salaries and fees; and, (3) analysis of compiled data regarding pharmacy overhead costs, profits, etc.

G. Use of "Smart Cards" and "Vouchers"

Comment: Several commenters suggested that HCFA adopt the use of a "smart card" or "voucher" payment system for payment of prescription drug claims. These commenters indicated that these systems would save significant amounts of expenditures.

Response: As we noted in the preamble to the NPRM, the use of a voucher or bank draft payment (smart card) system by State agencies was not one of the issues addressed in the proposal to establish upper payment limits. The methodology of determining an upper limit for prescription drug payments was the subject of the NPRM, not the claims payment process. The use of a voucher or "smart card" claims payment system is something which State agencies may do at present. If State agencies determine that such a system to process claims is workable, efficient and more cost-effective than their current system, and that system meets Medicaid program requirements, then, indeed, we encourage the individual agencies to adopt such a claims payment system.

H. Physician's Override

Comment: Several commenters recommended that we delete the physician override requirement while one State agency recommended that we strengthen the requirement.

Response: We are retaining the physician override requirement as proposed in the NPRM. This requirement is a safeguard that assures that the physician can select the drug that is medically necessary and best suited for his or her patient. This means that the upper limits established for specific (listed) multiple source drugs will not apply if the prescribing physician certifies that a brand name drug is medically necessary. These payments will not be included in the calculation for compliance with the upper limit for multiple source drugs. Instead, in these instances, the upper limit for all other (non-listed) drugs will apply. As under current regulations, a State agency may choose to elaborate and be more stringent regarding this standard if it chooses.

I. Acceptable Upper Limit Assurance

Comment: Several State agencies asked for guidance in making annual findings regarding the upper limit determinations and in deciding what constitutes an adequate assurance regarding the upper limit determinations when proposing State plan amendments.

Response: We are requiring in the final rule two findings. We are requiring an annual finding relating specifically to the multiple source drugs which HCFA will identify through Medicaid program issuances.

We also are requiring a separate triennial finding relating to the category of "other drugs".

The finding for the listed multiple source drugs will confirm that the agency's payment rates for these drugs do not exceed the aggregate payment levels determined by applying the upper limit formula plus a dispensing fee. The finding for the category of "other drugs" will confirm that a State agency's aggregate expenditures for these drugs under their chosen payment methodology, will not exceed aggregate payment under the EAC criteria that are retained for this rule. (Under this rule, the EAC criteria are applied as an upper limit on an aggregate basis rather than on a prescription by prescription basis.) The findings for both the listed multiple source drugs or "other drugs" can be supported by any documented acceptable method of sampling, imputation and statistical analysis that the State agency uses in making its determination. The State agency will then make an assurance to HCFA that it has made the required findings. That assurance to HCFA will constitute a presumption of validity of the findings and will serve as the basis for approval of the State plan.

J. Phase-In Upper Limit Standard for Multiple Source Drugs

Comment: One State agency recommended that the upper limit standard for multiple source drugs consist of between 15–20 specific limits established at 60 day intervals. The agency is concerned about having sufficient lead-time for wholesalers and pharmacies to adjust inventories to comply with the upper limit standard.

Response: We believe that we are providing an adequate period of time for these adjustments to occur. These regulations are effective October 29, 1987. This allows State agencies 90 days from the date of publication to the effective date of these final regulations in which to submit their plan amendment and required attachment.

K. Impact Analysis

Comment: Several commenters criticized us for not providing sufficient detail in our impact analysis to permit a comparison of the relative effects of the three alternatives presented in the NPRM. In particular, one commenter stated that we failed to support our contentions that all three proposals would reduce "disruptions" of drugs to retail outlets and achieve substantial savings through encouraging the use of low cost generic substitutions.

Response: As we explain in section V. of this preamble, the combination of having to analyze an extremely complex industry with very little data makes it difficult to formulate a comprehensive empirically grounded impact analysis. Based on the information available to us at the time of the NPRM, we did not expect any of the three proposals offered in the NPRM to have an annual effect on the economy of $100 million or more. Thus, we were not required under Executive Order 12291 to propose an impact analysis. Yet, because we were concerned, at the time the NPRM was published, that one or more of the proposals might have an annual effect of $100 million or more, and because we expected our proposals to generate considerable public debate, we voluntarily prepared an analysis that met the criteria of the Executive Order.

Comment: One commenter claimed that in our impact analysis, we failed to evaluate the effects of our proposals on the research and development of new drugs.

Response: It is far from clear to us what impact our proposals would have on the research and development of new drugs. These proposals are attempts on our part to take advantage of the competitive forces at work in the marketplace.

Companies that develop new drugs are provided protection under patent from competition for a certain period of time during which they may charge prices high enough, presumably, to recover their development costs associated with the drug in question or to subsidize the research and development costs of other drugs. Once the patent expires, however, other pharmaceutical firms may copy the drug, and once approved by the FDA, they may market the same drug and set their own price. Our proposals were designed to take advantage of this competition among drugs that are no longer under patent and not intended to prevent the development of new drugs. We were merely seeking to participate in the market as prudent buyers.

L. Application to Medicare

Comment: One commenter specifically requested clarification that the alternative selected by the Department for the final rule would not apply to the Medicare program and that hospitals and hospital-based skilled nursing facilities would be exempt under Medicare.

Response: As we stated in the NPRM, we are deleting the references to the MAC program contained in the Medicare regulations concerning allowable costs for drugs. (In the NPRM, we noted that we would delete § 405.433. However, that regulation has since been redesignated and is now located at § 413.110. Thus, in this final rule, we are deleting § 413.110.) The upper limits for drugs contained in this final rule pertain only to the Medicaid program. They do not apply to hospitals and hospital-based skilled nursing facilities under Medicare.

IV. Provisions of the Final Regulations

In this final rule, we have attempted to: (1) Respond to the public comments on the NPRM; (2) provide maximum flexibility to the States in their administration of the Medicaid program; (3) provide responsible, but not burdensome Federal oversight of the Medicaid program; and, (4) take advantage of savings resulting from the availability of less costly, but safe and effective, generic drug substitutes.

To accomplish this, we are drawing from various aspects of the proposals. The Federal upper limit standard we are adopting for certain multiple source drugs is based on the application of a specific formula similar to that described in the NPRM. The upper limit for other drugs is similar to that in the NPRM in that it retains the EAC limits as the upper limit standard that State agencies must meet. However, this standard is applied on an aggregate rather than on a prescription specific basis.

We want to emphasize that as a result of our adopting aggregate limits as the upper limit standards, State agencies are encouraged to exercise maximum State flexibility in establishing their own payment methodologies. We do not intend that our adoption of the formula approach to set limits for multiple source drugs be construed as an indicator of the Federally preferred payment system. The use of the formula approach is primarily due to the straight-forward application and administrative ease in setting upper limits. We encourage State agencies to establish any program that will substitute lower-priced alternatives for drugs. We hope that the State agencies will be innovative in these programs and find ways to assure the availability at reasonable prices of multiple-source drugs. One way they could do this would be to encourage retail pharmacy participation in the Medicaid program by permitting them to retain profits from the sale of listed drugs to Medicaid recipients. Other alternative payment systems could include, for example, contracting on a competitive basis for pharmaceutical services with selected pharmacies to which recipients may go for drugs without incurring a copayment or a system which entails charge screens and/or mandatory discounts. Additionally, State agencies may initiate or retain already existing so-called "mini-MAC" programs, which they have established on specific drugs either at levels lower than those established under the current Federal MAC limits or on drugs not now covered by MAC limits. This system of aggregate upper limits will allow State agencies to alter payment rates for specific listed drugs without first having to obtain permission from HCFA. The agencies then will be able to respond rapidly to sudden price fluctuations, which may threaten the supply of specific drugs on the HCFA list, without having to pursue a cumbersome approval process. A final advantage of the aggregate limit methodology is the ease of administration at the Federal level and the lack of administrative burden on State programs.

A. Multiple Source Drugs

The Federal upper limit standard that we have adopted for certain multiple source drugs is based on an aggregate payment amount equal to an amount that includes the ingredient cost of the drug calculated according to the formula described below and a reasonable dispensing fee. HCFA will determine to which drugs the formula will be applied. The listing of these drugs and any revisions to the list will be provided to State agencies through Medicaid program issuances on a timely, periodic basis (possibly semi-annually). The effective date of the new prices will be subsequent to the issuance of the listing. As did the NPRM, the final rule will specify that the drugs to which this formula will be applied must have been evaluated as therapeutically equivalent by the FDA. Similar to the NPRM, the final rule will specify that at least three suppliers list the drug in a national compendium. The NPRM stated that three suppliers would advertise the drug in the *Red Book* or *Blue Book*.

The formula to be used in calculating the upper limit of payment for certain multiple source drugs will be 150 percent of the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules (or if the drug is not commonly available in quantities of 100, the package size commonly listed), or in the case of liquids, the commonly listed size. As we stated in the NPRM, we chose the markup of 150 percent in order to meet the following two objectives: (1) That the markup be high enough to assure that pharmacists can normally obtain and stock an equivalent product without losing money on acquisition costs of incurring the expense of departure from normal purchasing channels, and (2) that the markup not be so high as to cost the Medicaid program unnecessary money. In other words, the 150 percent is intended to balance the interests of both pharmacists and the government in achieving efficiency, economy and quality of care as specified in section 1902(a)(30) of the Act.

In the NPRM, we stated that we would use the *Red Book* or *Blue Book* to determine the least costly therapeutic equivalent that can be purchased by pharmacists. In this final rule, however, we are deleting the reference to these specific sources and are specifying that we will publish and use the list of all current editions (or updates) of acceptable published drug compendia available for sale nationally. Although State agencies will need to calculate or impute a dispensing fee (if they do not pay for the dispensing fee separately) in order to determine if they meet the upper limit standard for certain multiple source drugs, we are deleting the current § 447.333 that recommends how agencies are to establish the dispensing fee.

As originally proposed under all options, this final rule will provide that if a physician certifies that a brand name drug is medically necessary, the upper limit for payment based on the formula will not apply. The upper limit for payment of "other drugs" (discussed in section IV.B) will apply.

In the future, the formula approach to setting an upper limit will be evaluated. We are aware of several State agencies now in the process of negotiating competitive bids for discounts or rebates from drug manufacturers and suppliers. Other agencies are considering selective contracting with providers or pharmacies (preferred provider organizations). Additionally, the interaction of competitive pricing and creative marketing may cause dynamics in the market that would necessitate a revision of our policy. Thus, we will monitor the implementation of this

policy, as well as the various payment systems used by State agencies and the dynamics of the marketplace, in order to make timely revisions to the policy for Medicaid upper limits for drug payments.

B. Other Drugs

In this final rule, we specify that the agency payment for certified brand name drugs and drugs other than multiple source drugs for which a specific limit has been established must not exceed, in the aggregate, the level of payment calculated by applying the lower of (1) the EAC plus a dispensing fee; or (2) the provider's usual and customary charges to the general public.

Under these rules, the Federal requirement for States to use the EAC method of payment will be eliminated. However, because the rule merely establishes an upper limit concept and does not describe the specific methodology for payment, State agencies may continue their practice of establishing EACs for the ingredient costs and adding to it a dispensing fee. Such practices will be acceptable, as will a system of establishing charge/payment screens based on Statewide or regional customary and usual prices.

The State's findings in regard to whether the Statewide aggregate upper limit test is met must demonstrate that aggregate payments do not exceed payment as calculated under the EAC principles.

C. State Plan Requirements, Findings and Assurances

We are revising the proposed language concerning State agency assurances regarding drug payment systems. We are clarifying that all agencies, regardless of the payment system used, will be required, in accordance with § 447.333(b)(1) of this final rule, to make two separate and distinct findings that expenditures for listed multiple source drugs on the one hand, and for all other drugs on the other, under their payment methodology will not exceed the upper limits established by HCFA. All State agencies will be required to maintain the supporting documentation and to provide HCFA with an assurance that they have made the required findings.

We note that we also have changed the requirements for findings and assurances to differ with regard to each drug category. We will require an annual finding for multiple source drugs and a triennial finding for all other drugs. The findings for multiple source drugs will be required at least annually because the State agencies efforts will be directed primarily at comparing State payments, in the aggregate, to the maximum ingredient costs published by HCFA. However, for all other drugs, State agencies will first have to determine the estimated acquisition costs before making comparisons on the aggregate basis. It is because of the various activities States will need to pursue in order to make the findings for all other drugs that we are requiring that this be done at least every three years. We anticipate that the triennial findings and assurances for all other drugs will lessen the administrative/reporting burdens on State agencies and maintain a level of accountability for purposes of FFP.

Apart from the initial plan submission, and subsequent assurances, an agency, which has determined that it is adopting a new methodology or making significant changes in its payment rates or to its existing system, will be required to provide HCFA with the requisite State plan amendments and the assurance that it has made the necessary findings.

D. Other Changes

As proposed, this final rule will remove the Departmental rules at 45 CFR Part 19 that limit drug reimbursement under certain Federal health programs. These rules have little impact upon programs other than Medicaid, and the Medicaid regulations concerning upper limits for drug payments are being revised under this final rule. We also are deleting cross references to 45 CFR Part 19 contained in 42 CFR 430.0(b)(2)(ii) and 45 CFR 1.2, and the reference to MAC limits in 42 CFR 413.110.

V. Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The local character of retail pharmaceutical markets, the large number of parties that participate in those markets, the variety of products sold, the numerous distribution channels through which these products flow, and a general lack of data adequately describing these various aspects of the market all make it extremely difficult for us to determine how and to what degree this final rule will affect market participants. For these reasons, we cannot say with any degree of certainty whether this rule will meet or exceed the Executive Order's criteria for a major rule. However, because of its controversial nature, we are providing a regulatory impact analysis.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. Although the most direct effect of this rule will be on States, States are not small entities under the RFA. The economic size of Medicaid participating retail pharmacies range from large national corporate chains to small independent single-owner outlets. Yet because retail pharmaceutical markets appear to be largely local in nature, retail pharmacies operate in these markets as small entities. For purposes of the RFA, therefore, we consider pharmacies to be small entities. Other entities that may be affected by this final rule, for example, wholesale distributors and manufacturers, also may qualify as small entities under the RFA, but are more likely to participate in regional or national markets, and thus, are more likely to take on the characteristics of large firms. For this reason, plus the fact that this rule is not explicitly directed at these other entities or expected to affect them directly, we are not considering them as small entities for purposes of this rule.

B. Objectives

Through promulgation of this final rule, we hope to achieve several objectives we view as essential for providing acceptable care to Medicaid recipients and for increasing the efficiency with which pharmaceutical products and services are delivered to recipients. These objectives are to:

- Establish simple, administrable methods of applying two separate and distinct upper limits on State Medicaid expenditures: one for certain therapeutically equivalent multiple source drugs, and one for all other drugs.
- Promote wider and more efficient distribution of pharmaceutical products and services, and avoid potential disruptions in the supply of drug

products that appear to be a major drawback of the present method of reimbursing retail pharmacists under the MAC program.

• Conserve scarce Federal and State resources through encouraging the more judicious purchasing of pharmaceuticals on behalf of Medicaid recipients, thus achieving some budget savings, while preserving or enhancing current levels of service.

In pursuing these objectives, we also wish to give State agencies the incentive to encourage prudent purchasing practices on the part of retail pharmacists and foster price competition among wholesale suppliers and manufacturers of multiple source drugs.

C. Impact on State Agencies

The aggregate payment limit on HCFA listed drugs as well as the general limit on sole-source and non-listed multiple source drugs, afford State agencies wide latitude in developing their own payment schemes to suit local conditions and unusual circumstances that may arise from time to time. For example, State agencies may retain already existing so called "mini-MAC" programs, which they have established on specific drugs either at levels lower than those established under the Federal MAC limits or on drugs not now covered by MAC limits. Also, under the aggregate limits, State agencies are free to experiment with alternative payment systems, for example, letting contracts on a competitive basis for pharmaceutical services with selected pharmacies to which recipients may go for drugs without incurring a copayment, or systems identical or similar to PhIP or CIP. This system will also allow States to alter payment rates for specific listed drugs without first having to obtain permission from HCFA. States then will be able to respond rapidly to sudden price fluctuations which may threaten the supply of specific drugs on the HCFA list without having to pursue a cumbersome approval process. A final advantage of the aggregate limit methodology is ease of administration at the Federal level and the lack of administrative burden on State programs.

D. Small Entities Affected

The drug industry is highly complex and multi-layered, with a variety of manufacturing, distribution, and retail sales arrangements that not only differ according to geographic location, but also vary by product. Further, under the Medicaid program, the immediate payor (that is, the State) is distinct from the purchaser (usually the recipient) or the orderer (the physician), both of whom are key decision makers for each specific purchase of drugs. These rules will directly affect only the State, and even then, these rules do not control the option available to the State, but establish limits on the extent that we will share in the State's overall expenditures for covered drugs. It is each State's actions, taken in some measure in response to these upper limits, that will in turn affect other parties.

As a result, it is difficult for us to clearly identify the entities affected by these regulations, and nearly impossible to fix the magnitude of any impact. At best, we can only identify broad categories of small entities that may be affected in some fashion by this rule, such as retail drug outlets and pharmacists, wholesale drug distributors, and manufacturers.

Through requiring States to establish programs to make payments which reflect the availability of lower cost alternatives when three or more therapeutically equivalent generic alternatives are available, this rule will affect the behavior of retail pharmacists who receive Medicaid payments. As a result of the response of pharmacists to State programs, we expect there to be effects on drug manufacturers and wholesale distributors. Also, it is conceivable that this rule might make physicians more aware of the availability of low cost generic drugs that could be substituted for higher cost leading brand drugs, and thus produce changes in physician prescribing practices. Furthermore, by making payments more prudent, we hope to affect Medicaid recipients positively by improving the States' and Federal government's financial ability to provide for needed services.

E. Expected Impact of Limits Placed on Listed Drugs

1. Increased State Flexibility

As described in section IV of this preamble and in §§ 447.332(a) and 447.331 of the rule, HCFA will prescribe aggregate upper limits on certain therapeutically equivalent multiple-source drugs we determine to be readily available, and on sole source and other multiple-source drugs. The limit for readily available drugs is to be based on 150 percent of the lowest known price for each drug on the list. The limit for sole source and other multiple-source drugs will be based on the amounts paid by other payors. Since we are setting separate aggregate limits on what we are calling "listed drugs" and on "other drugs", States will be free to make payments for individual drugs on any reasonable basis as long as total payments for each group of drugs do not exceed the aggregate limit on that group. This approach should help avoid disruptions in the supply of listed drugs in circumstances in which acquisition costs may exceed the listed price used in establishing the HCFA limits.

State agencies should determine, independent of the 150 percent formula, appropriate payment levels for the listed multiple-source drugs. We would not expect a State agency to adopt directly the upper limit methodology as a payment method because it does not gear payments to markups appropriate to the actual costs of acquiring and dispensing these drugs. Under these final regulations, State agencies will be able to make higher payments for some listed drugs as long as they pay at rates lower than those listed for other drugs on the list. By providing this measure of flexibility, we expect that State agencies will be able to ensure that listed drugs will be generally available to recipients.

As a counterpart to allowing State agencies the freedom to set their own minimum price floor on drugs in order to cover pharmacists' ingredient costs, they also have the authority to set an upper limit on the mark-up of specific drugs on the HCFA list. Since we are not placing maximum payment limits on individual drugs, drugs with high compendia prices could generate extremely high payment levels. Unless an agency's payment methodology ensured otherwise, a Medicaid agency could end up paying inappropriately high rates for some drugs while still being in compliance with the aggregate upper limit. Nevertheless, we believe States may establish maximum payment limits in order to offset the minimum payment levels necessary to ensure reasonable compensation for very low priced drugs.

Similarly, State agencies may employ essentially the same approach in meeting the limits for all other drugs. That is, the same principal of balancing payment increases for some drugs with decreases for other drugs also applies in determining whether aggregate payments exceed the limit. For reasons of economy, availability, or therapeutic efficacy, a State agency may want to raise or lower the amount it pays for certain drugs in efforts to influence the supply of specific drugs. Under the aggregate limit methodology any change in payments above or below the lower of the EAC or customary charges for specific drugs must be balanced with a corresponding reduction or increase in payments for other drugs within the all "other" drug payment category.

2. Possible Effects on Wholesale Distributors and Manufacturers

In the previous section, we discussed the possible effects of building into our rates for ingredients a profit margin for pharmacists. We expressed the hope that States would recognize the advantage of providing pharmacists with an incentive to participate in the Medicaid program and to stimulate pharmacists to engage in prudent purchasing practices and the substitution of lower cost therapeutically equivalent products.

In addition to these effects, we believe that our method of calculating the aggregate upper limit on payment to States may have consequences for other sectors of the industry: In particular on wholesalers and manufacturers. Although these entities may not fit the definition of small entities as discussed section V.A. of this preamble, nevertheless the manner in which this initiative affects these entities may have an impact on pharmacies and on our ability to manage the program.

By using the lowest compendia price for a drug as the benchmark for our listed drug rates, the low price supplier may be encouraged to raise its published price to a point just below the next higher price. Other drug wholesalers and manufacturers may tend to lower their published prices so the range of published prices would begin to narrow and cluster around the low end of the price scale We would expect to see such pricing patterns develop only for those drugs which had sizable portions of their total sales among Medicaid recipients. However, we suspect that price competition would be carried on in the form of discounts, promotional campaigns and other incentives aimed at the retail pharmacists.

Such tactics would work to the advantage of both retail druggists and wholesalers. Retail pharmacists would gain by being able to purchase drugs at prices below the HCFA list price, while wholesalers could gradually push the benchmark price upwards without loosing sales. Although, historically, it has been the large retail outlets that have benefited the most from wholesale discount practices, if adopted by a substantial number of State agencies, our policy of using published prices as a basis for determining payment levels may cause wholesalers to invent new ways of offering discounts to the smaller independent retail outlets, thereby expanding the practice of discounting to those outlets and enabling them to have access to less expensive sources of pharmaceuticals. The drawback is that neither State programs nor the Federal Medicaid program will benefit from such reductions in wholesale prices.

3. Savings

Based on current State spending for prescription drugs, and the potential for savings to be gained from drugs currently under patent losing their protection, we estimated savings to the Federal government over the next five fiscal years from implementing an aggregate upper limit on readily available multiple source drugs to be $270 million. (This assumes that the aggregate limits on listed multiple source drugs would be applied to payments for at least 60 drugs which we identified for purposes of applying the proposed PhIP limits in the NPRM.) Our savings estimates also incorporate a factor to account for physicians exercising their privilege of specifying a particular brand in accordance with § 447.331(c). The following table shows the Federal savings by fiscal year (FY), and assumes that actual implementation of the provisions at the State level will begin April, 1988.

FEDERAL SHARE OF MEDICAID—DRUG SAVINGS

[Rounded to the nearest $5 million]

FY 1988	FY 1989	FY 1990	FY 1991	FY 1992
$30	$60	$60	$60	$60

These savings estimates are at the limits presented in this rule and represent only the Federal portion, and while we generally calculate the States share of any savings to be about 82 percent of the Federal share (assuming the average FFP rate to be 55 percent), State savings or additional Federal savings will largely depend on the plans State Medicaid agencies adopt in response to the Federal upper limit.

F. Alternatives Considered

In the NPRM, we proposed three alternative payment schemes for reimbursing pharmacy costs of providing drugs and pharmacy services to Medicaid recipients. Two of the proposals, the PhIP and reformed MAC program, were efforts to strengthen our policies on payments for readily available generic drugs, while the third proposal, CIP, was designed as an all inclusive payment scheme that would cover both multiple and single source drugs.

In evaluating the three alternatives, we considered comments and the availability of resources to implement the proposed alternatives. It became clear almost immediately, that of the three alternative presented, implementation of CIP would be the most problematic. Several obstacles proved insurmountable. These were:

- The added cost of implementing CIP for multiple source drugs appeared to be considerable. Based on comments received and our own research, the administrative costs were estimated to be about $7 million to implement CIP nationally.
- We could not determine the impact of CIP because of the lack of reliable data on retail drug charges.
- CIP could not be implemented quickly.

Our reasons for rejecting the reformed version of the MAC program had to do largely with our conclusion that even with the reforms we were proposing, the program would still prove to be too cumbersome to enable us to respond to the rapidly changing drug market.

Thus, by a process of elimination, the Federal upper limit for selected therapeutically equivalent multiple source drugs is based on an aggregate payment amount equal to the ingredient cost of the drug calculated according to the 150 percent markup formula plus the dispensing fee established by the State agency. The upper limit for all other drugs is an aggregate upper limit that does not exceed the limit as calculated under the EAC principles.

G. Conclusions

We recognize that we have presented a somewhat limited discussion of the potential effects this rule may have on States and other entities. As we have pointed out, there are many reasons for our inability to present a more thorough analysis. The complex market structures that operate at national, regional and local levels, the proprietary and highly competitive nature of these markets, and the combined effects of different participants (States, pharmacies, physicians, recipients, distributors, manufacturers) interacting with one another create analytical problems that are beyond our capacity to analyze. The flexibility provided the States means that a variety of payment systems or methods will be used subject to the established payment standards noted in this final rule. We cannot predict with

any certainty what decisions the States will make over time, particularly as they experiment with new and improved payment methods.

We do, however, recognize that the establishment of the two upper limits described in section IV of this preamble represents only a partial solution to the problems of drug availability, increased efficiency in the allocation of resources, retail pharmacists satisfaction with payment levels, and the provision of adequate pharmacy services to Medicaid recipients. Each State agency will evolve its own payment methodology and solutions to local problems. Each State agency will have to identify and decide on the trade-offs it wishes to make with the understanding that some of the side effects of a particular payment method may be counter productive with respect to achieving stated objectives.

VI. Paperwork Requirements

Section 447.333 of this rule contains information collection requirements. The public is not required to comply with the information collection requirements until the Executive Office of Management and Budget approves these requirements under section 3507 of the Paperwork Reduction Act (44 U.S.C. 3507). A notice will be published in the **Federal Register** when approval is obtained. Comments on the information collection requirements should be sent directly to Allison Herron, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 430

Grant programs-health, Medicaid.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

45 CFR Part 1

Organization and functions.

45 CFR Part 19

Administrative practice and procedure, Drugs, Health care, Health maintenance oganizations, Medicare.

42 CFR Chapter IV is amended as set forth below:

I. 42 CFR Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

B. The table of contents for Subpart F is amended by removing § 413.110.

§ 413.110 [Removed]

C. Section 413.110 is removed.

II. 42 CFR 430.0 is amended as set forth below:

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

1. The authority for Part 430 continues to read as follows:

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302))

§ 430.0 [AMENDED]

2. In § 430.0(b)(2)(ii), the reference to "Part 19—Limitations on Payment or Reimbursement for Drugs" is removed.

III. 42 CFR Part 447 is amended as set forth below:

A. The authority for Part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

B. The table of contents is amended by adding a new § 447.301 and by revising the entries for §§ 447.331 through 447.333 as follows:

PART 447—PAYMENTS FOR SERVICES

* * * * *

Subpart D—Payment Methods for Other Institutional and Noninstitutional Services

* * * * *

Sec.

447.301 Definitions.

* * * * *

447.331 Drugs: Aggregate upper limits of payment.

447.332 Upper limits for multiple source drugs.

447.333 State plan requirements, findings and assurances.

* * * * *

C. Section 447.301 is added to Subpart D to read as follows:

§ 447.301 Definitions.

For the purposes of this subpart—

"Brand name" means any registered trade name commonly used to identify a drug.

"Estimated acquisition cost" means the agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of drug most frequently purchased by providers.

"Multiple source drug" means a drug marketed or sold by two or more manufacturers or labelers or a drug marketed or sold by the same manufacturer or labeler under two or more different proprietary names or both under a proprietary name and without such a name.

D. Section 447.331 is revised to read as follows:

§ 447.331 Drugs: Aggregate upper limits of payment.

(a) *Multiple source drugs.* Except for brand name drugs that are certified in accordance with paragraph (c) of this section, the agency payment for multiple source drugs must not exceed the amount that would result from the application of the specific limits established in accordance with § 447.332. If a specific limit has not been established under § 447.332, then the rule for "other drugs" set forth in paragraph (b) applies.

(b) *Other drugs.* The agency payments for brand name drugs certified in accordance with paragraph (c) of this section and drugs other than multiple source drugs for which a specific limit has been established under § 447.332 must not exceed, in the aggregate, payment levels that the agency has determined by applying the lower of the—

(1) Estimated acquisition costs plus reasonable dispensing fees established by the agency; or

(2) Providers' usual and customary charges to the general public.

(c) *Certification of brand name drugs.* (1) The upper limit for payments multiple source drugs for which a specific limit has been established under § 447.332 does not apply if a physician certifies in his or her own handwriting that a specific brand is medically necessary for a particular recipient.

(2) The agency must decide what certification form and procedure are used.

(3) A checkoff box on a form is not acceptable but a notation like "brand necessary" is allowable.

(4) The agency may allow providers to keep the certification forms if the forms

will be available for inspection by the agency or HHS.

E. Section 447.332 is revised as follows:

§ 447.332 Upper limits for multiple source drugs.

(a) *Establishment and issuance of a listing.*

(1) HCFA will establish listings that identify and set upper limits for multiple source drugs that meet the following requirements:

(i) All of the formulations of the drug approved by the Food and Drug Administration (FDA) have been evaluated as therapeutically equivalent in the most current edition of their publication, *Approved Drug Products with Therapeutic Equivalence Evaluations* (including supplements or in successor publications).

(ii) At least three suppliers list the drug (which has been classified by the FDA as category "A" in its publication, *Approved Drug Products with Therapeutic Equivalence Evaluations,* including supplements or in successor publications) based on all listings contained in current editions (or updates) of published compendia of cost information for drugs available for sale nationally.

(2) HCFA publishes the list of multiple source drugs for which upper limits have been established and any revisions to the list in Medicaid program instructions.

(3) HCFA will identify the sources used in compiling these lists.

(b) *Specific upper limits.* The agency's payments for multiple source drugs identified and listed in accordance with paragraph (a) of this section must not exceed, in the aggregate, payment levels determined by applying for each drug entity a reasonable dispensing fee established by the agency plus an amount established by HCFA that is equal to 150 percent of the published price for the least costly therapeutic equivalent (using all available national compendia) that can be purchased by pharmacists in quantities of 100 tablets or capsules (or, if the drug is not commonly available in quantities of 100, the package size commonly listed) or, in the case of liquids, the commonly listed size.

F. Section 447.333 is revised as follows:

§ 447.333 State plan requirements, findings and assurances.

(a) *State plan.* The State plan must describe comprehensively the agency's payment methodology for prescription drugs.

(b) *Findings and assurances.* Upon proposing significant State plan changes in payments for prescription drugs, and at least annually for multiple source drugs and triennially for all other drugs, the agency must make the following findings and assurances:

(1) *Findings.* The agency must make the following separate and distinct findings:

(i) In the aggregate, its Medicaid expenditures for multiple source drugs, identified and listed in accordance with § 447.332(a) of this subpart, are in accordance with the upper limits specified in § 447.332(b) of this subpart; and

(ii) In the aggregate, its Medicaid expenditures for all other drugs are in accordance with § 447.331 of this subpart.

(2) *Assurances.* The agency must make assurances satisfactory to HCFA that the requirements set forth in §§ 447.331 and 447.332 concerning upper limits and in paragraph (b)(1) of this section concerning agency findings are met.

(c) *Recordkeeping.* The agency must maintain and make available to HCFA, upon request, data, mathematical or statistical computations, comparisons, and any other pertinent records to support its findings and assurances.

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES; GENERAL ADMINISTRATION

IV. 45 CFR Subtitle A is amended as set forth below:

A. The table of contents for Subtitle A is amended by removing "Part 19, "Limitations on Payment or Reimbursement for Drugs".

PART 1—HHS's REGULATIONS

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

(5 U.S.C. 301)

§ 1.2 [Amended]

C. In § 1.2 of Subpart A, the last bullet point entitled "Miscellaneous" is amended by removing the reference to Part 19.

PART 19—LIMITATIONS ON PAYMENT OR REIMBURSEMENT FOR DRUGS [REMOVED]

D. Subtitle A is amended by removing Part 19, "Limitations on Payment or Reimbursement for Drugs".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; 13.773, Medicare—Hospital Insurance; 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 15, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 16, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-17384 Filed 7-30-87; 8:45 am]

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Federal Register

Friday
July 31, 1987

Part IV

Department of Justice

Immigration and Naturalization Service

8 CFR Part 210
Special Agricultural Workers; Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210

[INS No. 1042-87]

Special Agricultural Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule incorporates various amendments to the regulations governing the Special Agricultural Worker Program established by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603. The rule provides corrected information concerning the location of overseas processing offices in Mexico, it establishes a temporary transitional admission standard and other temporary transitional program adjustments designed to expedite the overseas processing of special agricultural workers. The temporary transitional admission program will provide for the entry of SAW eligible aliens who were not present in the United States prior to June 26, 1987, in order to avoid projected agricultural labor shortages in the United States during the 1987 harvest season. This rule also advances from May 1, 1987, to June 26, 1987, the date before which applicants must have entered the United States in order to be eligible to apply in the United States for special agricultural worker status. Finally, the rule also adjusts the provisions for administration of the numerical limitations on the number of applicants who may be accorded Group 1 special agricultural worker classification in order to eliminate inequities caused by adoption of the transitional admission standard.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers (SAW), Office of Legalization, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. To protect the nation's food supply and assure that adequate numbers of farmworkers were available to cultivate and harvest perishable crops, Congress established the Special Agricultural Worker (SAW) program as one of several steps to offset the effects of the employer sanctions provisions. This program provides temporary and eventual lawful permanent resident status to alien workers who have been employed in the cultivation and harvesting of perishable crops.

The SAW application period began on June 1, 1987, and continues until November 30, 1988. On June 1, 1987, facilities and procedures to accept and process SAW applications, were established in the United States by the Immigration and Naturalization Service and overseas by the Department of State. These facilities include 107 legalization offices in the United States and overseas processing offices in Mexico City and in immigrant visa issuing posts in other countries.

Agricultural Labor Shortages

Despite the government's timely preparations for administration of the SAW program, agricultural labor shortages were perceived in several regions of the United States, most notably in the Northwest, during the spring and early summer harvests of 1987. Such shortages were largely attributed by growers to a lack of SAW workers. Primary attribution of this problem to the SAW program appears misdirected in light of other readily identifiable factors. For example, an unusual overlapping of the asparagus and strawberry harvests and early bumper crops of asparagus, strawberries and cherries created a demand for an unusually large agricultural labor force in the Northwest during this period.

There has historically been an unavoidable lack of reliable statistics on the numbers of undocumented aliens who enter the migrant stream annually. This renders any precise quantification of the presence or absence of specific numbers of undocumented migrant agricultural workers at any given time impossible. However, United States consular and immigration officials in Mexico report that many aliens have been deterred from attempting illegal entry into the United States for fear of the new enforcement provisions of IRCA. Agricultural extension agents in California estimate that the number of farmworkers, who are normally staging into production areas at this time of year, is off approximately forty percent from previous years. It is predicted that favorable weather conditions this year will generate bumper crops in California and parts of the Midwest and that the apple and pear harvests in the Northwest will be among the largest ever recorded.

The early response to the opportunity to apply for special agricultural worker status at overseas processing offices has been much lower than anticipated. This low respose can in part be attributed to overseas applicant's lack of ready access to documentary evidence of eligibility. This circumstance, in turn, limits the number of overseas applicants who can perfect applications in time to work in the United States during the 1987 harvest season.

Government Response

Grower concerns about labor shortages were communicated directly to the Service, as well as through the growers' elected representatives, who requested that the appropriate government agencies investigate, analyze, and resolve to the extent possible any identified agricultural labor supply problems. Representatives of the Immigration and Naturalization Service and the Departments of State, Labor, and Agriculture, in immediate response to this request, engaged in meetings and discussions with the governors of several states and with representatives of grower and agricultural labor organizations. Investigation of agricultural labor supply problems involved gathering of information from field personnel of all these agencies and on-site observation of labor camps and agricultural operations.

Based on these investigations, the Service has concluded that serious crop and economic losses could result from a failure of SAW eligible workers to enter the United States in time for critical harvest activities this year. This conclusion is supported by the U.S. Departments of Labor and Agriculture. The Service is therefore establishing, by this rule, temporary procedures it believes necessary to avoid the adverse impact such crop losses would have, not only on farmers, but on food prices and on employment throughout the food industry. A section by section analysis of this rule follows:

Overseas Processing Office

Section 210.1(k) has been amended to delete any reference to an overseas processing office in Monterrey, Mexico. Although an overseas processing office will operate in Monterrey while the temporary transitional SAW procedures are in effect, this office is not intended to be a permanent facility.

Numerical Limitations

The amendment to § 210.2(a)(3), which sets procedures for administration of the numerical limitation on the allocation of Group 1 status, is discussed below in the analysis of new § 210.6(c)(2).

Filing of Applications—General

Section 210.2(c)(1) is amended to change the date before which aliens must have entered and remained in the United States to be eligible to apply in the United States for SAW status. That date has been changed from May 1, 1987, to June 26, 1987. An alien who did not enter and remain in the United States prior to June 26, 1987, must file an application at an overseas processing office unless that alien is legally admitted as a SAW applicant under the transitional admission standard in effect from July 1, 1987 to November 1, 1987.

The establishment of an entry cutoff date for filing SAW applications in the United States is derived from the SAW provisions of IRCA and is based on the primary objective of the statute—control of illegal immigration. IRCA provides for the acceptance and processing of SAW applications outside the United States and this regulation provides for temporary procedure which facilitates the admission of SAW applicants who were outside of the United States on June 26, 1987. Thus, no alien who can demonstrate eligibility for SAW status is disadvantaged by the mere fact that he or she is outside the United States. On the contrary, orderly procedures have been established for the adjudication of overseas SAW applications and the admission of aliens who can demonstrate their eligibility for SAW status.

The statute at section 210(d)(1) provides that an alien who is apprehended prior to the application period (June 1, 1987) and can establish a nonfrivolous case of eligibility for SAW status may not be deported or excluded and must be granted authorization to work. The Conference Managers' Report expressed Congress' intent that a nonfrivolous case of eligibility be established through an attestation under penalty of perjury regarding the performance of qualifying employment. Based on § 210(d)(1), a procedure was established which permitted aliens apprehended in the U.S. who could establish a nonfrivolous case of eligibility to remain and work in the United States. This procedure was not available, however, to aliens who had entered the United States subsequent to enactment of IRCA. To reward an illegal entrant with work authorization on the basis of an unsubstantiated claim to SAW eligibility would have been an inducement to illegal entry and contrary to the essential purpose of the statute. Consistent with the need to eliminate the prospect of employment as a magnet for illegal immigration, the Service provided in its preliminary working draft (52 FR 2115, January 20, 1987) and proposed rule (52 FR 8745, March 19, 1987) that such aliens could not file applications for SAW status in the United States.

Upon publication of the SAW final rule on May 1, 1987 (52 FR 16195), the cutoff date of entry was amended from November 6, 1986, to May 1, 1987. This change was made in acknowledgment of the fact that some alien migrant farmworkers had, as they traditionally have done, entered the United States illegally to engage in early spring cultivation and harvesting operations. If these SAW eligible workers had been required to depart the United States in order to file applications overseas after the beginning of the SAW application period of June 1, 1987, their departure from agricultural employment in the United States would have had a significant adverse impact on on-going agricultural operations.

The further change to the cutoff date of entry in this rule is made in light of the fact that the United States port of entry in Calexico, California, began processing applications for SAW status on June 26, 1987, as part of the temporary procedures established by this rule. Thus, overseas applicants now have the opportunity to apply for SAW status at Calexico or at one of the additional overseas processing offices also being established as part of the temporary procedures.

The establishment of a cutoff date to avert a potential flow of illegal immigrants was a responsible and reasonable policy in support of the primary purpose of IRCA. There is no contradiction if the date is adjusted in furtherance of another IRCA objective, the maintenance of agricultural production through legalization of the workforce. By making the cutoff date coincident with the date of announcement both objectives are met since there is no inducement to unlawful entry and needed agricultural workers are not required to leave the country.

Temporary Transitional Procedures

The temporary transitional procedures designed to expedite overseas SAW processing in order to avoid crop losses during the 1987 harvest season are established in § 210.6. These procedures will be in effect from July 1, 1987, to November 1, 1987, with the exception of border processing, which is effective from June 26, 1987, to November 1, 1987.

Expanded Overseas Processing Offices

Section 210.6(a) provides that overseas processing offices will be added in Mexico to process SAW applications. Additional offices were opened in Hermosillo and Monterrey on July 1, 1987, and other offices may be added dependent upon applicant response and resource availability.

Border Processing on the US/Mexico Border

Section 210.6(b) provides that United States ports of entry on the U.S./Mexico border will be designated to accept and process SAW applications under both standard and temporary procedures. The designated ports of entry on the US/Mexican border will accept applications from SAW applicants who are residents of Mexican border states. This border state jurisdictional alignment is established in order to ensure full utilization of the current overseas processing system and to discourage ineligible applicants from the interior of Mexico from proceeding to the border area. Application fees for border processing applications are required to be submitted in United States currency due to the general lack of availability outside the United States of instruments drawn on United States financial institutions, fluctuations in exchange rates, and the problem of negotiability in the United States of instruments drawn on foreign financial institutions. The port of entry at Calexico, California, has been designated to conduct border processing as of June 26, 1987. Additional ports of entry may be so designated dependent upon applicant response.

Transitional Admission Standard

Section 210.6(c)(1) sets the transitional admission standard for acceptance of SAW applications under the temporary transitional procedures. This standard requires the submission of a SAW application with the required fee and photographs. The applicant's credibility must be established to the satisfaction of the examining officer. Qualifying employment must be described with specificity. Under this standard, the presentation of documentary evidence of eligibility, including a report of medical examination, may be deferred until after the applicant's entry into the United States.

Procedures under the Transitional Admission Standard

Section 210.6(c)(2) sets procedures for administration of the transitional admission standard. Applicants who do not establish to the satisfaction of examining officers their credibility and the plausibility of their claim to eligibility are subject to rejection rather than formal denial of their applications. An application fee will not be accepted

until a determination is made as to whether the applicant meets the transitional admission standard. This rule provides that such applications shall be rejected rather than denied because applications under the transitional admission standard are not complete applications as defined at § 210.1(c) and cannot be properly approved or denied. Applicants whose applications are rejected under the transitional admission standard shall be advised that they may gather evidence sufficient to support a complete application or to overcome the grounds for rejection of their applications, and that they may resubmit applications upon obtaining such evidence.

This rule provides that applicants under the transitional admission standard must present proof of identity in connection with their applications. Applicants at overseas processing offices must present passports to be stamped with a nonimmigrant visa-like entry document. Applicants at designated ports of entry must present one of the forms of proof of identity stipulated in this rule.

This rule provides that all applications accepted under the transitional admission standard shall be regarded as applications for Group 2 classification as defined at § 210.1(g) until they are perfected as complete applications and submitted to a legalization office. Applicants who file under the transitional admission standard who claim eligibility for Group 1 classification as defined at § 210.1(g) will not be allocated one of the authorized 350,000 Group 1 numbers until they have submitted a complete application to a legalization office. Section 210.2(a)(3) is amended accordingly by this rule. This modification is necessary to ensure that aliens in the United States who are eligible for Group 1 classification but who cannot file an application until they have gathered evidence sufficient to support a complete application are not prejudiced by establishment of the transitional admission standard. These applicants would be disadvantaged if applicants under the transitional admission standard were allocated a Group 1 number without having been required to gather evidence to perfect a complete application.

Conditions of Admission

Section 210.6(c)(3) provides that aliens determined to meet the transitional admission standard shall, at a designated port of entry, be admitted or, at an overseas processing office, be documented to apply for admission to the United States. Such aliens, upon application for admission and a determination by an immigration officer that they are admissible to the United States, shall be admitted for a period of ninety days with employment authorization. Thus, under this rule, any alien outside the United States who is eligible for SAW status can enter the United States without delay to both accept employment and perfect a complete application. As noted above, this rule is intended primarily to ensure that an adequate number of farmworkers is present in the United States to perform critical harvest work during the 1987 harvest. The temporary transitional procedures established by this rule will terminate on November 1, 1987.

SAW applicants admitted to the United States under these temporary transitional procedures are required to gather evidence of eligibility, complete a medical examination, and submit a complete application to a legalization office within the ninety-day admission period or such extension of that period as may be authorized by a district director upon a showing of good cause by the applicant. The original Form I–700 SAW application presented to a designated port of entry or overseas processing office will be returned to the applicant to be presented to a legalization office. A duplicate will be retained by the designated port of entry or overseas processing office. An application submitted under the transitional admission standard is subject to denial for lack of prosecution if the applicant fails to submit a complete application to a legalization office within the ninety-day admission period or any authorized extension of that period. A denial for lack of prosecution under the temporary standard will not prejudice any future application.

Justification for Final Rule

The Immigration and Naturalization Service is invoking the "good cause" exceptions to the notice and comment rulemaking procedures established by the Administrative Procedures Act. (See 5 U.S.C. 553 (b) and (d)). The justification for invoking the "good cause" exceptions is as follows: The time that would be required for a meaningful public comment period and prior notice of this rule would delay implementation for several months. Immediate implementation of this rule is necessary to avert an agricultural labor shortage which would result in crop losses. The adverse economic effects of crop losses would be increased food prices, an inadequate supply of some foods, and economic dislocation such as business closings and job losses throughout the food processing, packaging, distribution, and service industries. The SAW eligible workforce is needed in the United States now. There is an immediate short-term need to stage workers into various parts of the United States to engage in pre-harvest and harvest activities. Compliance with the notice and comment procedures is therefore impractical and would harm the public interest. The projected agricultural labor shortage will exist throughout the 1987 harvest unless immediate action is taken to increase the agricultural workforce. Therefore, it is necessary to invoke the "good cause" exceptions to the notice and comment period requirements of 5 U.S.C. 553 (b) and (d) to make this rule effective upon publication. These temporary standards and procedures will be in effect only during the four-month period from July 1, 1987, to November 1, 1987.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of EO 12291.

The information collection requirements contained in this regulation have been cleared by OMB under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 210

Aliens, Permanent resident status, Reporting and recordkeeping requirements, Temporary resident status.

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

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for Part 210 continues to read as follows:

Authority: Pub. L. 99–603, 100 Stat. 3359; 8 U.S.C. 1101 note.

§ 210.1 [Amended]

2. In § 210.1, paragraph (k) is amended by removing the term "and Consulate General at Monterrey".

§ 210.2 [Amended]

3. In § 210.2, paragraph (a)(3) is amended by addition of the following sentence after the third sentence of that paragraph, which ends with the phrase "shall be accorded that classification": "Aliens admitted to the United States under the transitional admission standard placed in effect between July 1, 1987, and November 1, 1987, who claim

eligibility for Group 1 classification shall be registered as applicants for that classification on the date of submission to a legalization office of a complete application as defined in § 210.1(c) of this part."

4. In § 210.2, paragraph (c)(1) is amended by adding in the first sentence after the term "legalization office", the term "at a port of entry designated under § 210.6(b) of this part to accept such applications"; by deleting the date "May 1, 1987", from the second and third sentences of that paragraph and by adding in its place the date "June 26, 1987"; and by adding in the third sentence after the term "overseas processing office" in both places where it appears, the term "or port of entry designated under § 210.6(b) of this part".

5. Part 210 is amended by addition of the following new § 210.6, as follows:

§ 210.6 Temporary transitional procedures.

Notwithstanding any other provision of this part, the following temporary transitional procedures are placed in effect as of July 1, 1987, unless otherwise noted, and shall terminate as of November 1, 1987.

(a) *Expanded overseas processing.* Overseas processing offices will accept and process applications under the transitional admission standard set forth in paragraph (c)(1) of this section. Further, the Secretary of State will establish additional overseas processing offices in Mexico to accept and process applications for adjustment of status under this part. Additional offices have been opened in Monterrey and Hermosillo. Offices may be closed or added at the discretion of the Secretary of State.

(b) *Border processing on the U.S./Mexico border.* The Commissioner will designate specific ports of entry located on the U.S./Mexico border to accept and process applications under this part. As of June 26, 1987, ports of entry so designated will accept and process applications under the authority of the district directors in whose districts they are located. Only residents of the six states of Mexico which border the United States, i.e., Baja California Norte, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas, shall be eligible to submit applications to a designated port of entry. The port of entry at Calexico, California, has been designated to conduct border processing. Designated ports of entry may be closed or added at the discretion of the Commissioner.

(1) *Complete applications.* Designated ports of entry will accept complete applications as defined at § 210.1(c) of this part. Except as otherwise provided in this paragraph, such applications will be processed in accordance with the provisions of § 210.2 of this part as those provisions relate to applications filed in the United States. All applications must be submitted in person by the applicant. Upon a determination by the district director that a complete application submitted to a port of entry is a nonfrivolous application as defined at § 210.1(j) of this part, the required application fee shall be accepted and the applicant shall be admitted to the United States as an applicant for adjustment of status under this part and shall be issued Form I-688A, Employment Authorization. The application shall be forwarded for adjudication by a regional processing facility in accordance with the standards set forth at § 210.3 of this part. All fees for applications submitted to a port of entry must be submitted in United States currency. If the district director determines that the application is not sufficient to meet the requirements of a "nonfrivolous application" as defined at § 210.1(j) of this part, the application will then be considered under the transitional admission standard set forth at paragraph (c)(1) of this section.

(2) *Applications under the transitional admission standard.* Ports of entry designated to accept and process applications for adjustment of status under this part shall accept and process applications submitted under the transitional admission standard set forth at paragraph (c)(1) of this section.

(c) *Processing of applicants seeking admission to the United States under the transitional admission standard.*—(1) *Transitional admission standard.* An alien agricultural worker who believes that he or she is eligible for adjustment of status under the provisions of § 210.3 of this part may be admitted to the United States to work and to perfect an application for adjustment of status and to submit a complete application as defined at § 210.1(c) of this part to a legalization office if he or she:

(i) Fills out completely and signs a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, and presents that application to an overseas processing office or designated port of entry accompanied by the required fee and photographs which meet the specifications stated on Form I-700 (the performance of qualifying agricultural employment and the documentary evidence of such employment which the alien intends to adduce to substantiate his or her claim must be described with the specificity indicated on the form);

(ii) Establishes to the satisfaction of the examining consular or immigration officer during an interview that his or her claim to eligibility for special agricultural worker classification is credible; and

(iii) Is otherwise admissible to the United States under the provisions of § 210.3(e) of this part including, if required, approval of an application for waiver of grounds of excludability.

(2) *Procedures.* The fee for any application under this paragraph, including applications for waiver of grounds of excludability, must be submitted to a port of entry in United States currency, or to an overseas processing office in United States currency or in the currency of the country in which the overseas processing office is located. Application fees shall not be collected until the examining consular or immigration officer has determined that the applicant is admissible to the United States under the transitional admission standard set forth in paragraph (c)(1) of this section, including, if required, approval of an application for waiver of grounds of excludability as provided in this paragraph. Applicants at overseas processing offices must present a valid passport. Applicants at designated ports of entry must present proof of identity in the form of a valid passport, a "cartilla" (Mexican military service registration booklet), a Form 13 ("Forma trece"—Mexican lieu passport identity document), or a certified copy of a birth certificate accompanied by additional evidence of identity bearing a photograph and/or fingerprint of the applicant. Upon a determination by a consular officer at an overseas processing office that an applicant meets the transitional admission standard, the applicant shall be issued an entry document valid for a period of thirty days which will enable him or her to apply for admission to the United States at any port of entry as an applicant for special agricultural worker status. Upon a determination by an immigration officer at a port of entry designated to accept and process applications under this part that an applicant meets the transitional admission standard, the applicant shall be admitted to the United States as an applicant for special agricultural worker status. All applications under this part which are accepted for processing under the transitional admission standard shall be classified as applications for Group 2 classification as defined at § 210.1(g) of this part. However, such applications may be endorsed by applicants as applicants for Group 1

classification as defined at § 210.1(f) of this part and may be converted to applications for Group 1 classification upon submission to a legalization office of a complete application as defined at § 210.1(c) of this part. The date of filing the Group 1 application for the purposes of § 210.2(a)(3) of this part shall be the date on which a complete application was submitted to a legalization office. Upon a determination by a consular or immigration officer that an alien applying under the transitional admission standard does not meet that standard, the alien's application shall be rejected. The alien shall be advised of the reasons for rejection and that he or she may submit a complete application to an overseas processing office or a designated port of entry or may resubmit an application under the transitional admission standard if he or she obtains evidence which overcomes the ground of rejection.

(3) *Conditions of admission.* Aliens who meet the transitional admission standard set forth in paragraph (c)(1) of this section or who present entry documents issued by overseas processing offices in accordance with paragraph (c)(2) of this section shall be admitted to the United States for a period of ninety (90) days with authorization to accept employment, if determined by an immigration officer to be admissible to the United States. Such aliens are required, within that ninety-day period, to gather evidence of eligibility which meets the provisions of § 210.3 of this part; to obtain a report of medical examination in accordance with § 210.2(d) of this part; and to submit to a legalization office a complete application as defined at § 210.1(c) of this part. A district director may, for good cause, extend the ninety-day period and grant further authorization to accept employment in the United States if an alien demonstrates he or she was unable to perfect an application within the initial period. If an alien described in this paragraph fails to submit a complete application to a legalization office within ninety days or within such additional period as may have been authorized, his or her application shall be denied for lack of prosecution, without prejudice.

Alan C. Nelson,

Commissioner.

July 28, 1987.

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Friday
July 31, 1987

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 413, 441, 482, and 485
Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 413, 441, 482, and 485

[BERC-451-P]

Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule adds: (a) Conditions of coverage for the approval of organ procurement organizations for participation in the Medicare and Medicaid Programs and performance standards they must meet for continued reimbursement for services they furnish; and (b) a condition of participation for hospitals to have written organ procurement protocols. It would implement section 1138 of the Social Security Act, as added by section 9318(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509).

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on September 29, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-451-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.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BERC-451-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).

FOR FURTHER INFORMATION CONTACT:

Rita McGrath, (301) 594-6719, Organ Procurement Organizations,
or
Stanley Rosenfeld, (301) 594-5675, Organ Procurement Protocols.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program Description (General)

The Medicare law provides coverage for broad categories of benefits, including inpatient and outpatient hospital care, and it specifically excludes some categories of services such as cosmetic surgery, routine physical examinations, and procedures that are not considered reasonable and necessary. The statute does not, however, furnish an all-inclusive list of specific items, services, treatment procedures or technologies covered by Medicare. Under our long-standing policy, when a service is determined not reasonable and necessary, individual activities that are a component of the service are considered not reasonable and necessary. Thus, we would not make payment for organs procured for transplantation if the transplant itself did not meet the "reasonable and necessary" requirement.

Section 1881(b) of the Act authorizes the Secretary to make Medicare payment for kidney transplantation if performed in facilities meeting such requirements as are prescribed in regulations. The requirements are set forth at 42 CFR Part 405, Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services. The costs of procuring kidneys for transplantation may be reimbursed only when the kidneys are transplanted by facilities that meet the above requirements.

Currently, most of the organs obtained for transplants performed are kidneys. Also currently, Medicare is the primary payer for almost all kidney transplant procedures. This is because section 226A of the Act entitles an ESRD patient to Medicare when he or she receives a kidney transplant and section 1881 of the Act extends coverage to kidney transplantation. In some cases, Medicare payment may also be made for heart transplantation. Heart transplants and procurement costs for obtaining the organ are paid for by Medicare only when the transplant is performed by a facility that meets criteria we specify. The criteria were published in the **Federal Register** on April 6, 1987 as a HCFA Ruling (see 52 FR 10935). Transplantation of many other major organs (e.g., pancreas, adult liver, lung, or heart/lung transplants) is currently excluded from coverage under Medicare because we consider the procedure experimental for these organs; experimental procedures are not considered reasonable and necessary.

Under the Medicaid program, payment is made for "medical assistance" (section 1905 of the Act) as defined broadly by the statute and in our regulations at 42 CFR Part 440, Subpart A. Each State has a considerable degree of flexibility to supplement required services with others it chooses to specify in its State plan. Many States pay the coinsurance and deductible associated with Medicare-covered kidney transplants. Some that choose to pay for items not covered by Medicare have paid for heart-lung, pancreas, heart and liver transplants.

Under Medicare, kidney transplantation, as an inpatient hospital service, must be furnished by an approved facility (section 1861(e) of the Act; 42 CFR 405.2171). Approval is granted after we determine, based on an on-site survey, that the facility is in compliance with the applicable conditions of participation (42 CFR Part 482) and conditions for coverage (42 CFR Part 405, Subpart U). Currently, our regulations contain specific conditions of coverage for facilities that perform kidney transplantation under both Medicare and Medicaid. There also are criteria that heart transplant facilities must meet under Medicare. These criteria are set forth in 52 FR 10935.

We have not established conditions or standards that must be met by agencies or organizations that procure kidneys for transplantation in order for the cost of procurement to be covered under Medicare or Medicaid. However, all such agencies must meet the existing definition of "organ procurement agency" (§ 405.2102), and independent organizations must comply with the organizational and administrative requirements listed in § 413.178 of our regulations in order for costs associated with kidney procurement from those organizations to be reimbursed by the programs. Organ procurement agencies (OPAs) currently are not subject to an on-site survey by the State survey agencies that verify whether facilities meet our conditions and standards, but instead are approved by HCFA. We have not restricted the number of OPAs that can be established in any given area and currently some operate locally and others cover broad regional territories.

B. Organ Procurement

When renal transplantation became an effective form of therapy in the 1960s, it was necessary to develop systems for procuring kidneys from cadaveric donors. Early programs were established to provide centralized services that might include provision for surgical retrieval, tissue typing, maintaining lists and tissue characteristics of potential recipients, and organ distribution (transportation) to cooperating transplant centers.

The United States now operates the largest organ procurement effort in the world. Nationwide there are currently approximately 120 Medicare approved OPAs. Approximately 7,000 cadaveric kidneys were obtained in the United States in 1986. This effort has come about largely through the OPAs funded by the Medicare ESRD program. The number of patients on waiting lists for a kidney transplant totaled 10,000 in 1986.

Eact OPA routinely transports organs; for example, more than 40 percent of all transplanted kidneys are obtained in a locale different from the site in which transplantation occurs.

OPAs also procure organs other than kidneys used in transplantion. In 1986, 1368 heart, 924 liver, 45 heart-lung, and 140 pancreas or islet cell transplants were performed in the United States. Virtually all of these organs came from donors identified by the organ procurement system, nearly all of whom also donated kidneys. Waiting lists are much smaller for organs other than kidneys. Approximately 300 people were waiting for donor hearts and 400 waiting for donor livers in 1986. Pediatric patients make up about one-third of the waiting list for liver transplants, but organs are most scarce for this group.

Although OPAs play a central role in locating and placing transplantable human organs, OPAs vary in size, strategies, personnel, and organization.

OPAs currently approved for supplying kidneys for Medicare patients can be divided into two organizationally distinct groups. Nearly half of the OPAs are independently incorporated non-profit entities whose sole function is the procurement of human organs. These independent organ procurement agencies (IOPAs) are approved by HCFA if they comply with our definition of an OPA (42 CFR 405.2102). We prescribe four services that an OPA must perform or coordinate the performance of in order to be approved: Recovery of kidneys, preservation of kidneys, transportation of donated kidneys, and the maintenance of a system to locate prospective recipients for the recovered kidneys. Our instructions to approved IOPAs require them to develop a standard kidney acquisition charge, which is billed to the transplant center at the time an organ is furnished. The transplant center pays the IOPA and bills Medicare for that cost. We have established cost reporting requirements in our regulations and instuctions at 42 CFR 413.178 to make adjustments at the end of the cost reporting year.

The remaining OPAs are hospital-based organ procurement agencies (HOPAs). These HOPAs are located within the administrative stucture of a hospital approved to perform kidney transplants, usually within the department of surgery or the division of transplantation, or both. The costs of organ procurement activities, of HOPAs are recorded in a kidney acquisition cost center and billed by the hospital separately from the actual transplantation procedure costs that are billed when transplantation occurs (42 CFR 412.90(e)). Medicare cost adjustments, if needed, are made for the HOPA when the hospital's cost report is settled. HOPAs are generally directly responsible to a transplant surgeon and work, for the most part, primarily for that transplant center.

II. Legislation

The National Organ Transplant Act of 1984 (Pub. L. 98–507), created a Task Force on Organ Transplantation, which conducted a comprehensive examination of all aspects of organ procurement and transplantation. In addition to many other findings and specific recommendations, the Task Force concluded that an overriding problem, common to all organ transplant procedures, is the serious gap between the need for organs and the supply of organs available for transplantation. The Task Force found that many opportunities for obtaining organs were lost because of oversights or shortcomings in the present procurement process. One recommendation adopted by the Task Force was that OPAs be strengthened by establishing criteria that they must meet in order to be certified, and that all hospitals, as a condition of participation in Medicare, be required to adopt policies and procedures for routinely identifying potential organ and tissue donors and providing next-of-kin with appropriate opportunities for donation. The Task Force also recommended periodic recertification of the OPAs, requiring the OPAs to meet performance standards and that there be only one agency per service area. (See Organ Transplantation, Report of the Task Force on *Organ Transplantation*, April 1986, pp. 5, 31–34, 59–61, 117–122.)

Congress adopted these recommendations when enacting section 9318 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), Pub. L. 99–509, which added a new section 1138 to the Act. Section 1138(a) of the Act allows a hospital that otherwise meets the conditions of participation for the Medicare or Medicaid programs to participate in either program only if:

(1) The hospital establishes written protocols to identify potential organ or tissue donors that:

(a) Assure that families of potential donors are made aware that they have an option to donate organs or tissue and an option to decline to donate;

(b) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of the families of potential donors; and

(c) Require that an organ procurement agency designated by the Secretary of HHS under 1138(b)(1)(F) be notified of potential donors; and

(2) In the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules of, the Organ Procurement and Transplantation Network (the Network) established in accordance with section 372 of the Public Health Service Act.

This section applies to hospitals participating in the Medicare or Medicaid program as of October 1, 1987.

Section 1138(b) of the Act requires that, on or after October 1, 1987, Medicare and Medicaid pay for organ procurement costs attributable to payments made to an OPA only if the OPA satisfies the conditions below. The OPA:

(a)(i) Is a qualified organ procurement organization (as described in section 371(b) of the Pubic Health Service Act) that is operating under a grant made under section 371(a) of that Act, or

(ii) Has been certified or recertified by the Secretary within the previous two years as meeting the standards to be a qualified organ procurement organization;

(b) Meets the applicable Medicare or Medicaid requirements for organ procurement agencies;

(c) meets performance-related standards prescribed by the Secretary;

(d) Is a member of, and abides by the rules and requirements of, the Organ Procurement and Transportation Network established under section 372 of the Public Health Service Act;

(e) Allocates organs, within its service area and nationally, in accordance with

medical criteria and the policies of the Network; and

(f) Is designated by the Secretary as an organ procurement organization, payment to which may be treated as organ procurement costs for purposes of reimbursement under Medicare or Medicaid.

In addition, section 1138(b) provides that the Secretary may not designate more than one organ procurement organization (OPO) for each service area (as described by section 371(b)(1)(E) of the Public Health Service Act) to which payment may be made for organ procurement costs.

Organs, for purposes of section 1138, mean human kidneys, hearts, lungs, livers, and pancreases, and any other organs or tissues specified by the Secretary.

The statute applies to costs of organs procured on or after October 1, 1987 (section 1138(b)) and to hospitals participating in either Medicare or Medicaid on or after October 1, 1987 (section 1138(a)).

III. Proposed Regulations Revisions

In order to incorporate the legislative requirements in our regulations, we would add a new Subpart D to 42 CFR Part 485 to be entitled "Conditions of Coverage: Organ Procurement Organizations". We would add the legislative requirements discussed above.

Many of our proposed requirements that are not contained in section 1138 of the Act are contained in section 371 of the Public Health Service Act. Our requirements are very similar, but not necessarily identical to those required by the PHS Act. This reflects our belief that some of the requirements of the PHS Act that appropriately apply to grantees are not relevant to Medicare payment for OPO services. The public is invited to comment on whether our regulations should more completely reflect the PHS Act. Some of our requirements are based on the recommendations of the Task Force on Organ Procurement and Transplantation; others, including performance standards, are based on expert advice from the Office of Organ Transportation of the Public Health Service (PHS) and on our experience with organ procurement agencies that furnish kidneys to Medicare beneficiaries. Both the PHS recommendations and our proposed standard draw heavily upon the Association of Independent Organ Procurement Agencies' standards. (There are no national HOPA standards; individual HOPA standards apply only to the hospital served by the HOPA.)

The PHS Office of Organ Transportation in administering the National Organ Transplantation Act of 1984 has worked very closely with the Association of Independent Organ Procurement Agencies in the establishment of qualification criteria and guidelines to assist in the development of OPOs. PHS has been providing grants for the planning, establishment, initial operation, and expansion of OPOs. Because of their experience and expertise, we rely heavily on their recommendations.

Under section 1138(b) of the Act, effective October 1, 1987, Medicare payment for organ procurement costs may be made only if the OPA has been designated by the Secretary as the OPO for its service area (section 1138(b)(1)(F)). Consequently, *all* organizations, including currently Medicare-approved OPAs and PHS grantees, seeking payment as organ procurement organizations must apply to be designated, and be designated, by the Secretary under 42 CFR Part 485, Subpart D as the designated OPO for its service area in order for costs attributable to payments to the OPO to be reimbursable after September 30, 1987. IOPAs not designated as of October 1, 1987 must submit a final Medicare cost report in accordance with § 413.24(f)(2)(iii). A HOPA not designated will receive payment for organs procured within the hospital and used in in-house transplants; like all other hosptials that furnish organs to an OPO, it will receive payment for organs furnished to a designated OPO when the hospital cannot use it in-house. Costs for those activities will be reported as part of the hospital cost report.

Criteria for Designation as an OPO

Applications from all agencies desiring designation as an OPO will receive consideration; i.e., organizations that are currently approved for Medical payment or that have PHS grants would not receive preferential treatment.

For Medicaid, we propose to revise our rules at 42 CFR 441.13, Prohibitions on FFP: Institutionalized Individuals, to prohibit Federal cost sharing for services furnished by OPOs after September 30, 1987 that do not meet the requirements of Part 485, Subpart D.

The proposed new subpart would identify section 1138(b) of the Act as its basis, would define "organs", "organ procurement organization", and other relevant terms and list the specific conditions that OPOs must meet to obtain HCFA approval.

The proposed rules would not preclude any provider approved by HCFA to perform transplants from being reimbursed the acquisition costs incurred if it retrieves and transplants an organ into one of its patients; Section 1138 of the Act only covers procurement costs. In such a case, the transplant center would be required to notify the designated OPO for its service area of the potential organ donor. We would continue to pay a provider back for the costs it incurs in procuring an organ within its own facility that it cannot use in-house but furnishes to a designated OPO.

Beginning October 1, 1987, we will not pay transplant center procurement costs for organs retrieved by an OPO that has not been designated by the Secretary for its service area.

OPO Qualifications—General

In a new § 485.303, Condition: Organ procurement organization qualifications—General, we would establish that an OPO must apply to HCFA in writing to be the designated OPO for its service area. This would apply to all OPOs, whether hospital-based or independent, whether a PHS grant recipient or not. We would require that the OPOs meet other requirements related to membership in the Organ Procurement and Transplantation Network, adherence to performance standards and maintenance of records and data related to performance.

OPO Qualifications—Specific

In a new § 485.304, Condition: Qualifications required of an organization for it to be an approved organ procurement organization, we list specific requirements as follows:

The organ procurement organization must:

- For identifying potential donors (as defined in § 485.302; see below), have a working relationship with at least 75 percent of hospitals within its service area that have facilities for harvesting organs. The working relationship must be documented by evidence that supports the organization's ability to meet these proposed conditions. The documentation should explain the OPO's plans or systematic efforts to provide a range of organ procurement services, including, for example, actual organ retrieval, organ sharing and professional education activities (such as staff visits to local hospitals and in-service education sessions) that are intended to acquire or coordinate furnishing all usable organs in the organization's proposed service area. The preferable documentation is a copy of the written agreements with the various hospitals and transplant centers in its service area that list

responsibilities and functions. (A transplant center is a hospital designated by Medicare to furnish directly, for specific organ(s), transplantation and other medical and surgical speciality services required for the care of transplant patients). If an organization seeking approval as an OPO does not have a written agreement with a given facility, we will accept a letter of intent from a hospital or transplant center that it will enter into such agreement within not more than 12 months after the OPO's designation. If an organization does not have either a written agreement or letter of intent, it must submit other documentation of its working relationship.

Congress, in its report accompanying the National Organ Transplant Act, indicated that a substantial majority of hospitals with which the OPO would have to have an effective agreement would generally consist of more than 75 percent of the hospitals in the area that have facilities for organ donations. We agree that a working relationship with 75 percent of the facilities in a service area would demonstrate the necessary capabilities and resources to coordinate procurement activities in one area. (H.R. Rep. No. 575, 98th Cong., 1st Sess. 9 (1983)) However, we recognize that there may be instances where fewer hospitals will agree to cooperate with any one OPO. Therefore, we invite the public's comment on this criterion.

• Have a written agreement with the Secretary to be reimbursed under Medicare for the procurement of kidneys. The requirement for a written agreement would apply to OPOs, similar to the requirement now found at 42 CFR 413.178(c) that requires OPAs that procure kidneys to have a written agreement with Medicare to file costs reports and to permit HCFA to designate an intermediary.

• Submit documentation of its service area. A "service area" is an area that is a geographical area of sufficient size (unless the service area comprises an entire State) to include at lease 2.5 million in population or at least fifty potential donors each year and that includes an entire standard metropolitan statistical area or does not include any part of such an area. An OPO in an area with less than 2.5 million in population would have to submit quantifiable data showing that the area yields 50 or more donors per year. The service area requirement, except for the 2.5 million population, is found in section 371(b)(1)(E) of the PHS Act. The 2.5 million population minimum is related to the Congressionally-mandated number (50) of donors per year in order to assure effective administration. PHS has indicated that evidence from studies of OPOs suggests that OPOs working as effectively as methods and resources currently permit may approach 20 donors per million, which extrapolates to 50 per 2.5 million. (This was the conclusion of a report done by Maximus for PHS entitled, "Development of OPO Descriptors, Performance Measures and Criteria," May 15, 1986, Contract No. 240–85–0512.)

We would define "potential donors" as people who die in circumstances (including age, and causes and conditions of death) that would generally make at least one of their solid organs acceptable for transplantation if the donors could be identified in time and permission for donation could be obtained. The term is not intended to represent either referrals or actual donors.

Since the enactment of the PHS Act provision referring to "standard metropolitan statistical area" in the definition of "service area," the Office of Management and Budget has changed from using "standard metropolitan statistical area" to using other statistical area groupings. Thus, we would define "entire standard metropolitan statistical area" as a metropolitan statistical area, a consolidated metropolitan statistical area, or a primary metropolitan statistical area, as defined by the Office of Management and Budget (the areas are listed in the State and Metropolitan Area Data Book published by the U.S. Bureau of the Census).

"Documentation that precisely defines the proposed service area" would include information demonstrating the following—

a. Counties (parishes in Louisiana) served;

b. Geographic boundaries of the service area for which U.S. population statistics are available;

c. Total population in service area; and

d. The number of and the names of acute care hospitals capable of providing organ donors in the service area.

• Be a nonprofit entity. According to the House Report on the National Organ Transplant Act (which enacted section 371 of the PHS Act), the organ procurement system could best be accomplished by relying upon voluntary organ donations and prohibiting the sale of human organs (H.R. Rep. No. 575, 98th Cong., 1st Sess. 22 (1983)); Section 371(b)(1)(A) of the PHS Act (42 U.S.C. 273(b)(1)(A)) requires OPOs with grants to be nonprofit.

• Have accounting and other fiscal procedures necessary to assure the fiscal stability of the organization. This requirement also would require the OPO to have procedures to obtain payment for non-renal organs provided for transplantation.

• Have a director and such other staff, including the organ donation coordinator and organ procurement specialist, necessary to obtain organs effectively from donors in its service area.

• Have a board of directors or an advisory board that has the authority to recommend policies relating to the donation, procurement, and distribution of organs. The board of directors or advisory board must consist of:

1. Members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in the service area;

2. Members who represent the public residing in such area;

3. A physician with knowledge, experience, or skills in the field of histocompatibility;

4. A physician with knowledge or skills in the field of neurology; and

5. A transplant surgeon from each transplant center in the service area with which the OPO has arrangements to coordinate its activities.

The OPO would also have to:

1. Arrange for the appropriate tissue typing of donated organs;

2. Have a system to allocate donated organs among transplant centers and patients according to established medical criteria and policies of the Network;

3. Provide or arrange for the transportation of organs to transplant centers;

4. Have arrangements to coordinate its activities with transplant centers in the area; and

5. Have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage and distribution of tissues as may be appropriate to assure that all usable tissues from potential donors are obtained.

• The OPO would have to maintain and make available to the Secretary, the Comptroller General, or their designees data that show that it procured and transplanted the number of organs as required (as measured by the performance standards in § 485.306).

• The OPO would also have to maintain data in a format that can be readily assumed by a successor OPO and to agree to turn over to the Secretary copies of all records and data

necessary to assure uninterrupted service by a successor OPO that is newly designated by HCFA.

These requirements apply to both independent organ procurement agencies and hospital-based organ procurement agencies that wish to be approved for Medicare and/or Medicaid payment purposes.

Participation in the Network

Section 485.305 would require an OPO to be a member of, have a written arrangement with, and abide by the rules and requirements of the Organ Procurement and Transplantation Network. The United Network for Organ Sharing (UNOS) is under contract with the Secretary under section 372 of the PHS Act, effective September 30, 1986, to function as the Organ Procurement and Transplantation Network within the meaning of section 1138 of the Act. The address for UNOS is: 3001 Hungary Spring Rd., P.O. Box 28010, Richmond, VA 23228.

Our requirement is based on section 1138(b) of OBRA, which requires as a condition of payment for organs procured from an OPO that the OPO be a member of, and abide by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 372 of the Public Health Service Act (i.e., UNOS). We have not defined, described or otherwise circumscribed the statutory phrase "rules and requirements" in this proposed rule. Nor have we delineated what would constitute membership in the Network.

Some concern has been expressed about the requirement that OPOs be members of and abide by the rules of the Network in order to be designated. While we do not believe that UNOS or any other Network contractor we may designate in the future will seek to impose onerous rules or conditions for membership, we recognize that some OPOs may be troubled by this possibility. To allay any fears that the Network's contractor might use particular membership criteria or rules in an exclusionary or discriminatory manner, by the time these regulations are issued in final, we will amend the current contract (or issue appropriate regulations) to specify that the contractor is not permitted to impose any nongermane, exclusionary or discriminatory rules or conditions for membership. We believe this will satisfy any reasonable concerns relating to the ability of OPOs to become and remain members of the Network and to abide by its rules as required by statute. In addition, we wish to solicit comments as to how those terms need to be defined, if at all, and problems commenters might anticipate in the absence of a definition.

Performance Standards

In a new § 485.306, Condition: Performance standards for organ procurement organizations, we would state the requirements an OPO would have to meet to be recertified in order to continue to participate in the Medicare and Medicaid programs and continue to receive reimbursement. On the basis of advice from the Public Health Service, we are proposing the following as performance standards:

a. Each OPO would have to procure within its service area a minimum ratio of 23 cadaveric kidneys per million population of its service area for each 12-month period surveyed.

b. Each OPO would have to provide a minimum ratio of cadaveric kidneys procured in its service area *and transplanted* (either locally or exported and transplanted) of 19 cadaveric kidneys per million population of its service area for each 12 month period surveyed.

c. Each OPO would have to provide multiple organs for transplantation from a minimum of 20 percent of the total number of donors procured in its service area for each 12 month period surveyed. (Multiple organs refers to the donation and recovery of more than one vascular organ from a single organ donor. A pair of kidneys is considered a single organ in this definition.)

These numeric standards are the same as those adopted by the Association of Independent Organ Procurement Agencies (we are using their standards as HOPAs do not have any comparable standards). Kidneys are the basis of the performance standard because of their frequency of transplantation.

Recertification

Each designated OPO would be exempt from meeting the performance standards for the first two years after it is approved (See § 485.306). During that period and subsequently, it must continue to meet the requirements of §§ 485.304 through 485.306 in order to be recertified. Following is our proposal for recertification that outlines the process we intend to use. Since the first recertification would not occur until 1989, we are not proposing specific timeframes for procedural steps at this time.

For recertification, we intend to use State survey agencies to survey each approved OPO at least once every two years to determine if it continues to meet all applicable requirements of §§ 485.304 and 485.305 and meets the performance standards for recertification. HOPAs as well as IOPAs would be subject to the State agency survey. The deemed status of hospitals that are accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA) would not exempt them from this requirement.

Failure To Meet Requirements

In a new § 485.307, we would state that if the OPO fails to meet the conditions in §§ 485.304 through 485.306, we would notify the Network and transplant centers in the OPO's service area that we are not paying for services furnished by the OPO on or after a specific date. Any future costs associated with the utilization of this OPO on or after that date would not be reimbursable. We would then suspend payment for OPO services until the OPO is in compliance. If the OPO does not come into compliance, we would then proceed to terminate the agreement to reimburse the OPO's services under Medicare and Medicaid and the agreement that the OPO is the designated one for its service area. The right to appeal a proposed suspension of payment or termination of agreement would be provided. This appeal right is the same as that of other providers and suppliers and is found in 42 CFR Part 498, §§ 498.3 and 498.5. (52 FR 22444)

Multiple Applicants in a Service Area

The law permits the Secretary to pay for organ procurement costs under Medicare and Medicaid only if those costs are derived from payments to a single OPO designated for a given service area. We expect that only one OPO per service area will meet our qualifications. However, it may be that more than one applicant would be qualified. In such cases, we would consider other factors. At this time we propose to consider: (1) Bed capacity associated with the hospitals; and (2) prior performance, including the previous year's experience in the number of organs wasted and harvested and the average cost per organ. Although these additional factors are important, they stress numerical value and for that reason are secondary in consideration. We invite public comment suggesting additional factors to consider.

Also, there may be applicants whose proposed service area surrounds and includes another applicant's proposed service area. In such a case, we would give additional consideration to the applicant with the larger service area.

In new § 485.308, we would state that there will be only one OPO per service

area and the factors we will consider when deciding when more than one applicant meets the requirements.

Regardless of whether an OPO has been approved for a grant under section 371(b) of the Public Health Service Act or as being in compliance with Part 405, Subpart U, it would have to be evaluated for compliance with the newly established criteria for approval in §§ 485.304 and 485.305 and would not be eligible for payment after October 1, 1987 unless specifically designated under section 1138 of the Act.

Application Process

Because the statute is effective October 1, 1987, applicants should begin preparing material to meet these criteria based on the criteria set forth in these proposed regulations.

We encourage all interested organizations to write as soon as possible requesting a formal application. Written inquiries should be addressed to: HCFA, Office of Survey and Certification, Room 2–D–2 Meadows East Building, 6325 Security Blvd., Baltimore, MD. 21207, Attn: Wayne Smith.

As soon as the application form is completed, we will send it and complete instructions to each applicant for completion. Under express provisions in section 1138(b)(1)(F), payment may be made only to approved OPOs that have been designated for their service area. Submission of the application should be based on the conditions for approval established in final regulations. We will publish those as soon as possible after the close of the comment period. We strongly urge interested organizations to develop documentation that would satisfy the conditions as they are proposed. As noted earlier we recognize that there may be service areas where fewer than 75 percent of hospitals will agree to cooperate with any one OPO and we invited comments on that criterion. Potential applicants with agreements with a significant majority of hospitals, but less than the 75 percent proposed minimum, are encouraged to apply to prevent being disadvantaged should public comments be persuasive that the final rule contain exceptions or a lower minimum.

The applicant must forward the completed application to the HCFA regional office that services its area. The regional office will review the application against the final criteria to determine whether the OPO meets our criteria for approval (as required by §§ 485.304 and 485.305) and will make a specific designation before October 1, 1987; the State survey agency will survey the OPO later for adherence to our requirements.

An OPO that is not chosen as the OPO for its service area would have the same administrative appeal rights as other suppliers granted under Part 498. After designation, an OPO will have appeal rights to contest suspension or involuntary termination.

Organ Procurement Protocols

To implement section 1138(a) of the Act, we would revise the condition of participation for hospitals at 42 CFR 482.12, Condition of participation: Governing body. We would add to the standard concerning care of patients, paragraph (c), a new paragraph (5). We would include the language from OBRA requiring protocols pertaining to organ procurement.

The deemed status of the hospitals that are accredited by the JCAH or AOA would not exempt them from these requirements. We would employ the definition of organs used in the statute; we are not proposing any additions to the definition of "organ" at this time.

We note that these protocols would apply to all participating Medicare hospitals. Thus, many hospitals that do not now routinely inquire as to organ availability from potential donors would have to do so. Such protocols, of course, should take into account not only patient conditions but also hospital capability to maintain and harvest organs, whether or not an OPO is available to assist the hospital, and any other factors that would affect the ability of the hospital to harvest organs effectively.

As specifically required by the statute, we would require each hospital to be a member in the Organ Procurement and Transplantation Network for hospitals in which organ transplants are performed and to abide by the Network's rules and requirements. We have not defined, described or otherwise circumscribed the statutory phrase "rules and requirements" of the Network in this proposed rule, nor have we delineated what being a "member" in the Network would require. However, we are soliciting comments as to whether those terms need to be defined, if at all, and problems commenters might anticipate in the absence of a definition. We are aware that some concern has been expressed about the requirement that transplant hospitals must be members of and abide by the rules of the Network. As we stated earlier, we do not believe that UNOS or any other Network contractor we may designate in the future will seek to impose onerous rules or conditions for membership. To allay any fears that the Network contractor might use particular membership criteria or rules in an exclusionary or discriminatory manner, by the time these regulations are issued in final, we will amend the current contract with the Network contractor (or issue appropriate regulations) to specify that it is not permitted to impose any nongermane, exclusionary or discriminatory rules or conditions for membership.

Other Revisions

Our current regulations discuss OPOs primarily in the context of the Medicare ESRD program. That is, their focus has been on kidney procurement. Current § 413.178 discusses reimbursement of costs to independent OPAs. These rules would not change except for technical conforming changes; i.e., we would add a paragraph (f) (redesignating current (f) as (g)) to reflect the need for the OPO to be certified or recertified in accordance with § 485.307 in order to be reimbursed. We would also change all references to "OPA" to "OPO" for consistency; we also would not be reimbursing any costs incurred by any OPA that has not been designated as the OPO for its area.

We would revise Medicaid regulations at 42 CFR 441.13, Prohibitions on FFP: Institutionalized individuals, to exclude from FFP services furnished by an OPO that is not designated by the Secretary for its service area; we would revise the title so that it would no longer be limited only to institutionalized individuals. Under the revisions, each State would be able to continue to provide transplants as it does now; we simply would not contribute any FFP for organ procurement costs incurred by or on behalf of an OPA the Secretary has not designated as the OPO for its service area.

We would delete the definition of OPA from § 405.2102. In Subpart U of Part 405, we would change all references to "OPA" to "OPO" for consistency. It is confusing to use two different terms when we believe Congress intended payment only for OPO costs by requiring an OPA to be designated as an OPO before we could make payment for its costs.

We would add an OPO's appeal rights to 42 CFR Part 498, to assure that a decision not to designate an OPO, to suspend or cease payment (i.e., determine that the OPO does not meet the conditions for coverage), or to terminate the agreement with Secretary is subject to administrative review.

We would make minor technical revisions to §§ 405.2163(f) and 405.2171(a) (standards for participation

in patient registries for renal dialysis facilities or renal dialysis centers and for renal transplant centers), to show that the registry must be with an OPO certified and recertified in accordance with § 485.305. We would also revise § 405.2171(e) to change "OPA" to "OPO", and require that the OPO be certified and recertified in accordance with § 485.305.

IV. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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.

By far the greatest majority of organs procured by affected agencies are kidneys paid for by the Medicare program. The agencies do receive payment from other programs. However, the revenues from other sources are slight compared to payments from Medicare for kidneys. The total Medicare reimbursable costs for 1985 for the entire OPA program are estimated to be only slightly over $100 million: Approximately $42 million for IOPAs and approximately $60 million for HOPAs. We believe that the net costs of implementing the criteria of this regulation would be minimal—that the costs to the program and to the affected entities would be offset by improved efficiencies, resulting in reduction of administrative costs. The requirements in this proposed rule, which for the most part implement statutory provisions, would neither result in an annual economic impact of $100 million or more nor meet any other criteria of the Executive Order. Therefore, we have determined that this rule is not a major rule under Executive Order 12291 and that a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all existing OPAs as small entities.

Because we expect a substantial economic effect on all existing HOPAs and IOPAs as a result of these regulations, we are providing a regulatory flexibility analysis. We expect these regulations, in combination with other regulations on the subject of organ procurement, to bring about substantial change in terms of economics, behavior, and improvements in health care delivery in the industry.

Currently, there are 60 IOPAs and approximately 60 HOPAs. (We have exact data on the numbers of IOPAs because they are separately certified. Since the HOPAs are not separately certified, we have approximated the numbers.) OPAs have wide variations in size and management that affect their ability to respond effectively to meet the proposed criteria for OPOs. Presently, we expect that some OPAs now approved would meet the requirements of the criteria of this proposed regulation and some would not. Because existing OPAs report to us information about kidneys, and are not now required to meet the proposed population base and procurement minimums, available data is not useful in determining how many existing OPAs may meet all of the proposed criteria for OPAs. However, we believe that with proper notice and preparation most IOPAs could meet nearly all requirements.

The statutory requirement of designation of one OPA per defined area would have a substantial impact upon existing OPAs by necessitating a substantial reduction in the numbers of recognized organ procurement entities. Our best information indicates that as of May, 1987, 12 States and the District of Columbia have more than one OPA in one area as defined by these regulations. (There may be more or fewer as OPAs enter and leave the system.) In response to this requirement, existing OPAs may merge or consolidate.

We expect that many of the existing HOPAs may be at a relative disadvantage in competing for OPO designation because we believe many have procured organs solely or primarily for the transplant operations of the parent hospital. We realize that HOPAs have shared organs with other facilities. However, the proposed OPO criteria presume a wider range of associations and arrangements than we believe is common for HOPAs.

The operations of newly designated OPOs would differ from existing OPAs in several ways:

- They would have to meet performance standards of this rule within two years;
- They would have to work with the OPTN; which is developing its own standards; and
- With improved technology and the trend for insurers to expand coverage of transplants, we expect that procurement of nonrenal organs will comprise a growing portion of their activity. Further, we are separately pursuing a different regulation that would ensure that, in the future, the Medicare program will pay OPOs only for the costs of Medicare covered organs, and only for the share of the costs for those organs that is attributable to services furnished to Medicare beneficiaries. Thus, designated OPOs may need greater capabilities to identify separately the costs attributable to different types of organs and the costs of furnishing organs to recipients covered under different programs.

All IOPAs are currently nonprofit organizations. This may not be true of HOPAs, since one or more may be part of a for-profit hospital. In such a case, the entity could potentially meet the proposed OPO criteria if it were reorganized as a not-for-profit subsidiary.

We believe the proposed requirements regarding organ procurement protocols will have slight impact on hospitals. Effectively all transplant centers are accredited by the JCAH, which already requires hospitals to participate in the Organ Procurement Transplant Network. The proposed written organ procurement protocols may result in some administrative changes for hospitals, but we expect a slight effect on costs. We also expect that this requirement will result in increased efforts to secure organ donors. Those that do not have protocols will begin to establish them; others will step up their efforts. We do not expect it to be a major burden to small or rural hospitals. We expect their protocols to take into consideration their resources or support from an OPO and the OPTN. In addition, the requirement that hospitals participate in the OPTN is required by statute, so this is a conforming change.

State Medicaid agencies would be affected by this proposed rule because FFP would not be available for the costs of Medicaid-covered organ procurement unless the procurement were through an OPO or an "in-house" procurement by a transplant center. Thus, States would have to establish mechanisms to ensure

that Medicaid transplants used the services only of designated OPOs or were in-house. As of April, 1986, 22 States do not have any HOPAs; as of June, 1987, 21 States do not have any IOPAs. Although we cannot match data for a single period, there are 12 States that appear to have no OPAs.

Medicare beneficiaries and Medicaid recipients are affected by this regulation because most of the kidneys to be procured through the Organ Procurement and Transplantation Network by the OPOs will be transplanted in these individuals. Because of the expected improved efficiencies and publicity, we expect more organ donors to be identified, more organs procured and shared, and consequently more transplants, with a resulting beneficial effect on the beneficiaries and recipients.

The net costs of implementing these criteria are estimated to be minimal. Although these proposed criteria may increase costs in the beginning for some entities, at the same time we expect a greater effort to control costs to meet the criteria. Our objective is to improve access to and the quality of health care, and we expect these gains to more than offset any costs or potential adverse consequences for affected entities.

V. Paperwork Reduction Act

Sections 482.12, 485.303, and 485.304 of this proposed rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the instructions in the ADDRESS section.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 482

Administrative practice and procedure, Certification of compliance, Contracts (Agreements), Health Care, Health facilities, Health professions, Hospitals, Laboratories, Medicare, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 485

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare Practitioners, providers and suppliers.

For the reasons set out in the preamble, 42 CFR Chapter IV would be amended as set forth below:

PART 405—[AMENDED]

1. 42 CFR Part 405, Subpart U is amended as set forth below:

a. The authority citation for Subpart U continues 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.

b. Section 405.2102 is amended by revising the definition of "Organ procurement" and by removing the definiton of "Organ procurement agency" to read as follows:

§ 405.2102 Definitions.

* * * * *

Organ procurement. The process of acquiring donor kidneys. (See definition of *Organ Procurement organization* in § 485.302 of this chapter.)

* * * * *

c. Section 405.2163(f) is revised to read as follows:

§ 405.2163 Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.

* * * * *

(f) *Standard: Participation in recipient registry.* The dialysis facility or center participates in a patient registry program with an OPO certified or recertified under Part 485, Subpart D of this chapter for patients who are awaiting cadaveric donor transplantation.

d. In § 405.2171, paragraphs (a) and (e) are revised to read as follows:

§ 405.2171 Condition: Minimal service requirements for a renal transplant center.

* * * * *

(a) *Standard: participation in recipient registry.* The Renal Transplantation Center participates in a patient registry program with an OPO certified or recertified under Part 485, Subpart D of this chapter for patients who are awaiting cadaveric donor transplantation.

* * * * *

(e) *Standard: Organ procurement.* A renal transplant center utilizing the services of an organ procurement organization certified or recertified under Part 485, Subpart D of this chapter to obtain donor organs has a written agreement covering these services. The renal transplant center agrees to notify the Secretary in writing within 30 days of the termination of such arrangements.

PART 413—[AMENDED]

2. 42 CFR Part 413, Subpart F is amended as set forth below:

a. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

b. Section 413.178 is revised to read as follows:

§ 413.178 Reimbursement of independent organ procurement agencies and histocompatibility laboratories.

(a) *Principle.* Covered services furnished after September 30, 1978 by organ procurement organizations (OPOs) and histocompatibility laboratories in connection with kidney acquisition and transplantation will be reimbursed under the principles for determining reasonable cost contained in this part. Services furnished by independent OPOs and histocompatibility laboratories, that have an agreement with the Secretary in accordance with paragraph (c) of this section, will be reimbursed by making an interim payment to the transplant hospitals using these services and by making a retroactive adjustment, directly with the OPO or laboratory, based upon a cost report filed by the OPO or laboratory. (The reasonable costs of services furnished by hospital based OPOs or laboratories will be reimbursed in accordance with the

principles contained in §§ 413.60 and 413.64.)

(b) *Definitions.* For purposes of this section:

(1) "OPO" means an organization that meets the definition in § 485.302 of this chapter.

(2) "Histocompatibility laboratory" means a laboratory meeting the standards and providing the services set forth in § 406.2171(d) of this chapter.

(3) "Independent"—An OPO or a histocompatibility laboratory is independent unless it—

(i) Performs services exclusively for one hospital;

(ii) Is subject to the control of the hospital in regard to the hiring, firing, training and paying of employees; and

(iii) Is considered as a department of the hospital for insurance purposes (including malpractice insurance, general liability insurance, worker's compensation insurance, and employee retirement insurance).

(c) *Agreements with independent OPOs and laboratories.* (1) Any independent OPO or histocompatibility laboratory that wishes to have the cost of its pretransplant services reimbursed under the Medicare program must file an agreement with HCFA under which the OPO or laboratory agrees—

(i) To file a cost report in accordance with § 413.24(f) within three months after the end of each fiscal year;

(ii) To permit HCFA to designate an intermediary to determine the interim reimbursement rate payable to the transplant hospitals for services provided by the OPO or laboratory and to make a determination of reasonable cost based upon the cost report filed by the OPO or laboratory;

(iii) To provide such budget or cost projection information as may be required to establish an initial interim reimbursement rate;

(iv) To pay to HCFA amounts that have been paid by HCFA to transplant hospitals and that are determined to be in excess of the reasonable cost of the services provided by the OPO or laboratory; and

(v) Not to charge any individual for items or services for which that individual is entitled to have payment made under section 1861 of the Act.

(2) An independent OPO or histocompatibility laboratory whose services were being reimbursed under Medicare on October 1, 1978, and that wishes to continue being reimbursed under Medicare must file an agreement by January 23, 1979.

(3) The initial cost report due from an OPO or laboratory is for its first fiscal year ending after September 30, 1978, during any portion of which it had an agreement with the Secretary under paragraphs (c) (1) and (2) of this section. The initial cost report covers only the period covered by the agreement.

(d) *Interim reimbursement.* (1) Hospitals eligible to receive Medicare reimbursement for renal transplantation will be paid for the pretransplantation services of an independent OPO or histocompatibility laboratory that has an agreement with the Secretary under paragraph (c) of this section, on the basis of an interim rate established by an intermediary for that OPO a laborortory.

(2) The interim rate will be based on the average cost per service incurred by an OPO laboratory, during its previous fiscal year, associated with procuring a kidney for transplantation. This interim rate may be adjusted if necessary for anticipated cost changes. If there is not adequate cost data to determine the initial interim rate, it will be determined according to the OPO's or laboratory's estimate of its projected costs for the fiscal year.

(3) Payments made on the basis of the interim rate will be reconciled directly with the OPO or laboratory after the close of its fiscal year, in accordance with paragraph (e) of this section.

(4) Information on the interim rate for all independent OPOs and histocompatibility laboratories shall be disseminated to all transplant hospitals and intermediaries.

(e) *Retroactive adjustment.* (1) *Cost reports.* Information provided in cost reports by independent OPOs and histocompatibility laboratories must meet the requirements for cost data and cost finding specified in paragraphs (a) through (e) of § 413.24. These cost reports must provide a complete accounting of the cost incurred by the agency or laboratory in providing covered services, the total number of Medicare beneficiaries who received those services, and any other data necessary to enable the intermediary to make a determination of the reasonable cost of covered services provided to Medicare beneficiaries.

(2) *Audit and adjustment.* A cost report submitted by an independent OPO or histocompatibility laboratory will be reviewed by the intermediary and a new interim reimbursement rate for the succeeding fiscal year will be established based upon this review. A retroactive adjustment in the amount paid under the interim rate will be made in accordance with § 413.64(f). If the determination of reasonable cost reveals an overpayment or underpayment resulting from the interim reimbursement rate paid to transplant hospitals, a lump sum adjustment will be made directly between the intermediary and the OPO or laboratory.

(f) For services furnished on or after October 1, 1987, no payment may be made for services furnished by an OPO that does not met the requirements of Part 485, Subpart D of this chapter.

(g) *Appeals.* Any OPO or histocompatibility laboratory that disagrees with an intermediary's cost determination under this section is entitled to an intermediary hearing, in accordance with the procedures contained in §§ 405.1811 through 405.1833, if the amount in controversy is $1,000 or more.

PART 441—[AMENDED]

3. 42 CFR Part 441, Subpart A is amended as set forth below:

a. The authority citation for Part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

b. The title of § 441.13 in the table of contents is revised to read as follows:

441.13 Prohibitions on FFP.

c. In § 441.10, the introductory paragraph is republished and a new paragraph (i) is added to read as follows:

§441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services:

* * * * *

(i) Section 1138(b) for organ procurement organization services (§ 441.13(c)).

d. In § 441.13, the title is revised and a new paragraph (c) is added to read as follows:

§ 441.13 Prohibitions on FFP.

* * * * *

(c) FFP is not available in expenditures for services furnished by an organ procurement organization on or after October 1, 1987, that does not meet the requirements of Part 485, Subpart D of this chapter.

PART 482—[AMENDED]

4. 42 CFR Part 482 is amended as set forth below:

a. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1338, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z),

and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396(a)).

b. For § 482.12(c), the introductory paragraph is republished and new paragraph (c)(5) is added to read as follows:

§ 482.12 Condition of participation: Governing body.

* * * * *

(c) *Standard: Care of patients.* In accordance with hospital policy, the governing body must ensure that the following requirements are met:

* * * * *

(5)(i) To identify potential organ donors as defined in § 485.302 of this chapter, the hospital has written protocols that—

(A) Assure that each family of a potential organ donor knows of its options to either donate an organ or organs or to decline to donate;

(B) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of the families of potential donors;

(C) Require that an organ procurement organization designated by the Secretary be notified of potential organ donors.

(i) In the case of a hospital in which organ transplants are performed, the hospital must be a member of the Organ Procurement and Transplantation Network established under section 372 of the Public Health Service Act and abide by its rules and requirements.

(ii) For purposes of this subparagraph, the term "organ" means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by HCFA for purposes of this subparagraph.

5. 42 CFR Part 485 is amended as set forth below:

a. The authority citation for Part 485 is revised to read as follows:

Authority: Secs. 1102, 1138, 1861(aa), and (cc) and 1871 of the Social Security Act; (42 U.S.C. 1302, 1395x and 1395hh).

b. The part heading is revised and the table of contents is amended by adding a new Subpart D as follows:

PART 485—CONDITIONS OF PARTICIPATION AND CONDITIONS FOR COVERAGE: SPECIALIZED PROVIDERS

* * * * *

Subpart D—Conditions for Coverage: Organ Procurement Organizations

Sec.

c. A new subpart D is added to read as follows:

Subpart D—Conditions of Coverage: Organ Procurement Organizations

§ 485.301 Basis and scope.

The subpart sets forth the qualifications and requirements an organ procurement organization (OPO) must meet in order for the costs of its services in procuring organs for hospitals and transplant centers to be reimbursable under Medicare and Medicaid. Its statutory basis is section 1138(b) of the Act, as added by section 9318 of Pub. L. 99–509.

§ 485.302 Definitions.

As used in this subpart, the following definitions apply:

"Entire standard metropolitan statistical" area means a metropolitan statistical area, a consolidated metropolitan statistical area, or a primary statistical area listed in the State and Metropolitan Area Data Book published by the U.S. Bureau of the Census.

"Organ" means a human kidney, heart, lung, pancreas, liver or other human tissue or organ specified by HCFA for purposes of this subpart.

"Organ procurement organization" means an organization that performs or coordinates the performance of harvesting, preserving and transporting organs and maintains a system of locating prospective recipients for harvested organs.

"Potential donor" means a person who dies in circumstances (causes and conditions of death, and age at death) that are generally acceptable for donation of at least one solid organ if the donor can be identified timely and permission for donation can be obtained.

"Service area" means a geographical area of sufficient size that (unless the service area comprises an entire State) include at least 2.5 million in population or at least fifty potential organ donors each year and that either includes an entire standard metropolitan statistical area or does not include any part of such an area.

"Transplant center" means a hospital certified by Medicare to furnish directly, for specific organ(s), transplant and other medical and surgical speciality services required for the care of transplant patients.

§ 485.303 Condition: Organ procurement organization qualifications—General.

(a) Payment may be made under the Medicare and Medicaid programs for organ procurement costs attributable to payments made to an OPO only if the OPO has been designated by the Secretary as an OPO, payment to which may be treated as organ procurement costs for reimbursement of hospitals under Medicare and Medicaid.

(b) To be initially designated as an OPO, an OPO must:

(1) Apply to HCFA in writing using the application form prescribed by HCFA; and

(2) Meet the requirements in §§ 485.304 and 485.305.

(c) To continue to be designated as the designated OPO as specified in paragraph (b) of this section, the OPO must have been certified or recertified by the Secretary within the previous two years as meeting the performance standards in § 485.306 of this subpart and must continue to meet the requirements in §§ 485.304 and 485.305 of the Subpart.

§ 485.304 Condition: Qualifications required of an organization for it to be a designated organ procurement organization.

To be designated by the Secretary as the OPO for its service area in accordance with § 485.303 of this subpart, the OPO must at the time of application and throughout the period of its designation—

(a) Be a nonprofit entity;

(b) Have accounting and other fiscal procedures necessary to assure the fiscal stability of the organization, including procedures to obtain payment for non-renal organs provided to transplant centers;

(c) Have an agreement with the Secretary to be reimbursed under Medicare for the procurement of kidneys;

(d) Make available to HCFA documentation of its service area. An OPO in a service area of less than 2.5 million in population must provide to HCFA quantifiable data showing that the area yields 50 or more potential donors per year. Documentation that precisely defines the proposed service area includes the following:

(1) The names of the counties (or parishes in Louisiana) served;

(2) Geographic boundaries of the service area for which U.S. population statistics are available;

(3) Total population in service area; and

(4) The number of and the names of acute care hospitals capable of providing organ donors in the service area;

(e) Have a director and such other staff, including an organ donation coordinator and an organ procurement specialist, necessary to obtain organs effectively from donors in its service area;

(f) Have a board of directors or an advisory board that has the authority to recommend policies relating to the donation, procurement, and distribution of organs. The board of directors or advisory board must include—

(1) Members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area;

(2) Members who represent the public residing in that area;

(3) A physician with knowledge, experience, or skills in the field of histocompatability;

(4) A physician with knowledge or skills in the field of neurology; and

(5) A transplant surgeon from each transplant center in its service area with which the OPO has arrangements to coordinate its activities;

(g) To identify potential organ donors, have documented evidence that it has a working relationship with at least 75 percent of the hospitals that participate in the Medicare and Medicaid programs in its service area that have the equipment and personnel for harvesting organs and document systematic efforts intended to acquire all usable organs from potential donors;

(h) Arrange for the appropriate tissue typing of donated organs;

(i) Have a system to allocate donated organs among transplant centers and patients according to established medical criteria;

(j) Provide or arrange for the transportation of donated organs to transplant centers;

(k) Have arrangements to coordinate its activities with transplant centers in the area;

(l) Have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage and distribution of tissues as may be appropriate to assure that all usable tissues are obtained from potential donors;

(m) Maintain and make available upon request of the Secretary, the Comptroller General, or their designees data that relate to the performance standards; and

(n) Maintain data in a format that can be readily used by a successor OPO and agree to turn over to the Secretary copies of all records and data necessary to assure interrupted service by a successor OPO newly designated by HCFA.

§ 485.305 Condition: Network participation.

In order to be designated as the OPO for its service area, and to continue to be the designated OPO once designated, an OPO must be a member of, have a written agreement with, and abide by the rules and requirements of the Organ Procurement and Transplantation Network established in accordance with section 372 of the Public Health Service Act.

§ 485.306 Condition: Performance Standards for Organ Procurement Organizations.

(a) HCFA will not recertify any OPO that fails to meet the following performance standards:

(1) Each OPO must procure within its service area a minimum ratio of 23 cadaveric kidneys per million population of its service area for each 12 month period surveyed.

(2) Each OPO must provide a minimum ratio of cadaveric kidneys procured in its service area *and transplanted* (either locally or exported and transplanted) of 19 cadaveric kidneys per million population of its service area for each 12 month period surveyed.

(3) Each OPO must provide multiple organs for transplantation from a minimum of 20 percent of the total number of donors procured in its service area for each 12 month period surveyed. (Multiple organs refers to the donation and recovery of more than one vascular organ from a single organ donor. A pair of kidneys is considered to be a single organ by this definition.)

(b) An OPO designated by HCFA for its service area will be exempt from meeting these performance standards for two years after initially being designated as an OPO under § 485.303 of this subpart.

§ 485.307 Failure to meet requirements.

(a) Failure to continue to meet any of the requirements in §§ 485.304 and 485.305 of the subpart or to meet the performance standards in § 485.306(a) of this subpart (after two years after designation (see § 485.306(b) of this subpart)) may result in suspension of payment for costs for OPO services. HCFA will notify the OPO of its determination that the OPO has not met one or more of the requirements and provide a reasonable opportunity for correction. Continued failure to meet a requirement may result in termination of the OPO's agreement with the Secretary.

(b) An OPO whose payment is suspended or whose agreement with the Secretary is terminated may appeal the action in accordance with Part 498 of this chapter.

§ 485.308 Designation of one OPO for each service area.

(a) The Secretary may designate only one OPO per service area. If more than one OPO applies and substantially meets the requirements of § 485.304 of this subpart in a given service area, the Secretary will consider other factors in reaching a decision concerning which OPO to designate. These factors are as follows:

(1) Bed capacity associated with the hospitals with which the OPOs have a working relationship; and

(2) Prior performance, including the previous year's experience in terms of the number of organs harvested and wasted and the average cost per kidney.

(b) An OPO that applies to HCFA to be the designated OPO for its service area and that is not designated may appeal its nondesignation under Part 498 of this chapter.

PART 498—[AMENDED]

6. 42 CFR Part 498 is amended as follows:

a. The authority citation for Part 498 continues to read as follows:

Authority: Secs. 205(a), 1102, (1869(c), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395 ff(c), 1395hh and (1395ii), unless otherwise noted.)

b. In § 498.2, the definition of "Supplier" is revised to read as follows:

§ 498.2 Definitions.

As used in this part—

* * * * *

"Supplier" means an independent laboratory, supplier of portable X-ray services, rural health clinic (RHC), ambulatory surgical center (ASC), organ procurement organization (OPO), or end-stage renal disease (ESRD) treatment facility that is approved by HCFA as meeting the conditions for coverage of its services, and

* * * * *

c. In § 498.3(b), the introductory paragraph is republished and paragraph (b)(4) is revised to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) *Initial determinations by HCFA.* HCFA makes initial determinations with respect to the following matters:

* * * * *

(4) Whether a prospective supplier meets the appropriate conditions for coverage of its services, as set forth in Part 405 (§ 405.152, Subpart M, N, Q, or U), Part 416, Part 485, Subpart D, or Part 491 of this chapter).

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; No. 13.714, Medicare Assistance)

Dated: July 8, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 28, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–17505 Filed 7–29–87; 3:31 pm]

BILLING CODE 4120–01–M

federal register

Friday
July 31, 1987

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on the Proposed Endangered Status for the California Freshwater Shrimp; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Widlife and Plants; Extension of Comment Period on the Proposed Endangered Status for the California Freshwater Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be extended for the proposed determination of endangered status for the California freshwater shrimp (*Syncaris pacifica*). The shrimp is known from only 11 streams in Napa, Marin and Sonoma Counties, California. The extension of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period, which originally closed on June 22, and then was extended to August 1, 1987, now closes October 1, 1987.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Regional Endangered Species Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503–231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The California freshwater shrimp is a decapod crustacean of the family Atyidae. The species, a true freshwater shrimp, inhabits quiet portions of tree-lined streams with underwater vegetation and exposed tree roots. The species is threatened by introduced predatory fish and deterioration or loss of habitat. A proposal of endangered status was published in the **Federal Register** (52 FR 13254) on April 22, 1987. A Notice of public hearing and extension of the comment period was published in the **Federal Register** (52 FR 23317) on June 19, 1987.

A public comment hearing was held July 15, 1987, at the County Administration Building, Santa Rosa, California. Public comments at the hearing and written comments requested extension of the comment period in order to further evaluate the status of the species.

The comment period on the proposal originally closed on June 22, 1987. The Service extended the comment period to August 1, 1987. The comment period is now extended an additional 60 days, to October 1, 1987. Written comments may now be submitted until October 1, 1987, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Ms. Robyn Thorson, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503–231–6131 or FTS 429–6131).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *Et seq.;* Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: July 28, 1987.

Rolf L. Wallenstrom,

Regional Director.

[FR Doc. 87–17606 Filed 7–30–87; 10:57 am]

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