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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

WHEN: April 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: Carolyn Payne, 202–523–3187

BOSTON, MA

WHEN: April 19; at 9 a.m.
WHERE: Thomas P. O'Neill, Jr. Federal Building,
Auditorium,
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Rules and Regulations

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-001]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued March 30, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a final rule in Docket No. RM87-35-000 (Order No. 489, 53 FR 3342, Feb. 5, 1988). In Order No. 489, the Commission readopted a procedure for determining and updating the benchmark rate of return on common equity for the jurisdictional operations of public utilities and took other actions concerning the generic determination of a rate of return. The Commission received one petition for rehearing of the final rule in this docket. The petitioner contends that the Commission underestimated the cost of common equity of electric utilities by failing to conduct a comprehensive assessment of the financial and operating conditions of the electric utility industry. The Commission rejects the petitioner's argument by stating that assessments of the financial and operating conditions of the electric utility industry are already reflected in components of the discounted cash flow (DCF) analysis performed by the Commission. The petitioner also argues that the extension of the generic rate of return to proceedings under section 206 of the Federal Power Act is inappropriate. The Commission affirms its prior decision to consider the generic rate of return on an advisory basis in proceedings under section 206, stating that such consideration would be useful as an indication of the industry average rate of return.

EFFECTIVE DATE: This order will become effective March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's action in Docket No. RM87-35-001 adopted and released March 30, 1988.

The full text of this Commission action is available for inspection and copying during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-7988 Filed 4-11-88; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 154

[Docket No. RM-6-14-000; Order Nos. 483, 483-A]

Revisions to the Purchased Gas Adjustment Regulations; Correction

Issued April 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule, Correction Notice.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is correcting the final rule, Revisions to the Purchased Gas Adjustment Regulations, 52 FR 43854 (Nov. 17, 1987) and the Order on Rehearing on the Revisions to the Purchased Gas Adjustment Regulations, 53 FR 7495 (March 9, 1988).

EFFECTIVE DATE: April 6, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, Phone: (202) 357-8020.

SUPPLEMENTARY INFORMATION:

On November 10, 1987, and March 2, 1988 respectively, the Commission issued its final rule and order on rehearing for Revisions to the Purchased Gas Adjustment Regulations. In both the final rule and the order on rehearing, § 154.304 incorrectly lists the names of three of the pipelines subject to annual and quarterly PGA filings. The Commission is correcting those references. Further, the order on rehearing amending § 154.305(e) introductory text, (i)(3)(i) and (i)(3)(ii) inadvertently omitted revisions to the cross references in those paragraphs. This correction notice provides the correct cross references.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriation Act, 31 U.S.C. 9701 (1970).

2. In § 154.304, paragraph (c) is revised to read as follows:

§ 154.304 Scheduled annual and quarterly PGA filings.

* * * * *

(c) *Effective dates.* A pipeline must file its annual and quarterly PGA filings with the Commission to be effective as follows:

Annual Date: January 1

[Quarterly Dates: Apr 1, July 1, Oct 1]

Alabama-Tennessee Natural Gas Company
Granite State Gas Transmission, Inc.
East Tennessee Natural Gas Company
Nothern Natural Gas Company
Sea Robin Pipeline Company
Tennessee Gas Pipeline Company
National Fuel Gas Supply Corporation

Annual Date: February 1

[Quarterly Dates: May 1, Aug 1, Nov 1]

Lawrenceburg Gas Transmission Corporation
Texas Eastern Transmission Corporation
Texas Gas Transmission Corporation

Annual Date: March 1

[Quarterly Dates: June 1, Sept 1, Dec 1]

Algonquin Gas Transmission Company
Natural Gas Pipeline Company of America
North Penn Gas Company
Panhandle Eastern Pipe Line Company

Annual Date: April 1

[Quarterly Dates: July 1, Oct 1, Jan 1]

Arkla Energy Resources, A Division of Arkla, Inc.
Commercial Pipeline Company, Inc.
Midwestern Gas Transmission Company, Southern Division
Northwest Pipeline Corporation
Southern Natural Gas Company

Annual Date: May 1

[Quarterly Dates: Aug 1, Nov 1, Feb 1]

ANR Pipeline Company
Columbia Gas Transmission Company
Florida Gas Transmission Company
Kentucky-West Virginia Gas Company
MIGC, Inc.
Williams Natural Gas Company

Annual Date: June 1

[Quarterly Dates: Sept 1, Dec 1, Mar 1]

Mississippi River Transmission Corporation
Questar Pipeline Company
Pacific Interstate Transmission Company
Valero Interstate Transmission Company

Annual Date: July 1

[Quarterly Dates: Oct 1, Jan 1, Apr 1]

Distrigas of Massachusetts Corporation
El Paso Natural Gas Company
Gas Gathering Corporation
South Georgia Natural Gas Company
Transwestern Pipeline Company

Annual Date: August 1

[Quarterly Dates: Nov 1, Feb 1, May 1]

Bayou Interstate Pipeline System
Transcontinental Gas Pipe Line Company
Western Gas Interstate Company
Williston Basin Interstate Pipeline Company

Annual Date: September 1

[Quarterly Dates: Dec 1, Mar 1, June 1]

CNG Transmission Corporation
Carnegie Natural Gas Company
Equitrans, Inc.
Locust Ridge Gas Company
Mid Louisiana Gas Company
Trunkline Gas Company

Annual Date: October 1

[Quarterly Dates: Jan 1, Apr 1, Jul 1]

Colorado Interstate Gas Company
Raton Gas Transmission Company
Ringwood Gathering Company
Southwest Gas Corporation
United Gas Pipeline Company
West Texas Gas, Inc.

Annual Date: November 1

[Quarterly Dates: Feb 1, May 1, Aug 1]

Eastern Shore Natural Gas Company
Great Lakes Gas Transmission Company
Inter-City Minnesota Pipeline, Ltd., Inc.
Texas Gas Pipe Line Corporation
Valley Gas Transmission
Midwestern Gas Transmission Company, Northern Division

Annual Date: December 1

[Quarterly Dates: Mar 1, June 1, Sept 1]

KN Energy, Incorporated
Louisiana-Nevada Transit Company
Western Transmission Corporation

3. In § 154.305, paragraphs (e) introductory text, (i)(3)(i) and (i)(3)(ii) are revised to read as follows:

§ 154.305 Annual PGA filing.

* * * * *

(e) *Surcharge balance.* Subject to the conditions in paragraph (f) of this section and § 154.306, the balance for determining the surcharge includes:

* * * * *

(i) *Refunds.* * * *

(3) *Debiting refund subaccount.* * * *

(i) If the balance is a credit balance, disburse the amounts in cash in the manner described in paragraphs (i)(2)(i) or (i)(2)(ii) of this section; or

(ii) If the balance is a debit balance or the pipeline elects not to make a cash disbursement under paragraph (i)(3)(i) of this section, transfer the amounts to the current deferral subaccount balance determined under paragraphs (e) and (g) of this section.

* * * * *

[FR Doc. 88-7987 Filed 4-11-88; 8:45 am]
BILLING CODE 6717-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 706

Public Information

AGENCY: Overseas Private Investment Corporation ("OPIC").

ACTION: Final rule.

SUMMARY: These final rules replace the regulations of the Overseas Private Investment Corporation ("OPIC" or the "Corporation") governing the agency's processing of requests under the Freedom of Information Act ("FOIA" or the "Act"). The rules set forth the procedures governing public access to information contained in the files, documents and records of the Corporation, as well as the procedures by which persons submitting confidential business information to OPIC may designate such information as exempt from disclosure under the FOIA. Many of the changes are necessary to implement certain provisions of the Freedom of Information Act of 1986 (Pub. L. 99-570) which *inter alia*, prescribes the adoption of a government-wide uniform schedule of fees in accordance with the Office of Management and Budget Guidelines published at 52 FR 10012-10020.

DATE: Effective date: May 12, 1988.

FOR FURTHER INFORMATION CONTACT: Ralph T. Mabry at (202) 457-7021 or Robert Jordan at (202) 457-7093, or write to either of them at Overseas Private Investment Corporation, 1615 M Street, NW., Washington, D.C. 20527.

SUPPLEMENTARY INFORMATION: OPIC published notice of the regulations in the **Federal Register** on February 25, 1988 (53 FR 5583). No comments were received. Accordingly, the proposed rules are being promulgated today as OPIC's final rules on the processing of requests under the Freedom of Information Act.

The proposed replacement regulations include new policies and procedures relating to: (1) Predisclosure notification procedures for confidential business information; (2) designation of confidential business information; and (3) the schedule of fees to be charged in connection with the search, review and duplication of documents requested.

Pursuant to Executive Order 12600 of June 23, 1987, the regulations hereby promulgated establish procedures to notify submitters of records containing confidential business information of requests for the disclosure of this information under the Act. The rules formalize OPIC's long standing policy of notifying submitters of information and giving them an opportunity to object to its public disclosure. Also established are procedures enabling applicants for OPIC programs who provide confidential business information in support of their applications to designate information as privileged and confidential at the time the information is submitted to OPIC.

A new fee schedule is also established. The amended changes are intended to reflect the Corporation's direct costs in processing FOIA requests. The schedule has been prepared in accordance with the Freedom of Information Reform Act ("FOIRA") of 1986 (Pub. L. 99-570). FOIRA requires that all federal agencies conform to a uniform charging system as established by the Office of Management and Budget ("OMB"). The new fee schedule is based on the OMB uniform fee schedule and guidelines issued March 27, 1987 (52 FR 10012).

In the preamble to OPIC's proposed replacement regulations, the Corporation announced its intention to follow the guidelines issued by the Department of Justice on April 2, 1987 The final rules set forth below have

been amended to provide greater detail on the criteria the Corporation will consider in granting fee waivers and reducing fees.

Pursuant to the Regulatory Flexibility Act, 5 USC 601 *et seq.*, the head of OPIC has certified that the rules, as promulgated, will not have a significant economic impact on a substantial number of small entities.

The proposed rules are not a major rule for the purposes of Executive Order 12291 of February 17, 1981, since they are not likely to result in:

(1) An annual effect on the United States economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the Unites States-based enterprises in domestic or export markets.

The rules hereby promulgated do not contain a collection of information for the purposes of the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 706

Freedom of information.

For the reasons set forth in the preamble, 22 CFR Part 706 is revised to read as follows:

PART 706—DISCLOSURE OF PUBLIC INFORMATION

Subpart A—General

Sec.

706.11 Purpose and policy.
706.12 Scope.
706.13 Definitions.

Subpart B—Procedures and Fees

706.21 Information and records available to the public.
706.22 Information and records not generally available to the public.
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706.24 Notification of corporation action.
706.25 Extension of time.
706.26 Fees.
706.27 Administrative appeal of refusal to disclose.

Subpart C—Rights of Submitters of Confidential Business Information

706.31 Notification to submitters of business information.
706.32 Prior designation of business information as privileged or confidential.

Authority: The Freedom of Information Act, as amended, 5 U.S.C. 552.

Subpart A—General

§ 706.11 Purpose and policy.

(a) This part is adopted pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552. It establishes the procedures governing public access to information contained in the files, documents and records of the Corporation. It also sets forth the procedures by which persons submitting written information to the Corporation may designate such information as exempt from disclosure under 5 U.S.C. 552(b)(4); and provides submitters of confidential business information with the right to be notified of a request for disclosure and to object to the disclosure of such information.

(b) This part reflects the policy of the Corporation to honor all requests for the disclosure of Corporation records provided that such disclosure does not adversely affect a legitimate public or private interest, is required and/or not prohibited by law or other authority, and would not impose an unreasonable burden on the Corporation. However, this part also reflects the view of the Corporation that the soundness and viability of many of its programs depend in large measure upon the willingness of applicants for Corporation assistance to provide full and reliable commercial, financial, technical and business information relating to the conduct of their affairs. Since the release of such information may imperil the competitive business position and credit standing of an applicant, it is essential that applicants be assured that confidential commercial or financial information which is submitted to the Corporation will not be disclosed to the public. This part is designed in part to give this assurance and thereby to encourage applicants to make complete disclosure of information bearing upon an application for OPIC assistance.

§ 706.12 Scope.

This part applies to all files, documents, records, and information obtained or produced by officers and employees of the Corporation in the course of their official duties and/or under such officer or employee's control. Specific types of files, documents, records and items of information described herein are illustrative rather than exclusive. This part does not purport to describe or set forth every file, document, record or item of information which may or may not be disclosed or to incorporate every exemption from disclosure provided by law.

§ 706.13 Definitions.

(a) Except as may be otherwise provided in paragraph (b) of this section, all terms used in this part which are defined in the Freedom of Information Act, 5 U.S.C. 552 shall have the same meaning.

(b)(1) "Act" means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(2) "Business information" means trade secrets or confidential or privileged commercial or financial information obtained from any person, including but not necessarily limited to such information as is contained in individual case files relating to such activities as insurance, loans and loan guarantees.

(3) "Business submitter" means any person or entity which provides business information to the Corporation.

(4) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to the commerce, trade, or profit interests of the requester or the person on whose behalf the request is made. The term "commercial use requester" refers to any person making a commercial use request. In determining whether a requester properly belongs in this category, the Corporation will determine the use to which a requester will put the documents requested. Where the Corporation has reasonable cause to doubt the use to which a requester will put records sought, or where that use is not clear from the request itself, the Corporation may seek additional clarification before assigning the request to a specific category.

(5) "Direct costs" means those expenditures which the Corporation actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under the Freedom of Information Act.

(6) "Duplication" refers to the process of making a copy of a document available to the FOIA requester. Copies will be ordinarily in the form of a photocopy of the original document.

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

(8) "FOIA" means the Act.

(9) "Non-commercial scientific institution" refers to an institution that

is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(10) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals, but only in those instances when they can qualify as disseminators of "news" who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Corporation may also look to the past publication record of a requester in making this determination.

(11) "Review" refers to the process of examining documents located in response to a "commercial use request" under the Act (as the term "commercial use request" is defined in paragraph (b)(4) of this section) to determine whether any portion of any document located is permitted to be withheld. The term "review" includes processing any documents for disclosure, including doing all that is necessary to excise exempt portions and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(12) "Search" includes all time spent looking for material that is responsive to request, including a page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document would prove to be the less expensive and quicker method of complying with a request.

Subpart B—Procedures and Fees

§ 706.21 Information and records available to the public.

(a) *General.* Corporation information and records in existence which are not exempt from disclosure by law are available for public inspection and copying in the manner specified in § 706.23 of this part. A fee will be charged for the Corporation's expenses incurred in searching for, reviewing, duplicating, tabulating and compiling such information and records in accordance with the charging system and schedule of fees set forth in § 706.26.

(b) *Materials available from the Office of Public Affairs.* For the convenience of the public, the following Corporation materials will be maintained and readily available from the Office of Public Affairs.

(1) Current issues of the Corporation's annual report, which report ordinarily sets forth: (i) the names of recipients of Corporation insurance, loans, guarantees and other assistance during the fiscal year covered; (ii) the kind and amount of assistance provided; (iii) the purpose of the approved assistance in general terms; (iv) statistical data on Corporation programs; and (v) the audited financial statements of the Corporation;

(2) Pamphlets describing Corporation programs;

(3) Blank Corporation insurance forms currently in use; and

(4) Press releases.

(c) *Materials available from the Assistant General Counsel for Claims.* The Assistant General Counsel for Claims maintains public information files relating to the determination of claims filed under the Corporation's political risk insurance contracts and a list of all claims resolved by cash settlements or guarantees. Public access to such public information files will be granted in accordance with the procedures described in § 706.23(b) of this part.

(d) *Materials available from the Corporate Secretary.* The Corporate Secretary maintains public information files containing the minutes of the public portions of the Board of Directors' meetings, as well as the resolutions of the Board of Directors. Public access to such information will be granted in accordance with the procedures described in § 706.23(c) of this part.

§ 706.22 Information and records not generally available to the public.

The following kinds of files, documents, records, and items of information, among others, are generally not available to the public:

(a) "Business information" as that term is defined in § 706.13(b)(2) of this part:

(b) Information provided in applications for political risk insurance, loans, loan guaranties and other Corporation assistance;

(c) Insurance policies, loan agreements and loan guarantee agreements relating to specific recipients of Corporation assistance;

(d) Information on declined, withdrawn or canceled applications for Corporation assistance;

(e) Inter-agency or intra-agency communications not routinely available to a party in litigation with the Corporation, including, among other things, memoranda between officials or agencies, Corporation staff memoranda, opinions and interpretations prepared by Corporation attorneys or consultants, research studies performed internally or under contract for internal management purposes, and internal management reports; and

(f) Personnel files and related documents containing private or personal information.

§ 706.23 Public access to information and records.

(a) *Access to routinely available information.* Corporation facilities are available to the public between 8:45 a.m. and 5:30 p.m. (except for Saturdays, Sundays and official holidays) for obtaining copies of materials of the kind described in § 706.21(b). Persons wishing to obtain copies of such documents may request them by reporting in person to the Corporation receptionist, by telephoning the office of the Director of Public Affairs at (202) 457–7093 or by writing the Corporation to the attention of such officer.

(b) *Access to the Public Information Files on Claims.* Access by any member of the public to the Corporation's public information files on claim matters described in § 706.21(c) shall be granted by appointment only. Persons desiring such access may request an appointment by telephoning the Claims Assistant at (202) 457–7019 or by writing the Corporation to the attention of such officer. Although the Corporation will endeavor to grant an appointment at the time requested, some delay may be required at times because of the small size of the Corporation's staff. Persons desiring access to the public information files should seek an appointment at least twenty-four hours in advance.

(c) *Access to Public Information Files on Board Matters.* Access by any member of the public to the Corporation's public information files

described in § 706.21(d) shall be granted by appointment only. Persons desiring such access may request an appointment by telephoning the Corporate Secretary at (202) 457–7079 or by writing the Corporation to the attention of such officer.

(d) *Access to Any Records of the Corporation Not Otherwise Made Available by the Corporation to the Public.* Access to records of the Corporation other than those described in paragraphs (b), (c), and (d) of § 706.21, or the duplication of such records, shall be granted only upon specific written request to the Corporation addressed to the Vice President, Office of Corporate Communications, which shall be deemed not to have been received until actual receipt thereof by such officer or his designee. Such request shall, to the extent required under the law, accurately describe the records as to which access or duplication is requested including, by way of example only, the subject matter, format, date, and where pertinent, the country, project or person involved. Any request which does not describe such records in sufficient detail to permit the staff of the Corporation promptly to locate them shall be deemed not to have been received by the Corporation until such time as the requester has clarified the request to meet this standard. The Corporation will make every reasonable effort by telephone or by letter to assist the person making the request to be more specific in describing the document or information sought.

§ 706.24 Notification of corporation action.

Persons making a request for disclosure normally will be notified of the availability of the material within ten working days after the date of receipt of the request. The information or records subject to release shall be made available promptly provided the requirements of § 706.26 regarding payment of fees are satisfied. Any denial of a request in whole or in part shall be made in writing and such notification shall set forth the reasons for the denial. Any person whose request for information has been denied may appeal from such determination in accordance with the provisions of § 706.27 of this part.

§ 706.25 Extension of time.

Although the Corporation will make every effort to respond to an initial request for disclosure of information within ten working days, there may be delays because of the Corporation's limited staff. Moreover, in certain circumstances the period of time within which the Corporation will respond to an initial request will be extended by an additional ten working days. Circumstances which would necessitate such an extension include the following:

(a) The need to search for and collect requested records from storage facilities located outside Corporation premises;

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(c) The need for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject-matter interest therein; or

(d) The need to notify the submitter of confidential business information of the request and to allow a reasonable period for objection to disclosure per § 706.31 of this part.

It is the practice of the Corporation to inform a requester in writing or by telephone of any anticipated delays.

§ 706.26 Fees.

(a) *General policy.* A fee representing direct costs shall be charged for services rendered by the Corporation under 5 U.S.C. 552(a) in furnishing information to members of the public, in accordance with the provisions of paragraph (c) of this section and as required or permitted by law.

(b) *Anticipated fees.* A letter requesting a document or information should specifically state that all costs chargeable under this section will be paid or, alternatively that they will be paid up to a specified limit. If the letter makes no reference to anticipated fees, and the request is expected to involve fees in excess of $25, or it is estimated by the Corporation that the fee will exceed the dollar limit specified in the request, the Corporation will notify the requester of the estimated fee promptly upon receipt of the request. The request will not be deemed to have been received until the Corporation receives a reply from the requester stating its willingness to pay the estimated fee.

(c) *Uniform fee schedule.* Fees will be charged in accordance with the category of the requester and as specified below. All photocopying costs will be assessed at the rate of $0.15 per page.

(1) *Commercial use requesters.* "Commercial use requesters," as that term is defined in § 706.13 of this part, will be charged the direct cost of all time spent searching for and reviewing for release the records requested. Search costs are $13 per hour. Review costs are $33 per hour. Search and review costs will be assessed even though no records may be found or, after review, there is no disclosure of records. All pages photocopied will be assessed at the rate set out above.

(2) *Educational and non-commercial scientific institution requesters.* The Corporation will provide records to "educational institutions" or "non-commercial scientific institutions," as those terms are defined in § 706.13 (b)(7) and (b)(9) of this part, for the cost of reproduction alone. No fee will be charged for the costs of photocopying the first 100 pages of documents encompassed by a request. The fee for all pages photocopied will be assessed at the rate set out above. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying "educational institution" or "non-commercial scientific institution" and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Representatives of the news media.* The Corporation shall provide records to "representatives of the news media," as that term is defined in § 706.13(b)(10) of this part, for the cost of reproduction alone. No fee will be charged for the costs of photocopying the first 100 pages of documents encompassed by a request. The fee for all pages photocopied will be assessed at the rate set forth above. To be eligible for inclusion in this category a requester must be a "representative of the news media" and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* The Corporation will provide documents to requesters who do not fit into any of the categories in paragraphs (c) (1), (2), and (3) of this section for the cost of any search time in excess of two hours and for photocopying any documents in excess of 100 pages. The fee for search time will be assessed at the rate set forth in paragraph (c)(1) of this section. The fee for all pages photocopied will be assessed at the rate set forth above.

(d) *Non-payment of fees.* (1) The Corporation will begin assessing interest charges on the 31st day following the day on which the requester is advised of the fee charged, such interest charges to accrue as of the date of such

notification. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within 30 days of the billing date), the Corporation will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the Corporation begins to process a new request or a pending request from the requester.

(3) When the Corporation acts under paragraph (c) (1) or (2) of this section the administrative time limits prescribed in subsection (a)(6) of the Act (i.e. 10 working days from receipt of initial request and 20 working days from receipt of appeals from initial denial plus permissible extensions of these time limits) will begin only after the Corporation has received fee payments described above.

(e) *Advance payments.* Where the Corporation estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250 the Corporation will require a requester to make an advance payment of the entire fee before continuing to process the request.

(f) *Waiving or reducing fee.* (1) In accordance with section (4)(A)(ii) of the Act the Corporation will furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(i) In determining whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the Corporation will consider the following factors:

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

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

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

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

(ii) In determining whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following factors:

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

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

(2) The requester in all cases has the burden of presenting sufficient evidence or information to justify the requester waiver or reduction.

(g) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, section (4)(A)(iv) of the Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. These provisions work together so that, except for commercial use requesters, the Corporation will not begin to assess fees until after providing the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, the agency will determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost is equal to or less than the cost of processing the fee collected, there will be no charge to the requester.

(h) *Documents made available free of charge.* No fee will be charged to any requester for any brochure or annual report readily available from the Office of Public Affairs pursuant to § 706.21(b).

(i) *Inspection.* Persons may inspect and copy in the Corporation's facilities specifically requested documents other than those which are not generally available under § 706.22 or exempt by law without charge except for search, duplication, tabulation, or compilation fees which may be otherwise payable.

(j) *Other provisions—*

(1) *Charges for unsuccessful search.* The Corporation will assess charges for time spent searching, even if the Corporation fails to locate the records or if records located are determined to be exempt from disclosure.

(2) *Aggregating requesters.* When the Corporation reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation will aggregate any such requesters and charge accordingly.

(3) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* The Corporation will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

(4) *Remittances.* (i) All payments under this section shall be in the form of a personal check, bank draft drawn on a bank located in the United States, or cash. Remittances shall be made payable to the order of United States Treasury and mail to the Director of Public Affairs, Office of Corporate Communications, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527. The Corporation will assume no responsibility for cash which is lost in the mail.

(ii) A receipt for fees paid will be given only upon request.

(iii) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In appropriate cases an advance deposit may be required. The requester is at any time welcome to confer with the Director of Public Affairs in order to formulate the request in a manner which will reduce the fee and meet the needs of the requester. A request will not be deemed to have been received until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.

§ 706.27 Administrative appeal of refusal to disclose.

(a) *Who may appeal.* Any person whose request for information or records has been denied in whole or in part shall be entitled to submit a written appeal to the Corporation.

(b) *Time for appeal.* An appeal from a denial may be filed with the Corporation at any time within 20 days following the date of receipt of the initial determination, in cases of denials of an entire request, or from the date of receipt of any records being made available under an initial determination in cases of partial denials.

(c) *Form of appeal.* An appeal shall be by letter addressed to the Vice President & General Counsel, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527. The envelope and the letter setting forth the appeal shall be clearly marked in capital letters: FREEDOM OF INFORMATION ACT APPEAL. The letter shall reasonably describe the information or records requested and such other pertinent facts and statements as the appellant may deem appropriate. An appeal submitted in an envelope which is not addressed to the Vice President & General Counsel will not be deemed to have been received until such time as the appeal is forwarded to such officer.

(d) *Final Corporation Decision.* Final Corporation decisions on appeals from denials of requests for information or records shall be made in writing by the Vice President & General Counsel or his/her designee within twenty working days after the date of receipt of the request, unless an extension of up to ten working days has been deemed necessary in accordance with the procedures set forth in § 706.25 of this part. The 10-day extension may be applied to the response to the initial request or to the appeal, or to both, but in no event shall the extension exceed a total of ten working days. If the decision upholds the denial of the request, the appellant shall be notified in writing, which notice shall set forth the reasons for upholding the previous denial. If the Vice President & General Counsel or his/her designee acts favorably on the appeal, the information or records requested shall be made available promptly provided the requirements of § 706.26 regarding payment of fees are satisfied.

Subpart C—Rights of Submitters of Confidential Business Information

§ 706.31 Notification to submitters of business information.

(a) Except as provided in paragraph (c) of this section, the Director for Public Affairs will promptly notify a "business submitter" (as that term is defined in § 706.13(b)(3) of this part) that a request for disclosure has been made for any "business information" (as that term is defined in Section 706(b)(2) of this part) provided by such submitter, and shall describe the nature and scope of the request and advise such submitter of its right to submit written objections in response to the request. Such notice of intent to disclose shall be made to the submitter in writing and shall state the intent of the Corporation to disclose the business information on the expiration of 10 working days from the receipt of the notice.

(b) The business submitter may, within 10 working days of the forwarding of the Corporation's notification under paragraph (a) of this section, submit to the attention of the Director for Public Affairs, with copy to FOIA Counsel, written objection to the disclosure of the information requested, specifying the grounds upon which it is contended that the information should not be disclosed. In setting forth such grounds, the submitter shall specify to the maximum extent feasible the basis of its belief that the nondisclosure of any item of information requested is mandated or permitted by law. In the case of information which the submitter believes to be exempt from disclosure under subsection (b)(4) of the Act, the submitter shall demonstrate why the information is considered a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Act. The 10 working day period for providing the Corporation with a statement objecting to the disclosure of information encompassed by an FOIA request may be extended by the Corporation upon receipt of a written request for an extension. Such written request shall set forth the date which the statement is expected to be completed and shall provide reasonable justification for the extension. The Corporation's approval of a request for an extension shall not be unreasonably withheld.

(c) The Corporation will not ordinarily notify the submitter pursuant to paragraph (a) of this section if:

(1) The Corporation determines, prior to giving such notice, that the request should be denied;

(2) The disclosure is required by law (other than pursuant to 5 U.S.C. 552); or

(3) The information has been published or otherwise made available to the public, including material described in § 706.21.

(d) The Corporation shall carefully consider the objections of the submitter made pursuant to paragraph (b) of this section and shall promptly notify the submitter of any final determination regarding the release of the information requested.

§ 706.32 Prior designation of business information as privileged or confidential.

In order to facilitate the Corporation's determination of whether to disclose information submitted to it a submitter may designate information which it regards as confidential business information entitled to exemption from disclosure under 5 U.S.C. 552(b)(4). Such designation may be made at the time such information is submitted to the Corporation or at any time thereafter. Each document, record or item of information to be so designated shall be clearly marked in capital letters: PRIVILEGED BUSINESS INFORMATION. In accepting documents, records or any item of information so marked, the Corporation shall not be bound by such designation.

Ralph T. Mabry,

Senior Commercial Counsel.

[FR Doc. 88-7979 Filed 4-11-88; 8:45 am]

BILLING CODE 3210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-88-1770; FR-2442]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots; Correction

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

ACTION: Notice of correction to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This document corrects technical and typographical errors in the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots, published in the Federal Register on March 3, 1988 (53 FR 6922).

EFFECTIVE DATE: March 3, 1988.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Room 10276, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-7055. (This is not a toll-free number.)

Accordingly, the following corrections are made to FR Doc. 88-4578, published on March 3, 1988 (53 FR 6922):

Market area designation and local jurisdictions	Mortgage limits			
	1-family and condominium unit	2-family	3-family	4-family
REGION I				
HUD Field Office: Bangor Office				
Portland, ME MSA:				
Cumberland County	$81,600	$91,900	$111,650	$128,850
Lewiston-Auburn, ME MSA:				
Androscoggin County	101,250	114,000	138,000	160,500
HUD Field Office: Boston Office				
Barnstable County	$87,400	$98,400	$119,600	$138,000
Berkshire County	101,250	114,000	138,000	160,500
REGION III				
HUD Field Office: Washington, DC, Office				
Washington, DC-MD-VA MSA:				
District of Columbia	$101,250	$114,000	$138,000	$160,500
Montgomery County, MD				
Prince Georges County, MD				
Alexandria City, VA				
Arlington County, VA				
Fairfax County, VA				
Falls Church, VA				
Loudon County, VA				
Manassas City, VA				
Manassas Park City, VA				
Prince William County, VA				
HUD Field Office: Richmond Office				
Fauquier County	$99,300	$111,800	$135,850	$156,750
REGION IV				
HUD Field Office: Birmingham Office				
Anniston, AL MSA:				
Calhoun County	$76,000	$85,600	$104,000	$120,000
HUD Field Office: Greensboro Office				
Raleigh-Durham, NC MSA:				
Durham County	$101,250	$114,00	$138,000	$160,500
Franklin County				
Orange County				
Wake County				
REGION V				
HUD Field Office: Chicago Office				
Joliet, IL PMSA:				
Grundy County	$87,250	$98,300	$119,400	$137,800
Will County				
Aurora-Elgin, IL PMSA:				
Kane County	87,250	98,300	119,400	137,800
Kendall County				

Market area designation and local jurisdictions	Mortgage limits			
	1-family and condo-minium unit	2-family	3-family	4-family
HUD Field Office: Minneapolis-St. Paul Office				
Minneapolis-St. Paul, MN MSA:				
Anoka County	$101,250	$114,000	$138,000	$160,500
Carver County				
Chisago County				
Dakota County				
Hennepin County				
Isanti County				
Ramsey County				
Scott County				
Washington County				
Wright County				
St. Croix County				
REGION VIII				
HUD Field Office: Casper Office				
Teton County	$91,200	$102,700	$124,800	$144,000
HUD Field Office: Los Angeles Office				
Los Angeles Office Metro and Non-Metro Areas:				
Los Angeles County	$101,250	$114,000	$138,000	$160,500
San Luis Obispo County				
Santa Barbara County				
Ventura County				
Kern County				
HUD Field Office: San Francisco Office				
San Francisco Office Metro and Non-Metro Areas:				
Alameda County	$101,250	$114,000	$138,000	$160,500
Contra Costa County				
Del Norte County				
Humboldt County				
Lake County				
Marin County				
Mendocino County				
Monterey County				
Napa County				
San Benito County				
San Francisco County				
San Mateo County				
Santa Clara County				
Santa Cruz County				
Solano County				
Sonoma County				
HUD Field Office: Fresno Office				
Fresno Office Metro and Non-Metro Areas:				
Fresno County	$101,250	$114,000	$138,000	$160,500
Kern County				
Kings County				
Madera County				
Mariposa County				
Merced County				
Stanislaus County				
Tulare County				

Market area designation and local jurisdictions	Mortgage limits			
	1-family and condo-minium unit	2-family	3-family	4-family
HUD Field Office: Sacramento Office				
Sacramento Office Metro and Non-Metro Areas:				
Alpine County	$101,250	$114,000	$138,000	$160,500
Amador County				
Butte County				
Calaveras County				
Colusa County				
El Dorado County				
Glenn County				
Lassen County				
Modoc County				
Nevada County				
Placer County				
Plumas County				
Sacramento County				
San Joaquin County				
Shasta County				
Sierra County				
Siskiyou County				
Sutter County				
Tehama County				
Trinity County				
Tuolumne County				
Yolo County				
Yuba County				
HUD Field Office: San Diego Office				
San Diego Office Metro and Non-Metro Areas:				
Imperial County	$101,250	$114,000	$138,000	$160,500
San Diego County				
HUD Field Office: Santa Ana Office				
Metro Areas:				
Orange County	$101,250	$114,000	$138,000	$160,500
Riverside County				
San Bernardino County				
Non-Metro Areas:				
Mono County	75,000	84,000	102,500	118,000
Inyo County	75,000	84,000	102,500	118,000

Dated: April 1, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8191]

Income Tax; Returns Relating to Mortgage Interest Received in a Trade or Business From Individuals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the reporting of mortgage interest received in a trade or business from individuals. The Tax Reform Acts of 1984 and 1986 changed the applicable law. The final regulations affect a person that is engaged in a trade or business and that, in the course of that trade or business, receives $600 or more of mortgage interest from an individual for a calendar year. The final regulations provide these persons with guidance necessary to comply with the law.

EFFECTIVE DATES: The final regulations are effective on January 1, 1988, and apply to mortgage interest received after December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Katherine Lee Wambsgans, Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC 20224, Attention: CC:LR:T (202-566-3288, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1985, the **Federal Register** published temporary regulations (50 FR 33529) under section 6050H of the Internal Revenue Code relating to the reporting of mortgage interest received in a trade or business from individuals. The text of those temporary regulations also served as a notice of proposed rulemaking published in the **Federal Register** for the same day (50 FR 33551).

Section 145 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 685) added Section 6050H to the Code. Section 6050H requires a person engaged in a trade or business to report receipt of at least $600 of mortgage interest from an individual for a calendar year if the interest is received in the course of the trade or business. Section 1811(a) of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2832) made technical corrections to section 6050H. The final regulations reflect the relevant provisions of the 1984 and 1986 Acts.

After the Internal Revenue Service published temporary and proposed regulations, interest recipients noted their inability to comply with certain provisions. The Service's publication of Announcement 86-3, 1986-3, I.R.B. 42, relaxed several reporting requirements

for interest received in 1985. Announcement 86–112, 1986–46 I.R.B. 22, clarified the application of Announcement 86–3 to interest received after 1985. The final regulations reflect the issues addressed in Announcement 86–3.

The Service received public comments on the proposed regulations and held a public hearing on January 7, 1986. After fully considering comments and statements made at the hearing, the Service adopts the proposed regulations as revised by this Treasury decision. Revisions to the proposed regulations are discussed below.

Effective Date

The final regulations are effective only for interest received after December 31, 1987. The temporary regulations and Announcements 86–3 and 86–112 apply to interest received before January 1, 1988.

Points and Other Prepaid Interest

The proposed regulations prohibited an interest recipient from reporting points and other prepaid interest in the year of receipt but did not address when, if ever, to report those amounts. Announcement 86–3 provided that an interest recipient that received points and other prepaid interest in 1985 can report those amounts as received in 1985 if it was unable to segregate those amounts. Announcement 86–112 stated that the reporting requirement for points and other prepaid interest was relaxed only for 1985. The final regulations prohibit reporting of points and other prepaid interest in the year of prepayment, prohibit reporting of prepaid interest in the form of points in any year, and require reporting of prepaid interest other than points in the proper year of accrual.

Commentators suggested permitting an interest recipient to report in the current calendar year prepaid interest accruing shortly after year-end. For example, an interest payment properly accruing for the period December 6, 1988, through January 5, 1989, contains prepaid interest if received on December 31, 1988. The final regulations permit an interest recipient to report as interest received during the current calendar year prepaid interest properly accruing by the following January 15.

Rule of 78s Method of Accounting

The proposed regulations provided no special reporting rule for interest earned under the Rule of 78s method of accounting. Announcement 86–3 allowed an interest recipient that calculates interest earned under the Rule of 78s method of accounting to report interest received under that method provided it met certain notice requirements. The final regulations permit an interest recipient to report interest earned under the Rule of 78s method of accounting as interest received in circumstances identical to those described in Announcement 86–3.

Definition of Mortgage

The proposed regulations defined a mortgage as an obligation secured primarily by real property. Because commentators found difficulty in applying that definition, the final regulations define a mortgage as an obligation all or part of which is secured by real property. Real property includes a manufactured home meeting the definition of section 25(e)(10).

The proposed regulations exempted reporting for interest received on lines of credit or credit card obligations secured primarily by real property. Because the Tax Reform Act of 1986 limits interest deductibility and because payors of record are using these obligations more often, the final regulations remove this exemption.

The final regulations do not address issues arising out of the limitations on qualified residence interest.

The final regulations provide a transitional rule for obligations existing on December 31, 1987, that are not primarily secured by real property. An obligation covered by the transitional rule is not a mortgage subject to reporting after 1987.

Interest Received on Behalf of Another Person

The proposed regulations required interest received on behalf of another person to be reported by the first person to receive it (the initial recipient). Commentators noted difficulty in compliance when the initial recipient did not possess the mortgage reporting information. Announcement 86–3 suspended this reporting rule for 1985 to allow initial recipients time to obtain the reporting information. Announcement 86–112 stated that Announcement 86–3 applied only to 1985 reporting. The final regulations require the initial recipient to report interest received on behalf of another person but except an initial recipient from reporting for any period for which the initial recipient does not possess the mortgage reporting information if the person for which the interest is received is engaged in a trade or business and would receive the interest in the course of its trade or business if it received the interest directly. The exception requires the person for which the interest is received, rather than the initial recipient, to report.

Interest Received by Foreign Persons

The proposed regulations provided that a foreign-person interest recipient must report mortgage interest received outside the United States if it is a corporation such that any interest received from it would be from sources within the United States under section 861(a)(1)(C). The final regulations incorporate the criteria described in that section, extend the reporting requirements to noncorporate persons, and clarify that the term "foreign person" means "not a United States person" as defined in section 7701(a)(30).

Interest Received From Nonresident Alien Individuals

The proposed regulations did not exempt an interest recipient from reporting interest received from a nonresident alien individual. Announcement 86–3 provided that for 1985 an interest recipient need not report interest received from a nonresident alien individual. Announcement 86–112 extended this rule to post-1985 reporting. Announcement 86–3 provided documentary evidence rules to determine nonresident alien individual status. The final regulations except an interest recipient from reporting interest received from a nonresident alien individual in circumstances substantially similar to those described in Announcement 86–3.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Although the Service issued a notice of proposed rulemaking soliciting public comment, it concluded on issuing the notice that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Service has submitted the collection-of-information requirements contained in these regulations to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. OMB has approved these requirements.

Drafting Information

The principal authors of these regulations are Katherine Lee Wambsgans and Annette Guarisco, Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations on matters of both substance and style.

List of Subjects

26 CFR Parts 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

For the reasons set forth in the preamble, Title 26, Chapter 1, Subchapter A, Part 1, and Subchapter H, Part 602, of the Code of Federal Regulations is amended as set forth below:

PART I—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805. * * * Sections 1.6050H–0, 1.6050H–1, and 1.6050H–2 also issued under 26 U.S.C. 6050H.

Par. 2. Section 1.6050H–1T is amended by revising the title of such section to read as follows:

§ 1.6050H–1T Information reporting of mortgage interest received in a trade or business from individuals after 1985 and before 1988 (Temporary).

Par. 3. Section 1.6050H–1T is amended by revising Q/A–32 to read as follows:

Effective Date

Q–32: When is this section effective?

A–32: This section generally is effective for mortgage interest received after December 31, 1984, and before January 1, 1988. However, Q/A–15a of this section is effective for mortgage interest received after December 31, 1986, and before January 1, 1988.

Par. 4. The following new, §§ 1.6050H–0, 1.6050H–1 and 1.6050H–2, are added immediately following § 1.6050H–1T and read as follows:

§ 1.6050H–0 Table of contents.

§ 1.6050H–1 Information reporting of mortgage interest received in a trade or business from an individual.

(a) *Reporting requirement.*
(b) *Qualified mortgage.* (1) In general.
(2) Mortgage.
(i) In general.
(ii) Transitional rule for certain obligations existing on December 31, 1984.
(iii) Transitional rule for certain obligations existing on December 31, 1987.
(3) Payor of record.
(c) *Interest recipient.* (1) Trade or business requirement.
(2) Interest received or collected on behalf of another person.
(i) General rule.
(ii) Exception.
(3) Examples.
(4) Governmental unit.
(d) *Additional rules.* (1) Reporting by foreign person.
(2) Reporting with respect to nonresident alien individual.
(i) In general.
(ii) Nonresident alien individual status.
(3) Reporting by cooperative housing corporations.
(e) *Amount of interest received on mortgage for calendar year.* (1) In general.
(2) Calendar year.
(i) In general.
(ii) De minimis rule.
(3) Certain interest not received on mortgage.
(i) Interest received from seller on payor of record's mortgage.
(ii) Interest received from governmental unit.
(4) Interest calculated under Rule of 78s method of accounting.
(f) [Reserved]
(g) Effective date.

§ 1.6050H–2 Time, form, and manner of reporting interest received on qualified mortgage.

(a) *Requirement to file return.* (1) Form of return.
(2) Information included on return.
(3) Time and place for filing return.
(4) Use of magnetic media.
(b) *Requirement to furnish statement.* (1) In general.
(2) Information included on statement.
(3) Statement furnished pursuant to Federal mortgage program.
(4) Copy of Form 1098 to payor of record.
(5) Furnishing statement with other information reports
(6) Time and place for furnishing statement.
(c) Notice requirement for use of Rule of 78s method of accounting.
(1) In general.
(2) Time and manner.
(d) *Reporting by related parties.* (1) In general.
(2) Qualified person.
(3) Designation agreement.
(4) Penalties.
(e) *Penalty provisions.* (1) Failure to file return or to furnish statement.
(2) Failure to furnish TIN.
(3) Failure to include correct information.
(f) *Requirement to request and to obtain TIN.* (1) In general.
(2) Manner of requesting TIN.
(g) Effective date.

§ 1.6050H–1 Information reporting of mortgage interest received in a trade or business from an individual.

(a) *Reporting requirement.* Except as otherwise provided in this section and § 1.6050H–2, an interest recipient that receives at least $600 of interest on a qualified mortgage for a calendar year must, with respect to that interest—

(1) File an information return with the Internal Revenue Service; and

(2) Furnish a statement to the payor of record on the mortgage.

Paragraph (e) of this section contains rules to determine the amount of interest received on a mortgage for a calendar year. Section 1.6050H–2 contains rules relating to the form, time, and manner of filing information returns and furnishing statements. Paragraph (d) of this section contains additional rules relating to the reporting requirement for foreign persons, cooperative housing corporations, and nonresident alien individuals. An interest recipient may, but is not required to, report its receipt of less than $600 of interest on a qualified mortgage for a calendar year. An interest recipient that chooses, but is not required, to file a return as provided in § 1.6050H–2 (a) or to furnish a statement as provided in § 1.6050H–2 (b) is subject to this section and § 1.6050H–2.

(b) *Qualified mortgage*—(1) *In general.* A mortgage is a qualified mortgage if the payor of record on the mortgage is an individual, including an individual acting in a capacity as a sole proprietor of a business. A mortgage is not a qualified mortgage if the payor of record on the mortgage is not an individual (such as a trust, estate, partnership, association, company, or corporation), even though an individual is a co-borrower on the mortgage and all the trustees, beneficiaries, partners, members, or shareholders of the payor of record are individuals.

(2) *Mortgage*—(i) *In general.* Except as otherwise provided in paragraphs

(b)(2)(ii) and (b)(2)(iii) of this section, an obligation is a mortgage if real property (regardless of where located) secures all or part of the obligation. An interest recipient must determine whether real property secures an obligation at the time the obligation is created or, if security is added or removed at a later time, at that later time. Real property includes a manufactured home as defined in section 25(e)(10). An obligation includes a line of credit or a credit card obligation. For purposes of this section and § 1.6050H–2, a borrower incurs a line of credit or credit card obligation when the borrower first has the right to borrow against the line of credit or credit card, whether the borrower actually borrows an amount at that time. An obligation will not fail to be treated as a mortgage solely because, under an applicable State or local homestead law or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

(ii) *Transitional rule for certain obligations existing on December 31, 1984*—(A) *In general.* An obligation that existed on December 31, 1984, is not a mortgage if, at the time the payor of record incurred the obligation, the interest recipient reasonably classified the obligation as other than a mortgage, real property loan, real estate loan, or other similar type of obligation. A reasonable classification of an obligation must be consistent with industry practices and determined according to the purpose of the obligation, the property securing the obligation, and any other reasonable factor. For purposes of this paragraph (b)(2)(ii)(A), an obligation was not reasonably classified as other than a mortgage, real property loan, real estate loan, or other similar type of obligation if, at the time the payor of record incurred the obligation, more than one-half of the obligations in the particular class in which the obligation was classified were secured primarily by real property.

(B) *Examples.* The following examples illustrate the rules of paragraph (b)(2)(ii)(A) of this section:

Example (1). B offers an unsecured line of credit and a line of credit secured by real property. B separately markets the two credit lines, and they are governed by different terms and conditions. For accounting purposes, B classifies the two types of loans as a single class. For purposes of paragraph (b)(2)(ii)(A) of this section, the two types of loans are different classes of obligations.

Example (2). B operates a program to make loans to small businesses. Depending on the amount of the loan and the credit history of the borrower, B may or may not require security for the loan. If B requires security, it may consist of real or personal property. For accounting purposes, B classifies all of the loans within this program as a single class. For purposes of paragraph (b)(2)(ii)(A) of this section, all of the loans within this program may be classified as belonging to a single class.

(iii) *Transitional rule for certain obligations existing on December 31, 1987.* An obligation that was incurred after December 31, 1984, and that existed on December 31, 1987, is not a mortgage if the obligation is not primarily secured by real property.

(3) *Payor of record.* A payor of record on a mortgage is the person carried on the books and records of the interest recipient as the principal borrower on the mortgage. If the books and records of the interest recipient do not indicate which borrower is the principal borrower, the interest recipient must designate a borrower as the principal borrower.

(c) *Interest recipient*—(1) *Trade or business requirement.* Except as provided in paragraph (c)(4) of this section, an interest recipient is a person that is engaged in a trade or business (whether or not the trade or business of lending money) and that, in the course of the trade or business, receives interest on a mortgage. For purposes of this paragraph (c)(1), if a person holds a mortgage which was originated or acquired in the course of a trade or business, the interest on the mortgage is considered to be received in the course of that trade or business. For example, if real estate developer A lends money to individual B to enable B to purchase a house in a subdivision owned and developed by A, and B gives a mortgage to A for the loan, A is an interest recipient for interest received on the mortgage. Alternatively, if C, a person engaged in the trade or business of being a physician, lends money to individual D to enable D to purchase C's home, and D gives a mortgage to C for the loan, C is not an interest recipient for interest received on the mortgage because C will not receive the interest in the course of the trade or business of being a physician.

(2) *Interest received or collected on behalf of another person*—(i) *General rule.* Except as otherwise provided in paragraph (c)(2)(ii) of this section, a person that, in the course of its trade or business, receives or collects interest on a mortgage on behalf of another person is the interest recipient (the initial recipient) for the mortgage. In this case, the reporting requirement of paragraph (a) of this section does not apply to the transfer of interest from the initial recipient to the person for which the initial recipient receives or collects the interest. For example, if financial institution A collects interest on behalf of financial institution B, A is the initial recipient for the mortgage, and B is not required to report the interest received on the mortgage from A.

(ii) *Exception.* Paragraph (c)(2)(i) of this section does not apply for a period for which—

(A) An initial recipient does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section; and

(B) The person for which the interest is received or collected would receive the interest in the course of its trade or business if the interest were paid directly to that person.

The person for which the interest is received or collected is the interest recipient with respect to interest received or collected on the mortgage during such a period. For purposes of paragraph (c)(2)(ii)(B) of this section, if interest is received or collected on behalf of a person other than an individual, that person is presumed to receive interest in a trade or business.

(3) *Examples.* The following examples illustrate the rules of paragraph (c) of this section:

Example (1). Financial institution F collects mortgage interest on behalf of financial institution G and deposits the amount collected into G's account held with F. F possesses the information needed to comply with the reporting requirement of paragraph (a) of this section. F is the interest recipient for the mortgage. G is not required to report.

Example (2). The facts are the same as in example (1), except that F does not possess the information needed to comply with the reporting requirement. G, the person for which F collects the interest, is the interest recipient for the mortgage. F is not required to report.

Example (3). S, an individual, sells real property to another individual, P, and takes back a mortgage from P to finance the sale. S does not receive the interest in the course of a trade or business. B, a bank, collects P's payments of principal and interest on behalf of S and deposits that amount into an account held at the bank in S's name. B does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section. B is the interest recipient for P's mortgage without regard to paragraph (c)(2)(ii) of this section, because S would not receive the interest in the course of a trade or business. S is not required to report.

Example (4). X collects mortgage interest on behalf of Y, who would receive the interest in the course of a trade or business. X possesses the information needed to comply with the reporting requirement of paragraph (a) of this section. On July 1, 1988, Z assumes X's interest collection responsibilities. Z does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section. X is the interest recipient for interest received from January 1, 1988, through June 30, 1988. Because Z does not

possess the requisite information and Y would receive the interest in the course of a trade or business. Y is the interest recipient for interest received from July 1, 1988, through December 31, 1988.

(4) *Governmental unit.* A governmental unit or an agency or instrumentality of a governmental unit that receives interest on a mortgage is an interest recipient without regard to the requirement of paragraph (c)(1) of this section that the interest be received in the course of a trade or business. A governmental unit or an agency or instrumentality of a governmental unit that is an interest recipient must designate an officer or employee to satisfy the reporting requirements of paragraph (a) of this section.

(d) *Additional rules*—(1) *Reporting by foreign person.* An interest recipient that is not a United States person (as defined in section 7701(a)(30)) must report interest received on a qualified mortgage only if it receives the interest—

(i) At a location in the United States, or

(ii) At a location outside the United States if the interest recipient is—

(A) A controlled foreign corporation (within the meaning of section 957(a)), or

(B) A person, 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of the taxable year preceding the receipt of interest (or for such part of the period as the person was in existence), was effectively connected with the conduct of a trade or business within the United States.

(2) *Reporting with respect to nonresident alien individual*—(i) *In general.* The reporting requirement of paragraph (a) of this section does not apply if—

(A) The payor of record is a nonresident alien individual, and

(B) Real property located in the United States does not secure the mortgage.

(ii) *Nonresident alien individual status.* For purposes of paragraph (d)(2)(i)(A) of this section, an interest recipient must apply the following documentary evidence rules to determine whether a payor of record is a nonresident alien individual:

(A) If interest is paid outside the United States, the interest recipient must satisfy the documentary evidence standard provided in § 35a.9999–4T (Q/A–5 (iii)) with respect to the payor of record; and

(B) If interest is paid within the United States, the interest recipient must secure from the payor of record a Form W–8 or a substantially similar statement signed by the payor under penalty of perjury as described in § 1.6049–5(b)(2)(iv).

For purposes of this paragraph (d)(2)(ii), the place of payment is the place where the payor of record completes the acts necessary to effect payment. An amount paid by transfer to an account maintained by an interest recipient in the United States or by mail to a United States address is considered to be paid within the United States.

(3) *Reporting by cooperative housing corporations.* For purposes of this section and § 1.6050H–2, an amount received by a cooperative housing corporation from an individual tenant-stockholder that represents the tenant-stockholder's proportionate share of interest described in section 216(a)(2) is interest received on a qualified mortgage in the course of the cooperative housing corporation's trade or business. A cooperative housing corporation is an interest recipient with respect to each tenant-stockholder's proportionate share of interest and must report $600 or more of interest received from an individual tenant-stockholder. The terms "cooperative housing corporation," "tenant-stockholder," and "tenant-stockholder's proportionate share" are defined in section 216 and the regulations thereunder.

(e) *Amount of interest received on mortgage for calendar year*—(1) *In general.* For purposes of this section and § 1.6050H–2, interest includes mortgage prepayment penalties and late charges other than late charges for a specific mortgage service. Interest does not include interest prepaid in the form of points, regardless of the payor of record's ability to deduct the points under section 461(g)(2). An interest recipient must not report interest prepaid in the form of points as interest received for any calendar year. For example, although an interest recipient receives $3,400 interest prepaid in the form of points in 1988, it must not report that interest in 1988 or a subsequent year. Whether an interest recipient receives $600 or more of interest on a mortgage for a calendar year is determined on a mortgage-by-mortgage basis. An interest recipient need not aggregate interest received on all of a payor of record's mortgages which it holds to determine if it meets the $600 threshold. Therefore, an interest recipient need not report interest of less than $600 received on a mortgage, even though it receives $600 or more of a total interest on all of a payor of record's mortgages for a calendar year.

(2) *Calendar year*—(i) *In general.* Except as otherwise provided in paragraph (e)(2)(ii) of this section, the calendar year for which interest is received is the later of—

(A) The calendar year in which the interest is received, or

(B) The calendar year in which the interest properly accrues.

For example, if an interest recipient receives a payment on December 20, 1988, that includes interest accruing by December 31, 1988, the interest recipient must report the interest as received for 1988 even if the interest payment is not due until February 1989.

(ii) *De minimis rule.* An interest recipient may treat interest received during the current calendar year which properly accrues by January 15 of the subsequent calendar year as interest received for the current calendar year. For example, if an interest recipient receives a monthly interest payment on December 31, 1988, which includes interest accruing for the period December 5, 1988, to January 5, 1989, the interest recipient may treat the entire interest payment as received for 1988. If a portion of an interest payment received in a current calendar year accrues after January 15 of the subsequent calendar year, an interest recipient must report as interest received for the current calendar year only the portion that properly accrues by the end of the current calendar year. For example, if an interest recipient receives a monthly payment that includes interest accruing for the period December 20, 1988, through January 20, 1989, the interest recipient may not report as interest received for 1988 any interest accruing after December 31, 1988. The interest recipient must report the interest accruing after December 31, 1988, as received for calendar year 1989.

(3) *Certain interest not received on mortgage*—(i) *Interest received from seller on payor of record's mortgage.* Interest received from a seller or a person related to a seller within the meaning of section 267(b) or section 707(b)(1) on a payor of record's mortgage is not interest received on a mortgage. For example, interest is not received on a mortgage if a real estate developer deposits an amount in escrow with an interest recipient and advises it to draw on the account to pay interest on a payor of record's mortgage (e.g., a buy-down mortgage). Similarly, interest is not received on a mortgage if an interest recipient receives a lump sum from a real estatge developer for interest on a payor of record's mortgage.

(ii) *Interest received from governmental unit.* Interest received from a governmental unit or an agency or instrumentality of a governmental unit is not interest received on a

mortgage. For example, interest is not received on a mortgage if received as a housing assistance payment from the Department of Housing and Urban Development on a mortgage insured under section 235 of the National Housing Act (12 U.S.C. 1701–1715z (1982 & Supp. 1983)). Except as otherwise provided in paragraph (e) (1) and (2) of this section, interest received on a mortgage is only the excess of interest received on the mortgage over interest received from a governmental unit or an agency or instrumentality of a governmental unit.

(4) *Interest calculated under Rule of 78s method of accounting.* An interest recipient permitted by Revenue Procedure 83–40, 1983–1, C.B. 774 (or other revenue procedure) to use the Rule of 78s method of accounting to calculate interest earned on a transaction may report as interest received on a mortgage interest earned on the transaction as calculated under the Rule of 78s method of accounting only if the interest recipient satisfies the notice requirement of § 1.6050H–2(c).

(f) [Reserved]

(g) *Effective date.* This section is effective for mortgage interest received after December 31, 1987. Section 1.6050H–1T contains rules for reporting mortgage interest received after December 31, 1984, and before January 1, 1988.

§ 1.6050H–2 Time, form, and manner of reporting interest received on qualified mortgage.

(a) *Requirement to file return*—(1) *Form of return.* An interest recipient must file a return required by § 1.6050H–1(a) on Form 1098 (with Form 1096 as the transmittal form). An interest recipient may use forms containing provisions substantially similar to those in Forms 1098 and 1096 if it complies with applicable revenue procedures relating to substitute Forms 1098 and 1096. An interest recipient must file a separate return for each qualified mortgage for which it receives $600 or more of interest for a calendar year.

(2) *Information included on return.* An interest recipient must include on Form 1098:

(i) The name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41)) of the payor of record;

(ii) The name, address, and TIN of the interest recipient;

(iii) The amount of interest required to be reported with respect to the qualified mortgage for the calendar year; and

(iv) Any other information required by Form 1098 or its instructions.

Section 1.6050H–1(e) contains rules to determine the amount of interest received on a mortgage for a calendar year.

(3) *Time and place for filing return.* An interest recipient must file a return required by paragraph (a) of this section on or before February 28 of the year following the calendar year for which it receives the mortgage interest. An interest recipient must file the return with the same Internal Revenue Service Center where it files its other returns.

(4) *Use of magnetic media.* An interest recipient must file the return required by paragraph (a) of this section on magnetic media only if required by section 6011(e) and the regulations thereunder. An interest recipient not required by section 6011(e) to file returns on magnetic media may request permission to do so. Section 301.6011–2 contains rules relating to the use of magnetic media. A failure to file on magnetic media when required constitutes a failure to file an information return under section 6721.

(b) *Requirement to furnish statement*—(1) *In general.* An interest recipient that must file a return under paragraph (a) of this section must furnish a statement to the payor of record.

(2) *Information included on statement.* An interest recipient must include on the statement that it must furnish to a payor of record:

(i) The information required under paragraph (a)(2) of this section;

(ii) A legend identifying the statement as important tax information which is being furnished to the Internal Revenue Service, and notifying the payor of record that if the payor of record is required to file a return, a negligence penalty or other sanction will be imposed on the payor of record if the IRS determines that an underpayment of tax results because the payor of record overstated a deduction for this mortgage interest on the payor of record's return; and

(iii) A legend stating that the payor of record may be unable to deduct the full amount of mortgage interest reported on the statement; that limitations based on the cost and value of the property securing the mortgage may apply; and that the payor of record may only deduct mortgage interest to the extent it was incurred, actually paid by the payor of record, and not reimbursed by another person.

(3) *Statement furnished pursuant to Federal mortgage program.* An interest recipient that furnishes a statement to a payor of record under a Federal mortgage program will satisfy the requirement of paragraph (b)(1) of this section if the statement contains all the information and legends required by paragraph (b)(2) of this section and is furnished by the time and at the place required by paragraph (b)(6) of this section.

(4) *Copy of Form 1098 to payor of record.* An interest recipient will satisfy the requirement of paragraph (b)(1) of this section by furnishing to a payor of record a copy of Form 1098 (or a substitute statement that complies with applicable revenue procedures) containing all the information filed with the Internal Revenue Service and all the legends required by paragraph (b)(2) of this section by the time and at the place required by paragraph (b)(6) of this section.

(5) *Furnishing statement with other information reports.* An interest recipient may transmit the statement required by paragraph (b)(1) of this section to the payor of record with other information, including other information returns, as permitted by applicable revenue procedures.

(6) *Time and place for furnishing statement.* An interest recipient must furnish a statement required by paragraph (b)(1) of this section to a payor of record on or before January 31 of the year following the calendar year for which it receives the qualified mortgage interest. The interest recipient furnishes the statement to the payor of record if it mails the statement to the payor of record's last known address.

(c) *Notice requirement for use of Rule of 78s method of accounting*—(1) *In general.* An interest recipient seeking to report interest received on a mortgage under the Rule of 78s method of accounting as permitted under § 1.6050H–1(e)(4) must notify the payor of record that the Rule of 78s method of accounting was used to calculate interest received on the mortgage and that the payor of record may not deduct as interest the amount calculated under the Rule of 78s method of accounting unless the payor of record properly uses that method to determine interest deductions. The notice must state that the payor of record may use the Rule of 78s method of accounting to determine interest paid for Federal income tax purposes only for a self-amortizing consumer loan requiring level payments at regular intervals (at least annually) over no longer than a five-year period, with no balloon payment at the end of the loan term, and only when the loan agreement provides for use of the Rule of 78s method of accounting to determine interest earned. See Rev. Proc. 83–40, 1983–1 C.B. 774; Rev. Rul. 83–84, 1983–1 C.B. 97.

(2) *Time and manner.* An interest recipient must provide notice required by paragraph (c)(1) of this section to a payor of record on or with the statement required by paragraph (b) of this section. An interest recipient may provide notice on a separate paper or on the statement required by paragraph (b) of this section.

(d) *Reporting by related parties*—(1) *In general.* An interest recipient that receives or collects interest on a mortgage for a qualified person may designate that qualified person to satisfy the reporting requirements of paragraphs (a), (b), and (c) of this section. If a designated qualified person reports as permitted under this paragraph (d), it will satisfy the requirement of paragraph (a)(2)(ii) of this section by including on Form 1098 (and Form 1096) the name, address, and TIN of either the interest recipient or the designated qualified person.

(2) *Qualified person.* A qualified person is a trade or business with respect to which the interest recipient is under common control within the meaning of § 11.414(c)–2.

(3) *Designation agreement.* An interest recipient that designates a qualified person to satisfy the reporting requirements described in paragraph (d)(1) of this section must so designate in a written designation agreement. The designation agreement must identify the mortgages and calendar years for which the designated qualified person must report. Both the interest recipient and the designated qualified person must sign and retain a copy of the designation agreement, but neither must file the designation agreement with the Internal Revenue Service.

(4) *Penalties.* A designated qualified person is subject to any applicable penalties (e.g., the section 6723 penalty for failing to include correct information) as if it were an interest recipient. An interest recipient is not relieved from joint and several liability for applicable penalties by designating a qualified person under the provisions of paragraph (d)(3) of this section. Paragraph (e) of this section describes applicable penalties.

(e) *Penalty provisions*—(1) *Failure to file return or to furnish statement.* The section 6721 penalty applies to an interest recipient that fails to file a return required by paragraph (a) of this section with respect to a payor of record. The section 6722 penalty applies to an interest recipient that fails to furnish a statement required by paragraph (b) of this section to a payor of record.

(2) *Failure to furnish TIN.* The section 6676 penalty may apply to an interest recipient that fails to furnish the TIN of a payor of record on a return required by paragraph (a) of this section. The section 6676 penalty may apply to an interest recipient that fails to request and to obtain the TIN of a payor of record under paragraph (f) of this section.

(3) *Failure to include correct information.* The section 6723 penalty may apply to an interest recipient that fails to include correct information on a return required by paragraph (a) of this section or on a statement required by paragraph (b) of this section to be furnished to a payor of record.

(f) *Requirement to request and to obtain TIN*—(1) *In general.* For obligations incurred after December 31, 1987, an interest recipient must make all reasonable efforts to obtain the TIN of a payor of record when the payor of record incurs the obligation. For example, an interest recipient may require a borrower to furnish a TIN during the mortgage approval or application process. If an interest recipient does not maintain the TIN of a payor of record on a mortgage, whenever incurred, it must request the TIN at least annually and must process responses properly and promptly.

(2) *Manner of requesting TIN.* An interest recipient need not separately mail a request for a TIN. An interest recipient may include a request in its regular mailing of payment coupon booklets or annual statements. If an interest recipient makes no mailing to a payor of record during the year in which the payor of record incurs the obligation, it must request the TIN in a separate mailing. No particular form is required to request a TIN. Nevertheless, an interest recipient must make the request on a separate paper and must clearly notify a payor of record that the Internal Revenue Service requires the payor of record to furnish a TIN in order to verify any mortgage interest deduction. An interest recipient must notify a payor of record that failure to furnish a TIN subjects the payor of record to a $50 penalty imposed by the Internal Revenue Service. A request for a TIN made on Form W–9 satisfies the requirement of this paragraph (f)(2).

(g) *Effective date.* This section is effective for mortgage interest received after December 31, 1987. Section 1.6050H–1T contains rules for reporting mortgage interest received after December 31, 1984, and before January 1, 1988.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

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

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table

"§ 1.6050H–1.....1545–0901"

and

"§ 1.6050H–2.....1545–0901."

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: March 24, 1988.

Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–7977 Filed 4–11–88; 8:45 am]

BILLING CODE 4830–01–M

[T.D. 8192]

26 CFR Parts 1 and 602

Income Taxes; Deposits of Estimated Tax Payments of Certain Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides a final regulatory amendment that requires certain banks and financial institutions to deposit estimated income tax payments with respect to taxable trusts for which they act as fiduciaries through the Federal Tax Deposit (FTD) system instead of forwarding them to an Internal Revenue Service Center. The amendment would affect certain financial institutions which are authorized depositaries for Federal taxes and which act as fiduciaries for at least 200 taxable trusts.

DATE: This amendment is applicable and effective for estimated tax payments required to be made with respect to certain trusts on and after September 15, 1988.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3060, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1987, the **Federal Register** published (52 FR 44139) a notice of proposed rulemaking regarding a proposed amendment to the Income Tax

Regulations under section 6302(c) of the Internal Revenue Code of 1986 relating to deposits of certain quarterly estimated income tax payments required to be made by estates and trusts under section 6654(1) of the Internal Revenue Code of 1986. This document contains final regulations regarding deposits under section 6302(c) of the Internal Revenue Code of 1986 of the above-described payments required to be made by certain trusts, effective for such payments required to be made on or after September 15, 1988. The regulations are issued under the authority of sections 6302(c) and 7805 of the Internal Revenue Code of 1986.

Several public comments were received in response to the notice of proposed rulemaking, but no hearing was requested with respect to the proposed amendment, and none was held. The public comments discussed several problems that the proposed amendment could cause. After consideration of these comments, it was decided to promulgate the proposed amendment with several modifications to resolve those problems. These revisions are discussed in the public comments section of this regulatory preamble.

Explanation of Provisions

The final regulatory amendment requires certain banks and financial institutions to deposit through the Federal Tax Deposit (FTD) system the quarterly estimated income tax payments relating to certain taxable trusts for which such institutions act as fiduciaries, instead of delivering the payments to an Internal Revenue Service Center as is presently required.

The requirement that quarterly estimated income tax payments be made for certain trusts and estates was enacted in section 1404(a) of the Tax Reform Act of 1986. The Service had required all estimated tax payments for the 1987 taxable year with respect to trusts and estates to be delivered to an Internal Revenue Service Center along with a Form 1041-ES estimated tax voucher. The Service has experienced administrative difficulties in processing a single payment from fiduciaries in payment of estimated tax with respect to a large number of trusts administered by such fiduciaries. The amendment helps to resolve these diffculties by requiring certain financial institutions to pay estimated tax with respect to trusts for which they act as fiduciaries through the FTD system and to make magnetic tape reports of such payments in accordance with Revenue Procedure 87-64 (1987-52 I.R.B. 21). The institutions subject to this requirement are those that have Treasury Tax & Loan (TT&L) accounts for deposited Federal taxes ("TT&L fiduciaries") and that administer at least 200 trusts required to make estimated tax payments during the current calendar year.

Other fiduciaries that do not have TT&L accounts and TT&L fiduciaries that administer fewer than 200 trusts and that wish to make a single estimated tax payment with respect to a large number of trusts (*i.e.*, at least 50) for which they act as fiduciaries will be permitted to elect to make such payments through the FTD system in accordance with the procedures established in Revenue Procedure 87-64.

Public Comments

Most of the commentators requested that the proposed taxable-years-beginning-on January 1, 1988, effective date for implementing the FTD system with respect to trusts' estimated tax payments be postponed for up to a year to provide fiduciaries time both to adjust to the new payment system and to place all trusts on a calendar year basis as required by the Tax Reform Act of 1986. After consideration of these comments, the Service determined that the lead time from the publication of Revenue Procedure 87-64 in December 1987 until September 15, 1988, would be necessary and sufficient to implement the new estimated tax payment requirement. Therefore, the Treasury decision delays the effective date and requires certain trusts to make estimated tax payments through the FTD system beginning with payments required to be made on and after September 15, 1988.

A commentator contended that requiring every TT&L fiduciary with at least 50 taxable trusts to make estimated tax payments through the FTD system and to report them on magnetic tape would impose an undue burden on a number of small financial institutions that lack in-house magnetic tape capability. After considering this comment, the Service decided to reduce the burdens for small fiduciaries by revising this requirement so that only TT&L fiduciaries that have at least 200 trusts are required to make quarterly estimated tax payments under section 6654(1). However, it should be noted that Revenue Procedure 87-64 provides a procedure whereby fiduciaries with at least 50 taxable trusts and those without a TT&L account may apply for authorization to make estimated tax payments through the FTD system and to report them on a single magnetic tape. Thus, these fiduciaries may elect to make and report such payments in accordance with Revenue Procedure 87-64.

Two commentators objected that requiring fiduciaries to submit a preprinted individual voucher for each trust would be unduly burdensome. After consideration of both the burden on fiduciaries and the Service's requirements in order to process payments accurately, it was determined that Form 1041-ES vouchers would continue to be required in all circumstances in which a fiduciary does not use magnetic tape reporting. Fiduciaries of more than 50 taxable trusts that find use of Form 1041-ES vouchers unduly burdensome may elect to report estimated tax payments on magnetic tape in accordance with the procedures in Revenue Procedure 87-64.

Two commentators contended that requiring fiduciaries to make quarterly estimated tax payments through the FTD system for estates opened for more than 2 years would be unduly burdensome. They explained that estates comprise only a small portion of fiduciary accounts administered by banks and that estates, unlike taxable trusts, have a variety of fiscal years. Therefore, they contended, if this requirement was retained, the Service Centers would, in off-quarter months, receive a large number of magnetic tapes each reporting only a few estimated tax payments of such estates. After considering these comments, the Service decided to exclude estates from the Treasury decision's requirement to make certain estimated tax payments through the FTD system. Thus, all fiduciaries will continue to make and report estimated tax payments of taxable estates on the Form 1041-ES vouchers.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. It has been certified that this rule will not have a significant impact on a substantial number of small entities because the regulations would be applicable only to financial institutions which administer a large number of trusts actually required to make estimated tax payments. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork

Reduction Act of 1980. The requirements have been approved by OMB under control number 1545-0971.

Drafting Information

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

List of Subjects

26 CFR Parts 1.6302-1—1.6302-3

Income taxes, Administration and procedure, Tax depositaries.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

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

PART 26—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Section 1.6302-3 also issued under 26 U.S.C. 6302(c). * * *

Par. 2. A new § 1.6302-3 is added immediately following § 1.6302-2 to read as follows:

§ 1.6302-3 Use of Government depositaries in connection with estimated taxes of certain trusts.

(a) *Requirement.* A bank or other financial institution described in paragraph (b) of this section shall deposit in its Treasury Tax & Loan account 0described in 31 CFR 203 or with a Federal Reserve Bank all payments of estimated tax required to be paid on or after September 15, 1988, under section 6654(1) with respect to trusts for which such institution acts as a fiduciary on or before the date otherwise prescribed for paying such tax.

(b) *Banks and financial institutions subject to this requirement.* The requirement of paragraph (a) of this section applies to banks and other financial institutions described in sections 581 and 591 that have been designated as authorized Federal tax depositaries described in section 6302(c) and that act as fiduciaries for at least 200 trusts to which section 6654(1) applies that during the calendar year are required to make installment payments of estimated tax with respect to such trusts. For purposes of this section, a fiduciary is the person responsible for filing the tax returns and paying the taxes with respect to a trust.

(c) *Cross-references.* For provisions relating to the procedures for depositing the estimated tax payments described in paragraph (a) of this section and for reporting such deposits on magnetic tape, see Revenue Procedure 87-64 [1] or its successor. For provisions relating to the penalty for failure to make a deposit within the prescribed time, see § 301.6656-1 of this chapter (Regulations on Procedure and Administration).

PART 26—[AMENDED]

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

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6302-3 ..... 1545-0971".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 4, 1988.

Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-8035 Filed 4-8-88; 2:51 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3303-1]

Extension to Innovative Technology Waiver for New Source Performance Standards for Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 21, 1987 (52 FR 31633), the EPA proposed to amend the standards of performance for kraft pulp mills by extending the time period granted for an innovative technology waiver for operation of a new batch digester at the OI Valdosta and Timber STS, Inc. (OI) kraft pulp mill in Valdosta, Georgia, pursuant to section 111(j) of the Clean Air Act, as amended, 42 U.S.C. 7411(j). This action promulgates the extension to the waiver.

EFFECTIVE DATE: April 12, 1988. Under section 307(b)(1) of the Clean Air Act, judicial review of this waiver extension is available only by the filing of petitions for review in the U.S. Court of Appeals for the appropriate circuit within 60 days of today's publication. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings initiated to enforce these requirements.

ADDRESSES: *Docket.* Under section 307(d)(2), 42 U.S.C. 7607(d)(2), the Administrator is required to establish two separate rulemaking dockets for each rule that would apply only within the boundaries of one State. One copy of the docket (Docket No. A-84-16) is located in Washington, DC, at EPA's Central Docket Section, South Conference Center, Room 4, U.S. Environmental Protection Agency, 401 M Street, SW. A second copy is located at the EPA Regional Office in Atlanta, Georgia at 345 Courtland Street.

The docket may be inspected at the listed addresses between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Industrial Studies Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5426.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1984, an innovative technology waiver was proposed for operation of a new batch digester at the OI kraft pulp mill in Valdosta, Georgia (49 FR 35156). The waiver was granted on Febraury 14, 1985 (50 FR 6316), to continue to December 31, 1986, or until the batch digester achieved the standard specified in 40 CFR 60.283, whichever came first. The waiver expired on December 31, 1986.

On March 25, 1987, OI submitted a request for an extension of the innovative technology waiver for the batch digester at its kraft pulp mill in Valdosta, Georgia. The Agency reviewed the waiver extension requested with regard to the requirements under section 111(j) of the Act and concluded that this request met the requirements of the Act. Therefore, the Agency proposed, on August 21, 1987, to grant an extension to the innovative technology waiver for the OI kraft pulp mill in Valdosta, Georgia.

Waiver Extension

An extension to the waiver, as proposed on August 21, 1987, is granted

[1] This information is available from the Internal Revenue Service, Department of the Treasury, 1111 Constitution Ave., N.W., Room 5300, Washington, D.C. 20224.

to OI for the No. 10 batch digester at the kraft pulp mill in Valdosta, Georgia.

Public Participation

The extension to the waiver was proposed and published in the **Federal Register** on August 21, 1987 (54 FR 31633). The preamble to the proposed extension discussed information relating to the batch digester system and the requirements of a waiver under section 111(j) of the Clean Air Act. Public comments were solicited at the time of proposal and interested persons were given the opportunity to request a public hearing on the extension to the waiver. No public hearing was requested. The public comment period was from August 21, 1987, to September 21, 1987. No public comments were received.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemking process. Along with the statement of basis and purpose of the proposed and promulgated waiver, the contents of the docket will serve as the record in case of judicial review except for interagency review material (Section 307(d)(A)).

Miscellaneous

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires EPA to submit to the Office of Management and Budget (OMB) certain public reporting/recordkeeping requirements before proposal. This rulemaking does not involve a "collection of information."

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 60 *et seq.* is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12291.

Lists of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

Dated: April 4, 1988.

Lee M. Thomas,

Administrator.

Title 40 Part 60, Subpart BB of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

2. Section 60.286 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 60.286 Innovative technology waiver.

(a) * * *

(2) Commencing on February 14, 1985, and continuing to December 31, 1987, or until the DHS that can achieve the standard specified in 40 CFR 60.283 (February 23, 1987), is demonstrated to the Administrator's satisfaction, whichever comes first, OI Valdosta and Timber STS Inc. shall limit the discharge of TRS emissions to the atmosphere:

* * * * *

[FR Doc. 88–7934 Filed 4–11–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–3363–8]

Standards of Performance for New Stationary Sources; New Residential Wood Heaters; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on standards of performance for new stationary sources for new residential wood heaters that appeared in the **Federal Register** on February 26, 1988 (53 FR 5860). This action is necessary because, due to a numbering error in the final rule, the provisions relating to temporary labels contained in paragraphs (j)(2) through (j)(8) of 40 CFR 60.536 inadvertently applied only to certain affected facilities although the provisions are intended to apply to other categories of affected facilities as well, as originally proposed. This action also merges the provision contained in paragraph (j)(7) of § 60.536 with that contained in paragraph (j)(4) of § 60.536 to form (j)(2)(iii) under the revised numbering and clarifies EPA's intent that the use of adhesive backings or other means on temporary labels to prevent label destruction or removal during retail display of wood heaters is optional.

FOR FURTHER INFORMATION CONTACT: Rick Colyer, Standards Development Branch, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5262.

Dated: April 5, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

List of Subjects in 40 CFR Part 60

Air pollution control.

For the reasons set out in the preamble, 40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7601).

2. Section 60.536 is amended by removing the introductory text of paragraph (j), by revising paragraphs (j)(1) and (2), and by removing paragraphs (j)(3) through (8). As revised paragraph (j) reads as follows:

§ 60.536 Permanent label, temporary label, and owner's manual.

* * * * *

(j)(1) An affected facility permanently labeled under paragraph (e), (f)(3), or (g) of this section have attached to it a temporary label that shall contain only the information provided for in Appendix I, section 2.3, 2.4, or 2.5, as applicable.

(2) The temporary label of an affected facility permently labeled under paragraph (b), (c), (e), (f)(3), or (g) of this section shall:

(i) Be affixed to a location on the wood heater that is readily seen and accessible when the wood heater is offered for sale to consumers by any commercial owner;

(ii) Not be combined with any other label or information;

(iii) Be attached to the wood heater in such a way that it can be easily removed by the consumer upon purchase, except that the label on wood

heaters displayed by a commercial owner may have an adhesive backing or other means to preserve the label to prevent its removal or destruction;

(iv) Be printed on 90 pound bond paper in black ink with a white background except that those for models that are not otherwise exempted which do not meet the applicable emission limits, or have not been tested pursuant to this subpart, shall be on a red background as described in Appendix I, section 2.5;

(v) Have dimensions of five inches by seven inches as described in Appendix I, section 2.1;

(vi) Have wording, presentation of the graphic data, and typography as presented in Appendix I.

* * * * *

[FR Doc. 88-7935 Filed 4-11-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 434

[BERC-293-F]

Medicare/Medicaid Program; Revisions in Reporting, Recordkeeping, and Other Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends several regulations containing collection of information requirements. These requirements affect the Medicare providers of outpatient physical therapy and speech pathology services; physical therapists in independent practice; portable X-ray services; and Medicaid contracts with health maintenance organizations (HMOs) and prepaid health plans (PHPs).

This final rule also sets forth other changes affecting outpatient physical therapy and speech pathology services and physical therapists in independent practice. These changes, authorized by sections 2341 and 2342 of Pub. L. 98-369, the Deficit Reduction Act of 1984, amend the definition of "physician", and modify the plan of care requirements.

Under the direction of OMB, we have been advised to make changes in information collection requirements that are unnecessarily burdensome, duplicative or lack practical utility. This final rule will accommodate OMB's requirement.

EFFECTIVE DATE: The amendments to 42 CFR 405.1702, 405.1717, 405.1731, and 405.1733 are effective May 12, 1988. The amendments to all other sections are effective July 11, 1988. See section VI of the Supplementary Information for a fuller explanation.

FOR FURTHER INFORMATION CONTACT:

William Larson (301) 966-4640. For issues related to outpatient physical therapy and speech pathology services, physical therapists in independent practice, portable X-ray supplies, physician definition, and plan of care requirements.

or

Joan Mahanes (301) 966-4642. For issues related to HMOs and PHPs.

SUPPLEMENTARY INFORMATION:

I. Background

A. Review of Information Collection Requirements

The Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and implementing regulations authorize the Office of Management and Budget (OMB) to review all collection of information requirements in Federal regulations. On March 31, 1983, OMB published regulations at 5 CFR 1320.14 to implement its authority to review (48 FR 13666). OMB has the authority to require agencies to initiate a proposal for a change in information collection requirements if they are unnecessarily burdensome, duplicative, or lack practical utility. The agency responsible for the regulations is required to publish a notice in the **Federal Register** informing the public that OMB has directed the agency to revise certain requirements for the collection of information, and that OMB has granted approval of the collection of information requirements for the period necessary for consideration of the proposed change.

In its review of collection of information requirements for Medicare providers of outpatient physical therapy and speech pathology services, physical therapists in independent practice, and portable X-ray services, and for Medicaid health maintenance organizations (HMOs), and prepaid health plans (PHPs), OMB identified requirements in need of revision, in that they were overly prescriptive. In accordance with the requirements in 5 CFR 1320.14(f), a notice was published in the **Federal Register** on August 20, 1984 to inform the public of OMB's action and to state that OMB had granted approval of the questioned requirements for the period necessary: However, we have since noticed that § 405.1733(b) has never been previously approved, and must be submitted to OMB for approval under section 3507 of the Paperwork Reduction Act (44 U.S.C. 3507). Subsequently, on February 24, 1986, we issued a proposed rule setting forth proposed changes in the regulations in question. (51 FR 6429)

B. Definition of "Physician" and Plan of Care Requirements

Section 2341 of Pub. L. 98-369, the Deficit Reduction Act of 1984, amended the definition of "outpatient physical therapy services" to include services furnished to an individual who is under the care of a podiatrist. Section 2342 of Pub. L. 98-369 permits a physical therapist to establish a plan of care for physical therapy. These changes affect outpatient physical therapy and speech pathology organizations and physical therapists in independent practice. We proposed regulations to implement sections 2341 and 2342 of Pub. L. 98-369 in the above mentioned proposed rule, published on February 24, 1986.

II. Revision of Information Collection Requirements

A. Section 405.1413 Condition for Coverage—Qualifications and orientation of technical personnel and employee records (in 42 CFR Part 405, Subpart N—Conditions for Coverage of Portable X-Ray Services).

Statutory Authority

Under section 1861(s)(3) of the Social Security Act (the Act), there is no explicit statutory provision for personnel policies for x-ray suppliers. The current regulation is based on section 1861(s)(13) of the Act, which provides that laboratories must meet health and safety requirements prescribed by the Secretary.

Proposal

We proposed to remove the unnecessary paperwork burdens in the existing regulation, and to require only that records be maintained to demonstrate that (1) each employee is qualified for his or her position by means of training and experience and (2) employees receive adequate health supervision.

Comment and Response

Comment: One commenter questioned the meaning of "health supervision". Another questioned why evidence of licensure is not being required.

Response: The intent of the phrase "health supervision" in these amended regulations remains the same as in the current regulations. That is, we expect the facility, as well as the employee, to

be jointly cognizant of health conditions (including, but not limited to, excessive exposure to radiation) that could be detrimental to others. The facility is to assume primary responsibility for monitoring personnel for radiation exposure and general knowledge of employees' fitness for the job, but the employees must take responsibility for their own general health status.

There is no need that evidence of State licensure be maintained in a specific system of records. Section 405.1411 requires that all personnel be licensed where applicable, and although we expect that facilities will maintain evidence of licensure in their employee record system, there is no compelling reason to specifically require that this be the only place where this evidence may be maintained.

Provisions in Final Rule

We are amending § 405.1413 to require that employee records be maintained; however, we would not impose Federal requirements on how those records are to be structured.

B. 42 CFR Part 405, Subpart Q—Conditions of Participation: Clinics, Rehabilitation Agencies and Public Health Agencies as Providers of Outpatient Physical Therapy and/or Speech Pathology Services; and Conditions for Coverage: Outpatient Physical Therapy Services Furnished by Physical Therapists in Independent Practice.

1. Section 405.1716(c) Condition of Participation—Administrative Management Statutory Reguirement.

There is no explicit statutory provision dealing with personnel policies. The current regulation is based on section 1861(p)(4)(A)(v) of the Act, which provides that providers meet health and safety reguirements prescribed by the Secretary.

Proposal

We proposed to modify the requirement in existing regulations that detailed lists of records must be maintained. Some items in the list of personnel record requirements are too prescriptive and thus inappropriate for application at the Federal level. We proposed to delete the requirements that personnel records include job descriptions, performance evaluations, and health examinations.

Comment and Response

Comment: Some commenters expressed the opinion that OPT/OSP facilities should continue to be required to provide evidence of job descriptions, health examinations, and performance evaluations. It was suggested that if the proposed regulations were to become final, facilities would no longer maintain those types of records. This, in turn, would create significant problems for State survey agencies, and would adversely affect employee performance.

Response: The record items in question are of such a type that their existence does not directly affect the quality of care furnished to patients. Although we do agree that certain personnel records are necessary for every business, we do not believe that the Federal government should continue to insist that facilities develop and maintain records that are not directly linked to patient health and safety. We do not believe the quality of patient care will diminish as a result of deleting certain items from the personnel records.

Provisions in Final Rule

As proposed, we are modifying the requirement that detailed lists of records must be maintained and deleting the requirement in § 405.1716(c) that personnel records include job descriptions, performance evaluations, and health examinations.

2. Section 405.1716(d) Condition of Participation—Administrative Management Statutory Authority.

Section 1861(p)(4)(A)(ii) of the Act requires a facility furnishing outpatient physical therapy services or speech pathology (or others furnishing those services under arrangement with the facility) to have policies established by a group of professional personnel, including one or more physicians associated with the facility, and one or more qualified physical therapists or speech pathologists, to govern the physical therapy and speech pathology services.

Proposal

We proposed to remove the detailed list of requirements from the existing regulation. The statute does not specify that patient care policies must be written; however, we would retain the requirement that they be written to ensure that they are applied consistently to patient plans of care. We would remove the detailed list of items to be covered in the policies to allow facilities the flexibility to structure the policies to fit their individual administrative needs.

Comment and Response

Comment: Two commenters suggested that facilities should still be required (under section 405.1716(d)) to maintain policies covering patient care plans and methods of implementation, clinical records, and program evaluation.

Response: We expect facilities to develop and maintain those policies that are necessary for their operation and for patient well being. Since the intended results of the policies in question are all capable of being monitored (they are all addressed as separate OPT/OSP requirements), it is not necessary again to refer to them under this particular section.

Provisions in Final Rule

We are amending § 405.1716(d) by removing the detailed list of requirements from the regulations to allow facilities the flexibility to structure the policies to fit their individual administrative needs. However, we will retain the requirement that patient care policies be written, to ensure that they are applied consistently to patient plans of care.

3. Section 405.1717(b) Condition of Participation—Physician's Direction and Plan of Care.

Statutory Authority

Sections 1835(a)(2) (C) and (D) and 1861(p)(2) of the Act require, as an element of the definition of outpatient physical therapy services, the establishment and periodic review of a physician's plan of care delineating the type, amount and duration of physical therapy and speech pathology services which are to be furnished. The statute does not explicitly provide that the plan of care be in writing or that it make reference to anticipated goals or frequency of treatment.

Proposal

We proposed to delete the requirements that (1) the plan be developed in consultation between the physician and specific practitioners; and (2) other appropriate professional staff be required to participate in the review of plans of care. Regarding the requirement for consultation, it is standard practice for plans of care to result from a collaborative effort between physicians and the other practitioners furnishing care. Therefore, we believe that formal consultation need not be addressed at the Federal level, and its deletion from regulations will have no adverse effect upon the quality of patient care. Regarding the requirement for participation by other professional staff, it is standard practice that the physician, based upon his or her knowledge of the patient and upon information submitted by the other practitioners furnishing care, determines the plan of care changes as often as necessary. Therefore, we are deleting the requirement that other appropriate

professional staff be required to participate in the plans of care. While health professionals are no longer required to participate in the formal plan of care review, they nevertheless can furnish information essential to the physician's review.

We believe that no further revisions are prudent. The statute stipulates sufficient detail regarding the content of plans of care and suggests that the nature of the regulation, as a requirement designed to protect the health and safety of patients, would not be satisfied by broad requirements or by plans not committed to writing. For that reason, we proposed to retain the requirement that the plan be written. We are equally committed to assuring that program monies are not expended for unnecessary services because of vague plans of care that make assessment of medical necessity for the services unduly difficult. We believe that the retention of anticipated goals and frequency of treatment in the plan of care is also crucial to this assessment and is an important adjunct to patient health and safety.

Provisions in Final Rule

We received no comments on our proposed change. Therefore, as proposed; in § 405.1717(b) we are deleting the requirement that formal consultation be required between the physician and specified practitioner, and the requirement that other appropriate professional staff be required to participate in the review of plans of care. We have retained the requirement that the plan be written. As required by section 2342 of Pub. L. 98–369, we will also permit a physical therapist to establish a plan of care for physical therapy. (See discussion in section III.B., below.)

4. Section 405.1717(e) Condition of Participation Physician's Direction and Plan of Care.

Statutory Authority

Current law at section 1861(p)(4)(A)(v) qives broad authority to the Secretary to promulgate regulations relating to the health and safety of patients as he or she determines are necessary.

Proposal

We proposed to delete the requirement that the provider post the names and phone numbers of the "on call" physicians as well as their specific days of availability. We believe that the concept of physician availability is medically sound, but the details of the procedures by which this goal is achieved need not be prescribed by Federal regulations.

Provisions in Final Rule

We received no comments on our proposed change. Therefore, as proposed, we are deleting the requirement in § 405.1717(e) that the provider post the names and phone numbers of the "on call" physicians as well as their specific days of availability.

5. Section 405.1725(a) Condition of Participation—Disaster Preparedness.

Statutory Authority

Current law at section 1861(p)(4)(A)(v) gives broad authority to the Secretary to promulgate regulations relating to the health and safety of patients as he or she determines are necessary.

Proposal

We proposed to retain items to be included in structuring a disaster plan because they are instructive to providers, but we would remove the specific requirements that the plan include "instructions", "information", and "specifications" because they require paperwork which may not contribute to readiness for disaster.

Comment and Response

Comment: Two commenters objected to the deletion of the language in § 405.1725 that directs the facility to specify the manner in which items contained within the disaster plan are to be set out.

Response: We agree that items in a disaster plan need to be clear and straightforward if they are to be effective. We believe that the words that were deleted (for example, procedures, instructions, and specifications) are unduly duplicative and will not, by their absence, alter the manner in which facilities prepare disaster plans. The very nature of the requirement necessitates that some detail be made part of each disaster item. For example, it would not suffice to say that casualties and records will be transferred during a disaster without specifying how and where, since the disaster plan requirement dictates that the plan must contain the procedures to be followed in the event of disaster.

Provisions in Final Rule

As proposed, we revised § 405.1725(a) to remove specific requirements that the plan include "instructions", "information", and "specifications" because these were paperwork requirements that may not contribute to readiness for disaster.

6. Section 405.1733(b) Conditions for Coverage—Physician's Direction and Plan of Care.

Statutory Authority

Sections 1835(a)(2) (C) and (D) and 1861(p)(2) of the Act require, as an element of the definition of outpatient physical therapy services (relating to services furnished by a physical therapist in independent practice), the establishment and periodic review of a physician's plan of care delineating the type, amount, and duration of physical therapy which are to be furnished. The statute does not explicitly provide that the plan of care be in writing or that it make reference to anticipated goals or frequency of treatment.

Proposal

We proposed to delete the requirements that (1) the plan be developed in consultation between a physician and the physical therapist; and (2) that the physical therapist be required to participate in the review of the plans of care. Regarding the requirement for consultation, it is standard practice for plans of care to result from a collaborative effort between physicians and the other practitioners furnishing care. Therefore, we believe that formal consultation need not be addressed at the Federal level, and its deletion from regulations will have no adverse effect upon the quality of patient care. Regarding the requirement for participation by the physical therapist, it is standard practice that the physician, based upon his or her knowledge of the patient and upon information submitted by the other practitioners furnishing care, determines the plan of care changes as often as necessary. Therefore, the proposed regulations would delete the requirement that the physical therapist be required to participate in the plans of care. While physical therapists would not be required to participate in the formal plan of care review, they nevertheless could furnish information essential to the physician's review.

We believe that no further revisions are prudent. The statute stipulates sufficient detail regarding the content of plans of care to suggest to us that the nature of the regulation, as a requirement designed to protect the health and safety of patients, would not be satisfied by broad requirements or by plans not committed to writing. For that reason, we proposed to retain the requirement that the plan be written. We are equally committed to the goal of assuring that program monies are not expended for unnecessary services provided because plans of care that are so vague that assessment of medical necessity for the services by fiscal

agents is made unduly difficult. We believe that the retention in the plan of care of anticipated goals and frequency of treatment is also crucial to this assessment and is an important adjunct to patient health and safety.

Provisions in Final Rule

We received no comments on our proposed change. Therefore, as proposed, we are amending § 405.1733(b) by deleting the requirement that the plan of care be developed in consultation between a physician and the physical therapist and that the physical therapist be required to participate in the review of plans of care. We are retaining the provision that the plan be in writing.

7. General Request for Comments on Subpart Q.

In addition to requesting comments concerning the proposed changes to information collection requirements in Subpart Q included in this document, we requested comments on the need to revise or eliminate any other information collection requirements in Subpart Q, as well.

Comment and Response

We received no comments on our request to revise or eliminate any other information collection requirements in Subpart Q; therefore, no additional changes have been made.

C. 42 CFR Part 434, Subpart C—Contracts with HMOs and PHPs: Contract Requirements

1. Section 434.27(a)(3) Termination of Enrollment

Statutory Authority

Under section 1903(m)(2)(A)(v) of the Social Security Act there is no explicit statutory provision for requiring State Medicaid agencies to review each termination of enrollment by an HMO or PHP, but only a requirement that such terminations not discriminate against individuals on the basis of their health status or need for health care services.

Proposal

We proposed to require that the contract between the HMO or PHP and the agency specify the methods by which the HMO or PHP will assure the agency that termination of individuals from participation is for the reasons permitted under the contract. However, approval of these methods would be left to State Medicaid agency discretion.

Comment and Response

Comment: A commenter objected to our proposed deletion of the requirement that individual disenrollments from HMOs and PHPS be reviewed by Medicaid State agencies. The commenter experienced difficulty in assisting an enrollee who had been incorrectly terminated and was therefore convinced that more, not less, oversight of HMO actions was necessary.

Response: The proposed regulation did not weaken the requirement that disenrollments be processed only for those reasons specified in the contract. The regulation requires that the contract between the State Medicaid agency and the HMO or PHP specify the methods by which the State agency will be assured of the fairness of individual disenrollments from the HMO or PHP. However, we do not believe that it is necessary to dictate to States which methods are preferable, beyond stating that such methods must be specified in the contract. As further protection for recipients, regulations at § 434.62 continue to require State agencies to monitor HMO and PHP grievance procedures and enrollment and disenrollment practices.

Provisions in Final Rule

Therefore, as proposed, in § 434.27(a)(3) we will require only that the contract between the HMO or PHP and the agency specify the methods by which the HMO or PHP will assure the agency that termination of individuals from participation is for the reasons permitted under the contract; selection of appropriate methods will be left to the discretion of the agency.

2. Section 434.36 Marketing

Statutory Authority

Under section 1903(m)(2)(A)(v) of the Social Security Act there is no explicit statutory provision for requiring agencies to review marketing plans, procedures or material prior to their use. There is a requirement that the contract specify that the HMO's enrollment procedures will not discriminate among individuals on the basis of health status.

Proposal

Section 434.36 presently requires that contracts with HMOs and PHPs provide that they submit marketing plans, procedures and materials to the State agency for approval before using the plans.

We proposed to revise § 434.36 to require only that the contract specify the methods by which the HMO or PHP will assure the agency that marketing plans, procedures and materials are accurate, and do not mislead, confuse, or defraud either the recipients or the agency. As revised, approval of these methods would have been left to the discretion of the Medicaid State agency.

Comment and Response

Comment: One commenter objected to our deleting Federal requirements that marketing materials for HMOs and PHPs contracting with the State Medicaid agencies be reviewed by those agencies prior to their use. The commenter was especially concerned about a perceived weakening of these regulations in light of recent increases in competition for Medicaid enrollees by HMOs and PHPs in certain areas of the country.

Response: The proposed regulation did not weaken the regulations requirement that marketing materials be clear and accurate. The proposed regulation required that the contract between the Medicaid State agency and the HMO or CMP assure the accuracy and clarity of marketing materials. However, we do not believe that it is necessary to dictate to States which procedures for assurance are preferable.

Provisions in Final Rule

As proposed, we are amending § 434.36 to require that the contract specify the methods by which the HMO or PHP will assure the agency that marketing plans, procedures and materials are accurate. Approval of these methods will be left to the discretion of the Medicaid State agency.

3. Section 434.55 Approval of Marketing Plans, Procedures, and Materials

Statutory Authority

As stated above, section 1903(m)(2)(A)(v) of the Act provides no explicit statutory provision for requiring the Medicaid State agencies to review marketing plans, procedures, or materials before their use.

Proposal

We proposed to delete the existing requirement that the Medicaid State agency adopt a system for approval of marketing plans, procedures, and materials submitted by the contractor.

Provisions in Final Rule

We received no comments on our proposed change. Therefore, we are deleting § 434.55, since § 434.36 has been clarified to indicate that the contract must specify the methods by which the HMO or PHP will assure the agency that marketing plans, procedures, and materials are accurate, and do not mislead, confuse, or defraud either recipients or the agency.

III. Changes Per Legislation

As mandated by sections 2341 and 2342 of Pub. L. 98–369, we are making the following revisions to 42 CFR Part 405, Subpart Q.

A. Definition of Physician

Statutory Authority

Section 2341 of Pub. L. 98–369 amended the definition of "outpatient physical therapy services" to include services furnished to an individual who is under the care of a podiatrist.

Proposal

We proposed to include a definition of physician to apply to 42 CFR Part 405, Subpart Q. This definition would expand the use of the term "physician" as it relates to outpatient physical therapy services to include a podiatrist in all but the following two instances:

1. Qualifications of a Physical Therapist

As set forth in current regulations at §§ 405.1702(d)(4)(ii) and 405.1731(a)(4)(ii), an individual may qualify as a Medicare physical therapist if he or she has had prior to 1970, fifteen years of full-time experience in the practice of physical therapy services that were furnished under the order and direction of a physician. Historically, we have only recognized a doctor of medicine or osteopathy as a physician for the purposes of this requirement. Redefining the term physician to include a podiatrist would alter the original intent of this provision since during the timeframe embodied under this regulation, physical therapists were restricted to treating only those patients referred by doctors of medicine or osteopathy.

2. Emergency Staffing Requirements

Section 405.1717(e) specifies requirements concerning the availability of physicians for emergency care. Since patients treated in outpatient providers generally present a broad array of symptoms, we believe that patient health and safety requires the availability of personnel with broad medical knowledge in the event that emergency care is needed. Therefore, in this standard, we have specified that a doctor of medicine or osteopathy must be available.

Provisions in Final Rule

We received no comments on our proposed change. Therefore, as proposed, we have revised §§ 405.1702 and 405.1731 to expand the definition of physician, as it relates to outpatient physical therapy services, to include a podiatrist.

B. Physical Therapists

Statutory Authority

Section 2342 of Pub. L. 98–369 allows either the physical therapist or the physician to establish a plan of care. However, the physician would still be required to review periodically all plans of care.

Proposal

We proposed to revise §§ 405.1717(b) and 405.1733(b) to permit a physical therapist to establish a plan of care for physical therapy.

Provisions in Final Rule

We received no comments on our proposed change. Therefore, as proposed, we have amended §§ 405.1717(b) and § 405.1733(b) to permit a physical therapist to establish a plan of care for physical therapy.

IV. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in the Executive Order. In addition, consistent with the Regulatory Flexibility Act, (5 U.S.C. 601 to 612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulation will not have a significant economic impact on a substantial number of small entities. As we discussed in the proposed rule, the estimated impact of this rule will not meet any of the threshold criteria of E.O. 12291 or of the Regulatory Flexibility Act. We have determined, and the Secretary certifies, that this rule is not likely to result in a significant economic impact on a substantial number of small entities.

V. Clearance of Information Collection Requirements

The majority of these regulation provisions amend information collection requirements previously approved by OMB as part of the following information clearances:

§ 405.1413(c)	OMB No. 0938–0338
§ 405.1716(c)	OMB No. 0938–0336
§ 405.1716(d)	OMB No. 0938–0336
§ 405.1717(b)	OMB No. 0938–0336
§ 405.1717(e)	OMB No. 0938–0336
§ 405.1725(a)	OMB No. 0938–0336
§ 434.27(a)	OMB No. 0938–0326
§ 434.36	OMB No. 0938–0326
§ 434.55	OMB No. 0938–0326

However, § 405.1733(b) has not been previously cleared.

At the time of the notice published on February 24, 1986 (51 FR 6429), OMB granted interim approval to the regulation provisions as they stood at that time. The provisions of this final rule now must be submitted to OMB for approval 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.

VI. Effective Date

Our usual practice is to make regulations effective 30 days from the date of final publication, unless a statutory requirement or some other compelling reason necessitates a shorter or longer period. Thus, the amendments to §§ 405.1702, 405.1717, 405.1731 and 405.1733, implementing sections 2341 and 2342 of Pub. L. 98–369, are effective May 12, 1988.

All the remaining amendments made by this final rule affect collection of information requirements for which we have only interim approval from OMB. OMB's regulations at 5 CFR 1320.13(j) specify that collection of information requirements promulgated through notice-and-comment rulemaking may not become effective until OMB has assigned a control number and such number is displayed. We have provided a 90-day delay in the effective date to allow for OMB approval and issuance of control numbers for those regulation provisions containing information collection requirements. We will publish a notice in the **Federal Register** when we receive notice of OMB's approval.

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 434

Grant programs—health, Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart N is amended as follows:

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

Authority: Secs. 1102, 1861(s) (3), (11) and (12), 1864, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(s) (3), (11), and (12), 1395aa and 1395hh).

2. Section 405.1413 is amended by revising the section heading and paragraph (c) to read as follows:

§ 405.1413 Condition for coverage—qualifications, orientation and health of technical personnel.

* * * * *

(c) *Standard: Employee records.* Records are maintained and include evidence that—

(1) Each employee is qualified for his or her position by means of training and experience; and

(2) Employees receive adequate health supervision.

B. Subpart Q is amended as follows:

1. The authority citation for Subpart Q continues to read as follows:

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

2. In § 405.1702, the introductory text for the section, the introductory text in paragraph (d) and paragraph (d)(4)(ii) are revised; the current paragraphs (f)–(k) are redesignated as (g)–(l); and a new paragraph (f) is added to read as follows:

§ 405.1702 Definitions relating to clinics, rehabilitation agencies, and public health agencies.

As used in §§ 405.1702–405.1726, the following definitions apply:

* * * * *

(d) *Physical therapist.* A person who is licensed as a physical therapist by the State in which he or she is practicing if the State licenses physical therapists, and—

* * * * *

(4) * * *

(ii) Prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or

* * * * *

(f) *Physician.* A person who is—

(1) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs those functions or actions; or

(2) A doctor of podiatric medicine, but only with respect to the functions which he or she is legally authorized to perform by the State in which he or she performs them.

* * * * *

3. In § 405.1716, paragraphs (c) and (d) are revised to read as follows:

§ 405.1716 Condition of participation—administrative management.

* * * * *

(c) *Standard: Personnel policies.* Personnel practices are supported by appropriate written personnel policies that are kept current. Personnel records include the qualifications of all professional and assistant level personnel, as well as evidence of State licensure where applicable.

(d) *Standard: Patient care policies.* Patient care practices and procedures are supported by written policies established by a group of professional personnel including one or more physicians associated with the clinic or rehabilitation agency, one or more qualified physical therapists (if physical therapy services are provided), and one or more qualified speech pathologists (if speech pathology services are provided). The policies govern the outpatient physical therapy and/or speech pathology services and related services which are provided. These policies are evaluated at least annually by the group of professional personnel, and revised as necessary based upon this evaluation.

4. In § 405.1717, paragraphs (b) and (e) are revised to read as follows:

§ 405.1717 Condition of participation—physician's direction and plan of care.

* * * * *

(b) *Standard: Plan of Care.* For each patient there is a written plan of care established by the physician or, for speech pathology services, by the physician or by the speech pathologist who furnishes the services, or, for physical therapy services, by the physician or by the physical therapist who furnishes the services. The plan of care indicates anticipated goals and specifies the type, amount, frequency, and duration of physical therapy or speech pathology services. The plan of care and results of treatment are reviewed at least once every 30 days, by the attending or other physician, and the indicated action is taken.

* * * * *

(e) *Standard: Emergency care.* The organization provides for one or more doctors of medicine or osteopathy to be available on call to furnish necessary medical care in case of emergency. There are established procedures to be followed by personnel in an emergency, which cover immediate care of the patient, persons to be notified and reports to be prepared.

5. In § 405.1725, paragraph (a) is revised to read as follows:

§ 405.1725 Condition of participation—disaster preparedness.

* * * * *

(a) *Standard: Disaster plan.* The organization has a written plan in operation, with procedures to be followed in the event of fire, explosion, or other disaster. The plan is developed and maintained with the assistance of qualified fire, safety, and other appropriate experts, and includes:

(1) Transfer of casualties and records;

(2) The location and use of alarm systems and signals;

(3) Methods of containing fire;

(4) Notification of appropriate persons; and

(5) Evacuation routes and procedures.

* * * * *

6. In § 405.1731, the introductory text is revised; in paragraph (a), the introductory text is revised; paragraph (a)(4)(ii) is revised; and paragraph (d) is added to read as follows:

§ 405.1731 Definitions relating to physical therapists in independent practice.

As used in §§ 405.1731 through 405.1737, the following definitions apply:

(a) *Physical therapist.* A person who is licensed as a physical therapist by the State in which he is practicing if the State licenses physical therapists, and—

* * * * *

(4) * * *

(ii) Prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or

* * * * *

(d) *Physician.* A person who is—

(1) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs these functions or actions; or

(2) A doctor of podiatric medicine, but only with respect to the functions which he or she is legally authorized to perform by the State in which he or she performs them.

7. In § 405.1733, paragraph (a)(7) is amended by replacing the word "rendered" with "provided" and paragraph (b) is revised to read as follows:

§ 405.1733 Condition for coverage—physician's direction and plan of care.

* * * * *

(b) *Standard: Plan of care.* For each

patient there is a written plan of care established by the physician or by the physical therapist who furnishes the services, which indicates anticipated goals and specifies the type, amount, frequency, and duration of physical therapy Services. The plan of care and results of treatment are reviewed at least once every 30 days by the attending or other physician and the indicated action is taken.

* * * * *

II. Part 434 is amended as set forth below:

PART 434—CONTRACTS

A. The authority citation for Part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

B. In § 434.27, the introductory language in paragraph (a) is republished and paragraph (a)(3) is revised to read as follows:

§ 434.27 Termination of enrollment.

(a) All HMO and PHP contracts must specify—

* * * * *

(3) The methods by which the HMO or PHP will assure the agency that terminations are consistent with the reasons permitted under the contract and are not due to an adverse change in the recipient's health.

* * * * *

C. Section 434.36 is revised to read as follows:

§ 434.36 Marketing.

The contract must specify the methods by which the HMO or PHP will assure the agency that marketing plans, procedures, and materials are accurate, and do not mislead, confuse, or defraud either recipients or the agency.

§ 434.55 [Removed]

D. Section 434.55 is removed.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance Program; No. 13.714, Medical Assistance)

Dated: November 24, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: January 19, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-7860 Filed 4-11-88; 8:45 am]

BILLING CODE 4120-01-M

42 CFR Part 413

[BERC-435-F]

Medicare Program; Changes to the Return on Equity Capital Provisions for Outpatient Hospital Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare regulations to eliminate the allowance for a return on equity capital for outpatient services furnished by proprietary hospitals as required by section 4065 of the Omnibus Budget Reconciliation Act of 1987 (enacted on December 22, 1987). Section 4065 prohibits recognition of any return on equity capital with respect to hospital outpatient departments effective January 1, 1988.

EFFECTIVE DATE: This rule is effective May 12, 1988.

FOR FURTHER INFORMATION CONTACT: Anthony Coates, (301) 966-4515.

SUPPLEMENTARY INFORMATION:

I. Background and Provisions of the Final Rule

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) was enacted. Section 4065(a) of Pub. L. 100-203 added paragraph (S) to section 1861(v)(1) of the Social Security Act (the Act) to prohibit Medicare regulations from including a "provision for specific recognition of any return on equity capital with respect to hospital outpatient departments." Similarly, section 4065(b) of Pub. L. 100-203 amended section 1881(b)(2)(C) of the Act to restrict the Secretary's authority to provide for a return on equity capital to "facilities (other than hospital outpatient departments) * * *."

On September 1, 1987, we published a final rule in the **Federal Register** (52 FR 32920) that eliminated the allowance for a return on equity capital for outpatient services furnished by proprietary hospitals, effective for cost reporting periods beginning on or after October 1, 1987. In that document, we also made conforming changes to the regulations to describe the phaseout of the return on equity capital for inpatient hospital services effective for cost reporting periods beginning on or after October 1, 1986, as mandated by the provisions of section 1886(g)(2) of the Act.

On September 29, 1987, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. 100-119) was enacted. Section 107(b)(1) of Pub. L. 100-119 specifies that the "final Regulation * * * published on September 1, 1987 (52 FR 32920) and relating to changes to the return on equity capital provisions for outpatient hospital services is void and of no effect." In addition, section 107(b)(1)(C) of Pub. L. 100-119 prohibited the Department from issuing "after September 18, 1987, and before November 21, 1987 * * * any final regulation that changes the policy * * * with respect to payment for a return on equity capital for outpatient hospital services." We notified the public of this legislation in a notice published in the **Federal Register** on October 23, 1987 (52 FR 39637).

The conforming changes made in the September 1, 1987 final rule to the regulations that described the phase-out of the return on equity capital for inpatient hospital services were not affected by the provisions of Pub. L. 100-119 and have remained in effect. (See 42 CFR 413.157(b)(2).)

Because the legislative prohibition in section 107(b)(1)(C) of Pub. L. 100-119 on publishing a regulation concerning elimination of the allowance for a return on equity capital for outpatient hospital services has ended and we are precluded by the provisions of section 4065 of Pub. L. 100-203 from providing for a return on equity capital for outpatient hospital services on or after January 1, 1988, we are revising § 413.157 of our regulations to conform with the law by eliminating the allowance for a return on equity capital for outpatient services furnished by proprietary hospitals effective for services provided on or after January 1, 1988.

II Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for regulations that are likely to have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices, or result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. 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. For purposes of the RFA, we treat all hospitals as small entities.

Since the only purpose of this final rule is to conform our regulations with

the provisions of new section 1861(v)(1)(S) of the Act and revised section 1881(b)(2)(C) of the Act and to notify the public of this changes, there is no impact on hospitals that is attributable to this rule. For these reasons, we have determined that a final regulatory impact analysis is not required. In addition, we have determined, and the Secretary certifies, that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

III. Other Required Information

A. Paperwork Reduction Act

These changes will not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

B. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and provide a period for public comment. Such notices include a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, we may waiver that procedure if we find good cause that such a notice-and-comment procedure is impractical, unnecessary, or contrary to the public interest, and incorporate a statement of the finding and its reasons in the rule issued.

The purpose of this final rule is to conform § 413.157 of our regulations with the precise provisions of sections 1861(v)(1)(S) and 1881(b)(2)(C) of the Act and to notify the public of these changes in the Act that prohibit all allowance for the return of equity capital for outpatient services furnished by proprietary hospitals. Because these changes are effective January 1, 1988 and the law provides no Secretarial descretion in implementation, affording a proposed rulemaking process is impractical and not in the public interest because the only effect would be to withhold notification of the changes in the Act. Therefore, we find good cause to waive proposed rulemaking and to issue these regulations as final.

C. Opportunity for Comment

We routinely provide an opportunity for public comment when issuing Medicare rules. This final rule, which conforms § 413.157 with sections 1861(v)(1)(S) and 1881(b)(2)(C) of the Act, embodies essentially the same policy contained in the final rule we issued on this same subject on September 1, 1987. In that document, we responded to issues raised by public comment on the notice of proposed rulemaking (June 5, 1987; 52 FR 21330). Thus, we are merely reissuing a final rule that sets forth the same policy upon which the public has previously been afforded an opportunity to comment. Therefore, we find good cause for not affording additional opportunity for public comment since it would be unnecessary.

List of Subjects in 42 CFR Part 413

Administrtative 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 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

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 413.157 is amended by redesignating paragraph (b)(4) as new paragraph (b)(5), and adding a new paragraph (b)(4) to read as follows:

§ 413.157 Return on equity capital of proprietary providers.

* * * * *

(b) *General rule.* * * *

(4) *Rate of return related to outpatient hospital services.* (i) For cost reporting periods beginning on or after October 1, 1985, the rate used in determining the return for outpatient hospital services furnished before January 1, 1988 is a percentage equal to the average of the rates of interest described in paragraph (b)(1) of this section.

(ii) There is no allowance for return for outpatient hospital services furnished on or after January 1, 1988.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: February 11, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 14, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–7907 Filed 4–11–88; 8:45 am]

BILLING CODE 4120-01-M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility; Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final Rule.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the official Federal Poverty Income Guidelines as defined by the Department of Health and Human Services.

EFFECTIVE DATE: April 12, 1988.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20025–2571; (202) 863–1823.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of the Corporation's Regulations establishes a maximum income level equivalent to one-hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines as defined by the Office of Management and Budget. Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Office of Management and Budget to the Department of Health and Human Services. The revised figures for 1988 equivalent to 125% of the current official Poverty Income Guidelines as set out at 53 FR 4214 (Feb. 12, 1988) are set forth below:

List of Subjects in 45 CFR Part 1611

Legal services.

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1), 1007(a)(2) Legal Services Corporation Act of 1974, as amended, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

Appendix A of Part 1611—Legal Services Corporation Poverty Guideline

Size of family unit	All States but Hawaii and Alaska [1]	Alaska [2]	Hawaii [3]
1	7,212	9,012	8,312
2	9,662	12,075	11,125
3	12,112	15,137	13,937
4	14,562	18,200	16,750
5	17,012	21,262	19,562
6	19,462	24,325	22,375
7	21,912	27,387	25,187
8	24,362	30,450	28,000

[1] For family units with more than eight members, add $2,450 for each additional member in a family.
[2] For family units with more than eight members, add $3,062 for each additional member in a family.
[3] For family units with more than eight members, add $2,812 for each additional member in a family.

Dated: April 6, 1988.

Timothy B. Shea,

General Counsel.

[FR Doc. 88-7990 Filed 4-11-88; 8:45 am]

BILLING CODE 7050-01-M

Proposed Rules

Federal Register
Vol. 53, No. 70
Tuesday, April 12, 1988

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-020]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis regulations by adding the particle concentration fluorescence immunoassay (PCFIA) test to the list of official tests for brucellosis in cattle and bison. We believe this action is warranted in order to allow for testing that is faster, more sensitive, and more specific than many of the official laboratory tests currently being used.

DATE: Consideration will be given only to comments postmarked or received on or before May 12, 1988.

ADDRESSES: Send an original and two copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090-6464. Please state that your comments refer to Docket No. 88-020. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Hugh E. Metcalf, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8713.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious and contagious disease, caused by bacteria of the genus Brucella, that affects animals and man. The Secretary of Agriculture is authorized to cooperate with the states in conducting a brucellosis eradication program and in preventing the interstate spread of brucellosis. The regulations in 9 CFR Part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Official brucellosis tests are used for determining the brucellosis status of cattle, bison, and swine. The regulations stipulate that testing negative to an official brucellosis test is a condition for certain interstate movements of cattle, bison, and swine. Additionally, official tests are used to determine eligibility for indemnity payments for animals destroyed because of brucellosis.

In testing for brucellosis, both "presumptive" and "diagnostic" official tests are conducted. Presumptive tests are preliminary tests that offer greater sensitivity than other tests, because, in addition to identifying more brucellosis-infected animals than other tests, they may also identify animals as positive for other reasons. Animals that test positive to a presumptive test are then tested with a diagnostic test. The diagnostic test usually provides greater specificity than the presumptive test, in that it better distinguishes brucellosis-infected animals from those not infected with brucellosis. In addition to sensitivity and specificity, reproductibility is a factor in the effectiveness of a test. The more often a test yields the same results when conducted on the same sample, the greater its reproductibility.

A new serologic test for the testing for brucellosis in cattle and bison, called the particle concentration fluorescence immunoassay (PCFIA) test, has been evaluated by extensive field tests in seven states. Additionally, the PCFIA test was preformed on sera from 684 animals that were already known to be either brucellosis-infected or negative animals.[1] Based on the results of these tests, we believe that the PCFIA test affords higher sensitivity than many of our presumptive tests, and also greater specificity and reproductibility than most official diagnostic tests. Because of these performance levels, the PCFIA test would not have to be supplemented by other official tests. Additionally, the test procedure is faster than many of those currently being used. Therefore, we are proposing to amend the regulations by adding the PCFIA test to the list of official tests for brucellosis in cattle and bison.

[1] For more information, contact AgriTech Systems, Inc., 100 Fore Street, Portland, Maine, 04101.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises on domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action would only provide an additional official brucellosis test for cattle and bison as an option for use in determining whether an animal is infected with the disease. The testing requirements for brucellosis would not change. Moreover, use of the PCFIA test would not affect the market price of the animals tested. Although more rapid testing may allow faster marketing, the economic effect on owners of cattle or bison would not be significant. Nor would the economic effect upon laboratories that wish to use the PCFIA test be significant. Although the cost of this test may be more than that for other official tests, due to the need for new equipment and to higher reagent costs, lower personnel expenses due to the increased speed and automation of the test would offset the start-up and recurring costs.

Under those circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal disease, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, 9 CFR Part 78 would be amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the definiton of "official test" would be amended by redesignating paragraph (a)(9) as paragraph (a)(10), and by adding a new paragraph (a)(9) to read as follows:

§ 78.1 Definitions.

* * * * *

Official test.

(a) * * *

(9) Particle concentration fluorescence immunoassay (PCFIA) test. An automated serologic test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions provided in Appendices 1 and 2 of this part.

(10) * * *

* * * * *

3. Appendix 1 and Appendix 2 would be added at the end of Part 78 to read as follows:

Appendix 1 to Part 78—Instructions for Agrichek® Particle Concentration Fluoresence Immunoassay (PCFIA)* Brucella abortus Antibody Test

Name and Intended Use

Agrichek® PCFIA *Brucella abortus* Antibody Test Kit is AgriTech System's Particle Concentration Fluoresence Immunoassay (PCFIA) for the detection of antibody to *B. abortus* in bovine serum. This is an official test to be used in the cooperative State/Federal Brucellosis Eradication Program.

General Information

Brucellosis in cattle is a disease caused by *Brucella abortus*, a facultative, intracellular bacterium. The major mode of disease transmission is by ingestion of *B. abortus* organisms that may be present in tissues of aborted fetuses, fetal membranes, and uterine fluids. In addition, infection may occur as the result of cattle ingesting *B. abortus* contaminated feed or water. Infection in cows also has occurred through venereal transmission of the organisms by infected bulls.(1)

Abortion is the most outstanding clinical feature of the disease. If a carrier state develops in a majority of infected cows in a herd, the clinical manifestations may be reduced milk production, dead calves at term, and/or a higher frequency of retained placenta. Disease in the bull may produce infections of the seminal vesicles and testicles resulting in shedding of the organisms in semen.(2)

Diagnosis is based on serological and/or bacteriological procedures. While a positive bacteriological finding is the most definite diagnosis, several weeks may be required to obtain final culture results. The success of disease eradication is dependent upon the accurate identification and *elimination of B. abortus* reactors in a herd.(1) Reliable serological techniques for *B. abortus* provide a rapid and accurate assessment of natural infection or response to vaccine by a measurement of antibodies to *B. abortus* in the serum.

Description/Principles

PCFIA is a fluoresence immunoassay technique which utilizes submicron polystyrene particles as the solid phase onto which *B. abortus* antigens are attached. The conjugate is comprised of fluorescein labelled *B. abortus* antibodies.

In the assay, the test sample and coated particles are initially mixed and incubated in a specially designed 96-well plate. After this initial incubation period, conjugate is added, allowed to react, and the reaction mixture is then filtered through the membrane at the bottom of each well. The particles, being too large to pass through the membrane, are retained on the surface of the membrane. Each well is washed to remove unbound conjugate and antibody, and then moved into position below a front-surface fluorimetric read system. The amount of particle-bound fluoresence is measured as counts from the membrane surface. The system reads fluoresence in two channels, a sample channel (A) and a reference channel (B). The ratio of these counts in each channel normalizes any variation due to pipetting.

Anti-*B. abortus* PCFIA is a competitive immunoassay for antigen-specific antibodies. During the reaction, specific antibodies in the sample compete with the conjugate for antigen binding sites on the solid phase. The amount of conjugate bound to the solid phase will decrease as the specific antibody concentration in the sample increases, thus providing an inverse measurement of specific antibody. Binding of a non-specific antibody to the solid phase does not affect the competition between specific antibody in the sample and the conjugate, and thus does not affect the resulting signal. Non-specific binding to the antigen on the solid phase is displaced by either the higher affinity conjugate or specific antibody in the sample, and again, does not affect the resulting signal.

Reagents

1. *B. abortus* Coated Particles. Antigen-coated particles in Phosphate Buffered Saline with protein stabilizers. Preserved with Sodium Azide and Thimerosal.

2. Anti-*B. abortus:* FITC Conjugate. Fluorescein isothiocyanate labelled antibody to *B. abortus* in Phosphate Buffered Saline with protein stabilizers. Preserved with Sodium Azide and Thimerosal.

3. *B. abortus* Strong Positive Control. Bovine anti-*B. abortus* serum, diluted in sample diluent. Preserved with Sodium Azide and Thimerosal.

4. *B. abortus* Weak Positive Control. Bovine anti-*B. abortus* serum, diluted in sample diluent. Preserved with Sodium Azide and Thimerosal.

5. Negative Control. Bovine serum nonreactive to *B. abortus*, diluted in sample diluent. Preserved with Sodium Azide and Thimerosal.

6. Sample Diluent. Phosphate Buffered Saline with protein stabilizers. Preserved with Sodium Azide and Thimerosal.

7. Wash Concentrate (10x). Phosphate Buffered Saline, 10x. Preserved with Sodium Azide and Thimerosal.

Materials Required but Not Provided

1. AgriChek® Screen Machine.

2. Special 96-well AgriChek® PCFIA assay plates.

3. 500 ml graduated cylinder for preparing wash solution.

4. Precision pipettes: Suitable for delivering 2 ul and 50 ul.

5. Distilled or deionized water.

Precautions and Warnings for Users—Thoroughly Read All Directors Prior to Starting Test Procedure

1. Handle all *B. abortus* biological materials as though capable of transmitting Brucellosis.

2. Store all reagents at 2–7 degrees C.

3. Store *B. abortus* Coated Particles and Anti-*B. abortus:* FITC Conjugate protected from light. Use the dropper tops to dispense these reagents; DO NOT RETUREN UNUSED REAGENT TO STOCK BOTTLES.

4. There should be no eating, drinking, or smoking where specimens or kit reagents are being handled.

5. Kit reagents contain sodium azide as a preservative. Disposal requires flushing plumbing with large volumes of water to prevent the formation of copper or lead azide complexes which may explode upon percussion.

6. All wastes should be properly decontaminated prior to disposal.

7. DO NOT USE KIT PAST EXPIRATION DATE AND DO NOT INTERMIX COMPONENTS FROM DIFFERENT SERIAL LOTS.

Preparation of Wash Solution

The Wash Concentrate (10x) should be brought to room temperature, and must be

*AgriChek® Screen Machine and AgriChek® PCFIA are registered trademarks of AgriTech Systems, Inc.

diluted 1 to 10 with distilled or deionized water before use (e.g. add 100 ml of concentrate to 900 ml of water). Store the diluted (1x) wash solution at room temperature.

Sample Preparation

Serum samples must be diluted 1:25 with Sample Diluent (e.g., by adding 2 ul of serum to 50 ul of Sample Diluent).

Note: DO NOT DILUTE CONROLS.

Some hemolyzed sample may cause clogging of the membrane in the well, resulting in an invalid test for that sample. Treatment of these serums with kaolin (hydrated aluminum silicate) has been shown to effectively reduce clogging without detrimental effect on the specific reaction. A recognized kaoline treatment for this type of sample is as follows:

Mix approximately 20 mg of dry kaolin with 0.3 ml of serum. Vortex and allow to stand at room temperature for 30 minutes. Centrifuge at 660xg for 30 minutes.(3) Dilute the supernatant 1:25 for testing.

Test Procedure

The *B. abortus* antibody test is performed using the AgriChek® PCFIA systems. (Refer to the Agrichek® PCFIA Operation Manual for complete instructions on maintenance and operation of the instrument and use of the data management program. See Appendix 2 of this part.)

1. Allow all reagents to come to room temperature prior to use.

2. Mix particles gently by inversion; avoid foaming.

3. Add sample Diluent to the assay plates using the following procedure (NOTE: TAKE CARE NOT TO TOUCH THE MEMBRANE WITH THE PIPETTE TIP.):

a. Leave row A, wells 1–12 and row B, wells 1–4 of plate 1, empty so that controls can be added directly to the assay plate. Pipette 50 ul of sample diluent into assay plate 1, beginning with the wells in row B, column 5, and continuing through other rows C-H.

b. Continuing pipetting 50 ul of sample diluent into each well of the remaining plates to be processed, all rows and columns.

4. Add controls and serum to the appropriate wells.

a. Create a layout with the AgriChek® data management program to indicate sample position in the assay plate(s). NOTE. Refer to the Agrichek® PCFIA Operation Manual for instructions. (See Appendix 2 of this part).

b. Add 50 ul of UNDILUTED Negative Control to row A, all wells.

c. Add 50 ul of UNDILUTED *B. abortus* Weak Positive Control to wells B1 and B2 of plate 1.

d. Add 50 ul of UNDILUTED *B. abortus* Strong Positive Control to wells B3 and B4 of plate 1.

e. Add 2 ul of each serum sample to the appropriate remaining wells, using the layout created in step 4a as a guide.

5. Running the Assay

a. To Reagent Tray, add the following reagents:

1x Wash Solution to WASH Compartment (or fill external reservoir if applicable).

1x Wash Solution to AUX Compartment (or fill external reservoir if applicable).

Particles to compartment A.

Conjugate to compartment B. (Refer to Volume Chart in the AgriChek® PCFIA Operation Manual for appropriate volumes. See Appendix 2 of this part.)

b. Load Reagent Tray. Insert plates with diluted samples in numerical plate order.

c. Press PROCESS PLATES.

d. Press BRUCELLA.

e. Press IDENTIFY WELLS.

f. The total number of plates to be processed must be indicated. To do this, press PLATE 1 until the plate nubmer displayed on the screen equals the total number of plates in your batch.

g. Press CHECK REAGENTS. At this point, the instrument will verify if sufficient reagent volumes are present to process the indicated number of plates. Insufficient volumes will be highlighted on the screen. If this occurs, remove the reagent tray and add additional reagents as appropriate.

h. Press CHECK DATA LINK to begin assay. (If applicable, press CONFIGURE OUTPUT, then press PERSONAL COMPUTER, then press SAVE to begain assay.)

6. Follow the instructions in the AgriChek® PCFIA Operation Manual to generate a computer printout of results upon assay completion. (See Appendix 2 of this part.)

Results

Results are expressed as an S/N value, which is the ratio of sample or positive control signal to negative control signal. For the assay to be valid, the *B. abortus* Weak Positive Control must have an S/N value less than 0.70, and the *B. abortus* Strong Positive Control must have a value less than 0.3. The system automatically checks for these parameters to validate or invalidate the assay. (Refer to "Calculations" Section for a definition of the S/N value.)

The presence or absence of antibody to *B. abortus* is determined on the basis of the S/N value. Serum samples with an S/N value greater than 0.70 are considered negative for *B. abortus* antibody; samples with S/N less than or equal to 0.70 are considered positive.

Interpretation of Results

Animals are considered reactors when the S/N value is less than or equal to 0.25; an S/N value greater than 0.25, and less than or equal to 0.70, indicates suspect status; an S/N value greater than 0.70 is considered negative.

Expected results on a 30-day retest of a test eligible vaccinate typically show an increase in the S/N value.

Calculations

1. Calculation of Negative Control (NC) Mean:

$$NC = \frac{\text{Sum of A/B ratios for row A, all wells}}{12}$$

$$\text{A/B ratio} = \frac{\text{channel A counts}}{\text{channel B counts}}$$

2. Calculation of S/N for *B. abortus* Weak Positive Control (WPC) Mean:

$$S/N = \frac{\dfrac{\text{Sum of A/B ratios for wells B1 and B2}}{2}}{\text{NC (A/B ratio)}}$$

3. Calculation of S/N for *B. abortus* Strong Positive Control (SPC) Mean:

$$S/N = \frac{\dfrac{\text{Sum of A/B ratios for wells B3 and B4}}{2}}{\text{NC (A/B ratio)}}$$

4. Calculation of S/N for serum sample:

$$S/N = \frac{\text{A/B ratio of sample well}}{\text{NC (A/B ratio)}}$$

Bibliography

(1) Davis, Dulbecco, Eisen and Ginsberg, Microbiology, 2nd edition. Harper and Row Publishers, New York, N.Y. pp. 686–690, 1980.

(2) Merck and Sharp, The Merck Veterinary Manual, 6th edition. Fraser, C.M. (Ed.) Merck & Co. Inc., Rahway, N.J. pp. 639–641, 1986.

(3) Snyder, M.L., Eernisse, K.A., McKnight, R.A., and Stewart, W.C.: Microtitration Hemagglutination Inhibition Test for Procine Parvovirus (PPV), in Serologic Microtitration Techniques, USDA, APHIS, NVSL, Ames, Iowa pp. 28–31, 1981.

Appendix 2 to Part 78—Portion of Agrichek® PCFIA Operation Manual (II(D) and (E))

Brucella Test Protocol

Creating Plate Layouts with the AgriTech Brucellosis Software.

Plate layouts can be prepared before or after an assay is in progress. However, the operator *must* create layouts in the same order in which batches are to be run on the instrument; otherwise, the layouts will be assigned incorrectly.

1. Beginning from the Main Menu of the AgriTech Brucellosis Software, create the plate layouts by using the computer keyboard as follows:

Type "L" (for "plate layouts")

Type "S" (for "set up new layout")

Type in one character as a batch ID and press the <ENTER> key (↵).

Type in one character as a batch ID and press the <ENTER> key (↵).

Type in the total number of plates to be run in this batch (up to 10) and press <ENTER>.

2. The next screen observed will show an 8 × 12 plate format for Plate #1.

Type in sample identifications in the following format:

1st ID (owner)/2nd ID (vet)/1st Tube #/Total # of tubes in sequence

Up to 10 characters may be used for the 1st ID; 5 characters for the 2nd ID. The information will be visible at the bottom of the screen. Press the <ENTER> key and the computer will enter the information into the place format. Only the 1st ID will be visible on the current screen. To see the 2nd ID and Tube #'s, use the <F1> key to toggle the 2nd screen.

To use only one ID, type:

ID/1st Tube #/Total # of tubes in sequence

3. Continue to type in each set of identification numbers using the same format designated in Step 2. The computer will continue to fill in identifications and will automatically move to successive plates until the total number of plates designated for the batch are all full.

4. To view any plate in the batch, use the MINUS (−) key or the PLUS (+) key; use the <F1> key to toggle between the 1st and 2nd screen of each plate.

5. To obtain a printout of each plate layout, turn on the printer and perform the following:

a. Return to Plate #1 using the MINUS (−) key.

b. Toggle to the 2nd screen of Plate #1 using the <F1>

c. Simultaneously press the SHIFT key (↑) and the <PRTSC> key.

The printer will then print the screen currently visible on the computer monitor.

d. Access plate #2 using the PLUS (+) key and repeat Steps b and c to obtain a printout of Plate #2. Repeat these steps to obtain a printout of each successive plate layout in the batch.

e. Use the <F9> key to quit (return to the "Plate Layouts" Sub-menu).

Type "M" to return to the Main Menu.

Obtaining Printed Reports

1. When the assay is complete, reports can be generated from the AgriTech Brucellosis Software as follows:

a. Set paper at top page of printer. Be sure printer is turned on and both the "power" and "select" lights are illuminated.

b. From the Main Menu of the AgriTech Brucellosis Software, type "R" (to select "Reports").

c. Type in the appropriate Batch ID and press <ENTER> key (◄—). Results for each plate in the batch designated will begin to print.

Note: Plate layouts and Batch ID *must* be created before the data can be accessed and reports printed.

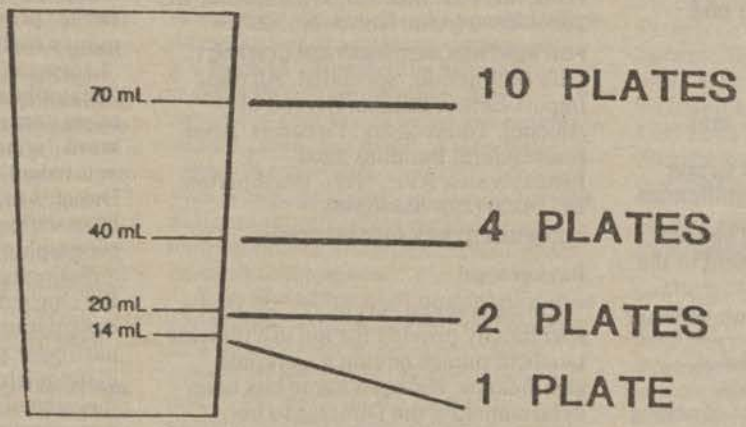
d. After results have printed, type "Y" if histograms are desired; type "N" if no histograms are desired.

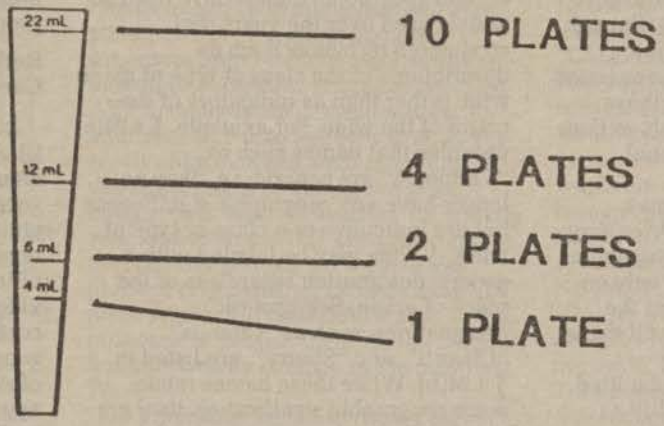
Press <ENTER> key to proceed.

* * * * *

BILLING CODE 3410-34-M

Volume Chart





BILLING CODE 3410-34-C

Done in Washington, DC, this 5th day of April, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-7779 Filed 4-11-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 12

[Notice No. 657, Ref. Notice No. 492]

Nongeneric Designations of Grape Wine Having Geographic Significance

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering expanding the list of names which are officially recognized under 27 CFR Part 4 as names of geographic significance for the purpose of labeling and advertising wine. As provided in 27 CFR 4.24(c) and 4.39 (i) and (j), names of geographic significance may be used only to designate wines of the origin indicated by such name. In addition, § 4.24(c) provides that certain nongeneric (i.e., geographically significant) names may be used as "distinctive" designations of wines upon approval by ATF. Numerous foreign countries, including members of the European Economic Community, have petitioned that ATF recognize, through publication, names of geographic significance that are used in connection with foreign wines, including those nongeneric designations which, in their view, denote distinctive national products.

ATF believes that 2,113 names submitted by 13 foreign countries may be recognized as names of geographic significance that may appear only on labels of qualifying wines from the appropriate country of origin. Of these 2,113 names, ATF has further determined that 618 names submitted from eight countries also qualify as nongeneric names which are the distinctive designations of specific wines as defined in § 4.24(c).

Accordingly, ATF proposes to list all of these names in a new part 12, entitled "Foreign Names of Geographic Significance", to be added to Title 27, CFR. The purpose of this listing will be to emphasize that the foreign names that are being published are restricted for use on labels of wines from the appropriate country of origin. This listing does not exhaustively state the names of geographic significance that may appear on wine labels.

DATE: Written comments must be received on or before July 11, 1988.

ADDRESS: Please submit all comments to the Chief, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attn: Notice No. 657).

FOR FURTHER INFORMATION CONTACT: Lilia M. Vannett, Specialist, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Ave., NW., Washington, DC 20226 (202-535-6245).

SUPPLEMENTARY INFORMATION:

Background

Certain regulations in 27 CFR Part 4 specifically provide for the use on wine labels of names having geographic significance. Unless a name has been determined by the Director to be "generic" or "semigeneric", or a fanciful product name, product or brand names of geographic significance may be used to designate wines only if they are consistent with the true origin of the wine. The regulations are designed to insure that consumers are not misled with respect to the origin or identity of wines.

Specifically, 27 CFR 4.24 governs the use of geographically significant names which are also used to designate a particular class or type of grape wine. This section initially recognizes that certain geographic names have been so widely used over the years that consumers recognize them as descriptions of the class or type of grape wine rather than as indicators of the origin of the wine. For example, § 4.24(a) provides that names such as "Vermouth" are generic, *i.e.*, they no longer have any geographic significance but are indicative of a class or type of wine. A wine may be labeled with a generic designation regardless of the place of origin. Semigeneric designations, such as "Chablis", "Chianti", and "Sherry", are listed in § 4.24(b). While these names retain some geographic significance, they are also known to the consumer as the description of a class or type of wine. Section 4.24(b) thus provides that semigeneric names may be used to designate wines of an origin other than that indicated by the particular geographic names provided the designation is accompanied by an appellation of origin indicating the true origin of the wine.

Section 4.24(c) states the general rule for use of names of geographic significance on wine labels. Unless a name has been found by the Director to be generic or semigeneric, nongeneric (non-generic) names such as "American", "French", "Spanish", "Deidsheimer", "Lacryma Christi", "Bordeaux", and "Beaujolais", may *only* be used to designate wines of the origin indicated by such name. Section 4.24(c) further provides that certain nongeneric names such as "Deidsheimer", "Lacryma Christi", "Bordeaux", "Beaujolais", "Medoc", and certain other names (when qualified by the word "wine" or its French or German equivalent), have been found by the Director to be "distinctive" designations of specific grape wines. A name of geographic significance is deemed to be a distinctive designation if it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines. In the case of still grape wines, a nongeneric distinctive designation may, as is provided in 27 CFR 4.34 appear on the wine label in lieu of the class designation.

In addition to the rule on the use of geographically significant names as class and type designations, the regulation appearing at 27 CFR 4.39(i) expressly restricts the use of brand names of viticultural significance. Section 4.39(j) prohibits the use of product names of geographic significance unless the Director finds that, through long usage, the names are recognized by consumers as fanciful product names.

Recognition of Foreign Names of Geographic Significance

In applying §§ 4.24(c) and 4.39 (i) and (j), ATF has had difficulty, in the past, in identifying names which are geographically significant and thus entitled to protection under the regulations. For example, until ATF officially recognized American viticultural areas, there was often confusion about which names were geographically significant in the context of American wines. Listing the names of approved American viticultural areas in 27 CFR Part 9 has provided one basis for determining whether a domestic name is geographically significant. There continues to be a problem, however, in determining which names used in connection with foreign wines are geographically significant. As a result, numerous foreign countries, including several Member States of the European Economic Community, have long sought

ATF recognition, through official publication, of names of geographic significance used in connection with their wine products. In Notice No. 492, published in the **Federal Register** of November 8, 1983 (48 FR 51333), ATF announced its intention to expand the list of nongeneric wine designations currently referenced in § 4.24(c) and invited all interested national governments to submit a list of those wine designations which they desired ATF deem nongeneric. As indicated in Notice No. 492, ATF desires to give official recognition, through publication, to foreign nongeneric wine designations so as to restrict the use of these designations to qualifying wines imported into the United States. In response to Notice No. 492, ATF received petitions from 13 countries: Argentina, Australia, Austria, France, The Federal Republic of Germany, Greece, Italy, New Zealand, Portugal, Romania, Spain, Switzerland, and Yugoslavia. Approximately 5,400 names were proposed for nongeneric status. The number submitted ranged from two names submitted by Argentina to over 3,000 names submitted by the Federal Republic of Germany. The length and detail of background material supporting each name submitted also varied widely from country to country.

After a review of the supporting information accompanying the petitions, and taking into account factors such as previous United States recognition of names; the historical interpretations and policies of ATF in enforcing the labeling provisions of the Federal Alcohol Administration Act (27 U.S.C. 205) and the regulations implemented thereunder to prevent consumer deception in the labeling and advertising of wine, ATF believes that 2,113 names submitted by the 13 countries may be recognized as names denoting appellation of origin or viticultural areas that may appear only on labels of qualifying wines from the appropriate origin as required by 27 CFR 4.24(c). ATF further believes that these 2,113 names should likewise be recognized as names that may appear as brand or product names on labels of qualifying wines from the appropriate origin only, as required by 27 CFR 4.39 (i) and (j). ATF is proposing to publish these 2,113 names, by country, in a new Part 12 to be added to Title 27, CFR. As is the case with the American viticultural names, a list of foreign names of geographic significance in the regulations will afford the widest possible recognition to these names in order to prevent consumer confusion with respect to the true origin of the wine. Publication of these foreign names will also serve to prevent erosion to the geographic significance of the listed name. ATF contemplates that this list of geographically significant foreign names will be expanded in the future.

Expansion of Distinctive Designations

An important additional purpose of Notice No. 492 was to publish a more extensive list of those foreign nongeneric names which are also deemed by the Director to be distinctive designations of wines, as defined in § 4.24(c)(1). To assist the Director in making this determination, ATF requested that the national governments submit those designations which the respective governments restrict to their own wines, produced subject to specific national requirements and having characteristics which distinguish them from all other wines.

A review of the petitions submitted in connection with Notice No. 492 reveals that many of the nongeneric names submitted are known to the consumer and to the trade as the distinctive designations of a specific wine so that they may be used in lieu of a class and type designation.

Specifically, ATF determined that of the 2,113 names being recognized as nongeneric, 618 names submitted from eight countries qualify as names which are also distinctive designations since the petitions establish that these are names used to designate specific grape wines from a particular place or region distinguishable from all other wines. In this regard, the data submitted by the foreign governments, in connection with these 618 names, detailing national requirements controlling growing area, yield per acre, crushing, blending, irrigation, grape variety, preservatives, and other enological practices, enabled ATF to make these determinations. In addition, ATF also believes that, as the result of an evolving understanding of the significance of distinctive wine designation, these 618 names are equally well known to the U.S. consumer and to the trade as wines from a particular place of origin distinguishable from all other wines. Therefore, ATF also proposes to publish these distinctive designations by country in the new Part 12.

In proposing these 618 names for publication as distinctive designations, ATF is not suggesting that other names submitted by the various governments are not in fact names which the governments, as a matter of practice, restrict to their own distinctive national wine products. Rather, ATF has determined that only 618 of the names submitted are currently known to the U.S. consumer and the trade as distinctive designations of specific wines as the term is defined in § 4.24(c)(1). Again, ATF contemplates that this list of nongeneric distinctive designations will be expanded in the future.

Finally, ATF believes that the names which are currently listed in § 4.24(c)(4) as examples of distinctive designations of natural table wines when accompanied by the word "wine", or its French or German equivalent, have become so well known to consumers and to the trade that they may now be included in § 4.24(c)(3) and in the new Part 12 as examples of distinctive grape designations which do not require any further qualifiers.

Names not Adopted for Listing in the Regulations

The 3,287 names submitted by the various national governments which ATF rejected for publication as examples of names of geographic significance were primarily commune and vineyard designations. In addition, varietal and color designations modifying a specific type of grape wine were also rejected where it appeared that any of several different varieties or colors were also authorized to modify the specific grape wine. ATF believes that names denoting vineyards, communes, grape varieties, and colors are supplemental to the principal name of geographic significance and are afforded sufficient protection when shown with a principal name (*e.g.*, the designations "Cotes Du Rhone Visan" and "Cotes Du Rhone Sablet" are restricted to wines from France by the very fact that the primary designation "Cotes Du Rhone" will be published in Part 12). Furthermore, limiting official recognition to the principal name only would avoid potential confusion to the consumer and would assure a more workable administrative process for recognizing geographically significant names. Additionally, ATF did not consider names such as Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Madeira, Malaga, Marsala, Moselle, Port, Rhine wine (syn Hock), Sauterne, Haut Sauterne, Sherry, and Tokay since the Director previously determined that these names are semigeneric under 27 CFR 4.24(b)(2).

Finally, denominations of origin that are identical or similar to varietal designations recognized in the United States were generally not considered by ATF to be geographically significant and were excluded from consideration. Denominations of origin rejected because they were found to be similar to United States varietal designations

included: Columbier, Frontignan, Muscat de Frontignan, Vin de Frontignan, Johanisberg, Moscato di Pantelleria, Primitivo di Goia, Sweetwater, and Valdepenas. An exception was made, however, for the name "St. Emilion", similar to the United States varietal name "St. Emilion" as "St. Emilion" has been recognized as a nongeneric distinctive designation since the 1930's and is listed in 27 CFR 4.24(c)(4). ATF does, however, seek specific comments on retaining St. Emilion as a distinctive designation, as well as on the exclusion from recognition, as geographically significant, all foreign names of origin that are similar to varietal names used in the United States.

Semigeneric, generic, varietal and color terms appear in connection with the principal names proposed by ATF as examples of distinctive designations under § 4.24(c). By this process, ATF proposes official recognition of the wine designation in its full context. ATF is not suggesting that varietal and color terms be considered nongeneric, nor is it recommending nongeneric status for names already determined to be generic or semigeneric. It is not ATF's intention that terms such as "rose," "vin," "retsina," or "sherry," which are parts of the full wine designation, not be used in other contexts by more than one country for other products, provided such use is in compliance with the labeling regulations which are stated in 27 CFR Part 4.

In view of the foregoing, ATF proposes that a complete list of recognized foreign names of geographic significance, as well as a complete list of foreign nongeneric names which are also deemed to be the distinctive designations of specific wines pursuant to § 4.24(c)(1), be published in a new Part 12 to be added to Title 27, CFR. The new Part 12 shall be entitled "Foreign Names of Geographic Significance." It is anticipated that only Part 12 will be amended when additional foreign names are recognized by publication in the future. Regulations in 27 CFR 4.24(c) and 4.39(i) will make reference to the new Part 12, but will otherwise remain concise and unchanged. ATF believes that the addition of a new Part 12 will be less costly and administratively more feasible than inserting lists of foreign geographic names in 27 CFR Part 4.

ATF also proposes to eliminate as unnecessary the current § 4.24(c)(4) listing examples of names which are distinctive designations of specific natural table wines when qualified by the word "wine" or its French or German equivalent. In view of the U.S. consumer's evolving understanding of the significance of distinctive designations, ATF believes there is no longer any need to require that a distinctive designation be qualified by the word "wine" since the consumer would not be receiving information that is not already evident to him. As previously indicated, ATF proposes that the names currently listed in § 4.24(c)(4) be considered distinctive designations under § 4.24(c)(3) which do not require any qualifying information. ATF further proposes that § 4.24(c) (2) and (3) be amended to include more examples of nongeneric names. Finally, if § 4.24(c) is amended as proposed, and a new Part 12 is established, then Revenue Ruling 61–110, 1961–1 C.B. 847, and ATF Ruling 73–23, 1973 ATF C.B. 88, would be superseded. Revenue Ruling 61–110 provides for the nongeneric status of "Rioja" while ATF Ruling 73–23 indicates "Soave", "Bardolino", "Frascati", and "Valpolicella" to be nongeneric. Under the current proposal, these names will be officially listed in the new Part 12.

Public Participation—Written Comments

ATF requests comments concerning this proposal from all interested persons, especially on the following specific questions:

1. (a) Examples of nongeneric terms in the current 27 CFR 4.24(c) date back to the 1930's and have been retained by ATF in the proposed list which is the subject of this NPRM. Should any of these names be deleted or changed? (b) This NPRM incorporates all the names currently found in § 4.24(c)(4) into § 4.24(c)(3); do you agree?

2. Are there any errors in the spelling of the names being proposed as examples of nongeneric designations? Has ATF listed a proposed name under the wrong country?

3. Would any of the foreign names proposed for inclusion in § 4.24(c), as examples of nongeneric designations, be misleading to the United States consumer? In this regard, ATF is interested in obtaining comments in connection with the following areas which it has identified as potential sources for confusion:

(a) When identical names submitted by two or more foreign countries are recognized by ATF as examples of nongeneric names. For example, ATF proposes that the name "Sonnenberg", submitted by both Austria and Switzerland, be recognized as geographically significant names for qualifying wines from each of those countries;

(b) When nearly identical names submitted by two or more foreign countries are recognized by ATF as examples of names of geographic significance. For example, ATF proposes to recognize "North Richmond" (Australia), and "Richmond" (New Zealand) as names to be used on wines from New Zealand. Additionally, the name "Chateauneuf" is proposed as a name of geographic significance for wines from Switzerland, while the name "Chateauneuf-du-Pape" is proposed not only as a nongeneric name for France but as a distinctive designation under § 4.24(c)(3);

(c) When names submitted by foreign countries and recognized as geographically significant by ATF are identical or similar to the names of United States counties, States, or other appellations or to United States trade names. For example, ATF proposes that the name "Montana" submitted by Switzerland, the name "Lincoln" submitted by New Zealand and the names "Marion," "Morgan" and "Great Western" submitted by Australia, be recognized as geographically significant names for wines from those respective countries; and,

(d) When names which are submitted by foreign countries are identical or similar to grape varietals that are recognized in the United States and are being considered as a part of an approved list of American grape variety names.

Refer to ATF Notice of Proposed Rulemaking No. 581, "Grape Variety Names; Wine Labeling," published in the **Federal Register** on February 4, 1986 (51 FR 4392–4396). For example, "Frontignan," "Muscat de Frontignan," and "Vin de Frontignan" were submitted by France as nongeneric names. However, these names are similar to "Muscat Frontignan", an alternative name for the prime United States varietal name "Muscat blanc." As previously indicated, ATF does not consider foreign denominations of origin that are identical to or similar to United States varietal names to be geographically significant.

The name "St. Emilion" submitted by France creates a special case. "St. Emilion" is identical to the synonym "St Emilion" which is used in the United States for the varietal grape named "Ugni Blanc". However, "St. Emilion" has been recognized as a nongeneric distinctive designation since the 1930's and is listed under 27 CFR 4.24(c)(4). Should "St. Emilion" be retained as a nongeneric distinctive designation?

4. If any of the names proposed for recognition as names of geographic significance or as nongeneric distinctive designations would be misleading, how

can the product be labeled to avoid confusion?

New submissions of names proposed by interested national governments will be accepted by ATF at any time but will not be considered as part of this rulemaking procedure. ATF believes this limitation is necessary to allow for a manageable comment period. New submissions may be made part of a future rulemaking proposal.

Disclosure

Copies of the petitions and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4412, Disclosure Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his/her request, in writing, to the Director within the 90 day comment period. The request should include reasons why the commentator feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposals are not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposal is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal authors of this document were John Kodadek and Lilia M. Vannett, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Imports, Labeling, Packaging and Containers, Wine.

27 CFR Part 12

Administrative practice and procedures, Imports, Labeling, Wine.

Authority and Issuance

Accordingly, the Director proposes to amend regulations in 27 CFR Part 4 and to issue new regulations in 27 CFR Part 12 as follows:

PART 4—[AMENDED]

Paragraph A. The regulations in 27 CFR Part 4—Labeling and Advertising of Wine—are amended as follows:

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

Authority: 27 U.S.C. 205.

2. Section 4.24 is amended by revising paragraphs (c)(2) and (c)(3) and removing (c)(4), to read as follows:

§ 4.24 Generic, semigeneric and nongeneric designations of geographic significance.

* * * * *

(c) * * *

(2) Examples of nongeneric names which are not distinctive designations of specific grape wines are: American, French, Spanish, South-Eastern Australia, Bisamberg-Kreuzenstein, Adlikon, Kaitaia, California, New York State, Napa Valley. Additional foreign nongeneric names are listed in Subpart C of Part 12 of this chapter.

(3) Examples of nongeneric names which are also distinctive designations of specific grape wines are: Alsace, Beaune, Bordeaux Blanc, Rosé d'Anjou, Vin de Pays de l'Aude, Dolcetto d'Asti, Orvieto, Valpolicella, Deidesheimer, Liebfrauenmilch, Schloss Johannisberger, Mosel, Retsina Attica, Moschatos Patras, Dao, Douro, Moscatel de Setubal, Porto, Rioja, Jerez-Xéres-Sherry, Blatina Mostar, Vinaracki Merlo. Additional foreign distinctive designations are listed in Subpart D of Part 12 of this chapter.

§ 4.39 [Amended]

3. Section 4.39(i)(3) is amended by replacing the words "or by a foreign government", with "or when recognized as a name of geographic significance in Part 12 of this chapter".

Par. B. A new Part 12, listing foreign names having geographic significance, is proposed to be added to read as follows:

PART 12—FOREIGN NAMES OF GEOGRAPHIC SIGNIFICANCE USED IN CONNECTION WITH WINES

Subpart A—General Provisions

Sec.

12.1 Scope.
12.2 Territorial extent.
12.3 Procedure for recognition of foreign names of geographic significance.

Subpart B—[Reserved]

Subpart C—Foreign Names of Geographic Significance

12.21 List of approved names by country.

Subpart D—Foreign Nongeneric Names Which Are Distinctive Designations of Specific Grape Wines

12.31 List of approved names by country.

Authority: 27 U.S.C. 205.

Subpart A—General Provisions

§ 12.1 Scope.

The regulations in this part relate to foreign names used to designate wines

which have been officially recognized as names of geographic significance under Part 4 of this chapter, and includes those nongeneric names which the Director has found to be distinctive designations of wine defined in 27 CFR 4.24(c)(1).

§ 12.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 12.3 Procedure for recognition of foreign names of geographic significance.

(a) *Procedure.* Under the provisions of 27 CFR 71.41(c), the Director may approve petitions from national governments requesting ATF recognition of names of geographic significance for their grape wines, including those names which are the distinctive designations of specific wines under § 4.24(c) of this chapter.

(b) *Format.* A petition shall be in the form of a letterhead application submitted by the appropriate foreign governmental department requesting that ATF recognize the nongeneric wine designations listed in their petition. All background material and supporting data submitted will be made part of the application and will be considered in the review process.

Subpart B—[Reserved]

Subpart C—Foreign Names of Geographic Significance

§ 12.21 List of approved names by country.

The names listed in this section have been recognized as names of geographic significance under 27 CFR 4.24(c)(2) and 4.39 (i) and (j).

(a) *Argentina:* Alto Colorado, Valles Calchaquies.

(b) *Australia:* Adelaide, Adelaide Plains, Alice Springs, Angaston, Auburn, Avoca, Ballandean, Bannockburn, Barmera, Barnawartha, Barooga, Barossa, Barossa Valley, Baynton, Beelbangera, Bendigo, Berri, Beverford, Bickley, Big Hill, Bilbul, Branxton, Bridgewater, Broke, Buckland River Valley, Bunbury, Bungendore, Buronga, Camden, Canberra, Clare, Clare Valley, Clarendon, Cobbitty, Coldstream, Coleambally, Corbie Hill, Coromandel Valley, Corowa, Cowra, Currency Creek, Dalwood, Dandenong Valley, Dareton, Darling Ranges, Denman, Dixons Creek, Dookie, Dorrien, Drumborg, Eden Valley, Evanston, Flaxmans Valley, Forbes, Fordwich, Frankland River, Gawler River, Geelong, Glenrowan, Gomersal, Goodnight, Goulburn Valley, Granite Belt, Graytown, Great Western, Greenock, Griffith, Guildford, Hanwood, Happy Valley, Harcourt, Hay, Heathcote, Herberton, Herne Hill, High Eden, Hillston, Hilltops, Hope Valley, Hunter River, Hunter River Valley, Hunter Valley, Kangaroo Lake, Karadoc, Katunga, Keppoch, Keyneton, King Valley, Kingower, Kingston, Koraleigh, Kyneton, Lake Boga, Lake George, Lake Wyangan, Lancefield, Langhorne Creek, Leasingham, Leeton, Lights Pass, Lilydale, Lindsay Point, Lower Hunter River Valley, Loxton, Luddenham, Lyndoch, Lyrup, Macedon, Magill, Maiden Gully, Mandurah, Mandurang, Mansfield, Maranaga, Margaret River, Marion, McLaren Flat, McLaren Vale, McLaren Valley, Merbein, Mid Murray, Middle Swan, Milawa, Mildura, Mitchellstown, Modbury, Monash, Moonambel, Moondah Brook, Moorabool, Moorook, Morgan, Morphett Vale, Mount Pleasant, Mount View, Mt. Barker, Mt. Helen, Mt. Ida, Mt. Macedon, Mudgee, Murchison, Murray River Valley, Murrumbateman, Murtho, Muswellbrook, Mystic Park, Nagambie, Namoi Valley, Nangiloc, Nericon, New South Wales, Newham, Nildottie, North East Victoria, North Richmond, Northern Territory, Nuriootpa, Ovens Valley, Padthaway, Partalunga, Pewsey Vale, Picola, Pokolbin, Qualco, Queensland, Ramco, Red Cliffs, Redbank, Renmark, Reynella, River Murray Valley, Riverina, Riverland, Robinvale, Roma, Romsey, Rooty Hill, Rothbury, Rowland Flat, Rutherglen, Sandy Hollow, Seaview, Seppeltsfield, Sevenhill, Seville, Seymour, Shepparton, South Australia, South-Eastern Australia, South-West Coastal, Springton, St. Andrews, Stanbridge, Stanthorpe, Steels Creek, Strathbogie Ranges, Sunbury, Sunraysia, Swan Hill, Swan Valley, Sydney, Tabilk, Tanunda, Tasmania, Tea Tree Gully, Tharbogang, Toodyay, Tooleybuc, Upper Hunter River Valley, Upper Swan, Victoria, Wagga Wagga, Waikerie, Wallacia, Wangunyan, Wanneroo, Watervale, West Swan, Western Australia, Whitton, Willunga, Wood Wood, Woorinen, Wybong, Yanco, Yarck, Yarra Glen, Yarra Valley, Yarra Yering, Yass, Yass Valley, Yenda.

(c) *Austria:* Bisamberg-Kreuzenstein, Bisamberg-Wien, Burgenland, Carnuntum, Eisenberg, Falkenstein, Frauenweingarten, Goldbachtal, Gumpoldskirchen, Kahlenberg, Kaisergarten, Kaiserstiege, Kapellenweg, Kirchberger Wagran, Kloch-Oststeiermark, Klosterneuburg, Krems, Kremstal, Langelois, Marthal-Kegelberg, Matzner Hugel, Niederosterreich, Nussberg, Osterreichischer, Oststeirisches Hugelland, Punkatal, Retz, Rosaliakapelle, Rust-Neusiedlersee, Sausal, Schatzberg, Schonberger Kalvarienberg, Sonnenberg, Staholln, Steiermark, Steirisches Vulkanland, Sudsteiermark, Sudsteirisches Rebenland, Tattendorfer Steinholle, Traismauer Weinberger, Vogelsag, Voslau, Wachau, Weisser Stein, Weststeiermark, Wien.

(d) *France:* Aloxe-Corton, Alsace, Alsace Grand Cru, Alsation, Anjou, Anjou Coteaux de la Loire, Anjou Gamay, Anjou mousseux, Anjou pétillant, Anjou-Saumer, Arbois, Arbois Mousseux, Arbois-Pupillin, Auvergne, Auxey-Duresses, Bandol, Banyuls, Banyuls Grand Cru, Banyuls Grand Cru Rancio, Banyuls Rancio, Barsac, Batard-Montrachet, Beaujolais, Beaujolais Villages, Beaujolais supérieur, Beaujolais followed by commune, Beaumes de Venise, Beaune, Bellegarde, Bellet, Bergerac, Bergerac sec, Bienvenues Batard-Montrachet, Blagny, Blanc Fumé de Pouilly, Blanquette de Limoux, Blayais, Blaye, Bonnes Mares, Bonnezeaux, Bordeaux, Bordeaux Blanc, Bordeaux Clairet, Bordeaux Cotes de Castillon, Bordeaux Cotes de Francs, Bordeaux Haut-Benauge, Bordeaux Rouge, Bordeaux Supérieur, Bordeaux mousseux, Bordeaux rosé, Bordeaux supérieur Clairet, Bordeaux supérieur Cotes de Castillon, Bordeaux supérieur rosé, Bourg, Bourgeais (vins blancs), Bourgeais (vins rouges), Bourgogne, Bourgogne Aligote, Bourgogne Clairet, Bourgogne Clairet Hautes Cotes de Beaune, Bourgogne Clairet Hautes Cotes de Nuits, Bourgogne Clairet Marsannay, Bourgogne Grand Ordinaire, Bourgogne Grand Ordinaire Clairet, Bourgogne Grand Ordinaire Rosé, Bourgogne Hautes Cotes de Beaune, Bourgogne Hautes Cotes de Nuits, Bourgogne Irancy, Bourgogne Marsannay, Bourgogne Marsannay la Cote, Bourgogne Mousseux, Bourgogne Ordinaire, Bourgogne Ordinaire Clairet, Bourgogne Ordinaire Rosé, Bourgogne Passetoutgrains, Bourgogne Rosé, Bourgogne Rosé Hautes Cotes de Beaune, Bourgogne Rosé Hautes Cotes de Nuits, Bourgogne Rosé Marsannay, Bourgogne des Environs de Chablis, Bourgueil, Brouilly, Bugey, Bearn, Cabardés, Cabernet d'Anjou, Cabernet de Saumur, Cabrieres, Cadillac, Cahors, Canon-Fronsac, Cassis, Chablis grand cru, Chambertin, Chambertin Clos de Béze, Chambolle-Musigny, Chappelle-Chambertin, Charentais, Charentes, Charlemagne, Charmes-Chambertin, Chassagne-Montrachet, Chateau-Chalon, Chateau-Grillet, Chateau Lafite, Chateau Margaux, Chateau Yquem, Chateaumeillant, Chateauneuf-du-Pape, Cheilly-les-Maranges, Chevalier-Montrachet, Cheverny, Chinon, Chiroubles, Chorey-les-Beaunes,

Chénas, Clairette de Bellegarde, Clairette de Die, Clairette de Die Mousseux, Clairette du Languedoc, Clos Saint-Denis, Clos Vougeot, Clos de Tart, Clos de la Roche, Clos des Lambrays, Collioure, Condrieu, Corbieres, Corbieress Supérieurs, Cornas, Corse, Corton, Corton Charlemagne, Costieres du Gard, Cote Beaujolaise, Cote Maconnaise, Cote Rotie, Cote Roannaise, Cote de Beaune, Cote de Beaune preceded by commune, Cote de Beaune-Villages, Cote de Brouilly, Cote de Jura Mousseux, Cote de Nuits, Cote de Nuits-Villages, Cote du Rhone, Coteaux Champenois, Coteaux d' Aix-en-Provence, Coteaux d' Ancenis, Coteaux de Baux-de-Provence, Coteaux de Méjanelle, Coteaux de Pierrevert, Coteaux de Saint-Christol, Coteaux de Saumur, Coteaux de Vérargues, Coteaux de l'Aubance, Coteaux de la Méjanelle, Coteaux du Giennos, Coteaux du Languedoc, Coteaux du Layon, Coteaux du Layon followed by commune, Coteaux du Layon-Chaume, Coteaux du Loir, Coteaux du Tricastin, Coteaux du Vendomois, Coteaux re la Loise, Cotes Canon-Fronsac, Cotes d' Auvergne, Cotes de Bergerac, Cotes de Bergerac moelleux, Cotes de Blaye, Cotes de Bordeaux Saint-Macaire, Cotes de Bourg (vins rouges), Cotes de Bourg (vins blancs), Cotes de Buzet, Cotes de Duras, Cotes de Gien, Cotes de Montravel, Cotes de Provence, Cotes de Saint-Mont, Cotes de Toul, Cotes du Cabardés et de l'Orbiel, Cotes du Forez, Cotes du Frontonnais, Cotes du Jura, Cotes du Luberon, Cotes du Marandais, Cotes du Rhone, Cotes du Rhone followed by commune, Cotes du Rhone-Villages, Cotes du Roussilon, Cotes ou Roussilon-Villages, Cotes du Roussilon-Villages-Caramany, Cotes du Roussilon-Villages-Latour de France, Cotes du Ventoux, Cotes du Vivarais followed by grape varieties, Criots Batard-Montrachet, Croze Hermitage, Crémant d'Alsace, Crémant de Bourgogne, Crémant de Loire, Crépy, Cérons, Dezize-lés-Maranges, Die, Echézeaux, Entraygues et Fel, Entre-Deux-Mers, Entre-Deux-Mers-Haut-Benauge, Estaing, Faugeres, Fitou, Fixin, Flagey-Echezeaux, Fleurie, Fronsac, Gaillac, Gaillac Mosseux, Gaillac Premieres Cotes, Gaillac doux, Gevrey-Chambertin, Gigondas, Givry, Grand Chablis, Grand Roussillon, Grand Roussillon Rancio, Grands Echézeaux, Graves, Graves Barsac, Graves Supérieurs, Graves de Vayres, Griotte Chambertin, Gros Plant, Gros Plant du Pays Nantais.

Haut Montravel, Haut Médoc, Haut-Poitou, Hermitage, Irouléguy, Jasnieres, Juliénas, Jurançon, Jurançon sec, Lalande de Pomerol, Latricieres Chambertin, L'Etoile, L'Etoile Mousseux, La Clape, Ladoix, Languedoc, Lavilledieu, Limoux, Lirac, Listrac, Loire, Loire-Atlantique, Loire-et-Cher, Loupiac, Lunel, Lussac Saint-Emilion, Lyonnais, Macon, Macon followed by commune, Macon-Supérieur, Macon-Villages, Maconnais, Madiran, Maranges, Marcillac, Margaux, Maury, Maury Rancio, Mazis-Chambertin, Mazoyeres Chambertin, Menetou Salon, Memetou Salon followed by commune, Mercurey, Meursault, Minervois, Minervois Noble, Mireval, Monbazillac, Montagne Saint-Emilion, Montagny, Monthelie, Montlouis, Montlouis Mousseux, Montlouis Pétillant, Montpeyroux, Montrachet, Montravel, Morey, Morey Saint-Denis, Morgon, Moulin-a-Vent, Moulis, Moulis-en-Médoc, Mousseux de Savoie, Mousseux de Savoie Ayze, Mousseux du Bugey, Muscadet, Muscadet de Sévre-et-Maine, Muscadet des Coteaux de la Loire, Muscat de Beaumes de Venise, Muscat de Lunel, Muscat de Mireval, Muscat de Rivesaltes, Muscat de Saint-Jean-de-Minervois, Musigny, Médoc, Méjanelle, Néac, Nuits, Nuits-Saint-George, Orleanais, Pacherenc du Vic Bilh, Palette, Parsac Saint-Emilion, Pauillac, Pernand-Vergelesses, Petit Chablis, Pic-Saint-Loup, Picpoul-de-Pinet, Pineau Charentais, Pineau des Charentes, Pinot Chardonnay Macon, Pomerol, Pommard, Pouilly, Pouilly Fumé, Pouilly Fumé de Pouilly, Pouilly-Fuissé, Pouilly-Loché, Pouilly-Vinzelles, Pouilly-sur-Loire, Premieres Cotes de Blaye, Premieres Cotes de Bordeaux, Premieres Cotes de Bordeaux followed by commune, Puisseguin Saint-Emilion, Puligny-Montrachet, Pécharmant, Pétillant de Savoie, Pétillant du Bugey, Quarts-de-Chaume, Quatourze, Quincy, Rasteau, Rasteau Rancio, Reuilly, Rhone, Richebourg, Riceys, Rivesaltes, Rivesaltes Rancio, Romanée, Romañee Conti, Romanée Saint-Vivant, Rosé d'Anjou, Rosé d'Anjou petillant, Rosé de Loire, Rosé des Riceys, Rosette, Roussette de Savoie, Roussette du Bugey, Roussillon Ruchottes-Chambertin, Rully, Saint-Amour, Saint-Aubin, Saint-Bris, Saint-Chinian, Saint-Denis, Saint-Drezery, Saint-Emilion, Saint-Estephe, Saint-George-Saint-Emilion, Saint-Georges-d'Orques, Saint-Jean-de-Minervois, Saint-Joseph, Saint-Julien, Saint-Nicolas-de-Bourgueil, Saint-Pourçain, Saint-Péray, Saint Péray Mousseux, Saint-Roman, Saint-Saturnin, Saint-Véran, Sainte-Croix-du-Mont, Sampigny-les-Maranges, Sancerre, Santenay, Saumur, Saumur Champigny, Saumur Mousseux, Saumur Pétillant, Saussignac, Sauvignon de Saint-Bris, Savennieres-Coul ée-de-Serrant, Savenniéres, Savenniéres-Roches-Aux-Moines, Savigny, Savigny-lés-Beaune, Savoie, Seyssel, Seyssel Mousseux, Tache (la), Tavel, Thouarsais, Touraine, Touraine Amboise, Touraine Azay-le-Rideau, Touraine Mesland, Touraine Mousseux, Touraine Pétillant, Tursan, Valeńcay, Vin Noble du Minervois, Vin d'Alsace, Vin d'Alsace Edelzwicker, Vin de pays Charentais, Vin de pays de la Loire-Atlantique, Vin de pays des Bouches-du-Rhone, Vin de pays du Loir-et-Cher, Vin de pays du Maine-et-Loire, Vin du Haut-Poitou, Vin d'Entraygues et du Fel, Vin d'Estaing, Vin de Blanquette, Vin de Corse, Vin de Corse Calvi, Vin de Corse Coteaux d'Ajaccio, Vin de Corse Coteaux du Cap Corse, Vin de Corse Figari, Vin de Corse Patrimonio, Vin de Corse Porto Vecchio, Vin de Corse Sartene, Vin de Coteaux du Giennois, Vin de Lavilledieu, Vin de Marcillac, Vin de Savoie, Vin de Savoie Mousseux, Vin de Savoie Petillant, Vin de Savoie Roussette, Vin de Savoie followed by variety, Vin de l'Orléanais, Vin de pays Catalan, Vin de pays d'Allobrogie, Vin de pays d'Argens, Vin de pays d'Oc, Vin de pays d'Urfé, Vin de pays de Bessan, Vin de pays de Cassan, Vin de pays de Caux, Vin de pays de Cessenon, Vin de pays de Cucugnan, Vin de pays de Franche-Comté, Vin de pays de Hauterive en Pays d'Aude.

Vin de pays de Mont-Caume, Vin de pays de Petite Crau, Vin de pays de Pezenas, Vin de pays de Retz, Vin de pays de Saint-Sardos, Vin de pays de l'Agenais, Vin de pays de l'Ardeche, Vin de pays de l'Aude, Vin de pays de l'Aveyron, Vin de pays de l'Hérault, Vin de pays de l'Ile de Beauté, Vin de pays de l'Isere, Vin de pays de l'Uzége, Vin de pays de la Benovie, Vin de pays de la Dordogne, Vin de pays de la Drome, Vin de pays de la Gironde, Vin de pays de la Haute Vallée de l'Aude, Vin de pays de la Haute Vallée de l'Orb, Vin de pays de la Haute-Garonne, Vin de pays de la Principauté d'Orange, Vin de pays de la Vallée du Paradis, Vin de pays de la Vaunage, Vin de pays de la Vendée, Vin de pays de la Vicomté d'Aumelas, Vin de pays de la Vistrenque, Vin de pays des Balmes dauphinoises, Vin de pays des Collines Rhodaniennes, Vin de pays des Collines de la Moure, Vin de pays des Coteaux Cathares, Vin de pays des Coteaux Cévenols, Vin de pays des Coteaux Flaviens, Vin de pays des Coteaux Termenes, Vin de pays des Coteaux Varois, Vin de pays des Coteaux d'Enserune, Vin de pays des Coteaux de Céze, Vin de pays des Coteaux de Fenouilledes, Vin de pays des Coteaux de Fontcaude, Vin de pays des Coteaux de Glanes, Vin de pays des Coteaux de Laurens, Vin de pays des

Coteaux de Miramont, Vin de pays des Coteaux deMurviel, Vin de pays des Coteaux de Narbonne, Vin de pays des Coteaux de Peyriac, Vin de pays des Coteaux de l'Ardeche, Vin de pays des Coteaux de la Cabrerisse, Vin de pays des Coteaux de la Cité de Carcassonne, Vin de pays des Coteaux des Baronnies, Vin de pays des Coteaux du Cher et de l'Arnon, Vin de pays des Coteaux du Grésivaudan, Vin de pays des Coteaux du Lezignanais, Vin de pays des Coteaux du Libron, Vin de pays des Coteaux du Littoral Audois, Vin de pays des Coteaux du Pont du Gard, Vin de pays des Coteaux du Quercy, Vin de pays des Coteaux du Salagou, Vin de pays des Coteaux du Salaves, Vin de pays des Coteaux et Terrasses de Montauban, Vin de pays des Cotes Catalanes, Vin de pays des Cotes de Cascogne, Vin de pays des Cotes de Ceressou, Vin de pays des Cotes de Lastours, Vin de pays des Cotes de Montestruc, Vin de pays des Cotes de Prouilhe, Vin de pays des Cotes de Pérignan, Vin de pays des Cotes de Thau, Vin de pays des Cotes de Thongue, Vin de pays des Cotes de la Malepere, Vin de pays des Cotes du Brian, Vin de pays des Cotes du Brulhois, Vin de pays des Cotes du Condomois, Vin de pays des Cotes du Tarn, Vin de pays des Cotes du Vidourle, Vin de pays des Fiefs Vendéens, Vin de pays des Fiefs Vendéens Brem, Vin de pays des Fiefs Vendéens Chantonnay, Vin de pays des Fiefs Vendéens Mareuil, Vin de pays des Fiefs Vendéens Pissotte, Vin de pays des Fiefs Vendéens Talmondais, Vin de pays des Fiefs Vendéens Vix, Vin de pays des Gorges de l'Hérault, Vin de pays des Gorges et Cotes de Millau, Vin de pays des Hautes-Alpes, Vin de pays des Hauts de Badens, Vin de pays des Jardins de la France, Vin de pays des Landes, Vin de pays des Marches de Bretagne, Vin de pays des Maures, in de pays des Monts de la Grage, Vin de pays des Pyrenénées Atlantiques, Vin de pays des Pyrénées-Orientales, Vin de pays des Sables des Golfes du Lion, Vin de pays des Vals d'Agly, Vin de pays du Berange, Vin de pays du Comté Tolosan, Vin de pays du Comté de Grignan, Vin de pays du Gard, Vin de pays du Gers, Vin de pays du Jardin de la France, Vin de pays du Littoral Orb-Hérault, Vin de pays du Lot, Vin de pays du Lot-et-Garonne, Vin de pays du Mont Baudile, Vin de pays du Mont Bouquet, Vin de pays du Puy-de-Dome, Vin de pays du Serre de Coiran, Vin de pays du Tarn, Vin de pays du Tarn-et-Garonne, Vin de pays du Val d'Orbieu, Vin de pays du Val de Cesse, Vin de pays du Val de Dagne, Vin de pays du Val de Montferrant, Vin de pays du Var, Vin de pays du Vaucluse, Vin du Bugey Cerdon Mousseux, Vin du Bugey Cerdon Pétillant, Vin du Bugey followed by grape variety, Vin du Lyonnais, Vin du Thouarsais, Volnay, Volnay Santenots, Vosne-Romanée, Vougeot, Vouvray, Vouvray Mousseux, Vouvray Pétillant.

(e) *Germany:* Aftentaler, Ahr, Bacharach, Baden, Badisch Rotgold, Badische Bergstrasse/Kraichgau, Badisches Frankenland, Bayerischer Bodensee, Bernkastel, Bingen, Bodensee, Breisgau, Deidesheimer, Ehrentrudis, Forster, Franken, Hessiche Bergstrasse, Kaiserstuhl-Tuniberg, Kocher-Jagst-Tauber, Kreuznach, Liebfraumilch, Liebfraunenmilch, Maindreieck, Mainviereck, Markgraflerland, Mittelhaardt/Deutsche Weinstrasse, Mittelrhein, Mosel, Mosel-Saar-Ruwer, Moseltor, Nahe, Nierstein, Obermosel, Ortenau, Remstal-Stuttgart, Rhein, Rheinburgengau, Rheingau, Rheinhessen, Rheinpfalz, Rudesheimer, Saar-Ruwer, Schloss Bockelheim, Schloss Johannisberger, Siebengebirge, Starkenburg, Steigerwald, Sudliche Weinstrasse, Umstadt, Walporzheim/Ahrtal, Wonnegau, Wurttemberg, Wurttembergisch Bodensee, Wurttembergisch Unterland, Zell/Mosel.

(f) *Greece:* Aghialos, Agioritikos, Amynteon, Archanes, Daphnes, Goumenitsa, Kantza, Lemnos, Mantinea, Mavrodaphni Cefalonia, Mavrodaphni Patras, Moschatos Cefalonia, Moschatos Lemnos, Moschatos Patras, Moschatos Rhodes, Moschatos Riou Patras, Naousa, Nemea, Paros, Patras, Peza, Plagies Melitona, Rapsani, Retsina Attica, Retsina Boetia, Retsina Chalkida, Retsina Euboea, Retsina Gialtra, Retsina Karystos, Retsina Koropi, Retsina Kropias, Retsina Liopesi, Retsina Markopoulo, Retsina Megara, Retsina Mesogeon, Retsina Paiania, Retsina Pallini, Retsina Pikermi, Retsina Spata, Retsina Thebes, Rhodes, Robola Cefalonia, Samos, Sitia, Santorini, Zitsa.

(g) *Italy:* Abruzzo, Aglianico del Vulture, Albana di Romagna, Alcamo, Aleatico di Gradoli, Aleatico di Puglia, Alezio, Alto Mincio, Aprilia, Aquileia, Alto Adige, Barbaresco, Barbera d'Alba, Barbera d'Asti, Barbera del Monferrato, Barbera di Castel S. Lorenzo, Bardolino, Barolo, Basilicata, Bianchello del Metauro, Bianco Capena, Bianco Pisano di S. Torpe', Bianco Vergine Valdichiana, Bianco dei Colli Maceratesi, Bianco della Val di Nievola, Bianco di Custoza, Bianco di Nugola, Bianco di Pitigliano, Bianco di Scandiano, Biferno, Boca, Bolgheri, Bosco Eliceo, Botticino, Brachetto d' Acqui, Bramaterra, Breganze, Brindisi, Brunello di Montalcino, Cabernet di Pramaggiore, Cacc'e Mmitte di Lucera, Calabria, Caldaro, Lago di Caldaro, Camarro, Campania, Campidiano di Terralba, Candia dei Colli Apuani, Cannonau di Sardegna, Capri, Capriano del Colle, Carema, Carignano del Sulcis, Carmignano, Castel del Monte, Casteller, Cellatica, Cerasuolo di Vittoria, Cerveteri, Cesanese del Piglio, Cesanese di Affile, Cesanese di Olevano Romano, Cinqueterre, Ciro', Ciro' di Cagliari, Colli Albani, Colli Altotiberini, Colli Berici, Colli Bolognesi Monte S. Pietro, Colli Euganei, Colli Lanuvini, Colli Morenici Mantovani del Garda, Colli Orientali del Friuli, Colli Perugini, Colli Tortonesi, Colli del Trasimeno, Colli della Toscana Centrale, Colli di Bolzano, Colli di Parma, Collio Goriziano, Copertino, Cori, Cortese dell'Alto Montferrato, Cortese di Gavi, Delia Nivolelli, Dolcetto d'Alba, Dolcetto d'Asti, Dolcetto delle Langhe Monregalesi, Dolcetto di Acqui, Dolcetto di Diano D'Alba, Dolcetto di Dogliani, Dolcetto di Ovada, Donnaz, Donnici, Elba, Emilia Romagna, Erbaluce di Caluso, Enfer d'Arvier, Est! Est! Est! di Montefiascone, Etna, Falerio dei Colli Ascolani, Fara, Faro, Fiano di Avellino, Franciacorta, Frascati, Freisa di Chieri, Friularo di Bagnoli, Friuli Venezia Giulia, Gabiano, Gambellara, Gattinara, Gavi, Genazzano, Ghemme, Grave del Friuli, Gravina, Greco di Bianco, Greco di Tufo, Grignolino d' Asti, Grignolino del Monferrato Casalese, Gutturnio dei Colli Piacentini, Ischia, Isonzo, Lacryma Christi, Lagrima, Lambrusco di Sorbara, Lambrusco Grasparossa di Castelvetro, Lambrusco Reggiano, Lambrusco Salamino di S. Croce, Lamezia, Latisana, Lazio, Lessona, Leverano, Liguria, Locorotondo, Lombardia, Lugana, Malvasia delle Lipari, Malvasia di Bosa, Malvasia di Cagliari, Malvasia di Casorzo d'Asti, Malvasia di Castelnuovo Don Bosco, Mandrolisai, Marche, Marino, Martina, Martina Franca, Matino.

Mentana-Monterotondo, Meranese di Collina, Merlot del Conselvano, Merlot di Pramaggiore, Meslissa, Molise, Monica di Cagliari, Monica di Sardegna, Monte Antico, Montecarlo, Montecompatri Colonna, Montefalco, Montello E Colli Asolani, Monterosso Val d'Arda, Montepulcianio, Montescudaio, Morellino di Scansano, Moscato di' Cagliari, Moscato di Noto, Moscato di Sardegna, Moscato di Siracusa, Moscato di Sorso Sennori, Moscato di Trani, Moscato Naturale d'Asti, Nasco di Cagliari, Nebbiolo d' Alba, Nettuno, Nuragus di Cagliari, Oltrep'Pavese, Orvieto, Ostuni, Ottavianello, Parrina, Pentro d'Isernia, Pentro, Piemonte, Pollino, Pomino,

Primitivo di Manduria, Primitivo Tarantino, Prosecco di Conegliano Valdobbiadene, Puglia, Recioto di Soave, Riviera del Garda Bresciano, Rosato del Salento, Rossese di Dolceacqua, Rosso Barletta, Rosso Canosa, Rosso Cerignola, Rosso Conero, Rosso Piceno, Rosso delle Colline Lucchesi, Rotaliana, Rubino di Cantavenna, S. Anna Isola di Capo Rizzuto, Salice Salentino, San Severo, Santa Maddalena, Sangiovese dei Colli Pesaresi, Sangiovese di Romagna, Sardegna, Savuto, Sicilia, Sizzano, Soave, Solopaca, Sorni, Squinzano, Taurasi, Terlano, Teroldego Rotaliana, Tocai di Lison, Tocai di S. Martino della Battaglia, Torgiano, Toscana, Trebbianno d' Abruzo, Trebbianno di Romagna, Trebbiano Val Trebbica, Trentino, Trentino Alto Adige, Umbria, Valcalepio, Valdadige, Valle Isarco, Valle d'Aosta, Valpolicella, Valtellina, Velletri, Veneto, Verbicaro, Verdiccio dei Castelli di Jesi, Verdicchio di Matelica, Vermentino di Gallura, Vernaccia di Oristano, Vernaccia di S. Gimignano, Vernaccia di Serrapetrona, Vesuvio, Vino Nobile di Montepulciano, Zagarolo.

(h) *New Zealand:* Bay View, Benmorven, Blenheim, Brookfield, Brookvale, Bushmere, Canterbury, Central Otago, Dargaville, Drury, Esk Valley, Eskdale, Fairhall, Fernhill, Flaxmere, Gisborne, Glendene, Greenmeadows, Haumoana, Hawkes Bay, Henderson, Henderson Valley, Huapai, Huapai Valley, Kaikohe, Kaitaia, Kapiti, Kerikeri, Kohukohu, Kumeu, Lincoln, Mangatangi, Mangere, Mariri, Marlborough, Matawnero, Matua Valley, Meeanee, Moutere, Mt Erin, Muriwai, Nelson, Northland, Omaka, Oratia, Ormond, Pakuratahi Valley, Pukekohe, Puketapu, Ranui, Renwick, Richmond, Riverhead, Riverlands, Riverlea, Rodney, Ruakaka, Ruapare, Ruawai, South Auckland, Sunnyvale, Taradale, Te Awanga, Te Hana, Te Karaka, Te Kauwhata, Te Mata, Thames, Tolaga Bay, Totara, Tuapaki, Tuki Tuki, Waihirere, Waimauku, Wairau Valley, Wairoa, Wanganui, Wellington, Whangarei, Whareranga, Whatitiri, Woodbourne, Woodhill.

(i) *Portugal:* Agueda, Alcanhoes, Alcobaça, Alentejo, Algarve, Alijo, Almeirim, Amarante, Amares, Arco de Val-de-Vez, Armamar, Arrabida, Arruda, Azueira, Açores, Baiao, Bairrada, Baixo Corgo, Barcelos, Basto, Batalha, Beiradouro, Beiras, Belém, Benfica do Ribatejo, Biscoitos, Bombarral, Borba, Braga, Bucelas, Cadaval, Camara de Lobos, Campanario, Cantanhede, Carcavelos, Cartaxo, Carvoeira, Casteletes, Castelo de Paiva, Chamusca, Chaves, Cima Corgo, Cinfaes, Colares, Cortes, Covilha, Dao, Dois Portos, Douro, Douro Superior, Ervedal da Beira, Estremadura, Fafe, Famalicao, Favaios, Felgueiras, Figueira de Castelo Rodrigo, Freixo de Espada a Cinta, Freixo de Numao, Fundao, Gouxa-Alpiarça, Graciosa, Granja Mourao, Guimaraes, Ilha Terceira, Labrujeira, Lafoes, Lagoa, Lagos, Lamego, Lima, Lousada, Macedo de Cavaleiros, Madére, Mangualde, Marco de Canavezes, Martim-Rei-Sabugal, Mealhada, Meda, Mesao Frio, Mogofores, Moncorvo, Montijo, Monçao, Moscatel de Douro, Moscatel de Setubal, Murça, Nelas, Nogueira do Cravo, Olhalvo, Oporto, Palmela, Paredes, Pegarinhos, Pegoes Velhos, Penafiel, Penajoia, Penalva do Castelo, Peso da Régua, Pico, Pinhel, Ponte da Barca, Ponte de Lima, Portalegre, Portimao, Porto, Portugal, Portwein, Portwijn, Povoa de Lanhoso, Preces, Redondo, Reguengos, Reguengos de Monsaras, Riba Tua-Cachao, Ribadouro-Mogadouro, Ribatejo, Ribatejo-Oeste, Ribeira de Cura-Vidago, Rio Maior, Régua, S. Mamede da Ventosa, S. Romao-Armamar, S. Jorge, Sabrosa, Sanfins do Douro, Santa Comba Dao, Santa Luzia, Santa Maria de Penaguiao, Santo Antonio, Santo Isidro de Pegoes, Santo tirso, Sao Joao, Sao Joao da Pesqueira, Sao Martinho, Sao Paio, Sao Pedro, Setubal, Silgueiros, Sobral de Monte Agraço, Souselas, Tavira, Tavora-Moimenta da Beira, Terra Fria-Bragança, Tomar, Tondela, Torre, Torres, Torres Vedras, Torrinha, Tras-os-Montes, Trevoes, Vale da Teja, Vale de Cambra, Vale do Sorraia-Coruche, Vale do Varosa-Tarouca, Valpaços, Vargem, Vermelha, Viana, Viana do Castelo, Vidigueira-Alvito, Vila Flor, Vila Franca das Naves-Trancoso, Vila Nova de Foscoa, Vila Nova de Tazem, Vila Real, Vilarinho do Bairro, Vinho do Porto, Vinho Verde.

(j) *Romania:* Alba Iulia, Arges, Bistrita-Nasaud, Bujoru, Cotesti, Cotnari, Dealu Mare, Dealurile, Dragasani, Drobeta Turnuseverin, Istria, Ivesti, Jidvei, Medias, Mehedinti, Minis, Moldovei, Murfatlar, Nicoresti, Odobesti, Oltina, Panciu, Recas, Sarica Niculitel, Sebes, Segarcea, Tecuci-Galati, Teremia, Tirnave.

(k) *Spain:* Alella, Alicante, Almansa, Ampurdan-Costa Brava, Campo de Borja, Carinena, Condado de Huelva, Jerez-Xéres-Sherry, Jumilla, Mancha (La), Manzanilla Sanlucar de Barrameda, Méntrida, Montilla-Moriles, Navarra, Penedés, Priorato, Ribeiro, Ribera del Duero, Rioja, Rueda, Tarragona, Utiel-Requena, Valdeorras, Valencia, Yecla.

(l) *Switzerland:* Adlikon, Aesch, Agarn, Aigle, Aire-la-Ville, Alfermée, Altstatten, Amlikon, Anchette, Andelfingen, Anieres, Appenhalde, Ardon, Arenenberg, Argovie, Arlesheim, Arnex, Au, Aubonne, Auenstein, Ausserberg, Auvernier, Avully, Avusy, Ayent, Bachenbulach, Bachtobel, Balavaud, Bale, Balgach, Balsthal, Baltschieder, Bardonnex, Bas-Vully, Batassé, Begnins, Bellevue, Benken, Berg am Irchel, Bergdietikon, Beringen, Berlingen, Berne, Berneck, Bernex, Bernune, Beudon, Bevaix, Bex, Bick, Biel-Benken, Birmenstorf, Blaurock, Blonay, Bodeler, Bole, Bonvillars, Boppelsen, Bottmingen, Bottstein, Boudry, Bougy-Villars, Bourdigny, Bovernier, Bozen, Bramois, Branson, Bratsch, Bremgarten, Brestenberg, Buch am Irchel, Buchackern, Buchberg, Buchenhalde, Buchs, Bulach, Burghalden, Burghof, Burignon, Bursinel, Bursins, Buus, Calamin, Cartigny, Cerlier, Chablais, Chaferstei, Chalais, Chamoson, Champlan, Champréveyres, Champsabé, Chancy, Chardonne, Charrat, Charrot, Chataignier, Chateau de Luins, Chateauneuf, Chatroz, Chavannes, Chermignon, Chexbres, Cheyres, Chiendsruet-Chorhusler, Chigny, Chippis, Chorherren, Choulex, Choully, Chrachenfels, Chur, Clavoz, Cleves (Les), Coinsins, Collex-Bossy, Collonges, Collonges-Bellerive, Cologny Concise, Confignon, Conthey, Coquempey, Corbassiere, Corcelles, Corin, Cormondréche, Cornaux, Corseau, Corsier, Cortaillod, Costams, Coteau de Vincy, Cressier, Crétaplan, Cully, Cure d'Attalens, Dachsen, Dardagny, Darnonaz, Dattlikon, Daucher, Dennens, Diesldorf, Diessenhofen, Dinhard, Diolly, Domat/Ems, Dorf, Dorflingen, Dorénaz, Dottingen, Douanne, Dézaley, Effingen, Eggerberg, Eglisau, Eichberg, Eisenhalde, Elfingen, Endingen, Ennetbaden, Epesses, Ergisch, Erlach, Erlenbach, Erlinsbach, Ermatingen, Eschenz, Essertines, Ettingen, Evionnaz, Evouettes (Les), Farhof, Faverges, Feldbach, Flaach, Flanthey, Flasch, Fluringen, Forst, Founex, Frauenfeld, Freienstein, Freudenberg, Freudenfels, Friburg, Frick, Fruthwilen, Fully, Féchy, Gachlingen, Gall, Gampel, Geneve, Genthod, Gilly, Gléresse, Goffersberg, Goldenberg, Goldwand, Gollion, Gorgier, Gotighofen, Goubing, Grabs, Grand-Brulé, Grandson, Grandvaux, Granges, Griesenberg, Grimisuat, Grisons, Grone, Guggenhurli, Guggenhusli, Gy, Géronde, Habsburg, Hallau, Haut-Vully, Hauterive, Heerenberg, Heidegg, Heiligberg, Henggart, Herdern, Hermance, Herrenberg, Herrliberg, Herznach,

Hessenreuti, Hettlingen, Hohenfels, Hohtenn, Holderberg, Hombrechtikon, Hongg, Horhussen, Hottwil, Humlikon, Huntwangen, Huttwilen, Igis, Ile St. Pierre, Jenins, Jussy, Kaisten, Kalchrain, Kartaus Ittingen, Kleinandelfingen, Klingnau, Klosterberg, Klus, Kusnacht, Kuttigen, La Cote, La Coudre, La Folie, La Milliere, La Neuveville, Laconnex, Lalden, Landecy, Landvogt, Lattenberg, Laufen-Uhwiesen, Lavaux, Le Carre, Le Landron, Le Mont, Lens, Lentine, Lenzburg, Les Cotes de l'Orbe, Leuk/Loeche, Leutschen, Leytron, Lichten, Ligerz, Limmattal, Loc, Lohningen, Lucerne, Luins, Lully, Lutry, Magden, Magnot, Maienfeld, Maisprach, Malans, Mammern, Manndach, Mannedorf, Mannenbach, Maragnenaz, Marbach.

Mariahalde, Marstetten, Martigny, Martigny-Combe, Meilen, Meinier, Mels, Miege, Molignon, Monstein, Mont d'Or, Mont (Le), Mont-sur-Rolle, Montagnon, Montagny, Montana, Monthey, Montibeux, Montorge, Montreux, Morges, Motier, Munot, Mur, Muraz, Muttenz, Muzot, Nant, Nax, Neftenbach, Nendaz, Neuchatel, Neuenstadt, Niedergesteln, Niederneuenforn, Noes, Nussbaumen, Nyon, Oberdorf, Oberembrach, Oberengstringen, Oberflachs, Oberhallau, Oberhofen, Obermumpf, Oberneuenforn, Oeschgen, Ollon, Onnens, Orbe, Ossingen, Osterfingen, Otelfingen, Ottenberg, Pagane, Paudex, Peissy, Perly-Certoux, Perroy, Peseux, Pfafers, Pfeffingen, Plan Cerisier, Port-Valais, Pratteln, Praz, Presinge, Puidoux, Puilly, Rafz, Ragaz, Randogne, Rapperwil, Raron/Rarogne, Ravanay, Ravyre, Rebstein, Regensberg, Reinach, Remigen, Rheinau, Rheinhalde, Rickenbach, Riddes, Riex, Rivaz, Rolle, Rosenberg, Rudlingen, Rudolfingen, Rufnach, Russin, Rutiberg, Saillon, Saint-Aubin, Saint-Blaise, Saint-Légier, Saint-Saphorin, Salenstein, Salgesch/Salquenen, Salins, Sargans, Satigny, Saviese, Savuit, Saxon, Schaffhausen, Schaffhouse, Schafis, Scherbengut, Schernelz, Schinznach, Schipfgut, Schiterberg, Schlattingen, Schloss Giersberg, Schloss Goldenberg, Schloss Schwandegg, Schloss Sonnenberg, Schloss Teufen, Schlossberg, Schlossgut Bachtobel, Schlossgut Herdern, Schmalzler, Schutzenhalde, Schwerzenberg, Schwyz, Seengen, Siblingen, Sierre, Signese, Sion, Sissach, Sonnenberg, Soral, Spiez, St. Clément, St. Gall, St. Katharinatal, St. Léonard, St. Maurice, St. Pierre-de-Clages, St. Raphael, St. Anna-Oelenberg, St. Luzisteig, Stadtberg, Stadtreben, Stadtschryber, Stadtscryber, Stafa, Stalden, Staldenried, Stammheim, Steckborn, Steg, Steigassli, Stein am Rhein, Steinbruchler, Steinmaur, Sternenhalde, Stettfurt, Stiftshalde, Straussberg, Suisse, Sugiez, Sulgen, Sunnehalde, Swiss, Tartegnin, Tegerfelden, Tessin, Teufen, Thal, Thalheim, Thayngen, Thurgovie, Thurgut, Trasadingen, Treytorrents, Trimmis, Troinex, Troistorrents, Trottenhalde, Trullikon, Trullisberg, Truttikon, Trémazieres, Tschapperli, Turmgut, Turtmann/Tourtemagne, Tuscherz, Twann, Ueken, Uerikon, Uesslingen, Uetikon am See, Uhwiesen, Untersiggenthal, Uvrier, Vaas, Valais, Vallamand, Valleyres-sous-Rances, Varen/Varone, Vaud, Venthone, Vernamiege, Vevey, Vex, Veyras, Veyrier, Vignelz, Vigneule, Villeneuve, Villette, Villigen, Vinzel, Vionnaz, Visp/Viege, Visperterminen, Volken, Volleges, Vouvry, Vufflens-le-Chateau, Vully, Vétroz, Wadenswil, Walenstadt, Waltalingen, Wartau, Warth, Wasterkingen, Weinfelden, Weiningen, Weinland/Kanton Zurich, Werdenberg, Wessenberg, Wettingen, Wiesendangen, Wil, Wilchingen, Wildensbuch, Winkel, Wintersingen, Winterthur-Wulflingen, Wittnau, Worrenberg, Wortberg, Wurenlingen, Wurenlos, Yvorne, Zeiningen, Zeneggen, Zizers, Zurcher Unterland, Zurich, Zurichsee.

(m) *Yugoslavia:* Beljski Burgundac Bijeli, Beljski Rizling, Blatina Mostar, Bolski Plavac, Borje, Brodska Grasevina, Bujska Malvazija, Buzetski Teran, Crnogorski Vranac, Dingac, Dubrovacka Malvazija, Erdutska Grasevina, Erdutski Burgundac Bijeli, Faros, Grasevina Pajzas, Grk Lumbarda, Ilocka Frankovka, Ilocka Grasevina, Ilocki Burgundac Bijeli, Ilocki Traminac, Kutjevacka Grasevina, Mandicevacka Grasevina, Mandicevacki Bijeli Burgundac, Merlot Bujstine, Metliska Crnina, Plesivicki Burgundac Bijeli, Plesivicki Rizling Rajnski, Porecki Cabarnet Sauvignon, Porecki Merlot, Postup, Primostenski Babic, Smederevski Rizling, Smederevski Sovinjon, Smederevski Traminac, Trnovacki Traminac, Tabernakalj, Vinaracki Merlo, Viska Vugava, Vrsacki Rizling, Zlata Radgonska Penina, Zilavka Mostar.

Subpart D—Foreign Nongeneric Names Which Are Distinctive Designations of Specific Grape Wines

§ 12.31 List ot approved names by country.

The names listed in this section have been approved for use as nongeneric designations which are also recognized as distinctive designations of specific grape wines, in accordance with § 4.24(c)(3) of this chapter.

(a) *France:* Aloxe-Corton, Alsace, Alsace Grand Cru, Alsation, Anjou, Anjou Coteaux de la Loire, Anjou Gamay, Anjou mousseux, Anjou pétillant, Anjou-Saumer, Auxey-Duresses, Bandol, Banyuls, Banyuls Grand Cru, Banyuls Grand Cru Rancio, Banyuls Rancio, Barsac, Batard-Montrachet, Beaujolais, Beaujolais Villages, Beaujolais supérieur, Beaujolais followed by commune, Beaumes de Venise, Beaune, Bergerac, Bergerac sec, Bienvenues Batard-Montrachet, Blagny, Blanc Fumé de Pouilly, Bordeaux, Bordeaux Blanc, Bordeaux Clairet, Bordeaux Cotes de Castillon, Bordeaux Cotes de Francs, Bordeaux Haut-Benauge, Bordeaux Rouge, Bordeaux Supérieur, Bordeaux mousseux, Bordeaux rosé, Bordeaux supérieur Clairet, Bordeaux supérieur Cotes de Castillon, Bordeaux supérieur rosé, Bourg, Bourgeais (vins blancs), Bourgeais (vins rouges), Bourgogne, Bourgogne Aligote, Bourgogne Clairet, Bourgogne Clairet Hautes Cotes de Beaune, Bourgogne Clairet Hautes Cotes de Nuits, Bourgogne Clairet Marsannay, Bourgogne Grand Ordinaire, Bourgogne Grand Ordinaire Clairet, Bourgogne Grand Ordinaire Rosé, Bourgogne Hautes Cotes de Beaune, Bourgogne Hautes Cotes de Nuits, Bourgogne Irancy, Bourgogne Marsannay, Bourgogne Marsannay la Cote, Bourgogne Mousseux, Bourgogne Ordinaire, Bourgogne Ordinaire Clairet, Bourgogne Ordinaire Rosé, Bourgogne Passetoutgrains, Bourgogne Rosé, Bourgogne Rosé Hautes Cotes de Beaune, Bourgogne Rosé Hautes Cotes de Nuits, Bourgogne Rosé Marsannay, Bourgogne des Environs de Chablis, Bourgueil, Brouilly, Cabernet d'Anjou, Cabernet de Saumur, Cahors, Canon-Fronsac, Chablis grand cru, Cnambertin, Chambertin Clos de Béze, Chambolle-Musigny, Chappelle-Chambertin, Charentais, Charmes-Chambertin, Chassagne-Montrachet, Chateau Lafite, Chateau Margaux, Chateau Yquem, Chateauneuf-du-Pape, Chevalier-Montrachet, Chinon, Chiroubles, Chorey-les-Beaunes, Chénas, Clairette de Bellegarde, Clairette de Die, Clairette de Die Mousseux, Clairette du Languedoc, Clos Saint-Denis, Clos Vougeot, Clos de la Roche, Concrieu, Coroieres, Coroieress Supérieurs, Cornas, Corton, Corton Charlemagne, Cote Beaujolaise, Cote Maconnaise, Cote Rotie, Cote de Beaune, Cote de Beaune preceded by commune, Cote de Beaune-Villages, Cote de Brouilly, Cote oe Nuits, Cote de Nuits-Villages, Cote du Rhone, Coteaux de Saumur, Coteaux du Layon, Coteaux du Layon followed by commune, Coteaux du Layon-Chaume, Coteaux du Loir, Coteaux re :a Loise, Cotes Canon-Fronsac, Cotes de

Bergerac, Cotes de Bergerac moelleux, Cotes de Blaye, Cotes de Bordeaux Saint-Macaire, Cotes de Bourg (vins rouges), Cotes de Bourg (vins blancs), Cotes de Buzet, Cotes de Duras, Cotes de Provence, Cotes du Frontonnais, Cotes du Jura, Cotes du Rhone, Cotes du Rhone followed by commune, Cotes du Rhone-Villages, Cotes du Roussilon, Cotes du Roussilon-Villages, Cotes du Roussilon-Villages-Caramany, Cotes du Roussilon-Villages-Latour de France, Cotes du Ventoux, Cotes du Vivarais followed by grape varieties, Criots Batard-Montrachet, Croze Hermitage, Crémant d'Alsace, Crémant de Bourgogne, Crémant de Loire, Echézeaux, Entre-Deux-Mers, Entre-Deux-Mers-Haut-Benauge, Fitou, Fixin, Flagey-Echezeaux, Fleurie, Fronsac, Gevrey-Chambertin, Gigondas, Givry, Grand Chablis, Grand Roussillon, Grand Roussillon Rancio, Grands Echézeaux, Graves, Graves Barsac, Graves Supérieurs, Graves de Vayres, Griotte Chambertin, Gros Plant, Gros Plant du Pays Nantais, Haut Médoc, Haut-Poitou, Hermitage, Juliénas, Jurançon, Jurançon sec, Lalande de Pomerol, Latricieres Chambertin, Listrac, Loire, Loire-Atlantique, Loire-et-Cher, Lussac Saint-Emilion, Macon, Macon followed by commune, Lyonnais, Macon-Supérieur, Macon-Villages, Maconnais, Margaux, Mazis-Chambertin, Mazoyeres Chambertin, Menetou Salon, Memetou Salon followed by commune, Mercurey, Meursault, Minervois, Minervois Noble, Monbazillac, Montagne Saint-Emilion, Montagny, Monthelie, Montrachet, Morey, Morey Saint-Denis, Morgon, Moulin-a-Vent, Moulis, Moulis-en-Médoc, Mousseux de Savoie, Mousseux de Savoie Ayze, Muscadet, Muscadet de Sévre-et-Maine, Muscadet des Coteaux de la Loire, Muscat de Beaumes de Venise, Muscat de Lunel, Muscat de Mireval, Muscat de Rivesaltes, Muscat de Saint-Jean-de-Minervois, Musigny, Médoc, Nuits, Nuits-Saint-George, Parsac Saint-Emilion, Pauillac, Pernand-Vergelesses, Petit Chablis, Pic-Saint-Louys, Picpoul, Picpoul-de-Pinet, Pineau Charentais, Pineau des Charentes, Pinot Chardonnay Macon, Pomerol, Pommard, Pouilly, Pouilly Fumé, Pouilly Fumé de Pouilly, Pouilly-Fuissé, Pouilly-Loché, Pouilly-Vinzelles, Pouilly-sur-Loire, Premieres Cotes de Bordeaux, Premieres Cotes de Bordeaux followed by commune, Puisseguin Saint-Emilion, Puligny-Montrachet.

Quarts-de-Chaume, Quincy, Rhone, Romanée, Romanée Conti, Romanée Saint-Vivant, Rosé d'Anjou, Rosé d'Anjou petillant, Rosé de Loire, Rosé des Riceys, Roussette de Savoie, Roussillon, Rully, Saint-Amour, Saint-Aubin, Saint-Denis, Saint-Emilion, Saint-Estephe, Saint-George-Saint-Emilion, Saint-Georges-d'Orques, Saint-Jean-de-Minervois, Saint-Joseph, Saint-Julien, Saint-Nicolas-de-Bourgueil, Sancerre, Santenay, Saumur, Saumur Champigny, Saumur Mousseux, Saumur Pétillant, Sauvignon de Saint-Bris, Savigny, Savigny-lés-Beaune, Tavel, Touraine, Touraine Amboise, Touraine Azay-le-Rideau, Touraine Mesland, Touraine Mousseux, Touraine Pétillant, Vin Noble du Minervois, Vin d'Alsace, Vin d'Alsace Edelzwicker, Vin de pays Charentais, Vin de pays de la Loire-Atlantique, Vin de pays des Bouches-du-Rhone, Vin de pays du Loir-et-Cher, Vin de pays du Maine-et-Loire, Vin du Haut-Poitou, Vin d'Entraygues et du Fel, Vin d'Estaing, Vin de Blanquette, Vin de Corse, Vin de Corse Calvi, Vin de Corse Coteaux d'Ajaccio, Vin de Corse Coteaux du Cap Corse, Vin de Corse Figari, Vin de Corse Patrimonio, Vin de Corse Porto Vecchio, Vin de Corse Sartene, Vin de Coteaux du Giennois, Vin de Lavilledieu, Vin de Marcillac, Vin de Savoie, Vin de Savoie Mousseux, Vin de Savoie Petillant, Vin de Savoie Roussette, Vin de Savoie followed by variety, Vin de l'Orléanais, Vin de pays Catalan, Vin de pays d'Allobrogie, Vin de pays d'Argens, Vin de pays d'Oc, Vin de pays d'Urfé, Vin de pays de Bessan, Vin de pays de Cassan, Vin de pays de Caux, Vin de pays de Cessenon, Vin de pays de Cucugnan, Vin de pays de Franche-Comté, Vin de pays de Hauterive en Pays d'Aude, Vin de pays de Mont-Caume, Vin de pays de Petite Crau, Vin de pays de Pezenas, Vin de pays de Retz, Vin de pays de Saint-Sardos, Vin de pays de l'Agenais, Vin de pays de l'Ardeche, Vin de pays de l'Aude, Vin de pays de l'Aveyron, Vin de pays de l'Hérault, Vin de pays de l'Ile de Beauté, Vin de pays de l'Isere, Vin de pays de l'Uzége, Vin de pays de la Benovie, Vin de pays de la Dordogne, Vin de pays de la Drome, Vin de pays de la Gironde, Vin de pays de la Haute Vallée de l'Aude, Vin de pays de la Haute Vallée de l'Orb, Vin de pays de la Haute-Garonne, Vin de pays de la Principauté d'Orange, Vin de pays de la Vallée du Paradis, Vin de pays de la Vaunage, Vin de pays de la Vendée, Vin de pays de la Vicomté d'Aumelas, Vin de pays de la Vistrenque, Vin de pays des Balmes dauphinoises, Vin de pays des Collines Rhodaniennes, Vin de pays des Collines de la Moure, Vin de pays des Coteaux Cathares, Vin de pays des Coteaux Cévenols, Vin de pays des Coteaux Flaviens, Vin de pays des Coteaux Termenes, Vin de pays des Coteaux Varois, Vin de pays des Coteaux d'Enserune, Vin de pays des Coteaux de Céze, Vin de pays des Coteaux de Fenouilledes, Vin de pays des Coteaux de Fontcaude, Vin de pays des Coteaux de Glanes, Vin de pays des Coteaux de Laurens, Vin de pays des Coteaux de Miramont, Vin de pays des Coteaux de Murviel, Vin de pays des Coteaux de Narbonne, Vin de pays des Coteaux de Peyriac, Vin de pays des Coteaux de l'Ardeche, Vin de pays des Coteaux de la Cabrerisse, Vin de pays des Coteaux de la Cité de Carcassonne, Vin de pays des Coteaux des Baronnies, Vin de pays des Coteaux du Cher et de l'Arnon, Vin de pays des Coteaux du Grésivaudan, Vin de pays des Coteaux du Lezignanais, Vin de pays des Coteaux du Libron, Vin de pays des Coteaux du Littoral Audois, Vin de pays des Coteaux du Pont du Gard, Vin de pays des Coteaux du Quercy, Vin de pays des Coteaux du Salagou, Vin de pays des Coteaux du Salaves, Vin de pays des Coteaux et Terrasses de Montauban, Vin de pays des Cotes Catalanes, Vin de pays des Cotes de Cascogne, Vin de pays des Cotes de Ceressou, Vin de pays des Cotes de Lastours, Vin de pays des Cotes de Montestruc, Vin de pays des Cotes de Prouilhe, Vin de pays des Cotes de Pérignan, Vin de pays des Cotes de Thau, Vin de pays des Cotes de Thongue, Vin de pays des Cotes de la Malepere, Vin de pays des Cotes du Brian, Vin de pays des Cotes du Brulhois, Vin de pays des Cotes du Condomois, Vin de pays des Cotes du Tarn, Vin de pays des Cotes du Vidourle, Vin de pays des Fiefs Vendéens, Vin de pays des Fiefs Vendéens Brem, Vin de pays des Fiefs Vendéens Chantonnay, Vin de pays des Fiefs Vendéens Mareuil, Vin de pays des Fiefs Vendéens Pissotte, Vin de pays des Fiefs Vendéens Talmondais, Vin de pays des Fiefs Vendéens Vix, Vin de pays des Gorges del'Hérault, Vin de pays des Gorges et Cotes de Millau, Vin de pays des Hautes-Alpes, Vin de pays des Hauts de Badens, Vin de pays des Jardins de la France, Vin de pays des Landes, Vin de pays des Marches de Bretagne, Vin de pays des Maures, Vin de pays des Monts de la Grage, Vin de pays des Pyrenénées Atlantiques, Vin de pays des Pyrénées-Orientales, Vin de pays des Sables des Golfes du Lion, Vin de pays des Vals d'Agly, Vin de pays du Berange, Vin de pays du Comté Tolosan, Vin de pays du Comté de Grignan, Vin de pays du Gard, Vin de pays du Gers, Vin de pays du Jardin de la France, Vin de pays du Littoral Orb-Hérault, Vin de pays du Lot, Vin de pays du Lot-et-Garonne, Vin de pays du Mont Baudile, Vin de pays du Mont Bouquet, Vin de pays du Puy-de-Dome, Vin de pays du

Serre de Coiran, Vin de pays du Tarn, Vin de pays du Tarn-et-Garonne, Vin de pays du Val d'Orbieu, Vin de pays du Val de Cesse, Vin de pays du Val de Dagne, Vin de pays ou Val de Montferrant, Vin de pays du Var, Vin de pays du Vaucluse, Vin du Bugey Cerdon Mousseux, Vin du Bugey Cerdon Pétillant, Vin du Bugey followed by grape variety, Vin du Lyonnais, Vin du Thouarsais, Volnay, Volnay Santenots, Vosne-Romanée, Vougeot, Vouvray, Vouvray Mousseux, Vouvray Pétillant.

(b) *Germany:* Ahr, Baden, Deidesheimer, Forster, Franken, Hessische Bergstrasse, Liebfraumilch, Liebfrauenmilch, Mittelrhein, Mosel, Mosel-Saar-Ruwer, Nahe, Rhein, Rheingau, Rheinhessen, Rheinpfalz, Rudesheimer, Schloss Johannisberger, Wurttemberg.

(c) *Greece:* Mavrodaphni Cefalonia, Mavrodaphni Patras, Moschatos Cefalonia, Moschatos Lemnos, Moschatos Patras, Moschatos Rhodes, Moschatos Riou Patras, Retsina Attica, Retsina Boetia, Retsina Chalkida, Retsina Euboea, Retsina Gialtra, Retsina Karystos, Retsina Koropi, Retsina Kropias, Retsina Liopesi, Retsina Markopoulo, Retsina Megara, Retsina Mesogeon, Retsina Paiania, Retsina Pallini, Retsina Pikermi, Retsina Spata, Retsina Thebes.

(d) *Italy:* Aglianico del Vulture, Aleatico di Giadolu, Aleatico di Puglia, Barbaresco, Barbera d'Alba, Barbera d'Asti, Barbera del Monferrato, Barbera di Castel S. Lorenzo, Bardolino, Barolo, Bianchello del Metauro, Brachetto d' Acqui, Brunello di Montalcino, Cabernet di Pramaggiore, Cannonau di Sardegnan, Carignamo del Sulcis, Cesanese del Piglio, Cesanese di Affile, Cesanese di Olevanno Romano, Cortese Dell'Alto Montferato, Cortese di Gavi, Dolcetto d'Alba, Dolcetto d'Asti, Dolcetto delle Langhe Monregalesi, Dolcetto di Acqui, Dolcetto di Diano D'Alba, Dolcetto di Dogliani, Dolcetto di Ovada, Est! Est! Est! di Montefiascone, Fiano di Avellino, Frascati, Freisa di Chieri, Greco di Bianco, Greco di Tufo, Grignolino d' Asti, Grignolino del Monferrato Casalese, Lacryma Christi, Lagrima, Lambrusco di Sorbara, Lambrusco Grasparossa di Castelvetro, Lambrusco Reggiano, Lambrusco Salamino di S. Croce, Malvasia delle Lipari, Malavesia di Bosa, Malvasia di Cagliari, Malvasia di Casorzo d'Asti, Malvasia di Castelnuovo Don Bosco, Merlot del Conselvan, Merlot di Pramaggiore, Montepulcianio, Moscato di' Cagliari, Moscato di Noto, Moscato di Sardegna, Moscato di Siracusa, Moscato di Sorso Sennori, Moscato di Trani, Moscato Naturale d'Asti, Nebbiolo d' Alba, Orvieto, Primitivo di Manduria, Primitivo Tarantino, Prosecco di Conegliano Valdobbiadene, Recioto di Soave, Sangiovese dei Colli Pesaresi, Sangiovese di Romagna, Soave, Tocai di Lison, Tocai di Sr. Martino della Battaglia, Trebbianno d' Abruzo, Trebbianno di Romagna, Trebbiano Val Trebbica, Valpolicella, Verdiccio dei Castelli di Jesi, Verdicchio di Matelica, Vernaccia di S. Gimignano, Vernaccia di Serrapetrona, Vino Nobile di Montepulciano.

(e) *Portugal:* Dao, Douro, Douro Superior, Moscatel de Douro, Moscatel de Setubal, Oporto, Porto, Portwein, Portwijn, Vinho do Porto, Vinno Verde.

(f) *Spain:* Jerez-Xéres-Sherry, Montilla-Moriles, Rioja.

(g) *Switzerland:* Swiss, Suisse.

(h) *Yugoslavia:* Beljski Burgundac Bijeli, Beljski Rizling, Blatina Mostar, Bolski Plavac, Brodska Grasevina, Bujska Malvazija, Crnogorski Vranac, Dubrovacka Malvazija, Erdutska Grasevina, Erdutski Burgundac Bijeli, Grasevina Pajzas, Grk Lumbarda, Ilocka Frankovka, Ilocka Grasevina, Ilocki Burgundac Bijeli, Ilocki Traminac, Kutjevacka Grasevina, Mandicevacka Grasevina, Mandicevacki Bijeli Burgundac, Merlot Bujstine, Plesivicki Burgundac Bijeli, Plesivicki Rizling Rajnski, Porecki Cabarnet Sauvignon, Porecki Merlot, Smederevski Rizling, Smederevski Sovinjon, Smederevski Traminac, Trnovacki Traminac, Vinaracki Merlo, Vrsacki Rizling.

Signed: January 19, 1988.

Stephen E. Higgins,

Director.

Approved: February 11, 1988.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 88-7863 Filed 4-11-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 45

[DoD Instruction 1336.1]

Certificate of Release or Discharge From Active Duty (DD Form 214/5 Series)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This part proposes revisions to the DD Form 214/214WS and Part 45 text. Form changes include adding a "Home of Record at Time of Entry" block, enlarging and moving the "Reserve Obligation Termination Date" block, adding a block to document dental treatment within 90 days of separation and adding a "Name and Address of Nearest Relative" block to help locate Service members who have transferred to the Individual Ready Reserve (IRR). Text changes would authorize certain officials in grade E-5, GS-5 or above to sign the form, specify issuance requirements for reenlisting members, clarify potential obligations of retired and IRR members, and clarify certain other administrative matters.

DATES: Comments should be received by May 12, 1988.

FOR FURTHER INFORMATION CONTACT: Capt M. Burns, Office of the Assistant Secretary of Defense (Force Management and Personnel), Pentagon, Washington, DC 20301, telephone 695-6312.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 45

Armed forces reserves, Military personnel.

Accordingly, Title 32 CFR Part 45 is proposed to be amended to read as follows:

PART 45—CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (DD FORM 214/5 SERIES)

1. The authority citation for Part 45 continues to read as follows:

Authority: 10 U.S.C. 1168 and 972.

§ 45.2 [Amended]

2. In § 45.2 "NOTE," change "(Manpower, Reserve Affairs, and Logistics)" to "(Force Management and Personnel)."

§ 45.3 [Amended]

3. In § 45.3, paragraph (b)(3)(i), after the words "DD Form 214" add "will furnish the member a DD Form 256, Honorable Discharge Certificate, and"

4. In § 45.3, paragraph (d)(8) is proposed to be revised and paragraphs (d)(10), (11), and (12) to be added as follows:

§ 45.3 Policy and procedures.

* * * * *

(d) * * *

(8) The authorized official will sign the original in ink ensuring that the signature is legible on all carbon copies. If not, a second signature may be necessary on a subsequent carbon copy. The authorized official shall be an E-7, GS-7, or higher grade, except that the Service concerned may authorize chiefs of installation separation activities (E-5, GS-5 or above) to serve in this capacity if designated in writing by the

responsible commander/director (0–4 or above).

* * * * *

(10) The date entered in block 12a shall be the date of enlistment for the earliest period of continuous active service for which a DD Form 214 was not previously issued. For members who have previously reenlisted without being issued a DD Form 214, and who are being separated with any discharge characterization except "Honorable," the following statement shall appear as the first entry in block 18, "Remarks," on the DD Form 214: "CONTINUOUS HONORABLE ACTIVE SERVICE FROM (applicable date) UNTIL (applicable date)." The "from" date shall be the date of initial entry onto active duty, or the first day of service for which a DD Form 214 was not previously issued, as applicable; the "until" date shall be the date prior to commencement of the current enlistment.

(11) For Service members retiring from active duty, enter "Subject to active duty recall by Service Secretary in an emergency" in block 9, "Command to Which Transferred."

(12) For Service members being transferred to the Individual Ready Reserve, enter "Ready Reserve." Subject to active duty recall/annual 1-day muster" in block 9, "Command to Which Transferred."

* * * * *

§ 45.3 [Amended]

5. In § 45.3(g), last sentence, remove the period (.) and add ", the size of the information blocks may be increased or decreased, and copies 7 and/or 8 may be deleted at the discretion of the Service."

Linda M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

April 7, 1988.

[FR Doc. 88–7969 Filed 4–11–88; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS–400011; FRL—3364–5]

Acid Blue 9; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is granting a petition by proposing to delete Acid Blue ((both the diammonium and the disodium salts) from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986. EPA proposes to amend the final rule codifying the list of chemicals published on February 16, 1988 (53 FR 4500). This proposed rule, if made final, applies only to the second year and beyond of reporting requirements under section 313. Therefore, facilities will have to report to EPA and State agencies by July 1, 1988, on covered releases that occurred during the 1987 calendar year.

DATE: Written comments should be submitted on or before June 1, 1988.

ADDRESSES: Written comments should be submitted in triplicate to: Section 313 Petition Coordinator, OTS Docket Clerk, TSCA Public Docket Office, Environmental Protection Agency, Mail Stop TS–793, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPTS–400011.

FOR FURTHER INFORMATION CONTACT: Renee Rico, Petition Coordinator (WH–562A), Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (800) 535–0202, In Washington, DC and Alaska: (202) 479–2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The response to the petition and proposed deletion are issued under section 313(e)(1) of Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, "SARA" or "the Act"). Title III of SARA is also the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

For reporting purposes, section 313 establishes an initial list of "toxic chemicals" that is composed of 328 entries, 20 of which are categories of chemicals. This list is a combination of lists of chemicals used by the States of Maryland and New Jersey for emissions reporting under their individual right-to-know laws. Section 313(d) authorizes EPA to modify by rulemaking the list of chemicals covered either as a result of EPA's self-initiated review or in response to petitions under section 313(e).

Section 313(e)(1) provides that any person may petition the Agency to add chemicals to or delete chemicals from the list of "toxic chemicals." In the **Federal Register** of February 4, 1987 (52 FR 3479), EPA issued a statement of policy and guidance, which provided guidance to potential petitioners regarding the recommended content and format for submitting petitions. The Agency must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied. If EPA fails to respond within 180 days, it is subject to citizen suits; therefore, EPA is under specific constraints to evaluate petitions and to issue a timely response.

II. Description of Petition

The Agency received a petition to delist C.I. Acid Blue 9, diammonium salt (CAS No. 2650–18–2) and C.I. Acid Blue 9, disodium salt (CAS No. 3844–45–9). The petition was submitted by the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry (ETAD). EPA received the petition on October 5, 1987, and under the statutory deadline must respond by April 2, 1988.

III. EPA Review of Acid Blue 9

A. Chemistry

Acid Blue 9 is an aromatic sulfonated triphenylmethane dye. The diammonium and disodium salts of the dye are the subject of this petition. The two salts have fairly similar properties. Both are described as reddish-brown powders. Both compounds melt with decomposition at greater than 250°C and exhibit appreciable water solubility (Ref. 1).

B. Toxicity Evaluation

Information on the health and environmental effects of Acid Blue 9 were obtained from the following sources: 1981 EPA Chemical Hazard Information Profile (CHIP) for Brilliant Blue FCF (synonym); EPA's Office of Pesticide Programs data on "Aquashade," an aqueous formulation of the subject dye; FDA cancer bioassays on FD&C Blue #1 (synonym); studies cited in the ETAD petition to remove Acid Blue 9 from the 313 list; and studies found in searching the published literature.

Toxicological data on all salts of Acid Blue 9 were reviewed for evidence indicating developmental toxicity, acute toxicity, mutagenicity, oncogenicity, and environmental toxicity (Ref. 3).

1. *Developmental toxicity.* The available data are insufficient to assess the developmental or reproductive toxicity of Acid Blue 9.

2. *Acute toxicity.* Acid Blue 9 has low acute toxicity. The subcutaneous LD_{50} in mice = 4,600 mg/kg bodyweight. The oral LD_{50} in rats is greater than 2,000 mg/kg bodyweight.

3. *Heritable genetic effects.* Acid Blue 9 does not exhibit mutagenic activity in the Ames assay. No other data on heritable genetic defects or mutagenic potential of the chemical are available.

4. *Carcinogenicity.* The total weight of evidence for the carcinogenicity of Acid Blue 9 is not sufficient to reasonably anticipate that the chemical will cause cancer in humans. This conclusion is based on a review of three well-conducted rodent bioassays performed in multiple species and involving multiple routes of exposure: A 2-year feeding study in mice (0, 0.5, 1.5, and 5 percent dose levels) indicated no oncogenic activity in either sex; a 2-year feeding study in rats (0.1, 1.0, and 2 percent dose levels) revealed no compound- related tumors; and an 18-month bioassay in mice in which a 1.0 percent solution of the chemical was administered via skin painting, did not result in oncogenic activity.

Acid Blue 9 was originally classified by the International Agency for Research on Cancer (IARC, 1978) as an animal carcinogen based on subcutaneous injection studies in which injection site tumors were found. However, in a subsequent reevaluation of experimental data (IARC, 1982), the chemical was no longer classified as a carcinogen. In the weight-of-evidence determination for Acid Blue 9 the injection site tumors were not given as much importance as the three negative full-term feeding and skin painting studies by appropriate routes of human exposure. Additionally, the U.S. Food and Drug Administration (FDA) has permanently listed C.I. Acid Blue 9 as a permitted color additive for food, drug, and cosmetic use based on the negative results of the feeding studies.

5. *Ecotoxicity.* Acid Blue 9 shows low acute ecotoxicity. The 48-hr LC_{50} for Daphnia and the 96-hr LC_{50} for fish are both greater than 1,000 mg/L.

EPA has a moderate concern for chronic ecotoxity of Acid Blue 9 based on a 30-day bioconcentration study in rainbow trout. Results of this study indicated that the chemical does not bioaccumulate; however, partial mortalities were observed at the four concentrations tested (1.8 to 10 mg/L). Adverse effects to kidneys and gills were observed at all concentrations tested. A 30-day chronic LC_{50} value for fish of 2.7 mg/L, and a chronic maximum allowable toxic concentration (MATC) of 0.45 mg/L were estimated from these data using probit analysis (Ref. 3).

A 30-day chronic study reported a 98 percent reduction in the population of aquatic plants at 2 mg/L of Acid Blue 9. A 40 to 60 percent reduction in aquatic plant and algae populations were observed at 0.8 to 10 mg/L concentrations. These effects are a result of the light screening ability of the chemical. (The typical use concentration of the chemical as an algicide in ponds is 1 mg/L) (Refs. 3 and 5).

A field study on the use of Acid Blue 9 as an aquatic weed control agent suggested that, in small shallow ponds, the chemical has a degradation half-life of up to 2 months. The mechanism of degradation is probably photolysis: Triphenylmethane dyes are relatively resistant to biodegradation but subject to photodegradation (it is the poor lightfastness of the dye that has made it undesirable in textile applications) (Ref. 5).

C. Use, Release, and Exposure

1. *Production and use.* The Agency has confirmed that three companies currently manufacture Acid Blue 9 in the United States. The yearly production volume for the diammonium and disodium salts combined is estimated to be 1.1 to 1.3 million pounds. BASF Corporation (Rensselaer, NY) produces an estimated 670,000 to 730,000 lbs/yr; Hilton Davis (Cincinnati, OH) produces an estimated 330,000 to 370,000 lbs/yr; and Warner-Jenkinson (St. Louis, MO) produces an estimated 100,000 to 225,000 lbs/yr (Ref. 4).

Acid Blue 9 is available in two grades, technical grade and FDA-certified food grade (the food grade dye must contain greater than 85 percent active colorant). BASF and Hilton Davis produce the technical grade product; Hilton Davis and Warner-Jenkinson produce the food grade product. A representative of Warner-Jenkinson has stated that the firm produced about 225,000 lbs of Acid Blue 9 for FDA-certified uses in 1986. The firm also imports 6,000 to 10,000 lbs of the food grade dye each year (Ref. 4).

Representatives from industry have stated that the major use for technical grade Acid Blue 9 is as a dye in toilet bowl cleaners and toilet bowl cakes (70 to 75 percent of the production volume). Acid Blue 9 is registered with the EPA Office of Pesticide Programs for use in ponds with low outflow to control the growth of weeds and algae. It functions by absorbing sunlight needed by the plant to carry out photosynthesis. Other minor uses include: a dye for paper, a marker for agricultural products, a component in inks, a textile dye (wool and leather), an indicator dye, a biological stain, and a colorant in miscellaneous products (Ref. 4).

Food grade Acid Blue 9 comprises an estimated 15 to 20 percent of the total production volume of the dye. A breakdown of uses for the food grade product has been provided by Warner-Jenkinson. They estimate that 80 percent is used in dairy goods, bakery goods, and confections, 10 percent is used in pet foods, 5 percent in dry mix beverages, and 5 percent in pharmaceuticals (Refs. 2 and 4).

2. *Exposure and Release*—a. *Manufacture.* BASF Corporation has provided EPA with a general description of its manufacture operations for Acid Blue 9. Evaluation of this information as well as EPA's best estimates indicate that exposure due to releases from manufacture will be low (Refs. 2 and 5).

b. *Processing.* Little factual data were available on processing operations. Standard release scenarios were used to estimate potential releases. The Agency has no health concerns for Acid Blue 9, so release and exposure estimates focus on water releases and predicted concentrations of Acid Blue 9 in surface waters.

The Agency has estimated that processing of Acid Blue 9 may take place at as many as 5 large volume processors, 80 moderate volume blenders and/or resellers, and 200 to 300 very small volume processors or repackagers. Large and medium scale processors are mainly involved in formulating Acid Blue 9 for use in toilet bowl cleaners. Processing operations for most uses will be essentially the same: The chemical will be transferred from shipping drums, blended with other materials, formed (if the product is a solid), and packaged. The Agency estimates that the most significant release of the chemical that may occur during processing will result from moderate volume blending operations. Using worst-case estimates (based on 10th percentile low flow of receiving waters and assuming no removal of the chemical during treatment operations), releases of Acid Blue 9 from processing could result in surface water concentrations of up to 0.015 mg/L (Refs. 2 and 5).

c. *Use.* The most significant release of Acid Blue 9 by users that could be subject to section 313 reporting may arise from use in paper drying. The Agency estimates that release of the chemical from this use could result in surface water concentrations of up to 0.019 mg/L.

D. Summary of Technical Review

The Agency has low human health concerns for Acid Blue 9. The dye has low acute toxicity, does not show evidence of oncogenic activity in adequate animal tests by appropriate routes of exposure, and does not exhibit mutagenic acitivy in the Ames assay. The Agency has a moderate concern for

chronic aquatic toxicity based on a 30-day study of fish and aquatic plants, and the level of persistence of the chemical. However, estimated releases of Acid Blue 9 will not result in exposure levels of concern: The suggested level of concern for chronic ecotoxicity is defined by the MATC value of 0.45 mg/L. The worst-case surface water concentration of the dye is estimated to be less than 0.019 mg/L.

IV. Explanation for Proposed Action To Delete

A. General Policy

EPA has broad discretion in determining whether to grant or deny petitions from the general public under section 313. When granting petitions, the Agency has a clear obligation to show how the granting of the petition fulfills the statutory criteria the Agency is to use in section 313(d) when modifying the list of toxic chemicals. However, in the Joint Conference Committee Report, the conferees made clear that EPA may conduct risk assessments or site-specific analyses in making listing determinations under section 313(d). In cases of petitions to delist chemicals, EPA believes that such analyses are important factors in determining whether removal of a substance from the list would serve the public's right-to-know. These analyses might show that while the toxicity of the chemical is not of high concern, exposures to humans and the environment are significant enough to warrant maintaining the chemical on the list.

B. Reasons for Proposing Deletion

EPA is granting the petition submitted by ETAD by proposing to delete Acid Blue 9 (both the diammonium and disodium salts) from the list of toxic chemicals subject to release reporting under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986.

The decision to grant the petition and to initiate action to modify the list is primarily based on the toxicity data on all salts of Acid Blue 9. A review of these data led to the conclusion that Acid Blue 9 is not known to cause nor reasonably anticipated to cause serious acute human health effects, cancer, teratogenic effects, or serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects; or significant adverse effects on the environment of sufficient seriousness to warrant reporting.

V. Rulemaking Record

The record supporting this proposed rule is contained in docket control number OPTS–400011. All documents, including an index of the docket, are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Room NE–G004, 401 M St., SW., Washington, DC 20460.

VI. Request for Public Comment

The Agency requests comments on all the analyses conducted for this review and on the Agency's proposal to delete Acid Blue 9 from the list of toxic chemicals. EPA also requests that any pertinent data on Acid Blue 9 be submitted to the address at the front of this notice. Any comments or data should be submitted on or before May 1, 1988.

VII. References

(1) Doa, M.J. Title III, Section 313, Chemistry Report on Acid Blue 9. USEPA. 1987.

(2) Heath, G.A. Petition Review Engineering Report, SARA Title III, Section 313 Environmental Release Analysis, C.I. Acid Blue 9. USEPA. 1987.

(3) Locke, D. Hazard Assessment of Acid Blue 9. USEPA. 1987.

(4) Long, J.W. Economic Analysis for ETAD Petition to Delist C.I. Acid Blue 9 From the Title III of SARA Section 313 List of Toxic Chemicals. USEPA. 1987.

(5) Lynch, D.G. Environmental Exposure Assessment; SARA Title III, Section 313: Petition to Delist C.I. Acid Blue 9. USEPA. 1987.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more.

This proposed rule would decrease the impact of the section 313 reporting requirements on covered facilities and would result in cost savings to both industry and EPA. Therefore, this is a minor regulation under Executive Order 12291.

This proposed rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the proposed rule results in cost savings to facilities, the Agency certifies that small entities will not be significantly affected by this proposed rule.

C. Paperwork Reduction Act

OMB has reviewed the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, reporting and recordkeeping requirements, Toxic chemicals.

Dated: April 1, 1988.

Victor J. Kimm,

Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, it is proposed that Part 372 of Chapter I of 40 CFR be amended as follows:

PART 372—[AMENDED]

1. The authority citation would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65 (a) and (b) are amended by removing the entire entry for C.I. Acid Blue 9, diammonium salt and C.I. Acid Blue 9, disodium salt under paragraph (a) and removing the entire CAS No. entries for 2650–18–2 and 3844–45–9 under paragraph (b).

[FR Doc. 88–7937 Filed 4–11–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–455–NRC]

Medicare Program; Discontinuation of Prevailing Charge Differentials for Specialists

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of request for comments.

SUMMARY: This notice requests comments on a possible change to the regulations that govern determinations of the reasonable charges that Medicare pays for physician services. We are considering discontining the establishment of separate prevailing charge screens for physicians services based on specialty practice, with the possible exception of specified medical visits and consultations.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on June 13, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–455–NI, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC,

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–455–NI. 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: Paul Riesel (301) 966–4494.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1833 of the Social Security Act (the Act) provides that Medicare payment for most physician and medical and other health services furnished under Part B of the program (Supplementary Medical Insurance) is made on a reasonable charge basis through Medicare contractors known as carriers. Under section 1842(b)(3) of the Act, when payment is made on a charge basis, it is the responsibility of the carrier to ensure that the charge is "reasonable". In determining the reasonableness of a charge for a physician service, carriers are required to consider the following factors and, in general, payment for the physician service is based on the lowest of these factors:

- The actual charge.
- The customary charge for similar services generally made by the physician furnishing the service.
- The prevailing charge in the locality for similar services. The prevailing charge may not exceed the 75th percentile of the customary charges of physicians in the locality.
- Other factors that are necessary and appropriate.

Section 1842(b)(3)(H) of the Act requires that in making a reasonable charge determination for a certain service, carriers must take into consideration the prevailing charge in the locality for "similar services." Neither the statute nor the legislative history of the statute provide any guidance on whether services described by the same procedure code and terminology (listed in the American Medical Association's *Physicians' Current Procedural Terminology*, Fourth Edition (1987) (CPT–4)), but performed by physicians in different specialties, constitute similar services.

Recognizing that physicians who engage in a specialty practice frequently charge different amounts for their services than do other physicians for services described by the same procedure code and terminology, our regulations currently located at 42 CFR 405.504(b) provide for the following:

- In establishing prevailing charge levels, carriers should be responsive to any differentials in the levels of charges among different kinds of specialty practices.
- If physicians in a locality have established different levels of fees for their services based on specialty practice, the carriers should recognize these differences in establishing prevailing charge screens.
- If the physicians have not established fee differentials based on specialty practice, the carrier should not establish artificial differences.

Carriers have made individual decisions both in determining whether or not a physician is a specialist in a particular area of medicine, and in establishing specialty prevailing charge screens.

II. Problems With the Current Regulations

A. Specialty Prevailing Charge Screens

There are marked differences in how carriers identify physicians as practicing in a particular specialty field in order to establish prevailing charge screens. Although some carriers adhere to a limited definition of a specialist (that is, one who has attained board certification or has had prerequisite training in a particular field), most carriers accept as specialists those physicians who classify themselves as specialists. Many carriers calculate discrete prevailing charge screens for individual specialties; however, these carriers may combine localities or, if necessary, specialties, to establish prevailing charge screens if there are insufficient data for a particular service to establish prevailing charges by separate locality and specialty. In addition, some carriers use groupings of specialties; one carrier groups by type of service; and a few carriers use single prevailing charge screens for all physician services without regard to specialty practice.

The medical visit categories account for approximately 37 percent of Medicare payments for physician services. The CPT 4 (1987) provides some explanations of the various levels of visit services. However, the visit codes used to describe the visits do not differentiate explicitly by diagnosis or the content of the service provided on the basis of the specialty of the physician (except with respect to the intermediate and comprehensive visits for ophthalmological services). Therefore, a major issue is whether there are significant service differences based on specialty practice in the visit categories that are reflected in physician charges and that should be recognized through different payment levels.

The results of a National Study of Medical and Surgical Specialties conducted at the University of Southern California School of Medicine by Robert Mendenhall and his associates indicated that there are differences among specialties in average time spent in patient encounters, referral patterns, percentage of patients with multiple problems, and the frequency of certain diagnostic and therapeutic services. These results, which were based on a survey of 10,000 physicians, suggest there are some differences in the content of patient visits. They were published in 1981 in a special report ("Medical Practice in the United States") by the Robert Wood Johnson Foundation, P.O. Box 2316, Princeton, New Jersey 08540.

However, the results of another study by Linda Aiken ("The Contribution of Specialists to the Delivery of Primary Care" published in the New England Journal of Medicine on June 14, 1979) suggest that a significant number of primary care problems are being handled by specialists incidentally to the treatment of specialty-related problems. Moreover, the data from the Aiken study did not support a presumption that responsibility for primary care was assumed by specialists for only very ill patients or

patients with conditions requiring care by a physician in a particular specialty.

A third study, by Howard Greenwald ("An Analysis of the Content of Specialty Practices and Their Service Capacities") published by the Health Resources Administration, Hyattsville, Maryland (DHHS/HRA Pub. No. 81–650), concluded that different specialties provide specific components of care with significantly different frequencies and encounter times. For example, internists consistently ordered more tests and spent longer periods of time in patient encounters than family practitioners.

Another study by Janet Mitchell, Ph.D. and Jerry Cromwell, Ph.D. (Health Economics Research, Inc.), resulted in similar findings. It indicated that at each level of patient encounter, internists had longer visits and performed and ordered more medical procedures than general practitioners. It concluded that internists have a more complex case mix than general practitioners

In order to assess the relationship between price differentials in the visit categories and service intensity, Mitchell and Cromwell also applied the data from the Mendenhall survey mentioned above to 1981 Medicare claims data for South Carolina. This exercise showed that although other medical specialists have higher reimbursement rates than general and family practitioners in each visit category, payments per patient hour to these groups were nearly identical. This suggests that higher specialty charges may be largely attributable to additional time physicians in some specialties spend with beneficiaries.

In 1976, the Michigan Academy of Family Physicians challenged in court the prevailing charge screens based on specialty that were used by Michigan Blue Shield. This case was brought because the services of the members of the Michigan Academy of Family Physicians who were board eligible but not board certified were included in the same prevailing charge screens as general practitioners and nonspecialists rather than with those of specialists. In contrast, Michigan Blue Shield recognized as specialists those physicians who were board eligible in other fields.

The U.S. District Court found the carrier's application of the regulation (§ 405.504(b)) to be unlawful in this instance. In the court's view, the carrier had not developed any factual basis for treating family physicians differently from all other physicians. (*Michigan Academy of Family Physicians, et al. v. Blue Cross and Blue Shield of Michigan, and Patricia Harris, Secretary of Health and Human Services,* 502 F. Supp. 751 (E.D. Mich., 1980)). The court ordered the carrier to provide a single screen for all physicians, separate from the screen for "chiropractors, podiatrists and dentists." In addition, it found that the regulation itself is unlawful because, in the court's view, under the Medicare law, charge payments for similar services in a locality must be based on a single prevailing charge. In practical terms this meant that in the court's view the same prevailing charge in the locality must be applied as a Part B Medicare payment limitation to all services that are described by the same CPT 4 procedure code, unless it can be established that these services are *not* similar when they are furnished by physicians in different kinds of specialty practice.

The Court of Appeals for the Sixth Circuit upheld the lower court decision (*Michigan Academy of Family Physicians, et al., v. Blue Cross and Blue Shield of Michigan and Richard S. Schweiker, Secretary of Health and Human Services,* 728 F. 2d 326 (1984)), and on June 9, 1986, the Supreme Court ruled that the lower courts have jurisdiction to consider challenges to Part B Medicare regulations (*Bowen v. Michigan Academy of Family Physicians, et al.,* 106 S. Ct. 2133 (1986)).

Section 9341(a)(1)(D) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), which enacted section 1869(b)(3) and (4) of the Social Security Act, has limited the precedential effect of the Supreme Court decision to carrier guidelines, manual instructions, and regulations issued on or after January 1, 1981. However, neither the Supreme Court decision nor the new legislation have resolved the substantive issues in the Michigan court case.

B. Defining "Specialist"

As we have indicated, currently, there is no commonly accepted definition of specialist, and carriers have wide latitude in recognizing specialist status. The 23 member boards of the American Board of Medical Specialties (ABMS) certify a total of 44 specialties and subspecialties in allopathic medicine. Board certification is voluntary and generally involves formal training in a specialized residency program, and written and oral examinations.

The ABMS member boards do not recognize the term "board eligible" and will not issue statements concerning board eligibility of individuals. The ABMS has indicated that the term "board eligible" is no longer used because eligibility requirements for admission to the board certification process vary among boards and over time. (For example, until 1988 candidates for certification in Emergency Medicine may substitute practice experience for formal training in a residency program; and several specialties require one or more years of practice experience in addition to residency training.)

Osteopathic physicians receive specialty certification from the Advisory Board for Osteopathic Specialists and are eligible for certification by some ABMS specialty boards.

While it has not addressed the issue specifically from the point of view of third party payment differentials for physicians' services, the Council of Medical Specialty Societies (CMSS) has recommended that either certification by a member board of the ABMS or full membership in the relevant specialty society should be a prerequisite for specialty designation. The CMSS would also require advanced training in the designated specialty or hospital designation based on peer review of specialty competence.

The CMSS maintains that specialty self-designation is not acceptable. However, data from the American Medical Association (AMA) Masterfile indicate a significant percentage of physicians would be affected by the elimination of self-designation. In 1985, less than five percent of active physicians reported general practice as their primary specialty. Of the remaining physicians, only 55 percent were board certified. Of those physicians, 83 percent were certified by the board corresponding to their primary specialty, four percent were certified by the corresponding board and other board(s), and the remaining 13 percent were certified by a board not corresponding to their primary specialty.

Among the medical specialties, the percentages of physicians who are board certified (including certification by a noncorresponding board) range from 50 percent of internists to 78 percent of cardiologists. Within the surgical specialties, 53 percent of general surgeons are board certified in contrast to 73 percent of plastic surgeons. Among the ancillary physician specialties, the percentages with board certification are: anesthesiology, 45 percent; pathology, 73 percent; and radiology, 89 percent.

III. Request for Comments

We are concerned that our policy of allowing carriers to establish separate prevailing charge screens by specialty has led to different payment levels for the same procedure performed by different physicians in the same locality, and that it has led to inconsistent

administration of the reasonable charge criteria by the carriers, for example, in identifying specialists and specialties for this purpose. The payment distinctions among physicians based on specialty practice have tended to become wider over the years as a result of the application of the Medicare economic index. Also, the use of specialty specific prevailing charges assumes that the value of a service does not depend on the nature of the service, but rather, on the specialty of the physician who furnished it. This is particularly difficult to justify in the case of services such as surgery and diagnostic procedures, which tend to be described in considerable detail by the codes and terminology physicians use for billing purposes. Most surgical and diagnostic procedure codes are quite specific; therefore, perhaps the level of Medicare payment made to a physician should be based on the service furnished to the beneficiary rather than on the specialty of the physician who furnished the service. On the other hand, the medical visit and consultation codes are less specific, and research indicates that there may be significant service differences in those categories, depending on specialty. To the extent that there are such differences, it might be appropriate to describe the services as being different rather than similar. Such different services could be appropriately recognized in different prevailing charge levels.

We are also concerned that carriers are using different methods or definitions to decide who is or is not a specialist. Further, eliminating specialty distinctions in paying for similar services would result in a major program simplification for Medicare carriers. There would be fewer prevailing charge screens to establish, and administrative costs would be reduced.

We are considering publishing a proposed rule that would eliminate specialty differentials in Medicare prevailing charges for all physician services except, possibly, for medical visits and consultations. We are also considering adding a definition of "specialist" to the regulations, to the extent we continue to recognize specialty differentials. However, we are requesting comments from the public to assist us in formulating our proposal.

We are particularly interested in comments and suggestions regarding the following:

1. Eliminating specialty-specific prevailing charge screens with or without an exception for medical visits and consultations, and assessing the impact this measure would have on the provision, scope, and availability of primary care services, particularly in rural areas and in urban underserved areas.

2. The specific similarities and differences in the contents of visit services and consultations from one type of specialty to another

3. The need, if any, to use different codes or modifiers and terminology to describe services in ways that make needed specialty distinctions.

4. Permitting carriers to maintain separate prevailing charge screens for specific specialties or groups of specialties for medical visits and consultations.

5. Appropriate standards for recognizing a physician as a specialist for Medicare payment purposes if it is decided to retain some specialty distinctions.

IV. Impact on Program Payments of Eliminating Specialty Differentials

Eliminating specialty distinctions could change the proportions of total Medicare payments that are expended for the services of physicians in a particular specialty. These redistributive effects, and their financial importance to physicians, would be different for different specialties, depending on a complex interplay of several variables. One factor would be how merging the charge data for all specialties would affect Medicare carriers' prevailing charge calculations, and whether the resulting new prevailing charge would be higher or lower than the former specialty-specific prevailing charges. The results might vary from one service, specialty, or locality to another.

Another factor would be the proportion of their total incomes that physicians in a particular specialty derive from Medicare. The impact of the changes in the Medicare program's payment levels may be less for those physicians who derive only a small part of their income from services furnished to Medicare beneficiaries than for those physicians who receive large portions of their incomes from services furnished to Medicare beneficiaries. Information in Arthur Owens' "How Much of Your Money Comes From Third Parties?" (*Medical Economics*, Apr. 4, 1983 at 262) indicates that the percentage of a physician's gross income that is attributable to services furnished to Medicare beneficiaries varies by specialty from lows of 1 percent for pediatrics, 5 percent for obstetrics/gynecology, and 6 percent for psychiatry to 15 percent for family practice, 18 percent for general practices, 21 percent for pathology, 22 percent for anesthesiology, 24 percent for ophthalmology, 24 percent for neurology, 25 percent for general surgery, 29 percent for internal medicine, and a high of 35 percent for thoracic surgery.

A third factor would be the kinds of services that physicians in a particular specialty field generally furnish since the redistributive effects mentioned above would probably affect some services more than others. For example, many surgical procedures tend to be furnished primarily by physicians in a particular specialty. Consequently, the redistributive effects of eliminating all specialty distinctions would probably be less significant for surgery than for medical care (that is, for the Medicare covered services described by CPT–4 codes 90000 through 99199). In contrast to surgery, the CPT–4 codes for medical care are, with some exceptions, used by many specialties. General surgeons may be an exception to the extent that they perform a wider range of procedures that overlap with the services of more highly specialized surgeons.

Information from Table 4 in "Medicare Physicians' Services: The Composition of Spending and Assignment Rates" (*Health Care Financing Review*, Fall 1985, Vol. 7, No. 1) indicates that 37.3 percent of all Medicare payments for physicians' services are for medical care. (These services are, as indicated above, more likely than surgical services to be affected by a discontinuation of Medicare specialty distinctions.) However, as Table 4 indicates, the percentages of the total Medicare payments received by physicians that are attributable to medical care are much higher for some specialties than others, for example, 88.9 percent for psychiatry, 74.4 percent for general practice, 76.6 percent for family practice, 70.8 percent for internal medicine, 64.4 percent for pulmonary disease specialists, and 45.5 percent for cardiology. Also, Table 6 in the article cited above indicates that general practitioners, internists, and family practice physicians as a group account for nearly 57 percent of Medicare payments for medical care services.

Since general practitioners, internists, and family practice specialists both derive substantial portions of their practice incomes from Medicare and receive a high proportion of their Medicare incomes for medical care services, the impact of discontinuing all specialty distinctions is perhaps more likely to be felt by these specialties than by others. However, the factors discussed above need to be viewed in relation to each other. For example, while thoracic surgeons receive 35

percent of their gross incomes from Medicare, the financial impact on them of discontinuing specialty distinctions would be ameliorated by the extent to which their services tend to be highly specialized and primarily performed only by them. Similarly, psychiatrists as a group receive 88.9 percent of their Medicare payments for medical care services, but Medicare accounts for only 6 percent of their gross income; consequently, they are not likely to be affected as significantly by the discontinuation of specialty differentials as general practitioners, family practice physicians, and internists.

(Sec. 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3); 42 CFR 405.504(b))

(Catalogue of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: November 23, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: February 1, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-7985 Filed 4-11-88; 8:45 am]

BILLING CODE 4120-01-M

Office of Child Support Enforcement

45 CFR Part 303

Child Support Enforcement Program; Federal Tax Refund Offset

AGENCY: Office of Child Support Enforcement, (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This regulation would revise Federal tax refund offset regulations to provide that the Office of Child Support Enforcement (OCSE) will recover its costs from the States for certain services provided in the Federal tax refund offset process. These services are limited to printing and mailing pre-offset notices when OCSE provides this service.

In addition, this regulation would make necessary changes to conform OCSE regulations with the revised method the Internal Revenue Service (IRS) will use beginning in processing year 1988 to recover costs of the offset procedure. The IRS fee will no longer be billed to the State and collected by the Secretary of Health and Human Services. Beginning with the 1988 processing year, the IRS will deduct its fee from the offset amount, although States will be required to credit the obligor with the full amount of the offset.

DATES: Consideration will be given to written comments received on or before June 13, 1988.

ADDRESS: Address comments to: Associate Deputy Director, Office of Child Support Enforcement, Attention: Division of Policy and Planning, Room 2086, 330 C Street, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Carol Jordan, OCSE Policy Branch, (202) 245-1979.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal tax refund offset program, States are required to send the absent parent advance notice that his or her case will be referred for offset, pursuant to section 464(a)(3)(A) of the Social Security Act (the Act). During the initial years of the Federal tax refund offset program, OCSE, under its regulatory authority, chose to provide States with the option of having OCSE send the advance notice on behalf of the State IV-D agency, if requested to do so, to encourage use of the offset mechanism. Currently, 38 States and jurisdictions have requested OCSE to provide the advance notice to absent parents for them.

OCSE has always had the statutory authority to charge fees for this service, but until now has not done so to give States an incentive to implement the offset procedure. OCSE believes that State programs have sufficiently developed now so that it is no longer necessary to provide this technical assistance, without cost to States, in order to promote participation by States in as broad a scale as possible. It is appropriate for States to assume the cost of the services OCSE provides (approximately $250,000 annually), since the Federal government is now constrained by the growing deficit and it is no longer appropriate to provide a service at no cost which is clearly the obligation of the State. Accordingly, OCSE will now charge for services it provides in the Federal tax refund offset process. These services include printing and mailing pre-offset notices on behalf of the States. Any fees charged the State would be reimbursable at the current Federal matching rate for child support administrative expenses so that the Federal government would still bear the majority of the cost (68 percent in FY 1988). Additional information, including the amount of the fee and its effective date, will be provided by the Office in instructions.

Another provision of the Federal tax refund offset program is that the IRS shall charge the State a fee for its costs of applying the offset procedure. Prior to the 1988 processing year, this fee was billed and collected from the State IV-D agency by the Secretary of Health and Human Services (HHS). However, the IRS has changed its cost recovery method, and beginning with the 1988 processing year will deduct its fee directly from the offset amount. Therefore, these regulations would delete the requirement that the IRS fee be billed and collected from the State IV-D agency by HHS.

States have been notified well in advance, and through several different media (conferences, action transmittal, letters) of the pending IRS change in its method of recovering costs under the offset procedure. While a small number of States may have difficulties with these changes if conforming State legislative changes are necessary, States have had ample warning and opportunity to implement necessary legislation. In 1986, the IRS notified OCSE of its intention to deduct its fee directly from the offset amount and OCSE informed States in a "Dear Colleague" letter of IRS' intention and asked for comments on whether or not this change would pose any problems. Although the IRS did not implement its proposal in the 1987 processing year, States have been on notice since that time of a potential change in the IRS method for cost recovery.

The revised cost recovery method used by the IRS does not affect current IV-D collection and distribution policy. The State IV-D agency must consider the total amount offset as a support collection and distribute this amount pursuant to Federal regulations at 45 CFR 303.72(h). For example, if the State certifies $2000 for Federal tax refund offset and the IRS offsets $2000 and deducts the IRS offset fee from this amount, the State must credit the absent parent with a $2000 payment and distribute $2000, not $2000 less the IRS fee. The State may recover the IRS fee in non-AFDC cases pursuant to regulations at 45 CFR 302.33(d).

Statutory Authority

Section 464(a)(3) of the Act requires the State to send notice to an individual that a Federal tax refund offset will be made. Section 464(b)(1) provides that the Secretary of the Treasury shall prescribe the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure.

Section 1102 authorizes the Secretary of HHS to publish regulations (not inconsistent with the Act) necessary to efficiently administer his functions

under the Act. Under the title IV–D State plan requirement contained in section 454(13) of the Act, the Secretary may prescribe, and the State must comply with, requirements and standards necessary to establish an effective title IV–D program.

General authority for the Federal government to charge for certain specialized or technical services which it may perform is found in the Intergovernmental Cooperation Act at 31 U.S.C. 6505. This statute states that services may be provided if requested by the State in writing and payment is made.

OMB Circular No. A–97 promulgates rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under title III of the Intergovernmental Cooperation Act of 1968. Specifically, this Circular permits Federal agencies to provide (among other services) technical information, data processing, communications and personnel management systems services, and technical advice on improving logistical and management services which the Federal agency normally provides for itself or others under existing authorities. We believe that sending the pre-offset notice on behalf of States meets the above criterion because it provides data processing services which improve the Federal tax refund offset process by ensuring that the offset notice is accurate and timely. The authority for OCSE to provide this service exists because OCSE serves as the agent between the State and the IRS for the offset process. Therefore, OCSE is intrinsically involved in the actual Federal tax refund offset process and this is just one aspect of that process.

Regulatory Provisions

45 CFR 303.72(e)(1) states that the Office, or the State IV–D agency if it elects to do so, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset.

45 CFR 303.72 (i)(1) states that a refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of HHS have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be billed and collected from the IV–D agency by the Secretary of HHS or designee and credited to the IRS appropriations which bore all or part of the costs involved in making the collection

Regulatory Changes

This regulation would revise 45 CFR 303.72(e)(1) to require that the State IV–D agency, or the Office, if the State requests and the Office agrees, shall send the advance notice. This revision is consistent with section 464(a)(3) of the Act. The revised language would merely clarify that the State is ultimately responsible for sending the advance notice and that the Office is providing technical assistance to the State when it sends the advance notice on behalf of the State.

Paragraph (i)(1) of this section would be revised by deleting the reference to the IRS cost recovery procedure, i.e., the IRS fee is billed and collected from the IV–D agency by the Secretary of HHS. This change is necessary to conform OCSE regulations to the change in the IRS method for collecting the IRS offset fee. Beginning in processing year 1988, the IRS will deduct its fee from the offset collection instead of billing the State and having HHS collect the fee.

A new paragraph (i)(3) would be added to this section. This paragraph would provide that OCSE will charge the State a fee for services provided in regard to the Federal tax refund offset process, including the printing and mailing of pre-offset notices on behalf of the State. The amount of the fee and the effective date for charging a fee would be established by the Office in instructions.

Paperwork Reduction Act

This regulation contains no new information collection requirements. The existing information collection requirements were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned OMB No. 0960–0253.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major rule. This regulation permits OCSE to charge the State for providing the advance notice of tax refund offset to the absent parent. In addition, this regulation revises OCSE regulations to conform to the revised cost recovery procedures established by the IRS for collecting offset fees. The cost for sending advance notice to an absent parent is allocated differently, but total expenditures remain the same. The method used by the IRS to recover costs of the offset program is revised, but the IRS fee is not affected by this regulation. Therefore, this rule will have little or no economic effect.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments, which are not considered small entities under the Act.

List of Subjects in 45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Date: November 3, 1987.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

Approved: February 8, 1988.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, Chapter III of Title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 303—[AMENDED]

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

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396(b)(p) and 1396(k).

2. Section 303.72 is amended by revising paragraphs (e)(1) introductory text and (i)(1) and adding a new paragraph (i)(3) to read as follows:

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

* * * * *

(e) *Notices of offset*—(1) *Advance.* The State IV–D agency, or the Office, if the State requests and the Office agrees, shall send a written advance notice to inform an absent parent that the amount

of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset. The notice must inform absent parents:

* * * * *

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. The full amount offset must be credited against the obligor's payment record. The fee which the Secretary of the Treasury may impose with respect to non-AFDC submittals shall not exceed $25 per submittal.

* * * * *

(3) The Office will charge the State a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices in regard to the Federal tax refund offset process. This fee shall be credited to the Health and Human Services (HHS) appropriations which bore all or part of the costs involved in making the collection.

* * * * *

[FR Doc. 88-7906 Filed 4-11-88; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Taking of Marine Mammals Incidental to Commercial Fishing Operations; Small Take Exemption; Taking by Federal, State, and Local Government Officials

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend 50 CFR Part 18 to implement sections 101(a)(4) and 109(h) of the Marine Mammal Protection Act of 1972 (Act), as amended on October 9, 1981. Section 101(a)(4) provides a procedure for applicants to qualify for an exemption to the Act's moratorium on the taking of marine mammals for the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S. commercial fishermen.

Section 109 was amended to allow the taking of marine mammals by Federal, in addition to State or local, government officials or employees or designees under section 112(c) if it is done in the course of his/her duties as an official, employee or designee and if it is done consistent with the requirements of section 109(h).

DATE: Comments concerning this proposed rule should be submitted no later than June 13, 1988.

ADDRESS: Send comments to Fish and Wildlife Service, Room 514, Matomic Building, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lynn B. Starnes, Chief, Division of Fish and Wildlife Management Assistance, Room 514, Matomic Building, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone (202) 632-2202.

SUPPLEMENTAL INFORMATION:

Background

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) established a moratorium on the taking of marine mammals. Pub. L. 97-58 amended the Act in 1981 by adding sections 101(a)(4) and 109(h) (16 U.S.C. 1371(a)(4) and 1379(h)). Section 101(a)(4) directs the Secretary of the Interior (Secretary), during any period of five consecutive years, to allow the incidental but not intentional taking of small numbers of non-depleted species or population stocks of marine mammals by citizens of the United States while engaged in commercial fishing operations. This exemption to the taking moratorium of the Act can be granted only if, after notice and opportunity for public comment, the Secretary: (1) Finds that the total of such taking will have a negligible impact on such species or stocks, and (2) provides guidelines pertaining to the establishment of a cooperative system among the fisherman involved in the operation to monitor and report any such taking.

The Service is responsible for implementing this new section with respect to the Orders Carnivora (polar bear, sea otter, and marine otter), Pinnipedia (walrus only), and Sirenia (manatee and dugong). The southern sea otter, manatee, and dugong are also protected by the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, which restricts taking of these species independent of the Act's regulations proposed herein. If a marine mammal species is listed as an endangered species or a threatened species under the Endangered Species Act, it is considered depleted under the Act. Depleted species may not be incidentally taken under the authority of section 101(a)(4) of the Act.

The Service announced its intent to revise 50 CFR Part 18 to implement the Act's amendments of 1981. A **Federal Register** notice was published on July 29, 1983 (48 FR 34486), and invited public comment on implementing sections 101(a)(4) and 109(h) of the Act as amended on October 9, 1981. No comments were received.

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Small Take Exemption

The proposed rule would delete all of the language that now appears in § 18.24 of 50 CFR Part 18, which noted that persons could lawfully take marine mammals incidental to commercial fishing operations until October 21, 1974 (subject to Department of Commerce regulations). The Service has never had any regulations under sections 101(a)(2) and 103 for the taking of nonnegligible numbers of marine mammals during commercial fishing activities (i.e., tuna-porpoise regulations). The Service is now proposing to substitute these "Taking of Marine Mammals Incidental to Commercial Fishing Operations; Small Take Exemption" regulations for the outdated reference to the Department of Commerce regulations.

The Service's proposed "small take" regulations closely follow the Department of Commerce guidelines found at 48 FR 55493 of December 13, 1983. Congress did not disturb the Department of Commerce's guidelines when the Act was reauthorized in 1984. Therefore, the Service has decided to use them as a template for these proposed "small take" regulations.

Request and Information Needed

A formal written request submitted in accordance with paragraph (d) of these proposed regulations would be received by the Service so that it can determine whether the described incidental take by citizens of the United States while engaging in commercial fishing operations may be authorized. Paragraph (d) requests specific information from the applicant regarding the description of the fisheries, the number of marine mammals by species expected to be taken annually, a description of the status and distribution of the affected species or stocks, the cooperative efforts between fishermen and scientists concerning retention of marine mammal specimens for scientific study, and a description of the system to be used by the fishermen to facilitate the reporting of any incidental takes.

The number of animals expected to be taken by harassment also must be estimated in requests for exemption and

will be considered by the Service in making the determination that the taking by any particular fishery is, or is not, small. Although harassment is generally recognized as a prohibited taking, the Service believes that directed harassment in appropriate cases could prevent accidental mortality or injury by keeping marine mammals away from nets.

Decision Criteria

The Service will evaluate each complete request in light of the best available scientific evidence, and will consider all comments received during a required **Federal Register** public comment review period to determine if the total taking over a five-year or less period will result in a negligible impact to the species or stocks, satisfy all other requirements of section 101(a)(4), and thus warrant issuance of an exemption in a "Notice of Exemption."

Suspension of Notice of Exemption

To ensure that the purposes of section 101(a)(4) continue to be satisfied, a Notice of Exemption may be suspended if, after notice and opportunity for public comment, the Service determines that either: (1) the take is not small; (2) the total taking is having more than a negligible impact on the species or stocks of marine mammals concerned; (3) the species or stock is subsequently determined to be depleted; or (4) the policies, purposes, and goals of the Act would be better served through the application of other provisions of the Act. The Service proposes to amend 50 CFR Part 18 by revising Section 18.24 in order to implement Section 101(a)(4) of the Act.

Taking by Federal, State, or Local Government Officials

Section 109(h) of the Act, as amended, allows the taking of marine mammals by a Federal, State, or local government official or employee or a person designated under section 112(c) if it is done in the course of his/her duties as an official, employee, or designee, and if the marine mammals are taken in a humane manner (including euthanasia). The Act requires that such taking be for (1) the protection or welfare of the mammal, (2) the protection of the public health and welfare, or (3) the nonlethal removal of nuisance animals. Mammals so taken must be returned to their natural habitat, if feasible.

Section 112(c) of the Act authorizes the Secretary to enter into contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of the Act and on such terms as he/she deems appropriate with any Federal or State agency, public or private institution, or other person.

The Service proposes to revise § 18.22(a) of 50 CFR Part 18 to implement fully section 109(h) of the Act. Initially only State or local government officials could take marine mammals under Section 109 of the Act. The proposed revision to § 18.22(a) would allow Federal officials and persons designated under section 112(c) of the Act to take marine mammals for the limited purposes outlined in Section 109(h) of the Act.

The term "Federal officials" was added in a separate rulemaking action published on May 16, 1986 (51 FR 17981).

Required Determinations

The Service has determined that the proposed regulations affecting 50 CFR 18.24 contained herein provide procedures to be followed by U.S. citizens applying for a Notice of Exemption to allow incidental taking of marine mammals and, as such, are categorically excluded from further National Environmental Policy Act requirements (Part 516 of the Departmental Manual, Chapter 6, Appendix 1, categorically excludes the issuance of regulatory procedures when the impacts are limited to administrative or technological effects). When an exemption is requested, an environmental assessment will be prepared according to the Service's National Environmental Policy Act compliance procedures.

The Service has determined that the proposed regulations affecting 50 CFR 18.22 reflect the statutory language. An environmental assessment, as defined under authority of the National Environmental Policy Act, need not be prepared for this action. There are no impacts on the public other than to remove any confusion created by the lack of consistent wording contained in the regulations and the statute.

The Department of the Interior has determined that this is not a major rule under Executive Order 12291, nor does it have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Commercial fisheries will be applicants under the proposed regulations. This rule affects Alaskan commercial fishermen, many of whom may be considered small businesses under 5 U.S.C. 601 *et seq.* However, no significant impacts are expected. The Determination of Effects on this proposed rule is available from the individual identified under the section of this proposed rule entitled, "**FOR FURTHER INFORMATION CONTACT.**"

Information Collection Requirements

The information collection requirements contained in this proposed regulation have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* Collection of this information will not be required until it has been approved by the Office of Management and Budget.

The author of this proposed rule is Jeffrey L. Horwath, Wildlife Biologist, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Washington, DC 20240.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

Accordingly, the Service proposes to amend 50 CFR Part 18 as shown below:

PART 18—MARINE MAMMALS

1. The authority for 50 CFR Part 18 is revised to read as follows:

Authority: Marine Mammal Protection Act of 1972, as amended (Pub. L. 92–522, 86 Stat. 1027; Pub. L. 97–58, 95 Stat. 979; Pub. L. 98–364, 98 Stat. 440 (16 U.S.C. 1361–1407)).

2. Amend the table of sections for Part 18 by revising the title for § 18.24 as shown below:

* * * * *

§ 18.24 Taking of marine mammals incidental to commercial fishing operations; small take exemption.

* * * * *

3. Revise § 18.22(a) in Subpart C—General Exceptions, to read as follows:

§ 18.22 Taking by Federal, State, or local government officials.

(a) A Federal, State or local government official or employee or a person designated under section 112(c) of the Act may take, in the course of his/her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for:

(1) The protection or welfare of the mammal;

(2) The protection of the public health and welfare; or

(3) The nonlethal removal of nuisance animals; and, in any case in which the return of the mammal to its natural habitat is feasible, includes steps designed to achieve that result. In addition, any such official, employee, or designee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All

steps reasonably practicable under the circumstances shall be taken by any such employee, official, or designee to prevent injury or death to the marine mammal as the result of such taking.

* * * * *

4. Revise § 18.24 in Subpart C—General Exceptions, to read as follows:

§ 18.24 Taking of marine mammals incidental to commercial fishing operations; small take exemption.

(a) *Purpose of regulations.* The regulations in this Section implement section 101(a)(4) of the Act, as amended (16 U.S.C. 1371(a)(4)), which provides a mechanism for allowing, during periods of not more than five consecutive years each, the incidental, but not intentional taking of small numbers of nondepleted marine mammals by citizens of the United States while engaged in commercial fishing operations within a specified geographical region.

(b) *Scope of regulations.* The taking of small numbers of marine mammals under section 101(a)(4) of the Act may be allowed only if, after notice and opportunity for public comment, the Service:

(1) Finds that the total of such taking will have a negligible impact on such non-depleted species or stocks, and

(2) Provides guidelines pertaining to the establishment of a cooperative system among the fishermen involved in the operation to monitor and report any such taking.

(c) *Definitions.* In addition to the definitions contained in the Act and 50 CFR 18.3 and, unless the context otherwise requires, in this Section:

"Incidental, but not intentional, taking" means an accidental taking. It does not mean that the taking is unexpected, but rather that it includes those takings which are infrequent, unavoidable or accidental (take is defined in 50 CFR 18.3).

"Negligible impact" means an impact which can be disregarded or which is so small or unimportant or of so little consequence as to warrant little or no attention. A finding of negligible impact cannot be made if a species or stock is considered depleted under section 3(1) of the Act.

"Small numbers" means a portion of a marine mammal species or population stock whose removal would have a negligible impact on that species or stock.

"U.S. citizens" means individual U.S. citizens or any partnership, corporation, association or similar entity (whether or not it is organized under the laws of any State) if it is controlled by individuals who are U.S. citizens.

(d) *Submission of requests.* (1) In order for the Service to consider allowing the taking by U.S. citizens of small numbers of non-depleted marine mammals incidental to commercial fishing operations, a written request must be submitted to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Requests for an exemption are limited to U.S. citizens and shall be for a specific fishery within a specified geographical region. Individuals may not apply for a small take exemption unless they are duly authorized representatives of a fishery and have the capability and authority to establish a system for reporting all incidental takes and to receive and collate these reports. Requests for an exemption must include the following information:

(i) A detailed description of the fishery, including the type of gear used, species of fish sought, seasonality of the fishery, area of operations, number of participating fishermen and/or vessels, and the known interactions of the fishery with marine mammals.

(ii) The number of marine mammals by species expected to be taken (including by harassment) annually by the commercial fishery covered by the exemption and the reason the mammals are taken.

(iii) A description of the status and distribution of the affected species or stocks likely to be affected by the fishery so that a negligible impact determination can be made.

(iv) A statement concerning cooperative efforts, if any, between those fishermen to be covered by an exemption and scientists holding a scientific research permit authorized by sections 101(a)(1) and 104 of the Act regarding the retention of marine mammal specimens for scientific study.

(v) A description of the system to be used by the fishermen to facilitate the reporting of any incidental takes. Such information should include:

(A) Copies of the reporting form to be utilized;

(B) Name and address of the person to whom completed forms will be sent;

(C) Person who will be responsible for collating and compiling them; and

(D) Mechanism by which information on taking will be conveyed to the Director.

(vi) Any other relevant information which the Service may subsequently request.

(2) Upon receipt of a signed application, the Director shall determine the adequacy and completeness of a request and in that connection may waive any requirement for information, or require either elaboration or further information which may be deemed necessary. If the application is found to be adequate, the Service will summarize the application and invite public comment on the request through publication in the **Federal Register**. After a 30-day comment period, the Director will determine whether the total taking constitutes a negligible impact on the species or stocks of marine mammals based on public comments received and on the best scientific evidence available. If a determination can be made that the level of taking in the applicant's fishery will be consistent with the finding that the total of such taking will have a negligible impact on the marine mammal species or stocks, the Director will issue a Notice of Exemption through the **Federal Register**. Exemptions will be valid for a specified period of up to five years. An accompanying Letter of Exemption to the applicant will specify any terms or conditions relating to reducing the take of marine mammals in the fishery and any guidelines relating to the cooperative system for reporting marine mammal takings.

(3) A Letter of Exemption shall be withdrawn or suspended for a specified period if, after notice and opportunity for comment, the Director determines that either:

(i) The total taking is having more than a negligible impact on the species or stocks of marine mammals concerned;

(ii) The species or stock is subsequently determined to be depleted; or

(iii) The policies, purposes, and goals of the Act would be better served through the application of other provisions of the Act.

(e) *Conditions.* (1) A participant operating in a fishery covered by a Letter of Exemption may take marine mammals as long as the taking is an incidental occurrence in the course of normal commercial fishing operations and the participant is registered with the individual or organization responsible for compiling reports of marine mammal mortality. Taking of marine mammals without a permit by non-registered participants in the fishery will be considered a violation of sections 101 and 102 of the Act and subject to prosecution thereunder.

(2) A registered participant shall take such steps as are necessary to minimize the impact of taking or the actual take of marine mammals without inflicting death or injury to any marine mammal. Such steps may include the judicious use of non-lethal harassment, as specified by the Service in the Letter of Exemption, to prevent net entanglement

or similar occurrences that would increase jeopardy to the animal.

(3) Marine mammals taken in the course of commercial fishing operations must be immediately returned to the environment where captured without further injury. Marine mammals may not be retained by the participant except in cooperation with Government officials as authorized in section 109(h) or an individual holding a valid scientific reseach permit authorized by sections 101(a)(1) and 104 of the Act.

(f) *Record keeping and reporting requirements.* (1) All registered participants in the fishery must maintain records of incidental take of marine mammals in such a form as agreed upon by the holder of the Letter of Exemption and the Service. Such records, which are to be forwarded to the holder of the Letter of Exemption, must include at least the following information:

(i) The date and location of the taking, classified by entrapment or entanglement and whether it caused serious injury or death;

(ii) The identity and number by species of marine mammals taken and, of those taken, the number killed or injured (noting which animals and number were killed, injured, or released unharmed); and

(iii) The total amount of time actually fished and the type and amount of gear used.

(2) If there are individuals in the fishery covered by a Letter of Exemption who are not participating in the reporting scheme, then the holder of the Letter of Exemption will be expected to estimate for those nonregistered participants the total number of hours fished, so that an estimate of the total taking of marine mammals by the fleet can be made.

(3) The holder of a Letter of Exemption will be expected to compile these individual participant reports and forward a summary and assessment to the Director no later than January 30 for the preceding calendar year.

(4) Failure to comply with the conditions of the Letter of Exemption may result in actions leading to the suspension or withrawal of the Letter of Exemption and a reimposition of the general permit requirements of the Act.

Date: March 17, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-7976 Filed 4-11-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80349-8049]

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Proposed rule.

SUMMARY: NOAA proposes to amend the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). NOAA is modifying for 1988 the area off Texas closed to trawl fishing. This action will enable fishermen to harvest marketable-sized shrimp from an area that would otherwise be closed. The intended effect is efficient management of the shrimp fishery.

DATE: Written comments must be received on or before April 27, 1988.

ADDRESS: Written comments and requests for copies of the environmental assessment and regulatory impact review should be sent to Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The shrimp fishery is managed under the FMP and its implementing regulations at 50 CFR Part 658, as provided by the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP, as amended, the Director, Southeast Region, NMFS, may modify the geographical scope of the seasonal closure of the exclusive economic zone (EEZ) off Texas after consultation with the Gulf of Mexico Fishery Management Council (Council), consideration of specified criteria, and determination that benefits may be increased or adverse impacts decreased by the action.

Section 658.25 of the regulations provides for a 45- to 60-day closure to shrimping in the EEZ off Texas in conjunction with that State's closure of its waters. This cooperative closure is designed to delay harvest of juvenile brown shrimp, migrating from coastal estuaries to the deeper waters of the Gulf, until they reach a larger size, thus producing more pounds of more valuable shrimp.

In 1986 the Council requested and NOAA issued emergency regulations to reduce the 200-nm (nautical miles) EEZ closure to 15 nm to provide relief to the economically troubled fishery while still protecting the majority of small shrimp. The intent was (1) to relieve the economic hardship of the shrimp fleet in the western Gulf by allowing fishing in areas where larger shrimp occur and (2) to obtain more current baseline data to analyze the effects of the closure.

In 1987 the Council again requested and NOAA issued regulations to reduce the closure to 15 nm. The intent was (1) to obtain additional information to evaluate the closure and (2) to allow fishing for larger shrimp offshore without jeopardizing the FMP's objective of optimizing yield, by deferring harvest of small shrimp located near shore.

Analysis and Justification

In 1988 the Council again requested that the closure of the EEZ off Texas extend 15 nm rather than 200 nm to provide relief to the economically troubled fishery while still protecting the majority of small shrimp until they reach a larger, more valuable size. The majority of small shrimp would be protected by this 15-nm closure, which would further the FMP's objective to optimize yield, by deferring harvest of small shrimp located near shore. Sampling by the Texas Parks and Wildlife Department and NMFS indicates that the majority of small shrimp could be protected by a 15 nm closure during most years. The average size caught beyond 15 nm in June 1987 was 66 count (i.e., tails to the pound) or nearly the same as the target size of 65 count expected from the closure.

This reduced closure area is intended to mitigate adverse social and economic impacts of the full 200 nm closure on the approximately 1,800 commercial shrimp vessels under 55 feet in length licensed by Texas. Many of these vessels do not have the capability to travel to and fish for shrimp in the open waters off other Gulf States during a full 200-nm closure off Texas. Scientific information indicated that a 200-nm closure in 1986 might have increased the value of the shrimp harvest by up to $9.8 million, as a result of deferred harvest of larger, more valuable shrimp. If this gain in value were equally divided among the estimated Gulf shrimp fleet, 5,400 shrimp vessels, it would amount to about $1,800 per vessel; however, the gain is unevenly distributed among the vessels according to size. The larger, more mobile freezer vessels are able to move to alternative shrimping areas during the 200-nm closure, while the smaller vessels are more likely to remain in port accruing fixed costs during the closure. Under these conditions the actual gain

in income is probably limited to about 3,600 vessels, or nearly $2,700 per vessel. Reduced catches of shrimp also disrupt shore facilities and cause shrimp processors and suppliers to scale back operations. Processors must rely on imports to continue operations until the reopening of the season.

Opening the EEZ beyond 15 nm during the 1988 season would allow Texas-based craft to fish in the open waters and land marketable-sized shrimp, thus providing income and employment for crew and shore facilities. The partial opening would allow harvest of larger pink and brown shrimp in the EEZ beyond 15 nm. From 1960 to 1989, offshore production of these shrimp from these waters averaged 643,000 pounds with an estimated value of $1.8 million. The strong markets for small shrimp that reduced the need for culling and discarding in 1987 likely will continue in 1988.

Available information showed that closure out to 15 nm is similar in effect to having the entire EEZ open (i.e., only State waters closed). Texas-based trawlers are able to operate outside the geographical area of the closure, thus providing continuous income and employment for the crews and shore facilities.

Attention is directed to the specification of the closed area in terms of 15 nm from the baseline from which the territorial sea is measured (in contrast to measurement from the physical shore). For the purpose of delimiting the territorial sea, the outermost permanent harbor works which form an integral part of the harbor system are regarded as forming part of the coast. The 15-nm closure line is 3 nm seaward of the line labeled on Coast Charts (1:80,000 scale) as "Contiguous Zone."

Effect on Endangered and Threatened Species and Marine Mammals

The expected change in fishing patterns during the 15 nm closure is unlikely to alter significantly the impact of the fishery on endangered species Five endangered sea turtle species are known to occur in the area (Kemp's ridley, loggerhead, green, hawksbill, and leatherback). A consultation held under section 7 of the Endangered Species Act in 1980 determined that management of the shrimp resource through cooperative closures was unlikely to jeopardize the continued existence of these endangered species.

A section 7 consultation held by NMFS in April 1986 concluded that the 15 nm closure is not likely to jeopardize the continued existence of sea turtles but may result in mortality of up to 20 Kemp's ridley and 80 loggerhead turtles. Because of this low level of take, and because regulations authorized by the Endangered Species Act require most shrimp vessels that operate in waters from 0 to 15 nm off Texas to use turtle exclusion gear beginning March 1, 1988, adequate protection is afforded sea turtles.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is consistent with the National Standards and other provisions of the Magnuson Act and other applicable law.

A regulatory impact review was prepared for this proposed rule and the Under Secretary, NOAA, determined that the rule is not major under Executive Order 12291.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. You may obtain a copy of this analysis from NMFS at the address above.

This proposed rule contains no information collection requirement for purposes of the Paperwork Reduction Act.

The Council prepared an environmental assessment for this proposed rule and the Assistant Administrator for Fisheries concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the environmental assessment is available from the address above.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator determined that his proposed rule does not directly affect the coastal zone of any State with an approved coastal zone management program. Texas, the only State involved, does not have an approved coastal zone management program.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing.

Dated: April 7, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 658 is proposed to be amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

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

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

2. In § 658.25, paragraph (a) is suspended from May 15 through July 31, 1988, and a new paragraph (c) is added, to be effective from May 15 through July 31, 1988, to read as follows:

§ 658.25 Texas closure.

* * * * *

(c) *Area and season restrictions.* Between June 1 and July 15, 1988, the area described in this paragraph is closed to all trawl fishing. The area is that part of the EEZ within 15 nautical miles of the baseline from which the territorial sea is measured off Texas west of a line connecting point A (29°32.1′ N. latitude, 93°47.7′ W. longitude) to point B (26°11.4′ N. latitude, 92°53.0′ W. longitude) as shown in Figure 3.

[FR Doc. 88-7980 Filed 4-7-88; 4:35 pm]

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Notices

Federal Register
Vol. 53, No. 70
Tuesday, April 12, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Indemnification of Government Contractors

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on federal government indemnification of government contractors. Interested persons are invited to comment on the draft recommendation.

DATE: Please submit comments by May 3, 1988.

ADDRESS: Send comments to David M. Pritzker, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, 202–254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation of federal government indemnification of government contractors. The proposed recommendation is based in part on a draft report written by Professor Frank P. Grad, Chamberlain Professor of Legislation at the Columbia University School of Law. The committee also took into account comments received in response to a notice of inquiry published in the **Federal Register** on February 9, 1968 (53 FR 3766). The text of the draft recommendation is printed in full below. Copies of Professor Grad's draft report are available from the Office of the Chairman of the Administrative Conference.

The draft recommendation proposes steps that Federal agencies can take to improve the way in which they make decisions on whether to include indemnification clauses in government contracts. Affected agencies are urged to set forth clear written statements of the extent of their authority to indemnify contractors. Several factors are identified which ought to be considered in determining whether to agree to indemnification. The recommendation also addresses the need for adequate risk assessments in deciding on indemnification, and suggests referral and interagency cooperation as a way of assisting agencies that do not often confront such decisions.

The committee does not offer any advice on whether existing agency authority to indemnify contractors should be altered. Determination of such matters depends on substantive and political considerations that are beyond the purview of the Administrative Conference. However, the proposal would call for compilation of information that would provide a better basis in the future for ascertaining the need for and risk associated with broader indemnification.

The Conference's Committee on Governmental Processes will meet in early May for further consideration of the draft recommendation in the light of any comments that may be received. At that time, the committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for June 9 and 10, 1988. Comments should be sent to the address given above.

Draft Recommendation: Federal Government Indemnification of Government Contractors

Indemnification of government contractors for third-party liability involves this issue: who should bear the risk of injury or damage to a third party caused by products and services supplied by government contractors—the government, the contractor, or the third party? This issue is especially significant when the products and services involve high-risk or hazardous governmental activities.

The liability of the government is limited by the doctrine of sovereign immunity, which has been waived only in certain situations, such as the Federal Tort Claims Act. Some courts have recognized a common law immunity for government contractors who have complied with pertinent government specifications and have disclosed all known defects or hazards to the government. In the absence of insurance or an indemnity, government contractors are exposed to claims based on alleged failure to follow specifications or adequately warn the government or others about product design defects.

No government-wide legislation provides generally for indemnification of government contractors for third-party liability, although a number of individual departments and agencies are authorized to indemnify contractors.[1] All of the laws authorizing government indemnification of contractors state conditions that must be met before contractual indemnity will be granted, and designate the official who is to determine whether the conditions have been met. Thus some statutes restrict indemnification to unusually hazardous governmental activities or activities that may result in catastrophic losses and further require the contractor to obtain such insurance as is available. Indemnification clauses included in contracts usually contain further conditions, some of which are required by agency rule. A common restriction is that the indemnity does not cover claims resulting from the contractor's willful misconduct.

Indemnification clauses are reserved for unusual circumstances, and few contractors are actually provided with indemnity. The Department of Defense, for example, included indemnification clauses in an average of about 70 contracts per year in the five-year period 1980–1984; during fiscal year 1984 alone, the Department executed over 14.8 million contract actions.

The Conference's study of contractual indemnification found virtually no

[1] Examples are the National Defense Contracts Act, 50 U.S.C. 1431, as implemented by Executive Order 10789 (providing for indemnification under national defense contracts for unusually hazardous or nuclear risks); section 2354 of title 10 of the United States Code (providing for indemnification for unusually hazardous defense research and development activities); section 170 of the Atomic Energy Act, as amended by the Price-Anderson Act of 1957, 42 U.S.C 2210(d) (providing indemnification for activities involving the risk of a substantial nuclear incident); the Federal Aviation Act, as amended, 49 U.S.C. 1531 et seq. (providing for indemnification for risks where aircraft operations are necessary to carry out U.S. foreign policy); and the National Aeronautics and Space Act, as amended, 42 U.S.C. 2458b (providing for indemnification for damages related to the launch, operation or recovery of space vehicles).

evidence of claims made on the basis of indemnification clauses or litigation over such claims. Although there is no indication that the government has incurred significant costs under contractual indemnity provisions in the 30 years that have passed since enactment of the National Defense Contracts Act in 1958 and the Price-Anderson Act in 1957, the space shuttle disaster and the Three Mile Island nuclear incident suggest that contingent liabilities under indemnity agreement are potentially costly.[2]

The Conference's study found that agencies generally do not believe that current practices and limits on indemnities discourage potential contractors from bidding. Federal agencies, with few exceptions, see little need for greater indemnification authority or for broad legislation that would extend indemnities to government contractors generally. However, this view is not shared by many federal contractors. They take the position that the decreasing availability of private insurance for a broad range of hazardous activities is greatly reducing the pool of bidders for contracts involving those activities in the absence of government indemnification. This legislative debate is beyond the scope of the present recommendation.

While the Conference takes no position of the current debate over proposals to expand agency authority to indemnify contractors for hazardous activities, mass injuries, or other special circumstances, the Conference does recommend the compilation of certain information that would provide a better basis in the future for ascertaining the need for and risks associated with broader indemnification.

This recommendation also identifies several factors that agencies should consider when they determine whether to grant an indemnity clause to a particular contractor. These decisions ordinarily require an assessment of whether the activity in question involves an unacceptable hazard or degree of risk. Sometimes the degree of risk is defined in terms of availability of insurance. Agencies regularly engaged in high-risk activities and able to grant indemnity clauses, such as the Department of Energy, Nuclear Regulatory Commission, or National Aeronautics and Space Administration, would normally have the resources to perform risk assessments. However, contracting offices of other agencies that confront these issues less frequently may not have adequate technical expertise to decide. It has been asserted that there is often great uncertainty, and such decisions may be made inconsistently. The recommendation suggests referral and interagency cooperation as a way of meeting this problem.

Recommendation

1. *Identification of Agency Authority to Indemnify.* Each agency that anticipates a possible need to indemnify any of its contractors against liability to third parties should set forth, in a policy statement of regulation, the agency's understanding of the extent and source of its authority to indemnify contractors. The agency should consult with the Department of Justice in drafting the statement.

2. *Agency Decision Whether to Grant an Indemnity Clause.* Any decision by an agency concerning whether to grant an indemnity clause to a contractor should take into account the following factors:

(a) The nature and magnitude of the risks involved in the covered activities;

(b) The source of funds that would be used to pay an award under the indemnity clause, and the impact, if any, that such an award will have on the programs of the agency or other units of the government;

(c) The incentives that either providing or denying an indemnification clause would give the agency for supervising contractual performance, so as to provide for maximum protection of the public from injury and to protect the government from unwarranted liability in light of the identifiable risks;

The incentives that the contractor would have, assuming indemnification were granted, for performing under the contract in a safe and prudent manner;

(e) The incentives that the contractor would have, assuming indemnification were granted, to defend itself or to help the government in any subsequent litigation; and

(f) Any effects, assuming indemnification were granted, on the ability or the willingness of the insurance industry to make available private insurance for the kinds of activities to which the indemnification would apply.

3. *The Need for More Information.* Each agency that has paid out any sum of money or received any claims for payment under a contractual obligation to indemnify a contractor, or on whose behalf such sums have been paid by the federal government, should report all such payments and claims to the Comptroller General on an annual basis. The Comptroller General should periodically issue a report summarizing the information received. All such reports should be made available to the public except to the extent that release of any information included is prohibited by law. The Comptroller General should also obtain from each affected agency a list, updated periodically, of all existing contractual indemnity clauses.

4. *Contracting Office Expertise.* Where an agency contracting office must consider whether to grant an indemnity clause, but does not have sufficient technical expertise to assess the degree of risk, the extent of the hazard, or the availability of insurance, these questions should be assigned to an office that does have the requisite expertise to make such decisions or to assist the contractng office in making such decisions.

5. *Indemnity in High Risk Areas.* When an agency becomes engaged in contracting for activities that involve special risks for which the agency's staff is not able to conduct adequate risk assessments (for example, newly emerging technological risks), it is appropriate to seek the assistance and cooperation of other agencies. Agencies that are frequently or normally engaged in similar high-risk activities should cooperate to make available to requesting agencies staff members whose experience in risk assessment may be helpful. It may be appropriate to create a small, highly-qualified risk assessment office to furnish or coordinate such assistance.

Dated, April 7, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88-7975 Filed 4-7-88; 4:06 pm]

BILLING CODE 6110-01-M

[2] In 1982, the Comptroller General issued an opinion (B-201072, May 3, 1982; reconsid. 62 Comp. Gen. 361 (1983)) stating that to comply with the Federal Anti-Deficiency Act, 31 U.S.C. 1341, indemnity clauses in government contract must specify that the indemnity is available only to the extent of available authorized appropriations. This limitation, however, has limited impact where Congress has set maximum indemnity limits by statute, as in the Price-Anderson Act, or where no ceiling is set, as in the National Defense Contracts Act. The Price-Anderson Act reauthorization is pending as of the date of this recommendation.

Committee on Judicial Review; Public Meeting

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States. The Committee has scheduled this meeting to continue discussion of Professor Thomas

Sargentich's draft report on assignment of federal court jurisdiction over interlocutory challenges to agency action and draft recommendations based on that report.

Date: Thursday, April 21, 1988 at 9:30 a.m.

Location: United States Claims Court, Courtroom 4, 5th Floor, 717 Madison Place NW., Washington, DC. 20005

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before during, or after, the meeting. Minutes of the meeting will be available on request.

For Further Information Contact: Mary Candace Fowler, Office of the Chairman Administrative Conference of the United States, 2120 L Street, NW, Suite 500 (202) 254–7020.

April 8, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88–8016 Filed 4–11–88; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board; Notice of Renewal

The Department of Agriculture has renewed the National Plant Genetic Resources Board for a 2-year period.

The Board was originally established in July 1975 by the Secretary and was last renewed on May 8, 1986.

The purpose of the Board is to advise the Secretary of Agriculture and officers of the National Association of State Universities and Land-Grant Colleges in order to assess national needs and identify high-priority programs for conserving and utilizing plant genetic resources, including such things as collection, maintenance and description of genetic stocks, and utilization of the stocks in plant improvement programs.

The Secretary has determined that continuation of the Board is necessary and in the public interest in order to assure adequate supplies of food, feed, and fiber by minimizing the genetic vulnerability of crops.

Done at Washington, DC, this 6th day of April 1988.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 88–7927 Filed 4–11–88; 8:45 am]

BILLING CODE 3410–03–M

Soil Conservation Service

Pamunkey River Watershed; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500; and the Soil Conservation Service Guidelines (CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pamunkey River Watershed in King William County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing soil erosion on 11,420 acres of cropland, pastureland, and forestland and the installation of seven animal waste systems to improve water quality in the Pamunkey River. This will be accomplished by installation of soil and water conservation practices.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Norris, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10,901, Resource Conservation and Development Program. Executive Order 12372 regarding inter-government review of federal and federally-assisted programs and projects is applicable.)

Date: April 1, 1988.

George C. Norris,

State Conservationist.

[FR Doc. 88–7960 Filed 4–11–88; 8:45 am]

BILLING CODE 3410–16–M

Upper Choptank River Watershed, DE; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Choptank River Watershed Plan Supplement, Kent County, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas E. Hawkins, State Conservationist, Soil Conservation Service, 9 E. Loockerman Street, Suite 207, Dover, Delaware 19901–7377, telephone (302 678–4160).

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Douglas E. Hawkins, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for agricultural water management and water quality improvement. The planned works of improvement include structures for water control and attendant practices to protect the structures, which include controlled inlet pipes, grade stabilization structures, shaped berms, and accelerated technical assistance for land treatment.

The Notice of Finding of No Significant Impact (FONSI) has been

forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Douglas E. Hawkins.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance Under No. 10.904, Watershed Protection and Flood Prevention Program, and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials).

Douglas E. Hawkins,

State Conservationist.

April 4, 1988.

[FR Doc. 88-7903 Filed 4-11-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Travel and Tourism Administration

Title: Survey of International Air Travelers

Form Number: Agency—N/A; OMB—0605-0007

Type of Request: Extension of the expiration date of a currently approved collection

Needs and Uses: The National Tourism Policy Act directs the Department of assist in the collection, analysis, and dissemination of tourism data. This survey provides consumer marketing data on international travelers and is used to identify and analyze specific foreign travel markets. It is used by private and public sector entities in developing marketing programs.

Affected Public: Individuals

Frequency: Monthly

Respondent's Obligation: Voluntary

OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: April 6, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-7904 Filed 4-11-88; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 19-88]

Foreign-Trade Zone 29, Louisville, KY; Application for Subzone for Hitachi Auto Components Plant, Harrodsburg, KY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, requesting special-purpose subzone status for the automobile components manufacturing plant of Hitachi Automotive Products (USA), Inc. (subsidiary of Hitachi, Ltd., Japan), located in Harrodsburg, Kentucky. 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 March 30, 1988.

The Hitachi plant (50 acres) is located at 955 Warwick Road, Harrodsburg, Kentucky. The facility employs 250 persons and is used to produce automobile components such as alternators, starter motors, engine control modules, ignition coils, pressure signal transducers, air flow meters, and pollution control cannisters. Foreign sourced materials for those products range from 40 to 84 percent of the value of the products. They include items such as integrated circuits, transistors, capacitors, resistors, connectors, transducers, coils, armatures, yokes, pinions, magnetic assemblies, plungers, bushings, motors, sensors, activated charcoal, cases, covers and fasteners. Hitachi has plans to export some of the finished products to Japan and Canada.

Zone procedures would exempt Hitachi from Customs duty payments on foreign materials used in its exports. On domestic sales, the company would be able to choose the same finished product duty rate that applies to the completed components (3.1-4.9%). The rates on materials and subcomponents range from 0.0 to 11.0%. If the components are shipped to auto assembly plants with subzone status the auto duty rate (2.5%) would apply. The applicant indicates that the savings would help improve the plant's international competitiveness.

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: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Robert L. Oliver, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone 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 May 27.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Gene Snyder Courthouse and Customhouse, 601 W. Broadway, Room 636B, Louisville, KY 40202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: April 6, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-7970 Filed 4-11-88; 8:45 am]

BILLING CODE 3510-DS-M

Foreign-Trade Subzone 29E, Scott County, KY; Toyota Automobile Manufacturing Plant (A-10-88); Manufacturing of Engines, Axles and Steering Columns

The Foreign-Trade Zones Board has been advised by Toyota Motor Manufacturing, U.S.A., Inc. (TMM), that it will soon begin using zone procedures at its auto assembly plant in Scott County, Kentucky, pursuant to the authority granted by the Board on December 18, 1987 (Board Order 369, 53 FR 45, 1-4-88). The company indicates that it plans to manufacture engines, axles, and steering columns, beginning in late 1988, for the vehicles produced at this plant, instead of importing these

items from its plants abroad as had been indicated in the subzone application.

TMM seeks confirmation that the manufacture of these items under zone procedures is within the scope of the foregoing Board order. The FTZ Staff has reviewed the matter, and it appears that the proposed activity involving the shifting of production of major components to the United States is within the range of activity sanctioned in the order. Before issuing its final decision, the FTZ Staff invites the comments of interested parties on this question.

Comments must be submitted in writing (triplicate) and postmarked on or before May 12, 1988. They should be addressed as follows: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: April 6, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-7971 Filed 4-11-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee; Open Meeting

A meeting of the Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee will be held May 11, 1988, in the Herbert C. Hoover Building, 14th & Constitution Avenue NW., Washington, DC. The May 11 meeting will convene in Room B-841 at 9:30 a.m.

The Subcommittee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to lasers and related equipment and technology.

Agenda

1. Opening remarks by the Chairman.
2. Public discussion on any matters related to the activities of the Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee.
3. Committee discussion on specific proposed revisions to CCL entry 1522, Lasers. The proposed revisions include: Recommendations concerning GLV levels and G-COM and GFW regulations, redefinition of certain laser equipment and the proposed assignment of certain equipment containing lasers to other CCL entries.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4606, 14th Street & Constitution Ave., NW., Washington, DC 20230.

For further information or copies of the minutes, contact Carol P. Willis, 202-377-2583.

Date: March 29, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-7947 Filed 4-11-88; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of Bangladesh

April 6, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issues a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 13, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Anne Novak, 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, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 347/348 and 638/639 are being increased by application of swing. The limit for Category 635 is being reduced to account for the increases.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 752, published on January 12, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb

Chairman, Committee for the Implementation of Textile Agreements.

April 6, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of January 7, 1988, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1988 and extends through January 31, 1989.

Effective on April 13, 1988, the directive of January 7, 1988 is amended to adjust the previously established restraint limits for the following categories, under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

Category	Adjusted limits[1]
347/348	1,179,106 dozen.
638/639	870,790 dozen.
635	107,572 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1988.

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,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-7951 Filed 4-11-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

April 7, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: April 7, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 336 is being increased for special carryforward for the period January 1, 1988 through May 31, 1988.

A description of textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 18413, published on May 15, 1987 and 53 FR 52 and 53 FR 53, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William J. Dulka

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 7, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1988 and extends through May 31, 1988.

Effective on April 7, 1988, the directive of December 30, 1987 is hereby amended to adjust the limit for Category 336 to 57,378 dozen [1], as provided under the terms of the bilateral agreement of May 10, 1983, as amended.

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,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–7950 Filed 4–11–88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

April 7, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 19, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, 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, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 342 and 348 are being increased for special carryforward for the period January 1, 1988 through May 31, 1988. As a result of the adjustment to Category 348, the limit, which is currently filled, will re-open.

A description of textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 18413, published on May 15, 1987 and 53 FR 52 and 53 FR 53, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 7, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1988 and extends through May 31, 1988.

Effective on April 19, 1988, the directive of December 30, 1987 is hereby amended to adjust the following limits, as provided under the terms of the bilateral agreement of May 10, 1983, as amended:

Category	Adjusted limit [1]
342	149,289 dozen.
348	209,662 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

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,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–7948 Filed 4–7–88; 5:07 pm]

BILLING CODE 3510-DR-M

Cancellation of Visas for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

April 7, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling visas.

EFFECTIVE DATE: April 19, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: The Government of Sri Lanka has notified the United States Government that an undetermined amount of goods in Category 348, which are currently in embargo at U.S. Customs ports, may be accompanied by fraudulent visas. At the request of the Government of Sri Lanka, visas issued on or after June 1, 1987 for Category 348 are being cancelled. The Government of Sri Lanka will accept visa waiver requests for shipments of Category 348 which have been determined by the Government of Sri Lanka to be accompanied by a valid visa. Contact Ms. Manel De Silva, Embassy of the Democratic Socialist Republic of Sri Lanka, 2148 Wyoming Avenue, NW. Washington, DC 20008.

A valid visa issued by the Government of Sri Lanka on or after June 1, 1988 will be required for entry of Category 348 exported on or after June 1, 1988. Shipments accompanied by visas issued before June 1, 1988 will be denied entry unless further notice is published in the **Federal Register**.

A description of textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 7, 1988.

Commissioner of Customs,
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: Effective on April 19, 1988 and until further notice, you are directed to prohibit entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 348, produced or manufactured in Sri Lanka and exported during the period June 1, 1987 through May 31, 1988 for which the Government of Sri Lanka has issued an export visa.

Visa waivers shall be required for shipments of Category 348 which are exported during the period June 1, 1987 through May 31, 1988 and determined by the Government of Sri Lanka to be accompanied by a valid visa.

A valid visa issued by the Government of Sri Lanka on or after June 1, 1988 shall be required for entry of goods exported on or after June 1, 1988. Shipments accompanied by visas issued before June 1, 1988 shall be denied entry.

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,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-7949 Filed 4-7-88; 5:07 pm]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 5, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Requirements for Hypersonic Test Facilities will meet on 17 May 1988, from 8:00 a.m. to 5:00 p.m., and on 18 May 1988, from 8:00 a.m. to 12:00 p.m., at the Arnold Engineering Development Center (AEDC), Tullahoma, TN, and on 18 May 1988, from 1:00 p.m. to 5:00 p.m., and on 19 May 1988 from 8:00 a.m. to 5:00 p.m. at the NASA Langley Reserach Center, Hampton VA.

The purpose of the meeting at AEDC is to tour their hypersonic test facilities and obtain information on future hypersonic facility upgrades/modifications and proposals. The purpose of the meeting at LaRC is to tour their hypersonic test facilities, obtain information on future NASA hypersonic applications, and obtain information on future hypersonic test facility upgrades/modifications and proposals. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-7901 Filed 4-11-88; 8:45 am]

BILLING CODE 3910-01-M

Defense Logistics Agency

Announcement of Direct Conversion to Contract Performance of Commercial Activities (CA) Function

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notification of intent to effect direct conversion to contract performance of DLA CA function.

SUMMARY: The publication of decisions to directly convert commercial activities (CA) to contract performance is required by Supplement to OMB Circular No. A-76 (Revised) and DoD Instruction 4100.33, "Commercial Activities Program Procedures."

Based on a Simplified Cost Comparison conducted 5 January 1988, the Defense Logistics Agency will issue a solicitation to directly covert to contract performance the travel services of the Defense General Supply Center (DGSC), Richmond, Virginia. The travel services include performing a full range of DoD passenger transportation and ticketing services for CONUS and international travel.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Arnett, DGSC, Office of Policy and Plans (DLSC-LPC). Richmond, Virginia 23297-5000, (804) 275-4017.

Interested commercial concerns should refer to announcements in the Commerce Business Daily (CBD) to be made as part of the contract solicitation process.

William J. Cassell,

Comptroller, Defense Logistics Agency.

[FR Doc. 88-7961 Filed 4-11-88; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

Office of the Under Secretary

Education Appeal Board; Designation of Jurisdiction; Glenpool, OK

AGENCY: Department of Education.

ACTION: Notice of designation of jurisdiction to Education Appeal Board.

SUMMARY: The Under Secretary designates the Education Appeal Board (EAB) as the forum to hear the appeal of the Glenpool Public Schools, Glenpool Oklahoma (Glenpool) of a final determination that Glenpool received overpayments of $191,246 in fiscal year 1983-1986 formula grant funds under Part A of the Indian Education Act (Part A; U.S.C. 241aa-241ff) and must refund that amount to the Department. The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) issued that final determination in her August 13, 1987 final determination letter.

FOR FURTHER INFORMATION CONTACT: Honorable Ernest C. Canellos, Chairman, EAB, 400 Maryland Avenue,

SW. (Room 1065, FOB–6), Washington, DC 20202. Telephone: (202) 245–7835.

SUPPLEMENTARY INFORMATION: Under section 451(a) of the General Education Provisions Act (20 U.S.C. 1234(a)), the EAB has the jurisdiction to conduct withholding, cease and desist, and audit appeal hearings, and other proceedings designated by the Secretary. By delegation of the Secretary, the Under Secretary may designate such proceedings to the EAB. The EAB regulation implementing the statutory provision (34 CFR 78.2(a) (1981)) clearly includes an appeal by a recipient of Part A funds from a final determination disallowing expenditures as within the EAB jurisdiction; an appeal from a final determination that a recipient must refund overpaid funds is not so designated.

In issuing this final determination concerning overpayments, the Assistant Secretary determined that for fiscal years 1983–1986 Glenpool submitted to the Department significantly overstated counts of Indian children, upon which the Part A awards were made, which resulted in a total overpayment to Glenpool of $191,246 (1983: $56,113; 1984: $40,321; 1985: $46,872; and 1986: $47,940). The Assistant Secretary concluded that Glenpool had improperly counted children (1) who were not enrolled in Glenpool's schools on the date Glenpool compiled the count of Indian children, (2) who had never been enrolled in Glenpool's schools, and (3) whose student certification forms, as determined by Glenpool, had been improperly signed by Glenpool officials.

The Assistant Secretary determined that, in including such children in the Part A count, Glenpool had violated (1) the statutory (Sec. 303(a)(1); 20 U.S.C. 241bb(a)(1)) and regulatory (34 CFR 251.31 (1983), 34 CFR 251.30 (1985)) requirements that the count of children be based upon children "enrolled" in the schools of applicant, (2) the statutory requirement (Sec. 453(c)(4) of the Indian Education Act; 20 U.S.C. 1221h(c)(4)) that the student certification form be signed by the parent or legal guardian of the child, verifying the accuracy of the information provided on the form, and (3) the regulatory requirement (34 CFR 251.40(n) (1983) and 34 CFR 251.50 (1985)) that a recipient of Part A funds maintain student certification form for each child counted under Part A.

In her August 13, 1987 final determination letter, the Assistant Secretary issued this final determination concerning overpayments and a final determination that Glenpool must refund $164,630 of fiscal year 1983–1986 Part A funds which it expended on unallowable costs. Noting that recovery under both final determinations would result in duplicative repayments by Glenpool, the Assistant Secretary sustained each final determination independently but stated that the total to be repaid in recovery under both final determinations was $200,091 (the overpayments of $191,246 plus the $8,845 determined to be the excess of unallowable costs beyond the overpayments in fiscal years 1983–1986).

In that letter, the Assistant Secretary notified Glenpool that it could appeal the unallowable costs final determination to the EAB and could appeal the overpayments final determination to the Assistant Secretary. By separate letters of September 10, 1987, Glenpool appealed the unallowable costs final determination to the EAB and the overpayments final determination to the Assistant Secretary. On September 23, 1987, the EAB accepted the appeal of the unallowable costs final determination.

The Under Secretary has determined that it is in the Department's and Glenpool's best interests to consolidate the two separate appeals from this single final determination letter. This is particularly true as the total amount sought for recovery under both findings requires an offsetting of the recoveries under each finding. The designation of this appeal to the EAB would simplify and expedite the resolution of the final determinations contained in the Assistant Secretary's August 13, 1987 final determination letter.

Designation of Jurisdiction

Under the authority of section 451(a)(4) of the General Education Provisions Act (20 U.S.C. 1234(a)(4)) and 34 CFR 78.2(a)(5) of the EAB regulations, the Under Secretary announces that on April 7, 1988, the Under Secretary designates the EAB as the forum to review Glenpool's appeal of the Assistant Secretary's August 13, 1987 final determination that it received overpayments of $191,246 in fiscal year 1983–1986 Part A funds and must refund that amount to the Department. The EAB is to review this appeal in accordance with the requirements of 34 CFR Part 78.

(Catalog of Federal Domestic Assistance Number Not Applicable)

Dated: April 7, 1988.

Linus Wright,

Under Secretary of Education.

[FR Doc. 88–7968 Filed 4–11–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. PP–86]

Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings; Washington Water Power Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of intent to prepare an Environmental Impact Statement and to hold public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Council on Environmental Quality at 40 CFR 1501.7, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces its intention to prepare an Environmental Impact Statement (EIS) and to conduct public scoping meetings. The EIS will be prepared to assess the environmental impacts of a proposed DOE action: To grant (with terms and conditions) or to deny a Presidential permit authorizing Washington Water Power Company (WWP) to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada. Specifically, WWP seeks permission to construct a double-circuit alternating current (ac) transmission line with a design voltage of 230 kilovolts (kV) from the U.S.-Canadian border near Northport, Washington, to a planned substation to be located in the vicinity of Spokane, Washington.

Written Comments should be addressed to: Anthony J. Como, Economic Regulatory Administration (RG–22), Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–5935.

For general information on the EIS process contact:

Carol M. Borgstrom, Acting Director, Office of NEPA Project Assistance (EH–25), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–4600.

Stan Echols, Office of General Counsel (GC–11), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–6947.

DATES: Written comments are to be submitted to the above address by May 27, 1988. Oral comments may be presented at the scoping meetings which have been scheduled as follows:

Tuesday, May 3, 1988, Ponderosa and Hemlock Rooms, Holiday Inn West,

4212 Sunset Blvd., Spokane, Washington 99204, Convenign at 7:00 p.m.

Wednesday, May 4, 1988, Colville High School Cafeteria, 985 South Elm Street, Colville, Washington 99114, Covening at 7:00 p.m.

Thursday, May 5, 1988, Pend Oreille County Public Utility, District Conference Room, 130 North Washington Street, Newport, Washington 99156, Convening at 7:00 p.m.

SUPPLEMENTARY INFORMATION: On October 15, 1987, the Washington Water Power Company filed an application with the ERA for a Presidential permit pursuant to Executive Order 10485, as amended by Executive Order 12038, to construct, operate, maintain and connect a double-circuit 230 kV, overhead transmission line which would interconnect with British Columbia Hydro and cross the U.S. international border near the city of Trail, British Columbia, and the town of Northport, Washington. The length of the proposed line is approximately 118 miles (from the international boundary to the proposed Marshall substation) and would require all new right-of-way. The two circuits will be capable of transmitting 800 to 1,200 megawatts (MW) of firm power from British Columbia Hydro to WWP for distribution in the Pacific Northwest.

The purpose of the proposed transmission line, according to the applicant, is to provide the customers of WWP and the Pacific Northwest Region with a future economic source of power. The application notes the need for additional supplies of peaking power for both WWP and the Pacific Northwest Region as early as 1993, and projects additional power needs of up to 210 MW and 550 MW, respectively, by the year 2000.

The ERA has determined that the issuance of a Presidential permit to WWP for the proposed facilities would constitute a major Federal action significantly affecting the environment. Consequently, pursuant to the provisions of the National Environmental Policy Act of 1969, an EIS will be prepared to assess the impact of the proposed action on the environment.

Interested agencies, organizations, and members of the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of the EIS are invited to do so and are encouraged to attend the public scoping meetings which will be held on May 3, 1988, in Spokane, Washington; on May 4, 1988, in Colville, Washington; and on May 5, 1988, in Newport, Washington.

Parties who desire to present oral comments at the scoping meetings are requested to provide advance notice to ERA as described below under "COMMENTS AND SCOPING MEETINGS". Although advance notice is not required, compliance with this request will provide for more orderly meetings and help insure that ample time will be allotted to everyone desiring to present oral comments. All comments received during the scoping process (both written and oral) will be considered in the preparation of the draft EIS which is presently scheduled for completion by November 1988. Upon completion of the draft EIS, its availability will be announced in the **Federal Register**, copies will be distributed for review, and further comments will be solicited.

Preliminary Definition of Environmental Issues

The purpose of this Notice is to solicit comments and suggestions on topics and issues which should be considered in the preparation of the EIS. As background for public comment and suggestions, following is a list of those environmental issues which have been tentatively identified for analysis and assessment in the EIS. This list is not intended to be all-inclusive or to imply any predetermination of impacts.

Additional issues for analysis may be identified as a result of comments received during the scoping process.

A. Environmental Issues Associated with Transmission Line Construction

(1) The loss or modification of upland plant communities due to the permanent removal of all tall-growing vegetation from the proposed right-of-way, and of all vegetation from tower footings, access roads and substation sites;

(2) Minor relocations and alterations to other existing facilities along the proposed right-of-way;

(3) Temporary disruption of wildlife communities, agricultural production and other land uses along the line route during actual construction;

(4) Potential long-term effects on wildlife communities from loss or modification of habitat;

(5) Temporary interference with aquatic life during construction at stream and river crossings;

(6) Potential long-term effects to aquatic resources from erosion and sedimentation and clearing of riparian vegetation;

(7) Temporary socio-economic perturbations due to the influx of construction workers into sparsely populated areas;

(8) Temporary noise and air pollution resulting from operation of construction equipment and from the burning of slash from clearing of the right-of-way;

(9) Disruption and displacement of soils during activities associated with land clearing; and

(10) Potential disturbance and contamination of groundwater.

B. Environmental Issues Associated with Transmission Line Operation and Maintenance

(1) Long-term withdrawal of land from traditional uses (e.g., forest, agriculture, residential) within right-of-way and land required for other project facilities;

(2) Periodic interference with plant and wildlife communities along right-of-way due to required maintenance activities, particularly vegetation control;

(3) Generation of acoustic noise and electronmagnetic interference with radio and television reception along right-of-way;

(4) Possible biological effects such as reduced growth or viability for plant and animal species resident within or in proximity of the right-of-way;

(5) Possible health effects from periodic and/or prolonged exposure to electric and magnetic fields produced by alternating current transmission;

(6) Possible long-term effects on public health and on aquatic and terrestrial organisms due to the use of herbicides for vegetation control along right-of-way;

(7) Indirect ecological and socioeconomic effects resulting from easier unauthorized human access to some areas via access roads and right-of-way, such as incresed hunting or use by motorcycles or snowmobiles; and

(8) Long-term visual impacts resulting from the presence of support towers, conductors, and other project facilities.

C. Other Specific Environmental Issues

(1) The possibility of affecting threatened or endangered species or critical habitats for such species;

(2) Identification and review of alternatives to construction within a 100-year floodplain or identified wetlands; and identification and review of mitigating measures to be taken if it is found that there are no practicable alternatives to construction in a floodplain or wetland;

(3) Possible direct and adverse effects on the values for which a wild, scenic or recreational river was established;

(4) Environmental factors relevant to any proposed construction in or over navigable rivers, or to any proposed actions resulting in the discharge of

dredge or fill materials into any waters of the U.S.;

(5) Actions having an impact on the continued use and viability of prime and unique farmlands;

(6) Possible effects on sites or properties included on, nominated for, or eligible for inclusion in the National Register of Historic Places, or on historical, architectural or archeological sites of national significance;

(7) Possible adverse impacts on National Forest lands; and

(8) Possible impacts on local Indian tribes.

Preliminary Definition of Alternatives

One of the major purposes of an EIS is to define the reasonable alternatives to the proposed action, and the environmental impacts to be expected from each reasonable alternative. As background for comments and suggestions concerning reasonable alternatives to be considered, the broad classes of alternatives which have been tentatively identified are described briefly below:

A. If the Presidential Permit is Issued

Issuance of the Presidential permit by DOE is one of the necessary steps leading to the construction of an electric transmission line which crosses the U.S. international border. Issuance of the permit indicates that there is no federal objection to the project, but does not mandate that the project be completed. Also, issuance of the permit would not necessarily result in construction of the project as presently proposed by WWP. Alternate project configurations which will be considered in the EIS include:

(1) Alternative corridor routes for the proposed transmission line and alternative sites for the proposed substation;

(2) Alternative tower designs; and

(3) Undergrounding of the proposed facilities.

B. If the Presidential Permit is Denied

Denial of the Presidential permit by DOE would result in WWP relying on other means to meet future increases in customer demand. Alternative means to meet new load requirements could include:

(1) The traditional course of action of continuing the operation of existing generating plants as necessary to meet load, and the construction of new, conventional thermal or hydroelectric generating plants as necessary to satisfy future increases in load;

(2) Development and construction of new, non-conventional types of generating plants (e.g., solar or wind) to reduce the need for future construction of conventional generating plants;

(3) Load management by energy storage or conservation and/or replacement of some end uses of electricity by other sources of energy, which would reduce seasonal variations in load and total annual electrical energy requirements;

(4) Purchases of power from utilities within the United States; and

(5) Development of cogeneration and distributed small power projects throughout the state.

Mitigation Alternatives

The environmental impacts which would result from construction and operation of the proposed project would depend on the choice among a number of alternative possibilities as to where, when and how the project was constructed, as well as the choice of alternative maintenance and repair procedures during operation. Tentatively identified groups of alternatives for consideration in the EIS include: (a) Design, (b) route selection, (c) construction practices and (seasonal) timing, (d) right-of-way clearing procedures, and (e) right-of-way maintenance practices.

Comments and Scoping Meetings

The purpose of the scoping meetings is to obtain information from interested parties on the issues which should be addressed when preparing the EIS. These meetings will be conducted informally; however, a transcript of the meetings will be prepared. Parties who desire to present oral comments at any meeting are requested to provide advanced notice to ERA by April 29, 1988, *if possible*. Every effort will be made to provide those attending the meetings, who have not provided advance notice, with a chance to speak if time permits. The ERA has designated Mr. Anthony J. Como as presiding officer at these meetings. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meetings.

Each speaker will be allotted approximately 10 minutes to make an oral statement. However, this time constraint may be adjusted depending upon the number of speakers. Should any speaker desire to provide for the record further information which cannot be presented within the designated time limit, or if any party wishes to submit written comments in lieu of making an oral presentation at the scoping meetings, such information may be submitted in writing by May 27, 1988. Written comments will be considered and given equal weight with oral comments.

A transcript of the scoping meetings will be retained by DOE and, upon request, made available for inspection and copying at the Freedom of Information Library, Room 1E-090, Forrestal Bldg., 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Alternatively, copies of the transcript(s) may be purchased directly from the court reporter.

Draft EIS Schedule and Availability of Environmental Documents

The draft EIS (DEIS) is scheduled for completion by November 1988, at which time its availability will be announced in the **Federal Register** and public comments again will be solicited.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the DEIS for review and comment when it is issued should contact Mr. Anthony J. Como at the address given in the prior section.

One of the requirements placed on the applicant for a Presidential permit is the submission of an Environmental Report. This and other documents to be used in preparation of the DEIS will be made available for public inspection at several public libraries or reading rooms in Washington. A notice of these locations will be provided in the **Federal Register** and in local newspapers at a later date.

Issued in Washington, DC on April 5, 1988.

Ernest C. Baynard, III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88-7930 Filed 4-11-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. OFU 048]

Order Granting Rescission of a Prohibition Order Issued to the Wisconsin Public Service Corporation Pursuant to the Energy Supply and Environmental Coordination Act of 1974

AGENCY: Economic regulatory Administration, DOE.

ACTION: Order granting rescission.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) [1] hereby gives notice

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order 12009 from the Federal Energy Administration (FEA) to the Department of Energy pursuant to the Department of Energy Organizatik n Act (42 U.S.C. 7101 et seq.).

that acting under the authority granted to it in section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) as amended 15 U.S.C. 792(f) and implemented by 10 CFR 303.130(b), it is granting a request by the Wisconsin Public Service Corporation (WPSC) or the Company to rescind the prohibition order issued on June 30, 1975 to the following powerplant.

Owner	Docket No.	Generating station	Unit No.	Location
Wisconsin Public Service Corporation	OFU-048	Weston	2	Rothschild, Wisconsin.

This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification on Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations. The basis for ERA's action is provided in the **SUPPLEMENTARY INFORMATION** section below.

EFFECTIVE DATE: April 12, 1988, in accordance with 10 CFR 303.10(a).

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-4708.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room GA-113, Washington, DC 20585, Telephone (202) 586-6947.

The public file containing a copy of this Order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

SUPPLEMENTARY INFORMATION: On June 30, 1975, the Federal Energy Administration (FEA) issued a Prohibition Order prohibiting Weston Unit 2 from burning natural gas or petroleum products as its primary energy source. The Prohibition Order became effective on June 13, 1977, pursuant to a Notice of Effectiveness (NOI) issued by FEA on that date. ERA issued an Amended NOI on December 21, 1978, deleting the termination date of December 31, 1978, for the Prohibition Order set forth in the original NOI. The amendment served to extend the effectiveness of the Prohibition Order indefinitely.

On July 7, 1987, WPSC submitted an Application for Rescission of Prohibition Orders to ERA regarding the above enumerated generating station unit. The Petitioner maintains that the rescission of the Prohibition Order for Weston No. 2 is warranted by significantly changed circumstances, a substantial change in the facts or circumstances upon which the Prohibition Order was based. Placed in service in 1960, Weston No. 2 located near Rothschild, Wisconsin has the capability to burn both coal and natural gas either separately or together to generate power. At maximum generation the unit can burn 863 Mcf of natural gas or 70,700 pounds of coal per hour. Using natural gas as the primary energy source its maximum generation capability is approximately 90 megawatts.

The Company believes it would be in the best interest of its ratepayers and of the general public to be able to use natural gas as a primary fuel in the Weston No. 2 generating unit. Natural gas would allow the Company to address the environmental emission limitations facing it in the most cost effective manner. It would also allow the company to operate the unit in a manner that will maximize its useful life. It is anticipated that gas will not be used as the primary fuel in the Weston No. 2 boiler unless it is needed to meet emission limitations during transitional operating conditions, such as start-up or during load changes, or if the cost of producing electric power would be less if burning gas than if burning coal.

The use of natural gas would have a favorable impact on the useful life expectancy of the plant by reducing wear on coal handling and other relevant equipment, in addition to reducing corrosive effects in the boiler. Natural gas would also be used for flame stabilization reducing the Company's use of petroleum.

WPSC believes that the use of natural gas is both practical and feasible. The Company maintains that its supplier generally has quantities of natural gas available for use by the Company as boiler fuel.

In accordance with the procedural requirements of 10 CFR 303.134(a), ERA published its Notice of Acceptance of a request by WPSC to rescind certain prohibition orders issued to it pursuant to the ESECA in the **Federal Register** on October 28, 1987 (52 FR 9698), commencing a 45-day public comment period. During that period interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed December 14, 1987. No comments were received and no hearing was requested.

Decision and Order

Accordingly, based upon information received from WPSC and the entire record of this proceeding, ERA has determined that as a result of significantly changed circumstances with respect to the prohibition orders issued to WPSC's Weston No. 2 generating unit set forth in 10 CFR 303.136(b), that this powerplant can be operated more effectively, efficiently, practically and reliably by using natural gas, rather than coal as a primary energy source. Pursuant to § 303.137(a) ERA hereby grants the rescission request of WPSC and hereby orders that the prohibition order to this unit be rescinded.

Pursuant to 10 CFR 303.100 (a) and (b), any person aggrieved by this order has not exhausted his administrative remedies until an appeal has been filed with DOE's Office of Hearing and Appeals and an order granting or denying the appeal has been issued. Such appeal must be filed within 10 days of the publication of this order in the **Federal Register** in accordance with the requirements of § 303.102.

Issued in Washington, DC on March 30, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-7931 Filed 4-11-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-12-NG]

Standard Gas Marketing Co.; Application To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt

on March 18, 1988, of an application filed by Standard Gas Marketing Company (Standard) requesting blanket authorization to export natural gas to Canada on a short-term and spot basis not to exceed 75 Bcf in the aggregate over a two-year period beginning on the date of first delivery.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than May 12, 1988.

FOR FURTHER INFORMATION:

William Durbin, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9516.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Standard, a Delaware corporation with its principal office in Cleveland, Ohio, is a wholly owned subsidiary of Sohio Petroleum Company. The applicant proposes to act as a broker or as an agent, acting on its own behalf or on behalf of others. The gas would be supplied from a variety of domestic sources and sold to a range of Canadian purchasers, including, but not limited to, industrial and commercial end users, agricultural users, electric utilities, pipelines and distribution companies.

The terms of each arrangement would be negotiated in response to market conditions. Standard intends to use existing transmission systems and will not require the construction of new or separate facilities in order to export the natural gas. Standard also intends to comply with ERA's reporting requirements.

This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts current excess gas supplies evidence a lack of need for this gas to serve regional and national markets. The applicant further asserts that this export arrangement would promote competition and have a beneficial impact on the balance of trade. Parties opposing the arrangement should comment in any response on these matters.

Standard requests that an authorization be granted on an expedited basis. An ERA decision on Standard's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriation action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., May 12, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Standard's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., April 6, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–7973 Filed 4–11–88; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA C&E 88–09; Certification Notice–14]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants; Delmarva Power and Light Co.

AGENCY: Economic Regulatory Administration, DOE.

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.*) provided 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 (setion 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 capabiity 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 **Fedral Register** a notice reciting that the certificatation has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Delmarva Power and Light Company, Wilmington, DE	3-23-88	Powerplant Simple Cycle.	200	Wilmington, DE.

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 the self certification procedure.

Issued in Washington, DC, on April 6, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-7929 Filed 4-11-88: 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-313-000 et al.]

Arkansas Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 7, 1988.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Company

[Docket No. ER88-313-000]

Take notice that on March 31, 1988, Arkansas Power & Light Company (AP&L) tendered for filing a Refund Payment Schedule containing a proposed allocation of refunds to its wholesale customers and Co-owners of the White Bluff and Independence Coal Plants concerning amounts received by AP&L from Burlington Northern Railroad Company. AP&L proposes to make refunds, with interest, in accordance with the Refund Payment Schedule 30 days after Commission authorization.

Comment date: April 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER88-311-000]

Take notice that on March 31, 1988, Boston Edison Company (Edison) tendered for filing an agreement for the sale of power to Public Service Company of New Hampshire (PSNH) and an associated Exhibit A to Edison's non-firm transmission tariff, FERC Electric Tariff Original Vol. III. Pursuant to the power sales agreement on a monthly basis Edison will sell to PSNH varying amounts of power from certain designated Edison jet turbine units.

Edison requests waiver of the Commission's notice requirements to permit the power sales agreement and the Exhibit A to become effective as of the commencement of the transaction, November 1, 1987.

Copies of the filing have been served upon PSNH and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: April 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement

[Docket No. ER88-310-000]

Take notice that on March 31, 1988, the Office of the Pennsylvania-New Jersey-Maryland Interconnection (PJM) tendered for filing, on behalf of the parties to the PJM Agreement, Revision No. 9 to Schedule 4.01 of that Agreement.

The purpose of this filing is to increase the rate applicable to capacity deficiency transactions determined in accordance with the PJM Agreement. The new rate is to become effective with the beginning of the next 12-month Planning Period on June 1, 1988. No changes in facilities are proposed in this filing.

Comment date: April 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ER88-309-000]

Take notice that on March 31, 1988, Interstate Power Company (Company) tendered for filing, an Electric Service Agreement between the Public Utilities Commission of the City of Truman, Minnesota and Interstate Power Company. This agreement provides for the delivery of firm power and energy the Company receives from the Missouri Basin Municipal Power Agency for delivery to the City.

The Company's standard wheeling rate, as approved in Docket ER76-555, as adjusted for the TRA of 1986 (Docket RM87-4-000) will apply.

Comment date: April 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. EL87-45-002]

Take notice that on February 18, 1988, Northern States Power Company tendered for filing a supplement to its transmission service contracts and proposed refunds with interest for the off-line transmission service customers in accordance with § 35.19(a) of the Commission's regulations, 18 CFR 35.19(a) (1987).

Comment date: April 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER88-296-000]

Take notice that on March 31, 1988, Southern California Edison Company tendered for filing an exhibit supporting an increase in rate per kilowatthour for interruptible transmission service under Rate Schedule FERC No. 130. The supported rate is an increase in the presently authorized filed rate.

Comment date: April 21, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Arizona Public Service Company

[Docket No. ER88-312-000]

Take notice that on March 31, 1988, Arizona Public Service Company (APS) tendered for filing a Transmission Service Agreement (Agreement) between APS and the Department of the Air Force (Air Force). The Agreement provides for the transmission of up to 2.63 MW of the Air Force's recently acquired allotment of preference power from the Parker-Davis Project.

The Agreement provides for APS to wheel the Air Force's preference power

allocations and make delivery of such power at a distribution voltage level of service. The proposed rate level is similar to that for rates on file with the Commission for similar type service; however, differs from the others in that it reflects delivery of Air Force's allocations of preference power at a distribution voltage level of service as low as 4.2kV.

No new facilities or modifications to existing facilities are required to provide service under the Agreement.

APS, has agreed to begin service on April 1, 1988 and thus, with the concurrence of the Air Force, requests waiver of the Commission's Notice Requirements so service may begin on such date.

Copies of this filing have been served on the Air Force and the Arizona Corporation Commission.

Comment date: April 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-7913 Filed 4-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-307-000 et al.]

Great Lakes Gas Transmission Co. et al.; Natural Gas Certificate Filings

April 6, 1988.

Take notice that the following filings have been made with the Commission:

1. Great Lakes Gas Transmission Company

[Docket No. CP88-307-000]

Take notice that on March 22, 1988, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88-307-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of Northern States Power Company (Northern States), a Wisconsin distribution company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that Northern States has requested that Great Lakes transport up to 30,000 Mcf per day, on an interruptible basis, which Northern States would purchase from Canadian suppliers, from a point on the International Border between the United States and Canada, at Emerson, Manitoba, where the facilities of Great Lakes interconnect with the facilities of TransCanada Pipe Lines Limited, to a point where Great Lakes' facilities interconnect with those of Northern Natural Gas Company, a Division of Enron Corporation (Northern Natural) at Carlton, Minnesota. It is further stated that the term of the proposed arrangements would end two years after the effective date of all regulatory approvals deemed necessary to implement the service. Great Lakes indicates that it has entered into a transportation service agreement (Agreement) dated September 10, 1987, which implements these arrangements.

Great Lakes states that the Agreement provides for a rate for the transportation service which is equal to the 100% load factor rate applicable to deliveries in the Western Zone under Great Lakes' existing Rate Schedule T-5 of Great Lakes existing FERC Gas Tariff. It is further stated that no new facilities would be required to provide the proposed service.

Great Lakes indicates that Northern States has entered into transportation arrangements with Northern Natural, for the subsequent transportation of the subject volumes to various points of interconnection between the facilities of Northern Natural and Northern States, all located in the state of Wisconsin.

Comment date: April 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

CNG Transmission Corporation

[Docket No. CP88-319-000]

Take notice that on March 29, 1988, CNG Transmission Corporation (CNG), 4455 West Main Street, Clarksburg, West Virginia 26301, filed in docket No. CP88-319-000 an application pursuant to section 7 (b) and (c) of the Natural Gas Act for authorization to retire 24.97 miles of parallel 20-inch Line Nos. 25 and 35, and to construct and operate replacement 30-inch Line No. TL-469, between Stull and Coxcomb Gates in Butler and Allegheny Counties, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that existing Line Nos. 25 and 35 are parallel pipelines located within the same right-of-way for approximately 52 miles between Coxcomb Gate, in southwestern Pennsylvania, and Petersburg, at the Ohio-Pennsylvania border. CNG explains that Line Nos. 25 and 35 link the western and central portions of its pipeline system and that this portion of its pipeline system was constructed for a maximum allowable operating pressure (MAOP) of 850 psig. CNG states that between Stull and Coxcomb Gates, population growth has occurred steadily in the vicinity of these pipelines since their construction. CNG further states that because the wall thickness of the existing installed pipe would not permit operation at the original design pressures in areas of such population density, CNG has reduced the MAOP's of the segments of Line Nos. 25 and 35 to 657 and 727 psig, respectively. CNG proposes to replace the pipeline segments with 30-inch Line No. TL-469, designed with sufficient wall thickness to restore CNG's ability to operate the affected portion of its systems at the original design pressure of 850 psig.

CNG further explains that the construction of Line No. TL-469 would alleviate the current restriction of the reduced MAOP's and would enhance CNG's ability to move gas from west to east. CNG states that restoration of its ability to move such quantities of natural gas from west to east would enable CNG to respond most efficiently to changing market requirements. No new sales or services are proposed by CNG.

CNG estimates that it would cost approximately $23,290,000 to construct Line No. TL-469, exclusive of Commission filing fees. CNG states that the cost would be financed from funds on hand or to be obtained from CNG's parent corporation, Consolidated Natural Gas Company. CNG proposes to construct Line No. TL-469 during the summer of 1988 and estimates that the project would take 3½ months to complete.

Comment date: April 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88-308-000]

Take notice that on March 23, 1988, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P. O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-308-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) and the National Gas Policy Act (NGPA) (18 CFR 284.223) for authorization to provide a transportation service for Catamount Natural Gas, Inc., a marketer, under the certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated February 24, 1988, it proposes to transport natural gas for Catamount Natural Gas, Inc. from points of receipt located in the states of Louisiana, Texas, Mississippi, Alabama, New York, Pennsylvania, Ohio, Kentucky, and offshore Louisiana and offshore Texas. Applicant states that the delivery points are located in the states of Massachusetts, New York, New Jersey, Alabama, Rhode Island, New Hampshire, Pennsylvania, Connecticut, Tennessee, Mississippi, West Virginia, Kentucky, and Louisiana. The delivery points are interconnections with downstream transporters, it is stated.

Applicant further states that the peak day quantities would be 102,600 dekathems, the average daily quantities would be 3,440 dekatherms, and that the annual quantities would be 1,255,600 dekatherms. Applicant asserts that service under § 284.223(a) commenced March 2, 1988, as reported in Docket No. ST88-2863 (filed March 18, 1988).

Comment date: May 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Union Gas System, Inc.

[Docket No. CP88-300-000]

Take notice that on March 15, 1988, Union Gas System, Inc. (Union Gas), P.O. Box 347, Independence, Kansas 67301-0347, filed in Docket No. CP88-300-000 an application pursuant to § 152.1 of the Regulations under the Natural Gas Act (18 CFR 152.1) for an exemption from the provisions of the Natural Gas Act and the rules and regulations of the Commission issued pursuant thereto, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Union Gas states that it is a local gas distribution company operating within the State of Kansas. Union Gas further states that all of its facilites are located within the State of Kansas, all of the natural gas transported or distributed through those facilities is received by Union Gas from its suppliers at delivery points within the State of Kansas, and all of such natural gas is delivered by Union Gas to residential, commercial and industrial customers for ultimate consumption within the State of Kansas.

Union Gas states that it makes no sales of natural gas at wholesale and none of the rates of Union Gas is, or has ever been, subject to the jurisdiction of the Commission. Union Gas further states that the State Corporation Commission of the State of Kansas has regulatory jurisdiction over the rates, service and facilities of Union Gas and is exercising such jurisdiction.

Comment date: April 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-7911 Filed 4-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-328-000 et al.]

Transcontinental Gas Pipe Line Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipeline Corporation

[Docket No. CP88-328-000]

April 4, 1988.

Take notice that on April 1, 1988, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP88-328-000 an application pursuant to section 7 of the Natural Gas Act for a blanket certificate of public convenience and necessity to transport natural gas under Section 284.221 of the Commission's regulations, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that self-implementing transportation would be provided in accordance with Rate Schedule IT for interruptible transportation and Rate Schedule FT for firm transportation. Applicant states that its Rate Schedules IT and FT were accepted by Commission order issued December 31, 1987, in Docket Nos. RP88-5-004 and RP88-37-001.

Applicant states that issuance of a blanket certificate authorizing it to transport natural gas on behalf of others is required by the public convenience and necessity, that it is willing and able to perform the acts proposed in the application, and that the requested authorization should be granted.

Comment date: April 18, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP88-306-000]

April 5, 1988.

Take notice that on March 21, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, pursuant to section 7(b) and 7(c) of the Natural Gas Act, as amended, filed in Docket No. CP88-306-000 an application requesting a certificate of public convenience and necessity to sell natural gas to Louisiana Gas Service Company (LGS) under new service agreements. In order to implement the new service agreements, United requests an order permitting and approving abandonment of its current sales to LGS under service agreements which expired on January 1, 1988.

Specifically, United has three service agreements with LGS which have expired. LGS has requested certain reductions relating to their purchase of natural gas from United and have entered into new service agreements with United to incorporate those changes, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: April 26, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP88-301-000]

April 5, 1988.

Take notice that on March 18, 1988, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP88-301-000 an application pursuant to section 7(b) of the Natural Gas Act requesting the Commission to issue an order authorizing the abandonment of a 285-horsepower field compressor and appurtenant facilities (Gohlke Unit) located in the Gohlke Field, DeWitt County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that the Gohlke Unit was originally installed as a 75-horsepower field compressor unit pursuant to a certificate of public convenience and necessity granted to Wilcox Trend Gathering System, Inc. (Wilcox Trend)[1] by FPC order issued April 23, 1956, in Docket No. G-8584 (15 FPC 1316) and that the engine was subsequently changed to a 285-horsepower unit under Wilcox Trend's budget-type certificate issued August 2, 1957, in Docket No. G-12140 (18 FPC 102).

Texas Eastern further states that the Gohlke Unit was originally installed to boost the pressure of gas produced from wells in the Gohlke Field to pressures sufficient to enter Texas Eastern's transmission line in DeWitt County, Texas. Subsequently, production from the Gohlke Field declined due to gradual depletion of reserves and reduction of producing wells to the point where continuation of comrpession was no longer feasible from either an economic or operational standpoint. Accordingly Texas Eastern discontinued operation of the Gohlke Unit.

It is stated that only one of the gas wells in the Gohlke Field is currently producing. It is indicated that the operator of the field has provided a field compressor for this well, which increases the pressure sufficiently for the gas to enter Texas Eastern's transmission system.

Texas Eastern states that service to Texas Eastern's customers will not be affected as a result of abandonment of the Gohlke Unit. Texas Eastern's other gas supply sources will continue to be used for such service. In addition, abandonment of the Gohlke Unit will eliminate the ongoing expense of maintenance and surveillance of the Unit. Further, to place the Gohlke Unit in good operating condition would require a major overhaul, it is stated.

Texas Eastern asserts that the available supply of gas for compression by the Gohlke Unit is depleted to the extent that continuation of the service provided by the unit is unwarranted.

Comment date: April 26, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88-293-000]

April 5, 1988.

Take notice that on March 14, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-293-000, pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205) and (157.212) for authorization to establish a new delivery point to its existing GS-1 firm sales customer, the city of Pontotoc, Mississippi (Pontotoc) under the blanket certificate issued in Docket No. CP82-413-000, on September 1, 1982, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to Pontotoc's request, it has agreed to establish a new GS-1 sales delivery point to Pontotoc in Tennessee's Rate Zone 1 to be known as the Pontotoc No. 2 Sales Meter Station located in Pontotoc County, Mississippi. Tennessee also states that the new delivery point is necessary to serve the growing requirements of the Southwest portion of its existing service area. The total estimated cost of the proposed new delivery point is $92,000.

Tennessee indicates that it proposed to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Pontotoc. Tennessee asserts that the establishment of the proposed new delivery point is not prohibited by its currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of its other customers.

Comment date: May 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Pacific Gas Transmission Company

[Docket No. CP88-295-000]

April 5, 1988.

Take notice that on March 15, 1988, as supplemented March 21, 1988, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP88-295-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), to add a new delivery point and to reassign a portion of the volumes of gas authorized for delivery at an existing sales tap for delivery at such new tap, under PGT's blanket certificate issued in Docket No. CP82-530-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

PGT states that PGT currently delivers up to 151,731 Mcf per day of natural gas to Northwest Pipeline Company (Northwest) at various points in Idaho, Washington and Oregon. PGT states that it would construct and operate a new delivery point to Northwest near Athol, Idaho and would

[1] Wilcox Trend, formerly a wholly owned subsidiary of Texas Eastern was merged into Texas Eastern Transmission Corporation pursuant to FPC order issued July 9, 1958, in Docket No. G-14870 (20 FPC 21).

reassign to such tap 300 Mcf per day of the 8,490 Mcf per day of natural gas presently authorized for delivery to Northwest at an existing sales tap located at a point near Mica, Washington. PTG states that it would construct the new sales tap and reassign a portion of the volumes from the existing delivery point to enable Northwest to provide service to the Washington Water Power Company, a local distribution company, which in turn will provide service to the town of Athol, Idaho. PGT states that there will be no increase in the total quantity of gas which PGT is authorized to transport for Northwest.

Comment date: May 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Nothern Natural Gas Company Division of Enron Corporation

[Docket No. CP88-305-000]

April 5, 1988.

Take notice that on March 18, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-305-000, a request for authorization pursuant to §§ 157.205 and 157.216(b) of the Regulations under the Natural Gas Act, and Northern's blanket certificate issued in Docket No. CP82-401-000, for permission and approval to abandon in place approximately 1,840 feet and remove 250 feet of the Yankton, South Dakota, 6-inch Branchline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the Yankton 6-inch Branchline was placed in service in 1954, and due to erosion is partially exposed and suspended over the James River. It is further stated that erosion would continue to deteriorate the banks of the James River and further expose the Yankton 6-inch Branchline, adding to an already unsafe situation. Northern asserts that the Yankton 8-inch Branchline can more adequately serve the current and future needs of the Yankton, South Dakota town border station (TBS) No. 1 which is utilized as a delivery point to Iowa Public Service Company.

Northern states that even though the overall volume capacity of the Yankton TBS would be reduced to 13,175 Mcf/d, the proposed abandonment would not impair the operational continuity and integrity of Northern's transmission system. In addition, projections indicate that the required capacity of the TBS is not expected to exceed 9,877 Mcf/d. It is asserted that the abandonment of said Branchline would not result in abandonment of service to any of Northern's existing customers.

Comment date: May 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP88-303-000]

April 5, 1988.

Take notice that on March 18, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88-303-000 its request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add an additional sales delivery point and reallocate natural gas service for The Washington Water Power Company (Water Power), an existing customer of Northwest's, under its blanket certificate issued pursuant to secton 7 of the Natural Gas Act in Docket No. CP82-433-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that Water Power has requested an additional sales delivery point, the Athol Meter Station, to be located in Section 16, Township 53 North, Range 3 West, Kootenai County, Idaho. Water Power has informed Northwest that the additional delivery point is needed to provide natural gas service to the town of Athol, Idaho, and for the development at the nearby Henley Aerodome.

It is stated that since the community of Athol, Idaho, is in the vicinity of Pacific Gas Transmission Company's (PGT) pipeline, PGT would construct and operate the Athol Meter Station and provide transportation of Northwest's system supply to that point. PGT has agreed to build the Athol Meter Station and Northwest has agreed to reimburse PGT for its actual costs of doing so. Likewise, Water Power has agreed to reimburse Northwest for all out-of-pocket costs incurred in construction of the Athol Station. The total cost of the meter station is estimated to be $165,500. It is stated that the Commission authorized the subject transportation service on August 5, 1960, at Docket No. G-17350 (24 FPC 134). PGT filed a request under §§ 157.205 and 157.212 of the Commission's Regulations on March 15, 1988, at Docket No. CP88-295-000 for authorization to construct and operate the Athol Meter Station and to reallocate transportation volumes to the Athol delivery point.

Northwest proposed to sell up to approximately 296.373 Mcf of natural gas per day under Rate Schedule ODL-1 to Water Power at the Athol Meter Station by utilizing existing quantities of natural gas heretofore authorized for sale and delivery under Rate Schedule ODL-1 to Water Power at the Mica Meter Station in Ada County, Idaho. No increase in the total daily contract quantity of natural gas which Northwest is authorized to sell and delivery to Water Power is proposed, nor would any such increase result from the grant of the authorization sought herein. Northwest avers that the proposed sales would be made by utilizing its currently existing system capacity and that Northwest has sufficient capacity to provide for the proposed deliveries without detriment or disadvantage to any of Northwest's existing customers.

Comment date: May 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP88-312-000]

April 5, 1988.

Take notice that on March 24, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP88-312-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity and permission and approval to abandon service authorized under such certificate so that Natural may make and discontinue interruptible sales for resale and direct sale deliveries in interstate commerce of natural gas supplies, which are surplus to the current and anticipated needs of Natural's existing jurisdictional and direct sale customers, to existing DMQ-1 and G-1 customers and new customers including interstate, intrastate and Hinshaw pipelines and local distribution companies under proposed Rate Schedule IS-1, which incorporates, *inter alia*, the ability for Natural to discount its sales rate where market conditions require a reduced rate for Natural to be competitive, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it is experiencing a gas supply/demand imbalance due to the current structural changes occurring in the natural gas industry. Changes in Commission policy are said to have encouraged the development of a spot market for gas and Natural's existing customers are said to have been

foregoing Natural's supplies to achieve short-term cost reductions in the spot market. As a result, Natural alleges, its annual supply deliverability far exceeds current average purchase levels by traditional customers. Average daily sales by Natural are said to have slipped from the historical levels prevalent for many years in excess of 2.5 Bcf per day to levels of about 0.5 Bcf per day during 1987. In addition, Natural states that it has experienced significant volatility in its sales market over the past 24 months and expects this volatility to continue, causing further sales reductions with corresponding increases in surplus supplies. Some of Natural's traditional customers are purchasing no gas from Natural on many days.

Natural further states that to help alleviate the drastic swings in sales described above, Natural is requesting blanket authorization to make interruptible sales for resale and direct sale deliveries to Natural's existing customers or to new customers, including interstate, intrastate and Hinshaw pipelines and local distribution companies. These sales would be made from deliverability which is in excess of that required to meet the current and projected needs of Natural's traditional customers. All of these proposed sales would be on an interruptible basis, subject to available supply and pipeline capacity. Natural each month would designate various points where Natural's excess system supply gas would be made available for sale. Natural would, based upon market conditions, determine the price from time to time, within a minimum and maximum range, at which sales will be made at each of the specified delivery points in a non-discriminatory basis.

Natural is proposing to make these sales pursuant to a new Rate Schedule IS–1. Natural would charge a negotiated rate for sales within a minimum and maximum range. Natural proposes to discount its sales rate to any level within this range if necessary to allow Natural to compete effectively. The minimum rate would be Natural's current weighted average commodity cost of gas plus the variable costs incurred to provide the service. The maximum rate would be Natural's 100% load factor DMQ–1 sales rate. The annual charges adjustment and Gas Research Institute surcharge if applicable, would be added to the rate Natural charges.

Comment date: April 26, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7912 Filed 4–11–88 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–95–000]

Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

April 5, 1988.

Take notice that Canyon Creek Compression Company (Canyon) on March 31, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1 to become effective May 1, 1988. Canyon's filing states that it will result in a rate decrease and that the filed cost of service is approximately $220,000, or 3%, less than the cost of service supporting Canyon's currently effective rates. The filed rates were developed utilizing a base period of the twelve months ended November 30, 1987, as adjusted for known and measurable changes through the end of the test period, August 31, 1988.

In addition to the proposed rate decrease, Canyon also proposed Original Volume 1A which sets in place the General Terms and Conditions under which Canyon could perform firm and interruptible transportation and compression service under section 311 of the Natural Gas Policy Act. Rate Schedule FCS (Firm) and Rate Schedule ICS (Interruptible) were also filed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before April 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix A—Proposed Tariff Sheets

FERC Gas Volume No. 1

Sixth Revised Sheet No. 4
First Revised Sheet No. 7

First Revised Sheet No. 8
First Revised Sheet No. 9
First Revised Sheet Nos. 101–127

FERC Gas Volume No. 1A

Original Sheet Nos. 1–3
Original Sheet No. 4
Original Sheet Nos. 5–21
Original Sheet Nos. 31–44
Original Sheet Nos. 101–110
Original Sheet Nos. 111–120

[FR Doc. 88–7916 Filed 4–11–88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA88–2–46–001]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

April 5, 1988.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 31, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective May 1, 1988.

Second Revised Sheet No. 40
Second Revised Sheet No. 41

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in section 18, General Terms and Conditions of its FERC Gas Tariff.

Kentucky West states the current purchase gas adjustment is a decrease of 2.71¢ per dekatherm (dth). The deferred gas cost adjustment is an increase of 2.71¢ per dth. These changes result in a total net jurisdiction purchase gas cost charge of 193.77¢ per dth, to become effective May 1, 1988.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket No. RP86–52.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7917 Filed 4–11–88; 8:45 pm]
BILLING CODE 6717-01-M

[Docket No. TA88–2–25–002]

Mississippi River Transmission Corp.; Rate Change Filing

April 5, 1988.

Take notice that on March 30, 1988, Mississippi River Transmission Corporation ("MRT"), tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Tariff Sheet and Proposed Effective Date

Substitute Twenty-Second Revised Sheet No. 4, March 1, 1988
Eighth Revised Sheet No. 4A, March 1, 1988
First Revised Sheet No. 61A, March 1, 1988
Original Sheet No. 61B, March 1, 1988
Original Sheet No. 61C, March 1, 1988

MRT states that the purpose of the filing is to comply with conditions set forth in the Commission's February 29, 1988 order which required, among other things, that MRT file revised tariff sheets reflecting reduced purchased gas costs, and a revised allocation of take-or-pay charges incurred from United Gas Pipe Line Company based on the cumulative purchase deficiency method as set forth in Order No. 500.

MRT claims that the combined impact of the purchased gas and take-or-pay adjustments contained therein on MRT's jurisdictional customers is an annual decrease of $7.0 million in costs from that contained in MRT's January 29, 1988 filing in this docket. MRT states that Rate Schedule CD–1 reflects decreases of $1.583 per Mcf and $.0133 per Mcf in Demand Charge D–1 and D–2, respectively. The single part rate under Rate Schedule SGS–1 reflects a decrease of $.1664 per Mcf. The annual fixed take-or-pay charges that MRT anticipates to incur from United have declined from $15.4 million to $12.3 million.

MRT states that because the cumulative deficiency method causes a severe misallocation of costs among its customers, the instant filing includes alternate tariff sheets to recover the take-or-pay charges incurred from United in a manner roughly equivalent to the D–1 methodology proposed in its original January 29, 1988 filing in this docket. MRT requests that such sheets be accepted and placed into effect during the pendency of its Request for Rehearing and Motion for Clarification filed in the instant docket on March 30, 1988.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88–7918 Filed 4–11–88; 8:45 pm]
BILLING CODE 6717-01-M

[Docket No. RP88–94–000]

Natural Gas Pipeline Company of America; Tariff Filing

April 6, 1988.

Take notice that on March 31, 1988, Natural Gas Pipeline Company of America (Natural) submitted revised tariff sheets to establish initial rates and institute billing procedures for recovery of the costs of (i) extinguishing or reducing take-or-pay claims; (ii) terminating gas purchase contracts; and (iii) revising, or resolving disputes relating to, the pricing, take, or other economic terms of gas purchase agreements.

Natural proposes that all such costs prudently incurred be recovered through a two-part rate mechanism. Half of the costs would be recovered through a demand surcharge allocated among customers based on a factor giving equal weight to the daily contract quantities and monthly entitlements of Natural's sales customers in effect on the initial effective date. The remaining half of the costs would be recovered through volumetric charges based on total sales

and transportation throughput. The volumetric charge would be collected through adjustments to unit sales and transportation rates.

Natural states that the initial charges would become effective May 1, 1988, subject to refund, and reflect costs of approximately $470 million actually paid or expected to be paid as of that date. The charges would be recalculated on a semi-annual basis, effective each subsequent December 1 and June 1 to coincide with Natural's periodic PGA filings. These semi-annual recalculations would reflect collections, additional payments under qualifying settlement agreements, and carrying charges on the uncollected balance of the costs. Special accounting procedures would be set up for recording transition costs and collections. The program will terminate on November 30, 1992, with a reconciliation to be made 90 days later. The reconciliation may result in refunds or additional billings as to costs recoverable on a demand basis.

Natural also submitted alternate sheets on a contingent basis in the event its proposal is rejected. Natural states that the alternate sheets provided for monthly billing on a demand basis of a calculated dollar amount for each sales customer of Natural to provide for the recovery, commencing May 1, 1988, of one-half these costs. Under this alternate approach, the remaining 50 percent of such costs would be absorbed by Natural. These alternate tariff sheets conform to the billing procedures approved by the Commission in Order No. 500 and 18 CFR 2.104. Consistent with Order No. 500, the costs to be recovered would be allocated based on purchase deficiencies from a base period of 1983–85.

Natural requested an effective date of May 1, 1988, for the proposed tariff changes.

Natural states that a copy of its filing has been mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before April 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7914 Filed 4–11–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–47–002]

Northwest Pipeline Corp.; Filing of Restatement of Base Tariff Rates

April 5, 1988.

Take notice that on March 31, 1988, Northwest Pipeline Corporation (Northwest) tendered for filing a restatement of Base Tariff Rates on Third Amended Thirty-Ninth Revised Sheet No. 10 of First Revised Volume No. 1 of its FERC Gas Tariff to be effective May 1, 1988.

Northwest states that this filing reflects no changes in the level of its jurisdictional rates but is being made for the sole purpose of restating and justfying such rates, as required by the 36-month review procedures within the Commission's Regulations governing PGA provisions. Accordingly, for this purpose, the filing contains a supporting cost study pursuant to § 154.303(e) of the Commission's Regulations.

Northwest states its agreement that this filing will automatically be subject to refund as of May 1, 1988, as required by § 154.303(e)(i) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7919 Filed 4–11–88 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–93–000]

Questar Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 5, 1988.

Take notice that on March 31, 1988, Questar Pipeline Company (Questar) (formerly Mountain Fuel Resources, Inc.), tendered for filing and acceptance proposed changes in the following tariff sheets in its FERC Gas Tariff and has requested that they become effective May 1, 1988:

First Revised Volume No. 1:
- Thirteenth Revised Sheet No. 12
- Original Sheet No. 12–A
- Second Revised Sheet No. 15
- Second Revised Sheet No. 15–A
- Second Revised Sheet No. 15–B
- First Revised Sheet No. 16
- First Revised Sheet No. 17
- Second Revised Sheet No. 39
- Original Sheet No. 39–A

Original Volume No. 1–A:
- Fifth Revised Sheet No. 5
- Original Sheet No. 5–A

Original Volume No. 3:
- Eighth Revised Sheet No. 8
- Original Sheet No. 8–A
- Fourth Revised Sheet No. 9
- Fifth Revised Sheet No. 10
- Original Sheet No. 10–A
- Original Sheet No. 10–B

Questar states that the proposed tariff changes would increase its annual revenues from jurisdictional sales-for-resale and transportation services by approximately $21.5 million based on the 12-month base period ended December 31, 1987, adjusted for known and measurable changes for the test period ending September 30, 1988. Questar further states that the total annual cost of service established in Docket No. RP86–7–000 was $89.6 million, including $26.2 million related to non-jurisdictional gathering services and $63.4 million for jurisdictional sales and transportation services. According to Questar, the jurisdictional Transmission Division cost of service in its rate increase application is $82.8 million.

Questar states that the tendered tariff sheets also: (1) Modify its standby charge under Rate Schedule CD–1 to First Revised Volume No. 1 of its tariff; and (2) include provisions that improve the administration of transportation arrangements under Original Volume No. 3 of its tariff with respect to nomination procedures, maximum daily quantity levels and application of authorized overrun charges.

Questar states that the filing reflects only assets, revenues and costs associated with its Transmission Division. Questar indicates that it has

excluded from the determination of rates the assets, costs and revenues related to: (1) Questar's Storage Division, which owns and operates the Clay Basin Storage Project. The Clay Basin project was separately certificated by the Commission in Docket No. CP76–285, Mountain Fuel Resources, Inc., 16 FERC § 61,040 (1981), and provides service to Northwest Pipeline Corporation and Questar's Transmission Division under a project-specific, cost-of-service tariff. (2) Questar's Gathering Division, which it says has been formed to own and operate those Questar facilities that carry out non-jurisdictional gathering operations under section 1(b) of the Natural Gas Act.

Questar further states that the key elements of the filing include changes in transportation and sales volumes; a rate of return on equity of 15.5%; a consolidated restatement of certain depreciation rates; and a modification to the allocation of storage costs between the sales and transportation classes of service.

Questar states that its filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7920 Filed 4–11–88 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–4–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

April 5, 1988.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 31, 1988, certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1988.

Transco states the proposed tariff sheets reflect an overall rate increase of 5.7 cents per dt in the commodity charge under the CD, G, OG, PS, E, ACQ and S–2 Rate Schedules.

Transco states the increase of 5.7 cents in the commodity charge of the aforementioned rate schedules is comprised of a 0.1 cent per dt decrease related to the current gas cost portion of commodity rates and a 5.8 cents per dt increase in the Deferred Adjustment. Transco states that the instant PGA filing reflects a projected average cost of purchased gas of $2.3946 per dt based on projected system gas purchases.

Transco has included in the instant filing the continuation of the 5.8 cents per dt special transition gas cost surcharge. Further, Transco states that the carrying charge amounts included in the filing which are attributable to transition gas costs have been calculated in accordance with the methodology approved by the Commission in its order issued April 30, 1987, in Docket No. TA87–4–29.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested state commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix A—Transcontinental Gas Pipe Line Corporation

Second Revised Volume No. 1

Revised Tariff Sheets

Fifty-Second Revised Sheet No. 12
Forty-Eighth Revised Sheet No. 15
Eighth Revised Sheet No. 15-A

Alternate Tariff Sheets

Alternate Fifty-First Revised Sheet No. 12
Alternate Forty-Seventh Revised Sheet No. 15
Alternate Seventh Revised Sheet No. 15-A

[FR Doc. 88–7921 Filed 4–11–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–2–50–000

Valley Gas Transmission, Inc.; Change In Rates Pursuant to Purchased Gas Adjustment

April 5, 1988.

Take notice that on March 31, 1988, Valley Gas Transmission, Inc. ("Valley") tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff:

Thirty-seventh Revised Sheet No. 2A to Original Volume No. 1
Tenth Revised Sheet No. 10 to Original Volume No. 2.

Valley states that these tariff sheets, which are proposed to become effective on May 1, 1988 are being filed pursuant to the purchased gas cost adjustment provisions of its tariff. Valley further states that these proposed changes reflect adjustments to its current surcharge adjustment and current gas cost adjustment, and that its filing has been served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7923 Filed 4–11–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88-3-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 5, 1988.

Take notice that Williams Natural Gas Company (WNG) on March 31, 1988, tendered for filing First Revised Fourth Revised Sheet No. 6 and Second Revised Third Revised Sheet No. 7 to its FERC Gas Tariff, Original Volume No. 1. WNG states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to decrease its rates effective May 1, 1988, to reflect:

(1) A $.2790 per Mcf decrease in the Cumulative Adjustment as measured against WNG's last regular PGA filing in Docket No. TA88-1-43-000 which became effective November 1, 1987 and a $.0717 per Mcf increase as measured against WNG's flex PGA" filing in Docket No. TF88-1-43-000 which became effective on February 1, 1988, due to an increase in WNG's projected gas purchase costs.

(2) A $1.054 per Mcf decrease in the Surcharge Adjustment (to a negative $.1359 per Mcf from a negative $.0305 per Mcf) to amortize the Deferred Purchased Gas Cost Subaccount Balance.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-7922 FIled 4-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing

April 6, 1988.

Take notice that on March 31, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Ninth Revised Sheet No. 10
Fourth Revised Sheet No. 11
Second Revised Sheet No. 91
First Revised Sheet Nos. 92-96
Second Revised Sheet No. 97
First Revised Sheet Nos.98-100
First Revised Sheet No. 104
Second Revised Sheet No. 113

Original Volume No. 1-A

Sixth Revised Sheet No. 11
Ninth Revised Sheet No. 12
Fifth Revised Sheet No. 275
Fourth Revised Sheet Nos. 275A-275B
Fifth Revised Sheet No. 276
Second Revised Sheet No. 276A

Original Volume No. 2

Eleventh Revised Sheet No. 10

Williston Basin also submitted for filing as part of its FERC Gas Tariff the following alternate tariff sheet:

First revised Volume No.1

Alternate Ninth Revised Sheet No. 10

Williston Basin's filing includes a number of changes including revisions to reflect changes in lost or unaccounted for gas, inert gas, a Rate Schedule X-1 commodity rate decrease, incremental pricing, and purchased gas costs. Williston Basin also states that its filing, *inter alia,* includes information in compliance with Commission orders issued April 30, 1985 and June 1, 1987. Among other things, Willison Basin requests that the Commission grant any waivers necessary to accept its Alternate Ninth Revised Sheet No. 10 in lieu of Ninth Revised Sheet No. 10 to avoid potential significant instability in its rates.

The Company requests an effective date for the tariff sheets of May 1, 1988.

Williston Basin states that Ninth Revised Sheet No. 10 (First Revised Volume No. 1) and Eleventh Revised Sheet No. 10 (Original Volume No. 2) and the schedules in support thereof were computed in accordance with Williston Basin's PGA clause and the Commission's Rules and Regulations. The changes herein reflect a cumulative gas cost adjustment for Rate Schedules G-1, SGS-1, E-1 and X-1 of a negative 33.529 cents per dkt. The surcharge adjustment for Rate Schedules G-1 and SGS-1 is a negative 87.193 cents per dkt. These changes produce a net decrease in rates for Rate Schedules G-1 and SGS-1 of 89.248 cents per dkt and a net decrease of 18.508 cents per dkt for Rate Schedules E-1 and X-1 relative to Williston Basin's February 29, 1988 filing in Docket No. RP87-115-003.

Williston Basin states that Alternate Ninth Revised Sheet No. 10 reflects a negative 2.634 cents per dkt surcharge adjustment applicable to Rate Schedules G-1 and SGS-1. This alternate surcharge adjustment, coupled with the proposed cumulative gas cost adjustment produce a net decrease in rates for Rate Schedules G-1 and SGS-1 of 23.689 cents per dkt relative to Williston Basin's February 29, 1988 filing in Docket No. RP87-115-003.

Williston Basin states that the projected price of deregulated gas supplies reflect that price last agreed-to by the various suppliers of natural gas.

Williston Basin has also submitted Sixth Revised Sheet No. 11 and Ninth Revised Sheet No. 12 (Original Volume No. 1-A) and Eleventh Revised Sheet No. 10 (Original Volume No. 2) respectively, to reflect a revised Company Use, Lost and Unaccounted For Gas percentage applicable to certain transportation rate schedules.

Pursuant to § 154.41(b) of the Commission's Regulations, Williston Basin also submits Fifth Revised Sheet No. 275, Fourth Revised Sheet Nos. 275A-275B, Fifth Revised Sheet No. 276 and Second Revised Sheet No. 276A (Original Volume No. 1-A). These sheets have been revised to update the "Index of Purchasers".

Williston Basin has also submitted Fourth Revised Sheet No. 11, Second Revised Sheet No. 91, and First Revised Sheet Nos. 92-96, Second Revised Sheet No. 97 and First Revised Sheet Nos. 98-100, (First Revised Volume No. 1). These sheets have been revised to implement a twelve-month amortization of the balance in the current deferred account. Williston Basin also filed revised tariff sheets to reflect the repeal of the incremental pricing provisions of the Natural Gas Policy Act pursuant to the Commission's order dated July 27, 1987 in Docket No. RM87-28-000, *et al.,* Order No. 478.

Additionally Williston Basin has submitted First Revised Sheet No. 104 (First Revised Volume No. 1) deleting the Subsection 22.1.3.14 reference to sales service under Rate Schedules X–5 and X–6, pursuant to the Commission authorized abandonment of Williston Basin's sales and purchase obligations thereunder in Docket No. CP86–430–000.

Williston Basin has also submitted Second Revised Sheet No. 113 (First Revised Volume No. 1) to correct an oversight in Subsection 27.5.3, i.e., to recite the GRI funding unit applicability to Sheet No. 11B (Original Volume No. 2).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.24, 385.211). All such motions or protests should be filed on or before April 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intevene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D Cashell,

Acting Secretary.

[FR Doc. 88–7915 Filed 4–11–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G–2923–000 et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificates, Abandonment of Service and To Amend Certificates [1]

April 6, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervenes or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G–2923–000, D, Mar. 28, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Panhandle Producing Company, Panhandle Field, Hutchinson County, Texas.	(1)
G–11479–001, D, Mar. 25, 1988.	Amoco Production Company, P.O. Box 3092, Houston, TX 77253.	El Paso Natural Gas Company, Langlie-Mattix Field, Lea County, New Mexico.	(2)
CI79–364–001, D, Mar. 22, 1988.	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	K N Energy, Inc., Lorena and Lorena S.E. Fields, Beaver County, Oklahoma.	(3)
CI81–438–002, D, Mar. 28, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Transwestern Pipeline Company, Kermit and S. Kermit Field, Winkler County, Texas.	(4)
CI84–498–004, D, Mar. 28, 1988.	Eastern Kentucky Production Company, 1989 East Stone Drive, Kingsport, TN 37660.	Kentucky West Virginia Gas Company, Various Counties, Kentucky.	(5)
CI88–362–000 (CI71–444), B, Mar. 10, 1988.	Conoco Inc., P.O. Box 2917, Houston, TX 77252	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Grand Isle Area, Offshore Louisiana.	(7)
CI88–380–000 (G–10672–000), D, Mar. 24, 1988.	Sun Exploration & Production Company, P.O. Box 2880, Dallas, TX 75221–2880.	Colorado Interstate Gas Co., Hugoton Field, Kearney County, Kansas.	(8)
CI88–383–000, F, Mar. 25, 1988.	Sun Exploration & Production Company	Natural Gas Pipeline Company of America, West Indian Basin Field, Eddy County, New Mexico.	(9)
CI88–386–000 (G–3009), D, Mar. 28, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	United Gas Pipe Line Company, Dulac Field, Terrebonne Parish, Louisiana.	(11)
CI88–387–000 (G–14832), D, Mar. 28, 1988.	.....do	Abbeville Field, Vermillion Parish, Louisiana	(12)

Footnotes:

[1] Effective 3–1–86, ARCO assigned certain interest to Lyco Panhandle 1985 Limited Partnership Lyco-MM Panhandle Limited Partnership and Lyco/MM 1986 Limited Partnership.

[2] Effective 12–1–86, Amoco sold all of its interest in certain acreage to Mobil Producing Texas & New Mexico Inc.

[3] The three wells dedicated to FERC Gas Rate Schedule No. 7, the Haller #1, the Dubois Trust #1, and the Strickland #1, have been plugged and abandoned.

[4] Effective 1–1–87, ARCO assigned its interest in certain acreage to Hondo Oil & Gas Comapny.

[5] Wells have been plugged and abandoned due to either economic depletion, hydrogen sulfide, or coal mining operations.

[6] Not used.

[7] Lease expired.

[8] Effective 6–1–86, Sun assigned the last remaining property under FERC Gas Rate Schedule No. 73, to Kenworthy Operating Company.

[9] Effective 1–1–88, Sun acquired from Doil Oil and Gas Corporation and Monarch Petroleum Properties, Inc. additional interests in the amount of .08308490% in the West Indian Basin #1 Unit, and .04154240% in the West Indian Basin #2 Unit in Eddy County, New Mexico.

[10] Not used.

[11] Effective 6–1–86, ARCO assigned all its interest subject to FERC Gas Rate Schedule No. 531 to Pennzoil Producing Company.

[12] Effective 5–1–86, ARCO assigned its interest in all acreage under contract dated 3–14–58 comprising its FERC Gas Rate Schedule No. 535 to Great Southern Oil and Gas Company, Inc.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88–7986 Filed 4–11–88; 8:45 am]

BILLING CODE 6717-01-M

OFFICE OF HEARINGS AND APPEALS

Issuance of Decisions and Orders for Week of February 22 Through 26, 1988

During the week of February 22 through February 26, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Clifford Jensen, et al., 2/26/88, RF272–2550, et al.

The DOE issued a Decision and Order granting 50 applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant purchased refined petroleum products during the period August 19, 1973, through January 27, 1981, and used the products for various agricultural activities. Each applicant calculated the volume of its fuel purchases by using the USDA estimate of the average annual petroleum product consumption per acre among the nation's farmers. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $1,608.

Coline Gasoline Corp./New York Pennozoil Co./New York Perry Gas Processors, Inc./New York, 2/23/88, RM2–92, RM10–93, RQ10–432, and RM183–94

The DOE issued a Decision and Order approving the second-stage refund application and Motions for Modification filed by the State of New York in the Coline Gasoline, Pennzoil, and Perry Gas refund proceedings. New York requested permission to use its previously-approved Coline, Pennzoil, and Perry Gas funds for the Transportation Systems Management (TSM) program. TSM provides information and technical assistance services to employers and commuters on the alternatives to single-occupant vehicle commuting. The DOE found that the TSM program will encourage ridesharing and will therefore help injured consumers reduce their energy use and costs. Because the litigation involving the Pennzoil funds has been resolved, the DOE can now disburse the Pennzoil funds for those programs it previously approved. New York will receive a total of $9,002 from the Pennzoil escrow fund, as well as permission to modify its use of the previously-received Coline and Perry Gas funds.

Cranston Oil Service Company, Inc./ Park Ave. Cement Block Co., Inc. et al., 2/24/88, RF276–20 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company, Inc., and its successor-in-interest, Galego Oil Company. The Applications were evaluated in accordance with procedures set forth in *Cranston Oil Service Co.*, 14 DOE ¶ 85,499 (1986). The sum of the refunds approved in this Decision is $869, representing $749 in principal and $120 in interest.

Dorchester Gas Corp./C.W. Oil Company, 2/25/88, RF253–47

This Decision and Order concerns an Application for Refund filed by C.W. Oil Company in the Dorchester Gas Corporation refund proceeding. C.W. Oil claimed that it purchased 368,466 gallons of refined products from Dorchester during the Dorchester consent order period. Since the applicant's claim did not exceed $5,000, the DOE granted it a refund without requiring a showing of injury. The amount of the refund was $3,482 in principal plus accrued interest of $1,244.

Ernest A. Ditch, 2/26/88, RF272–2278

The Department of Energy (DOE) issued a Decision approving an Application for Refund in the Crude Oil Subpart V refund proceedings. The claimant was a farmer who used income tax records to compute the dollar amount of petroleum products he purchased during the August 1973 to January 1981 crude oil price control period. In order to derive the amount of fuel consumed (in gallons), the claimant then divided this amount by an estimated average price per gallon ($0.80/gallon). Because the claimant relied on the end-user presumption, he was not required to demonstrate injury. A total of $15 was approved in this Decision and Order.

Getty Oil Company/D.S. Caldwell Oil Co., Inc., 2/22/88, RF265–535 et al.

The DOE issued a Decision and Order concerning 59 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In 55 of these cases, the applicants elected to limit their claims on the basis of the level-of-distribution presumption of injury methodology and were eligible for a refund below the maximum $50,000 threshold. In the remaining four cases, the applicants elected to limit their claims to $50,000 in accordance with the level-of-distribution presumption of injury for motor gasoline and middle distillates. The sum of refunds approved in this Decision is $865,583, representing $427,752 in principal and $437,831 in accrued interest.

Joseph Seibel et al., 2/23/88, RF272–4622 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $646. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become availablle.

Martin Standard Service, 2/25/88, RF272–897

The DOE issued a Decision and Order denying Martin Standard Service's Application for Refund from crude oil overcharge funds. Martin was gasoline retailer during the period August 19, 1973 through January 27, 1981. Because Martin did not demonstrate that it was injured due to the crude oil overcharges, it was found to be ineligible for a crude oil refund.

Mobile Oil Corporation/Chevron U.S.A., Inc., 2/23/88, RF225–6820

The DOE issued a Decision concerning an Application for Refund from the Mobile Oil Corporation escrow account filed by Chevron U.S.A., Inc. (Chevron). Chevron purchased refined petroleum products from Mobile during the consent order period which made it eligible to receive a refund of more than $5,000. However, the firm elected to limit its refund claim to the small claims threshold of $5,000 rather than submit the cost bank and competitive pricing data needed to receive a larger refund. Accordingly, the DOE granted Chevron a refund of $6,206 ($5,000 principal plus $1,206 interest).

Mobil Oil Corp./Eagle Oil Company, 2/22/88, RF225–10972, RF225–10973, and RF225–10974

The DOE issued a Decision and Order in which it determined that Eagle Oil Company had inadvertently been granted two refunds in the Mobil refund proceeding. Accordingly, the DOE rescinded the refund granted to Eagle in *Mobil Oil Corp./A–Z Service Station, Inc.*, 17 DOE ¶ 85,0085 (1988), and ordered the Controller's Office of the DOE not to disburse Eagle's refund.

Mobil Oil Corp./Edward R. Knoll, 2/23/88, RF225–146

The DOE issued a Decision and Order approving a refund application in the Mobil Oil Corp. special refund proceeding filed by Edward R. Knoll, a retailer of Mobil motor gasoline during the consent order period. Although Mr. Knoll has since sold his retail business, the OHA found no evidence that his right to this refund was among the assets purchased by the new owner in the sale. In accordance with the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Mr. Knoll was granted a refund totalling $225 ($181 in principal plus $44 in accrued interest).

Mobil Oil Corporation/Hansen Oil Co. et al., 2/26/88, RF225–9087 et al.

The DOE issued a Decision granting seven Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $8,744 ($7,059 in principal plus $1,685 in interest).

Mobil Oil Corporation/Prien Mobil Mobil I 10, 2/25/88, RF225–125, RF225–126

The DOE issued a Decision and Order granting Applications for Refund from the Mobil Oil Corporation escrow account filed by two retailers of Mobil motor gasoline. Both applicants 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 $954 ($529 in principal plus $425 in interest).

Mobil Oil Corporation/Ropet, Inc. Waterfront Services Co., 2/23/88, RF225–2882, RF225–2883, RF225–2884, and RF225–4598

The DOE issued a Decision granting Applications for Refund from the Mobil Oil Corporation escrow account to Ropet, Inc. and Waterfront Services Company. Each applicant's claim was limited to the small claims threshold of $5,000 set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The refund amounts approved in this Decision and Order totalled $12,388, representing $10,000 in principal plus $2,388 in interest).

Mobil Oil Corporation William R. Peterson Oil Co., Inc. Koenig Fuel & Supply Co., 2/26/88, RF225–9598, RF225–9665, RF225–9666, RF225–9667

The DOE issued a Decision granting four Applications for Refund from the Mobil Oil Corporation escrow account filed by two firms that resold Mobil refined petroleum products. Each applicant elected to limit its claim to the $5,000 small claims threshold as set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $12,388 (representing $10,000 in principal plus $2,388 in interest).

Mobil Oil Corp./Wisconsin Electric Power Co., Frontier Airlines, Inc., 2/25/88, RF225–387, RF225–4292

The DOE issued a Decision and Order granting four Applications for Refund from the Mobil Oil Corporation consent order fund filed by Wisconsin Electric Power Company, and Frontier Airlines, Inc., both end-users of Mobil refined petroleum products. Both applicants presented evidence that they purchased refined petroleum products directly from Mobil during the consent order period. According to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), both applicants were found to be eligible for a refund from the Mobil consent order fund based on the volume of their purchase times 100 percent of the volumetric refund amount. The aviation jet fuel volumes claimed by Frontier were adjusted to account for that product's date of decontrol. The refunds approved in the Decision totaled $8,786 ($7,078 principal plus $1,708 interest).

Paul Koch et al., 2/25/88, RF272–4154 et al.

The DOE issued a Decision and Order granting refunds to 28 claimants that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. As an agricultural end-user of petroleum products, each claimant was presumed have been injured as a result of the crude oil overcharges. The total of the refunds granted was $956.

Phillip J. Parrent et al., 2/23/88, RF272–4504 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 46 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its volume claim by either utilizing actual purchase records from the crude oil price control period or by estimating its petroleum consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $1,522.

Sid Richardson Carbon and Gasoline Company/Mellon Enterprises, Inc., 2/22/88, RF26–56

The Department of Energy considered a refund application filed by Mellon Enterprises, Inc., in connection with a consent order fund made available by Sid Richardson Carbon and Gasoline Company. As a spot purchaser of Sid Richardson propane, Mellon was expected to overcome the presumption that it was not injured as a result of its Sid Richardson purchases. In order to make such a demonstration, Mellon submitted information showing that it traded the Sid Richardson propane for gasoline from LaJet, Inc., and that it did not make a profit in its resale of the LaJet gasoline. The DOE found that such a showing did not establish that Mellon experienced any injury as a result of its Sid Richardson purchases, but only that it may have made an unprofitable arrangement with LaJet. Accordingly, the refund application was denied.

Standard Oil Co. (Indiana)/South Dakota, 2/23/88, [RM251–105]

The DOE issued a Decision and Order denying the Motion for Modification and the second-stage refund application filed by the State of South Dakota in the Standard Oil Co. (Indiana) (Amoco II) refund proceeding. South Dakota requested permission to use $105,000 for the "Ethanol Production Incentive Program." The DOE found that the program failed to provide restriction to injured consumers of petroleum products. The Decision noted that the DOE has previously stated that programs which primarily promote commercial enterprises, such as the proposed by South Dakota, do not benefit injured consumers. Accordingly, South Dakota's submission was denied.

Standard Oil Co. (Indiana)/Tennessee Belridge Oil Co./Tennessee Palo Pinto Oil & Gas/Tennessee, 2/24/88, [RM21–75, RMB–76, RM5–77]

The DOE issued a Decision and Order approving the Motions for Modification filed by the State of Tennessee in the Standard Oil Co. (Indiana), Belridge,

and Palo Pinto refund proceedings. Tennessee requested permission to use $177,000 of its previously-approved Standard Oil Co. (Indiana), Belridge, and Palo Pinto funds for the Ridesharing program. The DOE found that the Ridesharing program will encourage commuters to use energy-efficient commuting options, thereby helping injured consumers reduce their energy consumption and costs. Tennessee received permission to use $177,000 for this program.

Suburban Propane Gas Corporation/ Blu-Gas Service, Inc. Ciba-Geigy Corp. Leach Camper Sales, Inc., 2/24/88, [RF229-34, FR299-37, RF299-38]

The DOE issued a Decision granting three Applications for Refund from the Suburban Propane Gas Corporation escrow account filed by retailers and end-users of Suburban propane, butane, and natural gasoline during the period November 1, 1973 through October 31, 1978. Each applicant elected to apply for a refund based upon the presumption set forth in *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987). The DOE granted refund totalling $7,461 ($6,696 principal plus $765 interest).

Suburban Propane Gas Corporation/ Park Avenue Mobil Park et al., 2/25/88, [RF299-68 et al.]

The DOE issued a Decision and Order granting eight refund applications filed by reseller/retailers and end-users of Suburban propane. According to the procedures set forth in *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987), each applicant was found to be eligible for a refund based on the volume of propane it purchased from Suburban. The total amount of refunds approved in the Decision was $2,041, representing $1,832 in principal plus $209 in accrued interest.

Wayment Cattle Company, et al., 2/25/88, FR272-3066 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 35 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities. In addition, some applicants used the products to heat their homes, to operate transportation vehicles, and/or to tend livestock. Each applicant determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $1,360.

Welliver Brothers et al., 2/22/88, RF272-4717 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,174.

Dismissal

The following submissions were dismissed:

Name	Case No.
Dave's Getty	RF262-2
Southern Bell Telephone and Telegraph Company.	RF272-5717

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.

April 6, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-7974 Filed 4-11-88; 8:45am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3363-6]

Office of Research and Development, Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53, has designated another reference method for the measurement of ambient concentrations of carbon monoxide. The new reference method is an automated method (analyzer) which utilizes a measurement principle based on non-dispersive infrared spectrometry. The new designated method is identified as follows:

RFCA-0488-067, "Dasibi Model 3008 Gas Filter Correlation CO Analyzer," operated on the 0-50 ppm range, with a time constant setting of 60 seconds, a particulate filter installed in the analyzer sample inlet line, with or without use of the auto zero or auto zero/span feature, and with or without any of the following options:
Z-0176-S Rack Mounting Brackets
S-0132-A Rack Mounting Slides
N-0056-A RS 232 C Interface

This method is available from Dasibi Environmental Corporation, 515 West Colorado Street, Glendale, California 91204. A notice of receipt of application for this method appeared in Volume 51 of the **Federal Register**, on September 6, 1986, on page 32834.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR Part 58 (Modifications of Methods by Users).

In general, designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method

and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3)The analyzer must function within the limits of the performance specifications given in Table B–1 of Part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and recieved notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the states in establishing and operating their air quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above. Technical questions concerning the method should be directed to the manufacturer.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 88–7938 Filed 4–11–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3363–7]

Senior Executive Service Performance Review Board Membership

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the memberthip of the EPA Performance Review Board.

DATE: April 12, 1988.

FOR FURTHER INFORMATION CONTACT: Doris McCurdy, SES and Executive Resources Staff, Office of Human Resources Management, Office of Administration and Resources Management, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382–3328.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the EPA Performance Review Board are:

J. Daniel Berry (Chair), Associate General Counsel (Grants, Contracts, and General Law), Office of General Counsel

Douglas D. Campt, Director, Office of Pesticide Programs, Office of Pesticides and Toxic Substances

Allyn M. Davis, Director, Hazardous Waste Management Division, Region VI

Timothy Fields, Jr., Director, Emergency Response Division, Office of Solid Waste and Emergency Response

Susan C. Gordon, Assistant Regional Administrator for Policy and Management, Region VII

Edwin L. Johnson, Director, Developing Countries Staff, Office of the Adminstrator

Thomas E. Kelly, Director, Office of Standards and Regulations, Office of Policy, Planning and Evaluation

Donald E. Kirkendall, Deputy Inspector General, Office of Inspector General

Arnold M. Kuzmack, Director, Office of Program Development and Evaluation, Office of Water

Francis T. Mayo, Director, Water Engineering Research Laboratory, Office of Research and Development

Courtney Riordan, Director, Office of Environmental Processes and Effects Research, Office of Research and Development

David P. Ryan, Director, Office of the Comptroller, Office of Administration and Resources Management

Richard E. Sanderson, Director, Office of Federal Activities, Office of External Affairs

Nathaniel Scurry (Ex-Officio), Director, Office of Civil Rights, Office of the Administrator

Glenn L. Unterberger, Associate Enforcement Counsel for Water Enforcement, Office of Enforcement and Compliance Monitoring

Richard D. Wilson, Director, Office of Mobile Sources, Office of Air and Radiation

Kenneth F. Dawsey (Executive Secretary), Deputy Director, Office of Human Resources Management, Office of Administration and Resources Management

Members of the Inspector General Subcommittee to the EPA Performance Review Board are:

Bill D. Colvin, Assistant Inspector General for Investigations, Veterans Administration

Robert A. Hincken, Assistant Inspector General for Investigations, Veterans Administration

Mitchell L. Laine, Assistant Inspector General for Audit, Department of Education

Date: April 4, 1988.

Charles L Grizzle,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 88–7941 Filed 4–11–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP-00258A; FRL-3365-1]

Biotechnology Science Advisory Committee; Partially Closed Meeting of Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of change of meeting.

SUMMARY: The location of the meeting of a subcommittee of the EPA Biotechnology Science Advisory Committee (BSAC) has been moved from Room 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia to the Farragut Room, Plaza Level, Stouffer's Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia. The meeting place is being moved to provide a larger room for the meeting. The meeting was previously announced in the **Federal Register** on March 29, 1988 (53 FR 10150). The subcommittee will review an application submitted pursuant to section 5 of FIFRA by Crop Genetics International for an experimental use permit (EUP) for a genetically engineered microbial pesticide. The meeting will be closed to the public from 9 to 11:00 a.m. and open to the public from 11:00 a.m. to 4 p.m.

DATE: Monday, April 18, 1988.

FOR FURTHER INFORMATION CONTACT:
By mail: Stephen L. Johnson, Acting Executive Secretary, Biotechnology Science Advisory Committee, Office of Pesticide Programs (TS-769C), 401 M Street SW., Washington, D.C. 20460
Office location and telephone number: Room 1121, Crystal Mall, Building No. 2, Arlington, VA (703-557-7695).

Dated: April 5, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-8034 Filed 4-11-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance.

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0125.

Title: Request for Loan Information.

Abstract: FEMA Form 90-68, Request for Loan Information Verification, is used to obtain information required to determine a fair and equitable sales price of mobile home unit to a disaster victim. The ability to borrow money commercially is an important factor in determining the final sales price.

Type of Respondents: Individuals or households, businesses or other for-profit, and small businesses or organizations.

Number of Respondents: 500.

Burden Hours: 83.

Frequency of Recordkeeping or Reporting: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: April 5, 1988.

Alfred E. Warren,

Acting Director, Office of Administrative Support.

[FR Doc. 88-7925 Filed 4-11-88; 8:45 am]

BILLING CODE 6718-21-M

[Docket No.: FEMA-REP-6-TX-2]

The Texas Radiological Emergency Response Plan Site-Specific For The South Texas Project Electric Generating Station; Finding and Determination

ACTION: Certification of FEMA finding and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule, 44 CFR Part 350, the State of Texas formally submitted its plan relating to the South Texas Project Electric Generating Station to the Director of FEMA Region VI on October 8, 1986, for FEMA review and approval. On January 13, 1988, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the South Texas Project Electric Generating Station, an interim finding dated May 29, 1987, an evaluation of the full-participation exercise conducted on April 8, 1987, in accordance with § 350.9 of the FEMA rule, and a public meeting held on April 9, 1987, to discuss the site-specific aspects of the State and local plans around the South Texas Project Electric Generating Station in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarter's staff, I find and determine that the State and local plans and preparedness for the South Texas Project Electric Generating Station are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. However, while there is a public Alert and Notification (A&N) system in place and operational, this approval is conditional on FEMA's verification of the A&N system in accordance with the criteria of NUREG-0654/FEMA REP-1, Rev. 1, Appendix 3, and the "Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants" (FEMA REP-10).

FEMA will continue to review the status of offsite plans and preparedness associated with the South Texas Project Electric Generating Station in accordance with the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-6-TX-2 maintained in the FEMA Region VI Office at 800 North Loop 288, Denton, Texas 76201-3698.

For the Federal Emergency Management Agency.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 88-7926 Filed 4-11-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this

section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011062–001

Title: Maryland Port Administration Lease Agreement.

Parties:

Maryland Port Administration
Evergreen Marine Corporation (Taiwan) Ltd.

Synopsis: The proposed agreement modifies the basic agreement and lease to reflect the termination of Japan Line's participation as of May 31, 1988.

Agreement No.: 224–200105

Title: Port of Seattle Terminal Agreement.

Parties:

Port of Seattle (Seattle)
International Terminal Company (ITC)

Synopsis: The proposed agreement provides for ITC's lease from Seattle of terminal facilities at Seattle's Terminal 115, preferential use of space at Berth Nos. 1 and 2 and easements for vehicular ingress and egress across areas of Terminal 115, subject to Seattle retaining secondary right to the entire premises.

By Order of the Federal Maritime Commission.

Dated: April 7, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–7967 Filed 4–11–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 6, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Robert Neal, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

PROPOSAL TO APPROVE UNDER OMB DELEGATED AUTHORITY THE EXTENSION, WITHOUT REVISION, OF THE FOLLOWING REPORT

Report Title: Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debt Previously Contracted

Agency Form Number: FR 4006

OMB Docket Number: 7100–0129

Frequency: Annual

Reporters: Bank holding companies

Annual Reporting Hours: 3000

Significant effect on small businesses is not expected.

General Description of Report: This report is required by law (12 U.S.C. 1843(c)(2), 1844(b)). Certain portions may be given confidential treatment at applicant's request (5 U.S.C. 52(b)(4)).

Bank holding companies that acquire assets in satisfaction of debts previously contracted are required to submit an annual report to the Board outlining the efforts made to date to effect divestiture of the assets, a description and valuation of assets divested and those to be divested. The report provides supervisory information needed to monitor compliance with prudent banking practices.

Board of Governors of the Federal Reserve System, April 6, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–7900 Filed 4–11–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Alcohol Abuse and Alcoholism; Research Grants on Alcohol-Related Behavior That Increases the Risk of Aids and/or Research on Prevention Strategies To Reduce That Risk

AGENCY: National Institute on Alcohol Abuse and Alcoholism, HHS.

ACTION: Issuance of a request for applications for research grants on alcohol-related behavior that increases the risk of AIDS and/or research on prevention strategies to reduce that risk.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a Request For Applications (RFA) For Research Grants on Alcohol-Related Behavior That Increases The Risk of AIDS And/Or Research On Prevention Strategies to Reduce That Risk. Areas of research interest may include, but are not limited to, risk taking behaviors among specific target groups; the effect of alcohol use on judgment, decision making, perception of risk with respect to AIDS, and moral commitments to others. Other areas that could be explored are the impact of alcohol as a disinhibitor for indiscriminate sex or intravenous drug use; the consequences of alcohol consumption on the role of women or men as possible gatekeepers for protective or unsafe sex practices; and the function of alcohol environments (e.g., the singles or gay bar) as facilitators or disincentives for AIDS-related risk taking behavior. Support may be requested for up to 5 years. It is estimated that $500,000 to $1,000,000 will be available to make three to six awards for the first year of the study, including direct and indirect costs. Awards may be made late in FY 1988 or early in FY 1989.

Receipt Dates for Applications: Only one receipt date, May 25, 1988, is available for this RFA.

For a Copy of the RFA Contact: Donald F. Godwin, The National Institute on Alcohol Abuse and Alcoholism (NIAAA), Division of Clinical and Prevention Research, Prevention Research Branch, Parklawn Building, Room 16C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone 301–443–1677.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–7905 Filed 4–11–88; 8:45 am]

BILLING CODE 4160–20–M

Advisory Committee Meetings

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees and national advisory councils in the month of May 1988. These committees will be preforming initial review of applications for Federal assistance. Therefore, portions, of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: National Advisory Mental Health Council, NIMH

Date and Time: May 16–18: 9:00 a.m.

Place: May 16: National Institues of Health, Building #31C, Conference

Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892 May 17–18: Parklawn Building, Conference Room G and H, 5600 Fishers Lane, Rockville, Maryland 20857

Status of Meeting:

Open—May 16: 9:00 a.m.–5:00 p.m.
Closed—Otherwise

Contact: Ms. Rachel Townson, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Research Scientist Development Review Committee, NIMH.

Date and Time: May 23–25: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Status of Meeting:

Open—May 23: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Diana Souder, Parklawn Building, Room 9C–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH.

Date and Time: May 26–28: 9:00 a.m.

Place: Hyatt Regency, Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Status of Meeting:

Open—May 26: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Shirley Maltz, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism, NIAAA.

Date and Time: May 26–27: 10:30 a.m.

Place: National Institutes of Health, Building #31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

Status of Meeting:

Open—May 26: 10:30 a.m.–5:00 p.m.
Closed—Otherwise

Contact: James Vaughan, Parklawn Building, Room 16C–20, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375.

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Parklawn building, Room 16C–20, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375; Ms. Joanna Kieffer, NIMH Committee Management Officer, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: April 6, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–7952 Filed 4–11–88; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 88N–0071]

Approval of Alternate Design Configurations of Class III Daily Wear Contact Lenses; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of policy statement.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an agency policy statement concerning premarket approval of alternate design configurations of class III daily wear contact lenses, under certain conditions based on an applicant's submission of a supplemental premarket approval application (PMA) without additional clinical data.

ADDRESS: The policy statement is available at, and written comments on the policy statement may be sent to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Food and Drug Administration, Center for Devices and Radiological Health (HFZ–460), 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

SUPPLEMENTARY INFORMATION: FDA has reevaluated the clinical data requirements for premarket approval of alternate designs of already approved class III daily wear contact lenses, based upon publicly available information and discussions with the Ophthalmic Devices Advisory Committee. FDA now believes that it is appropriate to approve a supplemental PMA application for an alternate design configuration of a daily wear contact lens without additional clinical data, if the applicant shows that clinical and other data in the original approved PMA apply to the alternate design and other necessary information is submitted.

This policy applies to all class III daily wear lenses including those lenses made using soft (hydrophilic) (21 CFR 886.5925) or rigid gas permeable (21 CFR 886.5916) materials. (See the **Federal Register** of September 2, 1987; 52 FR 33346). Design configurations eligible for consideration under this policy include spherical, toric, lenticular, aspheric, and bifocal intended for correction of myopia, hyperopia, presbyopia, and/or astigmatism.

FDA is prepared to review PMA supplements submitted in accordance with this policy as part of its established "Fast Track" review process. Panel

review of these supplements will not be required, if the lens design modifications do not raise difference safety and effectiveness questions in comparison to the original approved device and its design. A preapproval inspection of the manufacturing facility will not automatically be required, if the facility has recently been found to be in compliance with the current good manufacturing practices regulations (21 CFR Part 820).

Interested persons may submit to the Dockets Management Branch (address above) written comments on the policy statement. Comments will be considered in determining if changes in the policy statement are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. Single copies of the policy statement may be obtained by contacting Richard E. Lippman (address above).

Dated: April 2, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-7953 Filed 4-11-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-12; A-20348-A]

Arizona; Exchange of Public and State Land in Arizona

April 4, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States transferred title to 1,340.83 acres in Coconino and Mohave Counties and accepted title from the State of Arizona on 3,499.16 acres in Mohave County.

FOR FURTHER INFORMATION CONTACT: Marsha L. Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act, the following described public land was transferred to the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 41 N., R. 2 W.,
Sec. 9, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 21, lots 1 and 3, NE¼, NE¼SE¼;
Sec. 27, all.
T. 41 N., R. 12 W.,
Sec. 6, S½NE¼.

Comprising 1,340.83 acres in Coconino and Mohave Counties.

In exchange the United States accepted title to the following described land conveyed by the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 40 N., R. 15 W.,
Sec. 16, N½NW¼NE¼;
Sec. 32, all.
T. 40 N., R. 16 W.,
Sec. 16, N½.
T. 41 N., R. 7 W.,
Sec. 13, NW¼, N½SW¼, SW¼SW¼.
T. 41 N., R. 8 W.,
Sec. 19, E½;
Sec. 32, all.
T. 41 N., R. 13 W.,
Sec. 2, lots 1-4, incl., S½N½, S½.
T. 41 N., R. 15 W.,
Sec. 2, lots 1-4, incl., S½N½, S½.

The area described comprises 3,499.16 acres in Mohave County.

The purpose of this notice is to inform the public and local governmental officials of the exchange of public and state land between the United States and the State of Arizona.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-7965 Filed 4-11-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-08-7122-10-1018; CA-20226]

Realty Action; Exchange of Public and Private Lands in Riverside and San Bernardino Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public and private lands, CA 20228.

SUMMARY: The following described public lands in San Bernardino County have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716).

San Bernardino Meridian, California

T. 5N., R. 14 E.,
Sec. 26:S½SE¼.

Containing 80 acres, more or less.

In exchange for these lands, the United States will acquire the following described non-federal lands in Riverside County from The Nature Conservancy:

San Bernardino Meridian, California

T. 4S., R. 7E.,
Sec. 7: E½SW¼SE¼, W½SE¼SE¼.

Except 50% of all minerals, gas, oil, and geothermal rights and substances, under the real estate described in the Deed, without right of surface entry, as reserved in the Deed from Lou R. Crandall and Marguerita Crandall, husband and wife; William V. Lawson and Mary Lou Lawson, husband and wife; Stanley N. Gleis and Kathleen R. Gleis, husband and wife; and William J.D. Lane and Kathleen C. Lane, husband and wife; each as to an undivided one-quarter interest, by deed recorded April 27, 1971 as Instrument No. 43314 of Official Records of Riverside County, California. Containing 40 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres of private land within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals contructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

2. An existing pipeline right-of-way granted by the United States to All American Pipeline Company, its successors or assigns, by right-of-way grant CA-14013 under the Act of February 25, 1920 (30 U.S.C. 181).

3. An existing electric distribution line right-of-way granted by the United States to Atchison, Topeka, and Santa Fe Railroad, its successors or assigns, by right-of-way grant LA-0168288 under the Act of March 4, 1911 (43 U.S.C. 961).

4. An existing pipeline right-of-way granted by the United States to Four Corners Pipeline Company, its

successors or assigns, by right-of-way grant LA-0152777, under the Act of February 25, 1920 (30 U.S.C. 181).

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, including the environmental assessment and land report, contact John Sullivan, BLM Indio Resource Area Office, (619) 323-4221.

For a period of 45 days after publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments this realty action will become the final determination of the Department of the Interior.

Date: April 1, 1988.

H.W. Riecken,

Acting District Manager.

[FR Doc. 88-7964 Filed 4-11-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4212-13; CA 20339]

California; Realty Action; Exchange of Public and Private Lands in Riverside and San Diego Counties, CA, and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

ADDRESS: Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal land within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The land acquired does not constitute habitat for the lizard, but provides a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portion for the preserve. The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 978-4815.

1. The United States issued a land exchange conveyance document to The Nature Conservancy on March 24, 1988, pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described public land:

San Bernardino Meridian, California

T. 18 S., R. 7 E.,
Sec. 15, lots 5 and 6.

The area described contains 78.87 acres in San Diego County.

2. In exchange for the land described in paragraph 1, on March 23, 1988, the United States accepted title to the following described private land from the Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 7 E.,
Sec. 17, E½NE¼, SW¼NE¼, and E½NE¼NW¼NE¼.

The area described contains 125 acres in Riverside County.

3. The values of the public land and the non-Federal land were equalized by the procedures set forth in the Memorandum of Agreement dated December 10, 1987.

4. At 10 a.m. on May 16, 1988, the land described above in paragraph 2 shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on May 16, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on May 16, 1988, the land described in paragraph 2 above shall be open to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on May 16, 1988, the land described in paragraph 2 above shall be open to applications and offers under the mineral leasing laws.

Date: April 4, 1988.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 88-7963 Filed 4-11-88; 8:45 am]

BILLING CODE 4310-40-M

[CA 940-08-5410-10-ZBKA; CA 20969]

Realty Action; Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, aggregating 319.54 acres, are segregated and made unavailable for filings under the public land laws, including the mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825, (916) 978-4815.

Serial No. CA 20969
T. 28 S., R. 33 E., Mount Diablo Meridian
Sec. 30, lots 3, 4, 9, 10, 11, 12, 13, 14.
County—Kern
Minerals Reservation—Coal and other minerals

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an

opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Date: April 4, 1988.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-7962 Filed 4-11-88; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

National Register of Historic Places; Pending Nominations; Alabama et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 2, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 27, 1988.

Amy Schlagel,

Acting Chief of Registration, National Register.

ALABAMA

Baldwin County

Point Clear, *Brodbeck—Zundel Historic District*, US 98 Scenic Route and Old Marlow Rd.

Point Clear, *Point Clear Historic District*, W side of US 98/Eastern Shore Blvd.

Colbert County

Tuscumbia, *Johnson's Woods*, 801 E. North Commons

Talladega County

Talladega, *Talladega Courthouse Square Historic District (Boundary Increase)*, Roughly bounded by N. East and E. North and S. East, Coffee and Springs Sts.

ARKANSAS

Garland County

Hot Springs, *Jones School*, Linwood and Hobson Aves.

ILLINOIS

Shelby County

Shelbyville, *Tallman, Horace M., House*, 816 W. Main

MASSACHUSETTS

Hampshire County

Hadley, *Hadley Center Historic District (Boundary Increase)*, Roughly bounded by Town Farm Ln., Spruce Hill Rd. and Fort River, and the Connecticut River

NEW MEXICO

Grand County

Dwyer vicinity, *Andazola, Trinidad, House (Mimbres Valley MRA)*, SE of NM 61 and S of Eby Ranch Rd.

Dwyer vicinity, *Baca, Ramon, House (Mimbres Valley MRA)*, SE of NM 61

Dwyer vicinity, *Eby, Tom, Storage Building (Mimbres Valley MRA)*, W. of NM 61 and N of Eby Ranch Rd.

Dwyer vicinity, *NAN Ranch (Mimbres Valley MRA)*, E. of NM 61

Dwyer vicinity, *Soliz—Baca House (Mimbres Valley MRA)*, SE of NM 61 and S of Eby Ranch Rd.

Dwyer vicinity, *Trujillo, Maria J. and Juan, House (Mimbres Valley MRA)*, E of NM 61 and S of Eby Ranch Rd.

Mimbres vicinity, *Huechling, Otto, House (Mimbres Valley MRA)*, E of NM 61

Mimbres vicinity, *Valencia, Ysabel, House (Mimbres Valley MRA)*, E of NM 61

Mimbres vicinity, *Wood, Dr. Granville, House (Mimbres Valley MRA)*, E. of NM 61

Mimbres, *Hooks—Moore Store (Mimbres Valley MRA)*, NM 61 and Forest Rt. 73

Mimbres, *Mimbres School (Mimbres Valley MRA)*, E of NM 61 and Forest Rt. 73

Mimbres, *Redding, William, House (Mimbres Valley MRA)*, Off NM 61

Mimbres, *Sibole, George, Store (Mimbres Valley MRA)*, E. of NM 61, N of Forest Rt. 73

San Juan vicinity, *Valencia, Jesus, House (Mimbres Valley MRA)*, E of NM 61

San Juan, *San Juan Historic District (Mimbres Valley MRA)*, 2261-2291 NM 61

San Lorenzo vicinity, *Acklin Store (Mimbres Valley MRA)*, N of NM 90 of NM 61

San Lorenzo vicinity, *Grijalva, Luciana B., House (Mimbres Valley MRA)*, E of NM 61

San Lorenzo vicinity, *Menard—Galaz House (Mimbres Valley MRA)*, W of NM 90

San Lorenzo vicinity, *Portillo, Mauricio, House (Mimbres Valley MRA)*, E of NM 61 1 mi. S of NM 90

San Lorenzo vicinity, *Torres, Antonio, House (Mimbres Valley MRA)*, N of NM 90 W of Mimbres River bridge

San Lorenzo, *San Lorenzo Historic District (Mimbres Valley MRA)*, Roughly Galaz St. between C and H Sts.

Sherman vicinity, *Perrault, George O., House (Mimbres Valley MRA)*, E of NM 61 1.7 mi. N of Mimbres Hot Springs Canyon Rd.

Sherman vicinity, *San Juan Teacherage (Mimbres Valley MRA)*, W of NM 61 1.7 mi. N of Mimbres Hot Springs Canyon Rd.

Sierra County

Archeological Site No. LA1082 (Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Archeological Site No. LA1119 (Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Archeological Site No. LA49016 (Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Archeological Site No. LA49030 (Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Archeological Site No. LA50548 (Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Archeological Site No. LA517 (Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Chambers Canyon Site (LA49028)(Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Horse Island Site (LA48996)(Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Kettle Top Butte Site (LA48995)(Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Longbotton Canyon Site (LA49033)(Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Monticello Point Archeological District (LA48990, LA48991, LA48992, LA48993, LA48994)(Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Palomas Narrows North (LA38755)(Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

Palomas Narrows South (LA49007)(Prehistoric Adaptations along the Rio Grande Drainage, Sierra County, New Mexico TR)

NEW YORK

Nassau County

Hempstead, *Rectory of St. George's Episcopal Church*, 217 Peninsula Blvd.

Otsego County

Cherry Valley, *Cherry Valley Village Historic District*, Roughly bounded by Alden St. and Montgomery St., Maple Ave. and Elm St., and Main St.

Sullivan County

Jeffersonville, *Jeffersonville School*, Terrace Ave.

NORTH CAROLINA

Camden County (also in Chesapeake County, VIRGINIA)

South Mills, *Dismal Swamp Canal (Dismal Swamp Canal and Associated Development, Southeast Virginia and Northeast North Carolina MPS)*, Runs between Chesapeake, VA and South Mills, NC

RHODE ISLAND

Providence County

Foster, *Moosup Valley Historic District (Foster MPS)*, Roughly bounded by Harrington, Johnson, Moosup Valley and Barb Hill, and Cucumber Hill Rds.

Providence, *Parkis—Comstock Historic District (Boundary Increase)*, 568, 570-572 Broad St. and 39-41, 54-56, and 60-62 Harvard Ave.

[FR Doc. 88-7978 Filed 4-11-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use in Assessing Potential Acquisition of Three Branch Lines of Atchison, Topeka, and Santa Fe Railroad Co.

The Commission has received a request from Pacific Rail Partners of Glendale, California for persmission to use certain waybill data pertaining to California rail traffic from the Commission's 1985 and 1986 Waybill Sample. The requested data are needed to assess the feasibility of acquiring three branch lines of the Atchison, Topeka, and Santa Fe Railroad Company: (1) San Jacinto Subdivision, (2) Redlands Subdivision and (3) Lucerne Valley Subdivision. The specific waybill data items requested are:

1. Waybill Number
2. Waybill Date
3. Accounting Period
4. Number of Carloads
5. Car Initials
6. Commodity Code
7. Billed Weight
8. Actual Weight of Lading
9. Freight Revenues
10. Transit Charges
11. Miscellaneous Charges
12. Interstate/Intrastate Code
13. All Rail/Intermodal Code
14. Shortline Miles
15. Stratum Identification
16. Subsample Code Number
17. Reporting Railroad
18. Routing

The Commission requires rail carriers to file waybill sample information if any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use File that has satisfied the majority of all waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commisison's rules for release of waybill data [Ex Parte 385 (Sub-No. 2), 52 FR 12415, April 16, 1987], we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party.

If any parties object to this request, they should file their objections (an original and 3 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. Objections should identify the parties seeking the waybill data, state the purpose for which the data are sought, and include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275–7684

Noreta R. McGee,

Secretary.

[FR Doc. 88–7810 Filed 4–11–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–57 (Sub-27X)]

Soo Line Railroad Co.; Abandonment at Minneapolis, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Soo Line Railroad Company of an approximate .63-mile track at Minneapolis, MN, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 12, 1988. Petitions to stay must be filed April 27, 1988, and petitions for reconsideration must be filed by May 9, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 22, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB–57 (Sub-No. 27X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Larry D. Starns, Soo Line Building, Suite 1000, 105 South Fifth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 5, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–7991 Filed 4–11–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Community Relations Service; Availability of Funding for Special Placement Progams (SPP) for Mariel Cubans Paroled or Reparoled by the Immigration and Naturalization Service Detention from Various Federal Detention Facilities

AGENCY: Community Relations Service (CRS), U.S. Department of Justice.

ACTION: Notice of availability of funding for grant agreements to provide community-based Special Placement Programs for Mariel Cuban detainees paroled or reparoled by the Immigration and Naturalization Service from various Federal detention facilities.

SUMMARY: This announcement governs the award of Grant Agreements to public or private non-profit organizations or agencies, and under certain conditions, to for-profit organizations or agencies, to provide eligible Mariel Cubans paroled or reparoled by the Immigration and Naturalization Service (INS) from various Federal detention facilities with intensive, structured, and comprehensive residential and community-based follow-up support services. Programs providing such services shall hereafter be referred to as Special Placement Programs (SPPs).

Special Placement Programs have the specific goal of assisting eligible clients to develop self-sufficiency and integration into the community through a comprehensive system of support services, delivered first in a residential setting (3 months) and subsequently in a community setting (9 months).

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[1] *See Exemption of Rail Line Abandonments or Discontinuance Offers of Financial Assistance*, XXX I.C.C.2d XXX, served December 21, 1987, and final rules published in the **Federal Register** on December 22, (52 FR 48440–48446).

DATE: Closing Date: 5:00 p.m. Eastern Daylight Time, Friday, May 27, 1988.

SUPPLEMENTARY INFORMATION:

Purpose and Scope

The purpose of the Special Placement Program is the re-integration of certain detained Mariel Cubans into society through a structured program of residential and community-based follow-up support services.

The client population consists of Mariel Cubans who have been returned to the custody of the United States Department of Justice, Immigration and Naturalization Service, from local and state criminal justice systems. Currently, those detainees deemed eligible for parole or reparole by the INS are detained at over twenty-five INS and Federal Bureau of Prisons (BOP) detention facilities.

Detainees approved for release are directly referred to Grant Recipients by the Community Relations Service (CRS).

During a three (3) month residential period, Recipients provide clients with basic physical care and maintenance, as well as counseling, employment services, English language training, life skills instruction, and other programmatic assistance. Upon resettlement into the community, Recipients provide strong community based follow-up support services and continued case management for a minimum period of nine (9) months. Clients are eligible for another six months of follow-up services, if required. Services are rendered within the context of a highly structured, accountable program environment.

Authorization: Authority for the Community Relations Service Special Placement Program is contained in Title V, section 501(c) of Public Law 96–422 (the Refugee Education Assistance Act of 1980).

Award Instrument: Awards to support Special Placement Program services will be in the form of Grants issued by the Community Relations Service.

Available Funds: Approximately $1.6 million will be available on a Fiscal Year basis to support up to 2 Grant Agreements. Fiscal year funding for each award is anticipated to be between $700,000 and $800,000, depending upon such factors as the geographic area of resettlement and specific program design.

Awards normally will not exceed a 36 month program performance period. Funding will be for 12 month budget periods.

The estimated amount of available funds and the anticipated ranges of funding contained in this Notice are intended to serve as bench marks only. These estimates and ranges do not bind the Community Relations Service to any specific number of Grant Agreements or to any specific level of funding.

Future fiscal year funding for the Special Placement Program will be contingent upon need and the availability of Federal appropriations. If adequate funds are available, the Acting Director, CRS, anticipates continuation of this program.

Proposal Review: Proposals will be reviewed, evaluated, rated, and competitively ranked by an independent review panel on the basis of weighted criteria listed in this Notice. Applicants must receive a minimum score of 65 points, out of a total of 100 possible points, in order to be considered for funding. All funding decisions are made at the discretion of the Acting Director, Community Relations Service. Awards will be subject to the availability of funds.

Eligible Applicants

Non-profit organizations incorporated under State law, which have demonstrated experience in:

(1) The resettlement of or provision of services to Cuban Entrants, or similar populations; (2) the administration of residential, community-based correctional treatment programs for ex-offenders, or; (3) the administration of other types of residential, community-based rehabilitative programs are eligible to apply.

For-profit organizations, incorporated under State law, which have demonstrated experience in:

(1) The resettlement of or provision of services to Cuban Entrants, or similar populations; (2) the administration of residential, community-based correctional treatment programs for ex-offenders, or; (3) the administration of other types of residential, community-based rehabilitative programs, *and* which can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been budgeted, are also eligible to apply.

Subcontractual arrangements for the administration of a Special Placement Program will only be acceptable in the cases of national-level organizations through local-level agencies which have a demonstrable affiliation with, or membership in, the national-level organization and which have an institutional presence in the selected area of resettlement.

Consortiums or joint ventures between or among unrelated agencies or organizations, i.e., those where no formal affiliation or membership relationship exists, will not be considered for funding under the terms of this Notice. Present CRS Recipients are not precluded from submitting applications under the terms and conditions of this Notice.

Eligible Client Population

Under the terms of this announcement, the eligible client population consists of Cuban Nationals who have been approved for parole or reparole from Federal detention by the Immigration and Naturalization Service and who meet the definition of Cuban/Haitian Entrant as specified in Title V, section 501(e) of Public Law 96–422:

(1) Any individual granted parole status as a Cuban-Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) Any other national of Cuba or Haiti:

(A) Who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or,

(iii) Has an application for asylum pending with the Immigration and Nationality Service; and,

(B) With respect to whom a final, nonappealable and legally enforceable order of exclusion or deportation has not been entered.

Further information concerning other characteristics of this population is contained in the CRS document entitled "Special Placement Program—Program Requirements and Description".

Areas of Resettlement

Funding cannot be considered for applicants who propose resettlement in states or areas heavily impacted by Cuban/Haitian Entrants, refugees, or Special Placement Programs, unless the applicant can assure full-time employment, service delivery, and community support in such areas. These impacted areas include the states of Florida, California, Illinois, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Texas, Virginia and Washington.

Applicants need not be located in the proposed city of resettlement, however, it is strongly suggested that they have a strong institutional presence or broad support base in this location. Local-level affiliates of national-level organizations, however, must be located in the proposed city of resettlement.

Application Contents

Applicants are required to set forth in detail a proposal that meets the program requirements described in this Notice and as supplemented by the CRS document entitled "Special Placement Program—Program Description and Requirements".

Applicants are required to set forth in detail the following:

1. Program Abstract

The Program Abstract is intended to be a brief summary of the proposal which includes names and locations of relevant agencies, proposed resettlement city and proposed location of facility, total number of clients and cycles to be served during the entire program performance period, proposed program periods and phases, and services to be offered to clients during these periods and phases.

2. Organization/Agency Background

Applicants must include a detailed discussion of:

a. The applicant's history, philosophy and goals;

b. Its particular demonstrated experience with respect to: (1) The resettlement of or provision of services to Cuban Entrants, or similar populations; (2) the administration of residential, community-based correctional treatment programs for ex-offenders, or; (3) the administration of other types of residential, community-based rehabilitative programs; and

c. The applicant's history of service delivery and institutional presence in the proposed city of resettlement.

If the applicant is a national-level organization which proposes to deliver services through a local-level affiliate, the proposed affiliate must be identified. Within the context of the topics outlined above, discuss the local-level affiliate's qualifications and provide a rationale for its particular selection as the service provider and for the use of such a subcontractual arrangement.

3. Characteristics of Program Site

a. Characteristics of the Proposed Resettlement City

Applications must contain a detailed qualitative and quantitative rationale for the selection of the proposed resettlement city with particular regard to:

1. A description of the city's racial, ethnic and sociocultural composition, including a description of existing Cuban populations and Cuban organizations;

2. A description of the political and law enforcement structures of the resettlement city and their potential receptivity regarding the program;

3. Current levels of employment and unemployment in various relevant local job markets, by race and ethnicity, if possible;

4. Availability of immediate or imminent prospects for full-time, permanent employment consistent with the skill levels of the program participants;

5. Availability of housing which is safe, sanitary, and affordable to the clients;

6. A description of the local social service network including any services targeted primarily to Hispanic populations; and

7. A brief discussion of the probable impact of the Immigration Reform and Control Act of 1986 (Public Law 99–603) on community tension and upon receptivity to the proposed program.

b. Characteristics of the Proposed Resettlement Community

The proposed resettlement community refers to the immediate geographical area in which the proposed facility is located. This area may be a defined, named neighborhood/area which is recognized as a political unit, or it may be a less formally designated area. In either case, the applicant must describe the relevant area in terms of the following characteristics:

1. Address of the Proposed Facility;

2. A description of the racial, ethnic and sociocultural composition of the community, including the presence of a Cuban community;

3. Identification of important local community groups, such as neighborhood watch associations, tenant organizations, neighborhood task forces;

4. Identification of political representatives who represent the constituency of that area, such as City Council members, Congressional representatives or local Community Board members;

5. Identification of the local social service and educational network, such as local churches, schools, the Salvation Army, and YMCAs;

6. Location of nearest police precinct or responsible law enforcement agency;

7. Location of nearest schools or day care centers;

8. Crime rate of the area; and

9. Availability of public transportation.

c. Residential/Office Facility

Applicants are required to set forth in detail comprehensive information regarding:

1. A physical description of the proposed facility including the proposed allocation of residential and office space; and

2. Documentation that the facility meets all relevant zoning, licensing, fire, safety and health codes required to operate a residentially-based social service program.

Copies of relevant documents must be submitted at the time of application.

If a facility properly zoned, licensed, or inspected is not available at the time of application, the applicant must submit a report on the progress made in obtaining the appropriate documentation, as noted above. This report consists of a description of the required documents, copies of correspondence to relevant local officials or offices from which they will be obtained, and the means and timeline for obtaining the documentation.

d. Community Support

Applicants are required to detail those measures which have and will be taken to develop and maintain:

(1) Community receptivity and support and/or reduce community opposition to the program and its clientele;

(2) On-going communication with the relevant INS office and with the relevant law enforcement agency; and

(3) An Advisory Committee for the Special Placement Program.

Such measures must be supported by appropriate documentation, as outlined in the Application Addenda Material.

4. General Program Design

Applicants are required to set forth in detail a comprehensive narrative which includes:

a. Client Population

1. A description of the client population to be served and the client selection criteria proposed by the applicant;

2. Total number of clients to be resettled during the entire proposed Program Performance Period (up to 36 months); and

3. The number of clients to be served during each cycle and the number of cycles to be accepted during each budget year (A cycle is comprised of 20–30 clients; programs normally serve a total of 80–120 clients or four (4) cycles of clients in a budget year).

b. Program Periods

1. An estimate of program start-up time; that is the period during which the program operations will begin and staff hiring and training will occur, and a

description of the activities which will occur during this time;

2. A description of the program periods, including period length and services to be rendered in each period;

3. A description of the criteria for clients to enter the community follow-up period; and

4. A flow chart or time-line which identifies significant milestones during each period.

c. Program Phases

1. A description of the phases within the residential and community follow-up periods, including the length of each phase and the services to be rendered during each phase;

2. A description of the criteria for clients to pass from one phase to another; and

3. A flow chart or time-line which identifies significant milestones during each phase.

d. Applicant Organization/Agency Management Plan

Applicants are required to submit a comprehensive plan which outlines the proposed management of the program. The plan must include the following:

1. A comprehensive organizational chart of the applicant organization or agency, which:

a. Shows the overall lines of authority and responsibility in the organization or agency as a whole;

b. Shows the relationship of the proposed project to other organization or agency projects; and

c. Shows the relationship of the local level affiliate to the national-level organization, if applicable.

2. Identification of the staff member who will assume overall supervision of the program at the applicant organization or agency level.

3. A description of the methods for the administration and supervision of the program by the applicant organization or agency.

4. A description of the means of communication among the various levels of program administration.

For national-level organizations whose local-level affiliates will administer the program, the following material must also be included:

A description of the specific services to be rendered by the national level organization to its local-level affiliate, the specific services to be rendered by the affiliate, and a monitoring plan.

e. Local-Level Affiliate Management Plan

For national-level organizations whose local-level affiliate will be responsible for the administration and operation of the program, a management plan must also be included which contains the following:

1. A comprehensive organizational chart of the local-level affiliate which:

a. Shows overall lines of authority and responsibility within the local-level affiliate; and

b. Shows the relationship of the proposed program to other agency programs.

2. Identification of the local-level affiliate staff member who will assume overall responsibility for the program.

3. A description of the methods for the administration and supervision of the program which identifies all responsible staff members.

f. Special Placement Program Management and Staffing Model

This plan refers to the administration, management and staff of the actual Special Placement Program.

For both the residential and community-based follow-up periods, identify or discuss:

1. The staff member responsible for the overall program management and staff supervision;

2. A plan to ensure intra-program coordination and communication;

3. The staffing pattern, include a comprehensive organizational chart of the proposed program showing lines of authority, responsibility and supervision;

4. A proposed staff schedule;

5. Proposed staff training;

6. The roles of consultants and rationale for their use; and

7. The role of volunteers, if applicable.

5. Basic Services—Residential Period

Applicants are required to provide a detailed narrative description of the following services to be rendered and the method of service delivery:

a. Housing;

b. Food Service;

c. Clothing;

d. Arrival Package;

e. Stipends;

f. Medical Services;

g. Transportation, and;

h. Resettlement Package.

6. Residential Program Services (3 months)

Applicants are required to provide a detailed narrative description of the following services and the method of service delivery, including identification of the community resources which will be accessed to provide or to enhance such services.

a. Orientation to the Program and to the Local Community.

b. Counseling Services, including:

1. Individual Counseling;

2. Group Counseling; and

3. Substance Abuse Counseling.

c. Employment Development, Placement and Maintenance Services.

d. English Language Training and Assistance with Higher Education or Vocational Training.

e. Life Skills Instruction including a substance abuse education component.

f. Assistance in Obtaining Documents, i.e., Social Security cards and new I–94 cards.

g. Recreational Services.

h. Resettlement Transition Plan.

7. Intensive Community-Based Follow-Up Period (9 months)

Applicants are required to provide a detailed narrative description of the services to be rendered and the method of service delivery, including the frequency with which services will be rendered.

a. Basic Services.

1. Emergency Assistance, and

2. Medical Coverage.

b. Program Services.

1. Individual Counseling;

2. Group Counseling;

3. Information and Referral Services;

4. Job Development, Placement, and Counseling Services;

5. Comprehensive Crisis Intervention Services; and

6. A Comprehensive Discharge Plan.

8. Final Six Month Follow-up Period

Applicants are required to provide a narrative description of the services to be rendered and the method of service delivery.

a. Basic Services.

1. Emergency Assistance,

b. Program Services.

1. Individual Counseling;

2. Group Counseling;

3. Information and Referral Services;

4. Job Development, Placement, and Counseling Services;

5. Comprehensive Crisis Intervention Services; and

6. A Comprehensive Discharge Plan.

9. Program Records and Accountability

Applicants are required to set forth a detailed narrative describing the following:

a. Internal administrative controls, such as daily logs, weekly staff meetings, in-house client meetings, program policies and procedures;

b. Administrative program records such as cash disbursement records, other financial records, inventory lists, medication dispensing records, food allocation, and similar files;

c. Method for insuring 24 hour monitoring of the program and its clients, such as sign in/sign out sheets and a pass system;

d. The reward/sanction system;

e. Disciplinary and grievance procedures;

f. Room search and pat-down procedures and frequency; and

g. A plan for testing for substance abuse.

10. Case Management System and Client Records, including

a. A description of the case management system for tracking and monitoring client progress;

b. A description of individual client service plans, including time lines for routine review and revision of plans; and

c. A description of the client case files, i.e., types of records to be maintained.

11. Program Evaluation

Applicants must set forth a plan for program evaluation which includes, at minimum, data pertaining to and an assessment of:

1. Achievement of overall stated goals and objectives of the program;

2. Client Statistics, including number completing program, parole revocations, AWOL cases, serious incidents, and arrests;

3. Major program components, particularly employment;

4. Factors contributing to or inhibiting successful delivery of services; and

5. The program relationship with the local community.

12. Budget and Budget Narrative

a. A Proposed Budget.

More detailed information concerning budget categories is contained in the "Special Placement Program—Program Description and Requirements" Document. The following budget structure should be used to provide appropriate cost breakdowns:

1. Personnel;
2. Fringe Benefits;
3. Travel Costs;
4. Equipment;
5. Supplies;
6. Contractual Obligations;
7. Renovation Costs (if applicable);
8. Direct Client Costs;
9. Other; and
10. Indirect Costs.

b. Budget Narrative.

A narrative explanation of each line item (in each budget category) must accompany the proposed budget.

13. Application Addenda Material

Applicants are required to submit the following material as an addendum to the program proposal. Material is required for all participating agencies, i.e., applicant organizations as well as local-level affiliates, as applicable:

a. Organization/Agency Administration.

1. A copy of the Organization/Agency's Articles of Incorporation;

2. A copy of the IRS status as a non-profit organization/agency, if applicable;

3. A list of officers and board members, if applicable; and

4. A list of professional affiliations and certifications.

b. Organizational/Agency Standards and Policies.

1. Personnel handbook and statement of standards of conduct;

2. Statement regarding professional and agency liability; and

3. A copy of policy regarding confidentiality of client information and records.

c. Staff.

1. Position descriptions and resumes, if individuals have been identified for certain positions, for all personnel to be hired for both the residential and community-based follow-up periods, and of individuals responsible for administering the program from the applicant organization/agency level and local-level affiliate, as applicable; and

2. Resumes of program consultants.

d. Community Support.

1. A proposed list of Advisory Committee members;

2. Letters of program support. Sources must be located in, or representative of the proposed resettlement community, i.e., *the immediate geographic area in which the proposed facility is located.* Appropriate sources include, but are not limited to, local political representatives, law enforcement officials, community leaders, community/neighborhood organizations or associations, social service agency representatives, merchants, and potential employers.

Applicants may also submit letters from other sources as supplemental material to the site-specific letters of support;

3. Letters showing that the relevant INS District Office and the relevant law enforcement agency have been notified of the program's purpose and intent; and

4. A list of voluntary or donated resources, including letters of intent from agencies or entities providing the resources.

e. Finance and Budget.

1. A description of the financial management system of the applicant and local-level affiliate, as applicable;

2. A copy of the latest financial audit of the applicant and local-level affiliate, as applicable; and

3. A listing of other Federal, State, local or foundation grants, cooperative agreements, or contracts administered by the applicant and local-level affiliate, as applicable.

This material should include information regarding the funding source, grant, cooperative agreement, or contract number; level of financial support, purpose of grant, cooperative agreement, or contract; grant, cooperative agreement, or contract performance period; and name, address, and telephone number of the grant, cooperative agreement, or contract officer from the relevant agency.

f. Subcontracts/Subgrants.

Subcontracts/Subgrants refers to those procurement arrangements which will be entered into by the Special Placement Program for the delivery of certain goods or services such as food catering or renovations, which will not be provided directly by the program.

1. Identify all proposed services which are to be provided through subcontractors/subgrants;

2. Provide letters from the proposed subcontractors/subgrants indicating their commitment and the specific services to be provided.

Application Screening Criteria

The Community Relations Service will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the independent CRS Review Panel.

An application may be rejected if:

1. The application is from an ineligible applicant or, in the case of national-level organizations, the applicant or its local-level affiliate does not meet the eligibility criteria contained in this Notice.

2. The application is received after the stated closing time and date.

3. The application omits any of the following information:

a. Relevant documentation regarding the proposed residential/office facility;

b. Documented written evidence of community support for the program;

c. A comprehensive line item budget with appropriate narrative description; and

d. A copy of the latest financial audit of the applicant and of the local-level affiliate, if the applicant is a national-level organization.

Criteria for Evaluation of SPP Applications

SPP applications will be competitively reviewed, evaluated, rated and ranked by an independent Review Panel, according to the weighted criteria outlined below.

Applicants must receive a minimum score of 65 points out of a total of 100 possible points in order to be considered for funding.

1. The qualifications of the applicant organization or agency, and the local-level affiliate, if applicable, with respect to:

- Demonstrated experience in: (1) the resettlement of or provision of services to Cuban entrants or similar populations; (2) the administration of residential, community-based programs for ex-offenders; or, (3) the administration of other types of residential, community-based rehabilitation programs; and
- Demonstrated capacity for effective programmatic and fiscal management and accountability.

(10 POINTS)

2. The rationale for the proposed program location as evidenced by:

- The quantitative and qualitative descriptions of the characteristics of the proposed resettlement city and proposed resettlement community;
- The institutional presence or broad support base of the applicant agency, or, the presence of a local-level affiliate in the proposed resettlement city; and
- Documentation of community support.

(10 POINTS)

3. The availability of a suitable residential/office facility and submission of required documentation regarding facility compliance with applicable health, safety, licensing, and zoning regulations or requirements.

(15 POINTS)

4. The adequacy of the overall general program design in terms of:

- Proposed client load;
- Proposed period and phase activities, timeliness, and services, and criteria for entering various program periods and phases;
- Proposed plans for overall agency management and program management, including clear organizational charts reflecting lines of authority and responsibility; and
- Staff qualifications, staffing patterns, and proposed training.

(15 POINTS)

5. The capacity for providing required program services, as demonstrated by:

- The program plan to provide basic services during all phases and periods of the program;
- An integrated program plan to provide all program services during the residential and community follow-up periods, particularly with regard to providing full-time employment for clients, and
- Sensitivity to the issues of culture, race, ethnicity and native language and use of resources in a manner which promotes and fosters cultural identification and mutual support.

(15 POINTS)

6. The degree to which the applicant provides for effective program structure and accountability as demonstrated by administrative and programmatic controls, as well as program and client records and reports.

(10 POINTS)

7. The reasonableness of the proposed budget and budget narrative.

(10 POINTS)

8. The adequacy of the program evaluation plan.

(5 POINTS)

9. The submission of the requested Application Addenda Material.

(10 POINTS)

Application Request and Submissions

Eligible applicants may request Proposal Application Packages from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Grants Officer.

Proposal Application Packages may also be obtained by contacting the Community Relations Service at 301–492–5818, or, 1–800–424–9304.

Applicants must submit a signed original and two (2) copies of the proposal and supporting documentation to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Grants Officer.

Applications Delivered by Mail

An applicant must show proof of mailing consisting of the following:

1. A legible dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local Post Office.

Applicants are encouraged to use registered or at least First Class mail. Each late applicant will be notified that the application will not be considered.

Applications postmarked on or before 5 p.m. (Eastern Daylight Time), Friday, May 27, 1988, shall be considered as timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

The Grants Management Office will accept hand delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time, daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Catalogue of Federal Domestic Assistance Number: 16.201.

Date: April 6, 1988.

Robert L. Martinez,

Acting, Director, Community Relations Service.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, *Intergovernmental Review of Federal Programs*, all States have the option of designing procedures for the review and comment on Federally assisted programs.

Each applicant is required to notify each State in which it is proposing activities under this Announcement and to comply with the States' established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC).

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than May 27, 1988, addressed to: Richard Gutierrez, Coordinator, Immigration and Refugee Affairs, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

Drug Enforcement Administration

George C. Daniel, M.D.; Order To Show Cause

The following is an Order to Show Cause proposing to revoke DEA Certificate of Registration AD2730706, previously issued to George C. Daniel, M.D. On February 24, 1988, Dr. Daniel was declared to be a fugitive from justice. Since Dr. Daniel cannot be located, notice of DEA's proposed action is being given through publication in the Federal Register.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

Date: April 6, 1988.

Order To Show Cause

In the matter of; George C. Daniel, M.D., 11610 Milbern Drive, Potomac, Maryland 20854.

Pursuant to sections 303 and 304 of the Controlled Substances Act, Title 21, United States Code, sections 823 and 824,

Notice is hereby given to afford George C. Daniel, M.D. an opportunity to Show Cause before the Drug Enforcement Administration, at a place and time to be determined, as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AD2730706, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f), for reason that his continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), and as evidenced by, but not limited to, the fact that he unlawfully distributed Schedule II controlled substances by issuing prescriptions for such substances to undercover agents of the Drug Enforcement Administration for no legitimate medical purpose.

The following procedures are available to you in this matter:

1. Within 30 days after the date of publication of this Order to Show Cause, the above-named registrant may file with the Administrator of the Drug Enforcement Administration a written request for a hearing in the form set forth in § 1316.47, Title 21, Chapter 2, Code of Federal Regulations. (See § 1301.54(a)).

2. Within 30 days after the date of publication of this Order to Show Cause, the above-named registrant may file with the Administrator a waiver of hearing together with a written statement regarding your position on the matters of fact and law involved. (See § 1301.54(c)).

3. Should the above-named registrant decline to file a request for a hearing or should he so file and fail to appear at the hearing, he shall be deemed to have waived the hearing and the Administrator may cancel such hearing, if scheduled, and may enter his final order in this matter without a hearing and based upon the investigative file and the record of this proceeding as it may then appear. (See § 1301.54(d) and 1301.54(e)).

Correspondence concerning this matter should be addressed to the Hearing Clerk, Office of the Administrative Law Judge, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, DC 20537.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 88-7959 Filed 4-11-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Syncates Associates, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 3, 1988, Syncates Associates, Inc., 10863 Rockley Road, Houston, Texas 77099, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance pentobarbital (2270).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 12, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: April 6, 1988.

[FR Doc. 88-7957 Filed 4-11-88; 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 (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance 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.

New Collection

Bureau of Labor Statistics

Laboratory Research on the CPS questionnaire
CPS–1
One time, nonrecurring
Individuals; no business or organizations will be involved.
1650 individual respondents; 225 hours
The proposed "Laboratory Research on the CPS" would determine if the questions in the CPS questionnaire are still relevant, properly understood, and worded so as to yield the appropriate information. The CPS is the primary source of data on employment and unemployment, and the proposed research is designed to enhance the quality of these data, which are widely used within and outside the Government.

Occupational Safety and Health Administration

Survey of Facilities for Regulatory Impact Analysis of Proposed Revisions to OSHA Standards for Four Ethylene Glycol Ethers Non-Recurring;
Businesses and other for-profit; Small businesses or organizations
940 responses; 787 burden hours, 0 forms
This information request is to support the Regulatory Impact Analysis of PEL revisions for four ethylene glycol ethers. The survey and site visits will collect data from industries where these substances are manufactured, processed, and used, to ascertain workforce characteristics, exposures, engineering controls, and substitutes.

Signed at Washington, DC this 7th day of April, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–7984 Filed 4–11–88 8:45 am]

BILLING CODE 4510–24–26–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Amstar Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 22, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 22, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 4th day of April 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Amstar Corp. (Bunker Hill Refinery) (ILA)	Charlestown, MA	4/4/88	3/20/88	20,575	Refined cane sugar.
Colorado Westmoreland, Inc. (Company)	Paonia, CO	4/4/88	3/21/88	20,576	Steam coal.
Eaton Corp. Controls Div. (UAW)	Winamac, IN	4/4/88	3/17/88	20,577	Automotive switches.
Shenango China Co. (USWA)	New Castle, PA	4/4/88	3/5/88	20,578	Pottery.
Skan-A-Matic Corp. (Workers)	Elbridge, NY	4/4/88	3/23/88	20,579	Photo-electric optical scanners.
Tektronix, Inc. (Graphic Terminals Div.) & Admin. (Company).	Wilsonville, OR	4/4/88	3/16/88	20,580	Workstations.
Theurer Atlantic, Inc. (Teamsters)	Newark, NJ	4/4/88	3/22/88	20,581	Containers & trailers.
Van Dorn Plastic Machinery (Company)	West Boylston, MA	4/4/88	3/14/88	20,582	Plastic injection molding machines.

[FR Doc. 88–7983 Filed 4–11–88; 8:45 am]

BILLING CODE 4510–30–M

Office of the Assistant Secretary for Veterans' Employment and Training

Procedures for Preapplication for Funds; Stewart B. McKinney Homeless Assistance Act; Fiscal Year 1988

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures for obtaining a preapplication for funds for the operation of a Homeless Veterans' Reintegration Project (HVRP) funded under the Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, section 738. Projects will be administered by the Department of Labor through grants with State and local public agencies.

DATE: A preapplication package and instructions for completion will be available for issuance as of April 15, 1988. The closing date for receipt of a completion preapplication package in response to this notice is May 6, 1988.

ADDRESS: A copy of the preapplication package and instructions for completion may be obtained by written request only, including two self-addressed mailing labels, to: U.S. Department of Labor, Office of Procurement Services, Rm. S5220, 200 Constitution Ave. NW., Washington, DC 20210, Attention: Melvin Goldberg, Reference: PAG-01.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Chudd, Office of the Assistant Secretary for Veterans' Employment and Training, 200

Constitution Ave. NW., Rm S1313, Washington, DC 20210, Telephone (202) 523–2752.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training announces the availability of a preapplication package for its Homeless Veterans' Reintegration Projects for Fiscal Year 1988. Funding for these projects is authorized by the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77, section 738, 101 Stat. 482, 538 (1987).

The McKinney Act, enacted on July 22, 1987, provides well over $800 million during Fiscal Years 1987 and 1988 to several Federal agencies to administer a variety of programs for homeless persons. Title VII, Subtitle C, Section 738 of the Act authorizes programs "to expedite the reintegration of homeless veterans into the labor force." There are approximately $1.6 million available in Fiscal Year 1988 to carry out demonstration Homeless Veterans' Reintegration Projects (HVRP) authorized under section 738.

Project funding will range from a minimum of $50,000 to a maximum of $200,000. Between 15 and 25 projects will be funded. It is expected that most projects will be in the $50,000 to $100,000 range. Projects will begin no later than September 30, 1988 and will end no later than September 30, 1989. Funding could begin as early as July 1988.

In keeping with the demonstration nature of the McKinney Act, the program is designed to provide each potential program operator with flexibility in determining the range of employment and training related activities which best meet the need of the homeless veteran population in its jurisdiction. There are two elements, however, which will be required in each HVRP: (1) An outreach activity staffed by veterans who have experienced homelessness; and (2) linkages with providers of other services which could benefit homeless veterans, including, where applicable, other recipients of funds under the McKinney Act.

Potential jurisdictions which will be served through HVRPs are limited to: (1) The 35 largest U.S. cities; or (2) jurisdictions which were served through Jobs for Homeless Veterans' grants funded under Program Year (PY) 1987 Job Training Partnership Act (JTPA), Title IV–C funds. A list of these jurisdictions follows:

ARIZONA
  Phoenix
CALIFORNIA
  Long Beach
  Los Angeles [1]
  San Diego
  San Francisco
  San Jose
COLORADO
  Denver [1]
FLORIDA
  Ft. Lauderdale [1]
  Jacksonville
GEORGIA
  Atlanta [1]
ILLINOIS
  Chicago
INDIANA
  Indianapolis
LOUISIANA
  New Orleans [1]
MARYLAND
  Baltimore [1]
MASSACHUSETTS
  Boston [1]
MICHIGAN
  Detroit [1]
MISSOURI
  Kansas City
  St. Louis
NEW YORK
  New York City [1]
OHIO
  Cleveland
  Columbus
OKLAHOMA
  Oklahoma City
OREGON
  Portland
PENNSYLVANIA
  Philadelphia
  Pittsburgh
TENNESSEE
  Memphis
  Nashville
TEXAS
  Austin
  Dallas
  El Paso
  Ft. Worth
  Houston
  San Antonio [1]
WASHINGTON
  Olympia [1]
  Seattle [1]
  Tacoma [1]
WISCONSIN
  Milwaukee
DISTRICT OF COLUMBIA [1]

Entities which are eligible to submit preapplications for serving the jurisdictions listed above are limited to State and local public agencies.

The preapplication instructions will include a more detailed program description, program guidelines, and approach to implementation. The preapplication package will consist of a standard preapplication form; a two- to three-page narrative description of proposed activities and current services, and a generalized budget.

Criteria for identifying the most promising and effective proposals will be applied, and between 15 and 25 preapplicants will be identified as potential grantees. These entities will be sent a full grant application package and instructions. Grant awards will be noncompetitive, subject to satisfactory completion of a full grant application.

Signed at Washington DC, this 6th day of April 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 88–7982 Filed 4–11–88; 8:45 am]

BILLING CODE 4510–79–M

[1] Program Year 1987 Job Training Partnership Act, Title IV–C, Jobs for Homeless Veterans' jurisdictions.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities;

National Council on the Humanities; Meeting

April 7, 1988.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC, on May 12–13, 1988.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions scheduled on May 12–13, 1988, will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the

Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on May 12, 1988, will be as follows:

8:30–9:30 a.m.: Coffee for Council Members—Room 527 (Open to the Public)

Committee Meetings

(Open to the Public) Policy Discussion

9:30–10:30 a.m.:
- Education Programs—Room M–14
- Fellowship Programs—Room 316–2
- General Programs—Room 415
- Research Programs/Preservation Grants—Room 315
- State Programs/Challenge Grants—Room M–07

10:30 a.m. until Adjourned:
- (Closed to the Public)
- Discussion of specific grant applications before the Council

(Open to the Public) Policy Discussion

3:00 p.m. until Adjourned:
- Jefferson Lecture Committee—Room 430
- (Closed to the Public)
- Discussion of Jefferson Lecture Nominees

The morning session on May 13, 1988, will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meeting will be served from 8:30–9:00 a.m.)

Minutes of the Previous Meeting Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Dates of Future Council Meetings
E. Application Report and Matching Report
F. Status of Fiscal Year 1988 Funds
G. Fiscal Year 1989 Appropriation Request
H. Fiscal Year 1990 Budget Planning
I. Committee Reports on Policy and General Matters
1. Education Programs
2. Fellowship Programs
3. Preservation Grants
4. Research Programs
5. General Programs
6. State Programs
7. Challenge Grants
8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code 202–786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88–7946 Filed 4–11–88; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8502]

Draft Finding of No Significant Impact Regarding Major License Amendment to Malapai Resources Company Irigaray Operation Located in Johnson County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of draft finding of no significant impact.

1. Proposed Action

The proposed administrative action is to issue a major amendment to Source and Byproduct Material License SUA–1341. This amendment would allow in situ leach uranium recovery at the 14,000 acre Christensen Ranch Satellite Operation located in Johnson and Campbell Counties, Wyoming.

2. Reasons for Draft Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the Willow Creek Research and Development in situ leach operation located on Christensen Ranch and the licensee's application dated January 5, 1988. Based on the review of the operational data and the application materials, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program proposed by Malapai Resources Company is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR 51.33(a), the Director of the Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**.

This finding, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado and at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

Dated at Denver, Colorado, this 30th day of March, 1988.

For The Nuclear Regulatory Commission.

Edward F. Hawkins,

Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

[FR Doc. 88–7942 Filed 4–11–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 77 to Facility Operating License No. NPF–14 and Amendment No. 42 to Facility Operating License No. NPF–22, issued to Pennsylvania Power and Light Company (the licensee), which revised the Technical Specifications for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The amendments were effective as of the date of issuance.

The amendments modified the Technical Specifications to incorporate changes related to diesel generator loading timer.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on January 28, 1988 (53 FR 2554). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated June 1981.

For further details with respect to the action see (1) the application for amendments dated October 15, 1987, as revised October 30, 1987, (2) Amendment No. 77 to License No. NPF-14, (3) Amendment No. 42 to License No. NPF-22, and (4) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 30th day of March 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-7943 Filed 4-11-88; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting on "Financing the Costs of the HIV Epidemic" Tuesday, April 26, 1988, at 10:00 A.M. to 5:30 P.M.; Wednesday, April 27, 1988, 9:00 A.M. to 5:30 P.M.; and Thursday, April 28, 1988, 9:00 A.M. to 1:00 P.M. at the Interstate Commerce Commission Building, 12th and Constitution Ave., NW. (Constitution Avenue entrance) Hearing Room B, Washington DC.

The purpose of the meeting is to receive testimony from representatives of the health care and research community as well as the private sector on the costs and alternatives for financing the programs, activities and services needed to adequately address the HIV epidemic.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655 15th Street, NW., Suite 901, Washington, DC 20005.

Polly L. Gault,

Executive Director.

[FR Doc. 88-8083 Filed 4-8-88; 8:45am]

BILLING CODE 4160-15-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

April 6, 1988.

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:

AAR Corporation
Common Stock, $1.00 Par Value (File No. 7-3181)
Armtek Corporation
Common Stock, $1.00 Par Value (File No. 7-3182)
Best Buy Co., Inc.
Common Stock, $.10 Par Value (File No. 7-3183)
Beverly Investment Properties
Common Stock, $.10 Par Value (File No. 7-3184)
BRT Realty Trust
Shares of Beneficial Interest, $3.00 Par Value (File No. 7-3185)
DCNY Corporation
Common Stock, $.50 Par Value (File No. 7-3186)
Eldon Industries, Inc.
Common Stock, $.01 Par Value (File No. 7-3187)
Furr/Bishops' Cafeterias
Common Stock, No Par Value (File No. 7-3188)
Gallagher (Arthur J.) & Co.
Common Stock, $1.00 Par Value (File No. 7-3189)
Hotel Investor Trust
Shares of Beneficial Interest, $1.00 Par Value (File No. 7-3190)
Hunt Manufacturing Co.
Common Stock, $.10 Par Value (File No. 7-3191)
Lea-Ronal, Inc.
Common Stock, $1.00 Par Value (File No. 7-3192)
Lomas Mortgage Co.
Common Stock, $.01 Par Value (File No. 7-3193)
Montedison
American Depository Shares (File No. 7-3194)
Munsingwear Inc.
Common Stock, $1.00 Par Value (File No. 7-3195)
New Plan Realty Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3196)
Nuveen CA Municipal Value Fund
Common Stock, $1.00 Par Value (File No. 7-3197)
Progressive Corporation (Ohio)
Common Stock, $1.00 Par Value (File No. 7-3198)
Strategic Mortgage Investors, Inc.
Common Stock, $.01 Par Value (File No. 7-3199)
Sun Distributors, L.P.
Common Stock, No Par Value (File No. 7-3200)
Sun Energy Partners
Common Stock, No Par Value (File No. 7-3201)
Wallace Computer Services, Inc.
Common Stock, $1.00 Par Value (File No. 7-3202)
Weingarten Realty Inc.
Common Stock, $.03 Par Value (File No. 7-3203)
Weis Markets Inc.
Common Stock, No Par Value (File No. 7-3204)
USAcafes, L.P.
Common Stock, $.10 Par Value (File No. 7-3205)

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 April 27, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7954 Filed 4-11-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 6, 1988.

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 stocks:

MGI Properties
Common Stock, $1.00 Par Value (File No. 7-3175)

EMC Corporation
Common Stock, $.01 Par Value (File No. 7-3176)

Colonial Government Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3177)

Oppenheimer Multi-Sector Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-3178)

Daniel Industries, Inc.
Common Stock, $1.25 Par Value (File No. 7-3179)

Equimark Corporation
Common Stock, $1.00 Par Value (File No. 7-3180)

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 April 27, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7955 Filed 4-11-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

American Pain & Stress, Inc., et al.; Order Modifying Prior Order Imposing Trading Suspension

April 6, 1988.

On April 5, 1988 the Commission issued an Order suspending trading for a single 10 day period in forty-six issuers pursuant to section 12(k) of the Securities Exchange Act of 1934. It has since been determined that one of the companies listed in the Order, ASTI, Inc. had changed its name to Republic Financial Group Ltd. The Commission has determined that it is appropriate to modify the Order to reflect this name change.

Accordingly, *It is Hereby Ordered* that the Order entered on April 5, 1988 is modified by changing the name of ASTI, Inc. to Republic Financial Group, Ltd.

By the Commission.

Jonathan Katz,

Secretary.

[FR Doc. 88-7956 Filed 4-11-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1058]

Federal Reserve Act; Delegation of Authority No. 168

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949, 22 U.S.C. 2658, it is hereby directed as follows:

1. Functions Delegated to the Assistant Secretary of State for Inter-American Affairs

The functions conferred upon the Secretary of State by section 25(b) of the Federal Reserve Act, as amended, 12 U.S.C. 632, insofar as such functions relate to certifying to any Federal Reserve Bank or any insured bank concerning any property heretofore or hereafter held in such Federal Reserve Bank or insured bank from or for the account of the Republic of Panama or any central bank or fiscal agent thereof, including Banco Nacional de Panama and Caja de Ahorros, are hereby delegated to the Assistant Secretary of State for Inter-American Affairs.

2. Technical Provisions

(a) As used herein, the word "functions" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion or activity.

(b) Notwithstanding any provision of this delegation of authority, the Secretary of State may at any time exercise any function delegated by this delegation of authority.

(c) This delegation of authority shall become effective on April 4, 1988, and shall remain in effect until terminated by appropriate authority.

(d) Except to the extent inconsistent with this delegation of authority, all certifications and other actions made, issued or entered into with respect to any function affected by this delegation of authority and not revoked, superseded or otherwise made inapplicable before the effective date of this delegation of authority, shall continue in full force and effect until modified, amended, or terminated by appropriate authority.

Date: April 1, 1988.

John C. Whitehead,

Acting Secretary of State.

[FR Doc. 88-7966 Filed 4-11-88; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-88-13]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of

certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before May 2, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 6, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
15691	Air Logistics	14 CFR 43.3(h)	To extend Exemption No. 4660 that allows petitioner's appropriately trained and certificated pilots to continue to remove, check, and reinstall magnetic chip detector plugs and the Allison 250C series turbine engines, aircraft transmissions, and tail rotor gearboxes installed on Aerospatiale Model 355 and Bell 206, 212, and 412 series helicopters while operated by petitioner in, or en route to, remote areas.
25233	Alaska Air Carriers Association	14 CFR 43.3(g)	To extend Exemption No. 4802 that allows pilots employed by petitioner's member air carriers to continue to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft used in Part 135 operations.
25493	Corporate Air	14 CFR 21.197(c)	To allow petitioner to ferry an aircraft to its closest maintenance facility under special circumstances, unrestricted by normal business hours of the FAA.
25556	McDonnell Aircraft Company	14 CFR 21.187	To allow petitioner to operate certain aircraft in both experimental and normal category operations without complying with procedural requirements specified in § 21.187.
25566	Eastern Air Lines Incorporated	14 CFR 91.27	To allow petitioner to use, for a period not to exceed 72 hours, company-generated teletype messages pending receipt of a replacement airworthiness or registration certificate from the FAA.
25536	Hazeltine Corporation	14 CFR 91.79(b) & (c), 91.87(d)(2) & (d)(3), 91.109(a)(1) & (a)(2).	To allow petitioner to perform pre-commissioning flight inspection maneuvers of microwave landing systems at altitudes/distances: below normal obstacle clearance altitudes; below the instrument landing system and/or visual approach slope indicator glide paths; or not in accordance with altitudes specified for VFR level cruising flight.
25448	British Aerospace, Inc	14 CFR 93.123	Petitioner requests an exemption from the slot allocation regulations for high density traffic airports to permit a specific type version of the BAe ATP turboprop transport certificated for a maximum seating capacity of 60 passengers to be operated using commuter slots. Exemption would allow use of the BAe ATP in a short-haul markets with commuter slots limited to use by aircraft having less than 56 passengers seats.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
24888	John L. Geitz	14 CFR 135.293(a)(2) and (b) and 135.337(a)(2), (3), and (4).	To allow petitioner to serve as check airman under certain limitations for "on-demand" air carriers who operate under the provisions of Part 135 without meeting, in each case, all provisions of the FAR. *Denial, March 28, 1988, Exemption No. 4918*
25482	Acme School of Aeronautics	14 CFR 141.65	To allow petitioner to exercise examining authority for flight instructor and airline transport pilot written tests. *Grant, March 25, 1988, Exemption No. 4919*

[FR Doc. 88-7899 Filed 4-11-88; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. EX88-1; Notice 1]

General Motors Corp.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

General Motors Corporation of Warren, Michigan, has petitioned for a temporary exemption from several requirements of Motor Vehicle Safety Standards Nos. 108 *Lamps, Reflective Devices, and Associated Equipment*, and 111 *Rearview Mirrors*. The basis of the petition is that requiring compliance would prevent it from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles.

Notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration on this subject (49 CFR Part 555) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

GM wishes to institute a factory

delivery program for two of its passenger cars, similar to programs established by European manufacturers where Americans purchase vehicles in Europe meeting the Federal motor vehicle safety standards, drive them there on holiday, and then return to the U.S. with their vehicles. The purchasers of the vehicles for which exemptions are sought would be "European citizens who are either visiting or temporarily assigned to work in the U.S.", who would drive them in the U.S., and export them to their home countries. GM notes that these vehicles would have to be built to European safety specifications, and that this necessitates a noncompliance with two Federal motor vehicle safety standards which, absent an exemption, precludes sale and use of the cars in the United States.

The petitioner seeks a 2-year exemption to cover, as limited by 15 U.S.C. 1410, not more than 2500 vehicles each year. These vehicles are 1988–90 Cadillac Eldorado and Seville passenger cars. The vehicles would comply with all Federal motor vehicle safety standards with the exception of portions of the standards on lighting and rearview mirrors. Specifically, the headlamps will meet European (ECE R20) photometrics rather than those of Standard No. 108, the side marker lamps and reflectors will be eliminated, and the turn signals and stop lamps will meet the photometrics of ECE R7 and R6 respectively. The outside driver's side rearview mirror will be convex, and the passenger side convex mirror will not have the words "Objects in mirror are closer than they appear" etched on them."

GM argues that the noncomplying vehicles will nevertheless have an equivalent overall level of safety for the following reasons. The vehicles will be equipped with lamps not required by Standard No. 108, such as rear fog lamps and "side repeater (turn signal) lamps", which "will serve to improve the conspicuity of the vehicle, and in the aggregate should compensate for the photometric variances". It notes that the center highmounted stop lamps will be supplied and wired for use while the vehicles are in the U.S. Vehicles intended for use in Norway and Sweden will be equipped with daytime running lamps, while those sold to residents of Finland and Sweden will have a fluidic headlamp cleaning system. With respect to headlamp photometrics, GM states that safety evaluation of U.S. and European specifications tends to be subjective, that each has trade offs, and that a number of countries "including Sweden, Switzerland, Canada, Japan, and the Persian Gulf States permit headlamps with either European or U.S. beam patterns." More specifically, it discusses beam pattern differences. On the upper beam, minimum values for test points at 9 and 12 degrees left and right of HV will not be met (GM fails to specify the shortfall) but since "the primary purpose of the high beam is to provide illumination 'down the road', we do not believe that providing illumination below the minimum value at these wide test points poses a safety concern". As for the lower beam, the lamp provides only 80% of the minimum value at test point 2 D 15 R, and 67% at 1½ D 2R. But since the drivers of the cars "will be Europeans who are accustomed to the forward illumination characteristics of these vehicles" the noncompliant lighting "should provide 'equivalent safety' for these drivers compared to vehicles with headlights complying with FMVSS 108 photometrics."

As for the noncompliance with Standard No. 111, GM argues that right hand mirrors without legends are used throughout Europe. Further, many European vehicles also use convex mirrors on the driver's side. In sum, "since Europeans are more accustomed to convex mirrors than U.S. drivers, there is not safety value added by providing flat mirrors on the driver's side or the passenger side etched explanation to the users of the subject vehicles."

In addition to the supplemental lighting equipment heretofore described, the vehicles will be equipped with safety equipment not required under U.S. standards. This includes "vehicle sensitive and webbing sensitive seatbelt retractors", ECE requirements for more rounded surfaces on the inside and exterior of the vehicle, ECE requirements for antiskid braking systems, and three point seat belts at rear outboard seating positions.

GM argues that an exemption will be in the public interest in "improving the severe trade deficit currently being suffered by the U.S.", albeit in a small way. Further, the potential exists "for this type of export activity to expand in the future to include additional car models, and perhaps make a more significant contribution to reducing the deficit, provided regulatory constraints do not preclude such activity."

Interested persons are invited to submit comments on the petition of General Motors Corporation described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extent practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 12, 1988.

(15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on April 7, 1988.

Ralph J. Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 88–7981 Filed 4–11–88; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private, Non-Profit Organization in Support of

International Education and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The Office of Private Sector Programs will assist in supporting an exchange that will focus on the United States and Africa: Petroleum Issues in the 1990s. USIA representatives abroad will select the participants from developing countries in sub-Saharan Africa. The project scheduled for fall 1988 will be conceived and executed by a U.S. not-for-profit institution with expertise in the field of foreign affairs or energy issues. The project design will include discussion of U.S. trade in petroleum with Africa, the relationship between the petroleum sector and economic development, financing energy and mineral projects, and petroleum investment and contract negotiations. US national oil policy and energy prospects in the 1990s for Africa and the United States will also be covered.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency, 301 4th Street S.W., Washington, DC 20547.

Robert Francis Smith,

Director, Office of Private Sector Programs.

Date: April 1, 1988.

[FR Doc. 88-7928 Filed 4-11-88 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 70
Tuesday, April 12, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

April 6, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 p.m., April 13, 1988.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 875th Meeting—April 13, 1988, Regulator Meeting (10:00 p.m.)

CAP–1.
Project No. 2543–006, The Montana Power Company
CAP–2.
Project No. 5776–004, Dr. Daniel C. Merrill
CAP–3.
Docket No. EL87–5–001, Island Power Company, Inc.
CAP–4.
Project No. 8142–006, Henwood Associates, Inc.
CAP–5.
Project No. 8863–002, Northeast Hydrodevelopment Corporation
CAP–6.
Project No. 8924–002, Northeast Hydrodevelopment Corporation
CAP–7.
Project Nos. 6727–003 and 008, Northwest Power Company, Inc.
CAP–8.
Project Nos. 4940–003 and 7612–003, Eastern States Energy and Resources, Inc.
CAP–9.
Omitted
CAP–10.
Project No. 2205–007, Central Vermont Public Service Corporation
CAP–11.
Project No. 4437–008, Glacier Energy Company
CAP–12.
Project No. 9086–000, Northwest Power Company, Inc.
CAP–13.
Project No. 1389–001, Southern California Edison Company
CAP–14.
Docket No. ER88–261–000, Centel Electric-Kansas
CAP–15.
Docket No. ER88–237–000, Utah Power & Light Company
CAP–16.
Docket No. EC87–25–001, Northern Indiana Public Service Company
CAP–17.
Docket No. EC88–5–001, Public Service Company of Indiana, Inc.
CAP–18.
Docket Nos. ER82–774–004, ER83–209–000 and ER83–227–000, Tapoco, Inc.
Docket Nos. ER82–829–000 and ER83–219–000, Natahala Power and Light Company
Docket No. EL83–6–000, Lacey H. Thornburg, Attorney General of the State of North Carolina v. Aluminum Company of America, Tapoco, Inc., and Nantahala Power and Light Company
Docket No. EL84–29–000, Town of Highlands, North Carolina, *et al.* v. Nantahala Power and Light Company
CAP–19.
Docket Nos. EL87–65–000 and ER87–653–000, Minnesota Power & Light Company and Northern States Power Company (Minnesota)
CAP–20.
Docket No. EC87–24–000, Minnesota Power & Light Company and Northern States Power Company (Minnesota)
CAP–21.
Docket No. ER81–177–006, Southern California Edison Company
CAP–22.
Docket Nos. E–7777–000 (Phase II), Project No. 2735–001, Project No. 1988–003 and Project No. 233–006, Pacific Gas and Electric Company
CAP–23.
Docket Nos. ER84–571–004 (Phase II) and ER86–300–002, Utah Power & Light Company
CAP–24.
Docket No. ER87–418–000, Niagara Mohawk Power Corporation
CAP–25.
Docket Nos. ER87–435–000, ER87–554–000, 002 and 003, Wisconsin Power & Light Company
CAP–26.
Docket No. ER86–558–016, Gulf States Utilities Company
CAP–27.
Docket No. QF88–33–000, Luz Solar Partners VI, Ltd.
Docket No. QF–88–34–000, Luz Solar Partners VII, Ltd.
CAP–28.
Docket No. EL–88–11–000, Dominion Resources, Inc.

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA85–58–000, Arkansas Power & Light Company
CAM–2.
Docket No. FA85–65–000, Mississippi Power & Light Company
CAM–3.
Docket No. FA86–63–000, Louisiana Power & Light Company
CAM–4.
Docket No. FA85–49–001, Public Service Company of New Mexico
CAM–5.
Omitted
CAM–6.
Docket No. RM87–7–000, Information to be Made Available by Hydroelectric Licensees Under Section 4(a) of the Electric Consumers Protection Act of 1986
CAM–7.
Docket No. RM88–16–000, Regulations Amending Commission Review of Contested DOE Remedial Orders
CAM–8.
Docket No. GP88–14–000, State of Kentucky, Public Service Commission, Blacklog #5 Well, *et al.*, JD81–43949, *et al.*
CAM–9.
Docket No. GP87–71–000 Railroad Commission of Texas, Brown No. 1 Well, NGPA Section 102(c)(1)(C), JD No. 83–45067 and H.E. Wilcox No. 1 Well, NGPA Section 108, JD No. 80–44765
CAM–10.
Docket No. GP84–15–000, Railroad Commission of Texas, El Paso Natural Gas Company, Section 103 NGPA Determination, Patterson No. 2 Well, FERC No. JD81–15154
CAM–11.
Docket No. GP84–20–003, City of Farmington v. Amoco Gas Company and Amoco Production Company

Consent Gas Agenda

CAG–1.
Docket No. RP88–62–000, Equitable Gas Company
CAG–2.
Docket No. RP88–78–000, Transwestern Pipeline Company
CAG–3.
Docket No. ST88–677–000, Hill Transportation Company, Inc.
CAG–4.
Docket No. RP88–29–003, Tarpon Transmission Company
CAG–5.
Docket No. TA88–1–22–001, CNG Transmission Corporation

CAG–6.
Docket no. RP87–15–021, Trunkline Gas Company
CAG–7.
Docket No. RP87–26–026, Tennessee Gas Pipeline Company
CAG–8.
Docket Nos. RP88–5–006 and RP88–37–003, Transcontinental Gas Pipe Line Corporation
CAG–9.
Docket Nos. RP85–177–044 through 046 and CP88–136–000, Texas Eastern Transmission Corporation
CAG–10.
Docket No. RP85–177–009, Texas Eastern Transmission Corporation
CAG–11.
Docket Nos. RP88–45–002 and RP88–46–001, Arkla Energy Resources, a division of Arkla, Inc.
CAG–12.
Docket No. RP86–144–000 and 002, Sea Robin Pipeline Company
CAG–13.
Docket No. RP85–122–004, Colorado Interstate Gas Company
CAG–14.
Docket Nos. RP86–100–002 and RP86–119–001, Tennessee Gas Pipeline Company
CAG–15.
Docket Nos. RP86–111–001 and 002, Transcontinental Gas Pipe Line Corporation
CAG–16.
Docket No. RP88–47–001, Northwest Pipeline Corporation
CAG–17.
Docket Nos. CP86–401–007, CP87–354–002 and CP87–393–002, Southern Natural Gas Company
CAG–18.
Docket No. TA88–1–52–001, Western Gas Interstate Company
CAG–19.
Docket No. TA88–2–39–000, Pacific Interstate Transmission Company
CAG–20.
Docket Nos. RP85–177–008 and RP85–176–001 (Minimum Bill), Texas Eastern Transmission Corporation
CAG–21.
Docket No. RP87–61–000, Eastern Shore Natural Gas Company
CAG–22.
Docket No. RI87–553–000, Cities Service Oil and Gas Corporation
CAG–23.
Docket Nos. CI86–138–002 and CI86–295–002, Chevron U.S.A. Inc. and Tenneco Oil Company
CAG–24.
Docket No. G–13299–006, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. CI67–851–001, Amoco Production Company
Docket No. CI86–745–000, Harry Allen Chapman
Docket No. CI86–745–001, Harry Allen Chapman
Docket No. CI87–231–000, Gordon Oil Company
Docket No. CI88–166–000, Vintage Petroleum, Inc.
Docket No. CI88–182–000, Amoco Production Company
Docket No. CI88–209–000, Midland Resources, Inc.
Docket No. CI88–210–000, Kerr-McGee Corporation and Perkins Energy Company
Docket No. CI88–299–000, Gibson, *et al.*
Docket No. CI88–309–000, Arlington Exploration Company
Docket No. CI88–354–999, Lone Wolf Producing Company
Docket No. CI88–202–000, Kirkpatrick Oil and Gas Company
Docket No. CI88–371–000, Exxon Corporation
Docket No. CI86–282–000, Fina Oil and Chemical Company, *et al.*
Docket No. CI86–282–002, Fina Oil and Chemical Company, *et al.*
Docket No. CI87–126–000, Republic Mineral Corporation
Docket No. CI87–170–000, Hutton Gas Company
Docket No. CI87–420–000, Amerada Hess Corporation
Docket No. CI87–611–000, Amerada Hess Corporation
Docket No. CI87–618–000, Amerada Hess Corporation
Docket No. CI87–801–000, Amoco Production Company
Docket No. CI87–877–000, Pennzoil Company and Pennzoil Gas Marketing Company
Docket No. CI87–890–000, Pennzoil Company
Docket No. CI88–114–000, Pauley Petroleum, Inc.
Docket No. CI88–115–000, Pauley Petroleum, Inc.
Docket No. CI88–186–000, Mitchell Energy Corporation,
Docket No. CI88–220–000, John A. Newman and Foy Tomlinson
Docket No. CI88–227–000, Wilshire Oil Company of Texas
Docket No. CI88–265–000, Hill Trusts
Docket No. CI88–268–000, Mesa Operating Limited Partnership
Docket No. CI88–319–000, Mesa Operating Limited Partnership
Docket No. CI88–368–000, Louis J. Hector, *et al.*
Docket No. CI87–373–000, WTG Exploration, Inc.
Docket No. CI88–347–000, Edinger Inc., *et al.*
Docket No. CI86–293–000, Transcontinental Gas Pipe Line Corporation
Docket No. CI86–297–000, Transcontinental Gas Pipe Line Corporation
Docket No. CI86–637–004, ANR Pipeline company
Docket No. CI87–239–000, Northwest Central Pipeline Corporation (now Williams Natural Gas Company)
Docket No. CI87–115–002, Colorado Interstate Gas Company
Docket No. CI87–121–002, Colorado Intrestate Gas Company
Docket No. CI87–684–000, Natural Gas Pipeline Company of America
Docket No. CI88–290–000, J.M. Huber Corporation
Docket No. CI88–364–000, Ultramar Oil and Gas Limited
CAG–25.
Docket No. CI87–533–000, Mesa Operating Limited Partnership (Successor to Pioneer Production Corporation)
Docket Nos. CI69–491–001 and 002, Amoco Production Company
CAG–26.
Docket No. CP88–231–000, Oklahoma Gas Pipeline Company, Enron Gas Gathering, Inc., Odeco Gas Gathering Inc., Tabasco Gas Pipe Line Company, Sonat Gas Gathering Inc., and Murphy Gas Gathering Inc.
CAG–27.
Docket No. CI88–59–000, Conoco, Inc., Cities Service Oil and Gas Corporation, Texaco Producing, Inc. and AGIP Petroleum Company, Inc.
CAG–28.
Docket No. CP83–335–212, Williston Basin Interstate Pipeline Company
CAG–29.
Docket No. RP88–13–001, James River Corporation of Nevada v. Northwest Pipeline Corporation
Docket No. CP88–111–001, Northwest Pipeline Corporation
Docket No. CP87–328–002, Northwest Pipeline Corporation
CAG–30.
Docket No. CP88–232–028, Panhandle Eastern Pipe Line Company
CAG–31.
Docket Nos. CP86–407–001 and RP86–136–004, National Fuel Gas Supply Corporation
CAG–32.
Docket No. CP86–376–001, Panhandle Eastern Pipe Line Company
CAG–33.
Docket No. CP86–676–001, Equitable Gas Company, a Division of Equitable Resources, Inc. and Equitable Transmission Company
CAG–34.
Docket No. CP86–337–003, Algonquin Gas Transmission Company
CAG–35.
Docket Nos. CP84–209–010, 011 and 012, Lawrenceburg Gas Transmission Corporation and Texas Gas Transmission Corporation
CAG–36.
Docket Nos. CP87–332–001, CP87–333–001, CP87–334–001, CP87–457–001 and 002, Trunkline Gas Company
CAG–37.
Docket No. CP86–489–001, Transcontinental Gas Pipe Line Corporation
CAG–38.
Docket No. CP87–261–000, K N Energy, Inc.
CAG–39.
Iowa Public Service Company

I. Licensed Project Matters

P–1.
Project No. 9391–002, Pan Pacific Hydro, Inc. Order on preliminary permit.

II. Electric Rate Matters

ER–1.
Docket No. EL87–53–000, Orange and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company. Order on petition for declaratory order concerning rates for purchases from qualifying facilities.

Miscellaneous

M–1.
Reserved
M–2.
Reserved

I. Pipeline Rate Matters

RP–1.
Docket Nos. CP88–291–000 and 001, Natural Gas Pipeline Company of America. Order concerning a proposal to implement a gas supply charge.
RP–2.
Omitted

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Docket No. CP86–492–001, Moraine Pipeline Company
Docket No. CP86–494–001, Moraine Pipeline Company
Docket No. CP86–493–001, Natural Gas Pipeline Company of America. Order on request for rehearing of optional procedures certificate to construct and operate facilities.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7989 Filed 4–7–88; 4:42 pm]

BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 18, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21th Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 8, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–8079 Filed 4–8–88; 3:47 am]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 11, 18, 25, and May 2, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED: .

Week of April 11

Wednesday, April 13

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 18—Tentative

Thursday, April 21

10:00 a.m.
Briefing on Status of Program for Performance Indicators (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed-Ex. 2 and 6)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 25—Tentative

Thursday, April 28

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 2—Tentative

Wednesday, May 4

10:00 a.m.
Annual Briefing on the State of the Nuclear Industry (Public Meeting)
2:00 p.m.
Briefing on NRC Point Papers for Consultation Draft of the Site Characterization Plan for Yucca Mountain (Public Meeting)

Thursday, May 5

2:00 p.m.
Briefing on Status of Operator Requalification Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on the time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

April 7, 1988.

[FR Doc. 88–7998 Filed 4–8–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [53 FR 11001 April 4, 1988].

STATUS: Closed meetings.

PLACE: 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, March 30, 1988.

CHANGES IN THE MEETING: Additional meeting/item.

The following item was considered at a closed meeting on Monday, April 4, 1988, at 2:30 p.m.

Formal order of investigation.

The following additional item was considered at a closed meeting scheduled on Tuesday, April 5, 1988, at 2:30 a.m.

Chapter 11 proceeding.

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: Nancy Morris at (202) 272–2468.

Jonathan G. Katz,

Secretary.

April 6, 1988.

[FR Doc. 88–8086 Filed 4–8–88; 3:58 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 70
Tuesday, April 12, 1988

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 STATE

22 CFR Parts 120, 121, 122, 123, 124, 125, 126, 127 and 128

[Departmental Regulations 108.866]

The International Traffic in Arms Regulations (ITAR) and Implementation of the Foreign Relations Authorization Act

Correction

In rule document 88-7709 beginning on page 11494 in the issue of Thursday, April 7, 1988, make the following correction:

On page 11495, in the first column, in the 16th line, "ineligible" should read "eligible".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

28 CFR Part 66

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government

Correction

In rule document 88-5251 beginning on page 8034 in the issue of Friday, March 11, 1988, make the following correction:

§ 66.32 [Corrected]

On page 8069, in § 66.32(a), in the first column, in the 11th line, insert "justice" after "criminal".

BILLING CODE 1505-01-D

Federal Register

Tuesday,
April 12, 1988

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1907 and 1910

Safety Testing or Certification of Certain Workplace Equipment and Materials; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1907 and 1910

[Docket No. S-110]

Safety Testing or Certification of Certain Workplace Equipment and Materials: Deletion of Specific Testing Laboratory Names; Definition of Nationally Recognized Testing Laboratory; Determination of Eligible Testing Organizations

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final Rule.

SUMMARY: The Occupational Safety and Health Administration is deleting the names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) from 23 testing-related standards provisions in the OSHA "general industry" standards (29 CFR Part 1910). Generally, the Agency is substituting the term "nationally recognized testing laboratory" (NRTL) and is providing a new definition for this previously undefined term. Additional minor terminology changes are also being made.

This rule also provides a mandatory procedure for a testing organization to be recognized as a nationally recognized testing laboratory (NRTL) by OSHA. This procedure will replace 29 CFR Part 1907 which has remained unimplemented since its promulgation in 1973. This new mandatory procedure includes public review of an applicant's operations against the NRTL definitional criteria.

OSHA will closely monitor progress under these new provisions and will evaluate the effectiveness of the program on an ongoing basis. Further rulemaking will be undertaken as appropriate if necessary to make the recognition process work more effectively.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151. This final rule was written by William J. Higgins, Directorate of Safety Standards Programs.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Summary of Rule

The Agency is deleting the names of Underwriters Laboratories, Inc. (UL) and Factory Mutual Research Corporation (FMRC) from 23 testing-related standards provisions in 29 CFR Part 1910.

Under these standards, third-party (or independent) testing for safety is necessary in order that certain equipment and materials be acceptable for workplace use. The safety standards being revised either had explicitly required or had implied that this safety testing be performed only by UL or FMRC. Over the past decade, certain testing laboratories other than UL and FMRC have claimed to have suffered economic losses due to this situation.[1] They repeatedly have sought regulatory relief of a type being afforded here by OSHA.

As a result of this UL/FMRC name deletion, the 23 identified OSHA safety standards now will provide that certain types of workplace equipment and materials be third-party tested for safety by "nationally recognized testing laboratories." The Agency is adding a definition of NRTL since heretofore there has been no definition of this term in OSHA's safety standards. Those testing certain workplace equipment and materials required to be approved by OSHA standards will need to be recognized by OSHA as a nationally recognized testing laboratory.

This new definition of NRTL includes the following requirements:

(1) Capability to examine specific equipment for workplace safety;

(2) Provision of controls and services necessary for assuring and demonstrating original conformity of equipment to appropriate test standards;

(3) Independence from manufacturers, suppliers and vendors of products, and from other employers; and

(4) Procedures for producing creditable findings and reports and for handling complaints and disputes.

This final rule includes a requirement that testing laboratories listing or approving products or equipment required to be approved under Part 1910 be recognized as Nationally Recognized Testing Laboratories (NRTL) by OSHA. Under this rule OSHA will evaluate applicant testing and control programs against the NRTL definitional requirements, and issue a written "recognition" letter. This will be done in accordance with a new Appendix A which is being issued under this rule and described in greater detail later. OSHA contemplates continuing surveillance over OSHA-recognized NRTLs to assure conformance with the requirements of this rule. OSHA may, in the future, also engage in post approval audits of products listed or approved by laboratories recognized under this program by OSHA as nationally recognized testing laboratories. Such postmarketing surveys would be designed to evaluate the effectiveness of the OSHA recognition program being established in this final rule and the effectiveness of individual laboratories in assuring that products they have approved do indeed meet the required standards.

This final rule is issued as a result of OSHA's proposal entitled "Safety Testing and Certification of Certain Workplace Equipment and Materials" (49 FR 8326). The remaining proposed requirements and related questions arising from the Agency's March 6, 1984 proposal are unaffected by this action. These issues will undergo further study by the Agency.

B. Proposal History

On March 6, 1984, the Occupational Safety and Health Administration (OSHA) proposed to initiate a comprehensive overhaul of its regulatory procedures related to OSHA's requirements for safety testing or certification of certain workplace equipment and materials (49 FR 8326).[2]

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[1] In 1983, the Agency entered into a settlement agreement with a Baltimore, Maryland testing laboratory (*MET Electrical Testing Company, Inc.* v. *Raymond J. Donovan, Secretary of Labor*, No. Y-82-1133, D. Md.), and the suit was dismissed without prejudice. Under that agreement, it was mutually agreed that OSHA would "continue development of a rule looking toward (1) deletion of references to UL and FM wherever these terms appear in 29 CFR Part 1910 and (2) amendment of Part 1907 to create a workable procedure for designation of enterprises whose approval of products will be accepted by OSHA." MET recently filed suit to "compel compliance with the settlement agreement" and the Secretary moved to dismiss for lack of subject matter jurisdiction and alternatively moved to transfer the case to the U.S. Court of Appeals. The Judge denied the Secretary's motion to dismiss and ordered the Secretary to complete the rulemaking process within 120 days (*MET Electrical Testing Co., Inc.* v. *Secretary of Labor*, No. Y-87-1480, D. Md., 12/8/87).

[2] The Agency's NPRM included four related components:

1. Proposed revisions to nine Subparts of Part 1910 (General Industry Safety and Health Standards);

2. Proposed Part 1936, replacing current Part 1907;

3. Proposed Part 1935, covering OSHA test methods and procedures; and,

4. Proposed addition to Part 1910, Subpart A, concerning valid testing and certification for OSHA purposes.

The goals of the proposal were:

(1) To assure that products required to be tested or certified would be reliably tested or certified;

(2) To implement testing and certification requirements and procedures which would be administratively workable; and

(3) To take advantage of recent developments by others in organizing and evaluating product certification systems and in accrediting laboratories for testing (49 FR 8327, col. 2).

In proposed revisions to Part 1910, the names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) were to be deleted from OSHA's general industry standards. This removal would end any perceived preference on the part of the Agency for the product safety testing activity of these two enterprises.

The proposal also included significant changes to several key testing-related definitions contained in OSHA's general industry standards. These changes would update and provide uniformity to the testing and certification terminology used in Part 1910.

The Agency also proposed to revise completely OSHA's unimplemented regulation at 29 CFR Part 1907, "Accreditation of Testing Laboratories." Major portions of Part 1907 were to be revised and redesignated as part of a proposed new Part 1936; other provisions of questionable utility were to be revoked.

New 29 CFR Part 1936—entitled "OSHA Recognition of Testing-Related Agencies and Certification Programs"—proposed a new procedure by which OSHA would recognize enterprises it considered competent to perform activities related to the testing or certification requirements contained in the Part 1910 safety standards. It would include requirements related to (1) laboratory accreditation agencies and accredited laboratories, and (2) product certification systems, including both manufactuer self-certification and third-party certification programs.

As a related matter, OSHA also proposed to establish a new Part 1935 of Title 29, "Occupational Safety and Health Test Methods and Procedures." Specific test methods and procedures intended for use in complying with OSHA's safety standards would be set forth in Part 1935 after promulgation by OSHA.

The proposal also included a new section for Part 1910, § *1910.7 Valid testing data and certifications for safety.* This section included provisions concerning the validity of testing data and the use of standard test methods and procedures. It also included a requirement that laboratory-based testing—other than testing conducted directly by employers—be conducted only in duly accredited laboratories. These requirements were intended to apply only to the safety standards in Part 1910; health standards in Subpart Z of Part 1910 were specifically excluded.

In the proposal, OSHA stated that it was attempting to build upon the self-regulatory efforts of the private sector, particularly in the fields of electrical and fire safety. OSHA stated its intention to take full advantage of the mechanisms which now exist in the private sector or in government, and to keep its long-term involvement in these activities to a minimum (49 FR 8329).

As noted, the proposal was issued on March 6, 1984. A three-day informal public hearing was held on September 25 and 26, and October 1, 1984, and additional written submissions concerning this proposal were received until December 31, 1984. The record on the proposal closed December 31, 1984.

(References in this text to written public comments, post-hearing submissions, etc., will be marked by "EX" or "EXs" in parentheses, and to the transcript of the informal public hearing by "TR" in parentheses.)

II. Major Issues and Questions

A. General

Based on a thorough review of the public comments and testimony in the record, the Agency now believes that the "comprehensive overhaul" which it originally proposed cannot be accomplished on the present record. However, OSHA has identified certain important elements of its original proposal—including the deletion of the specific name references to UL and FMRC throughout Part 1910—which should be finalized.

OSHA believes it is appropriate to complete the deletion of the references to UL and FMRC at this time. The following facts support this action:

1. The record contains sufficient documentation to support this action;

2. Proper implementation of these changes, in close cooperation with the private sector, including operators of independent testing laboratories, should maintain current levels of worker safety protection.

To assure no diminution of worker safety, the Agency is also providing a definition of "nationally recognized testing laboratory," the term which is being substituted for references to UL and FMRC in the standards, and is including a requirement that firms doing product and equipment approval or listing required by OSHA, be recognized by OSHA as a NRTL. The new definition will foster compliance with OSHA standards in a manner consistent with worker safety and assist in the enforcement of these standards. The procedure prescribed in the standard for obtaining OSHA recognition would also assure that there is no diminution of worker safety.

The Agency believes that this NRTL definition is supported by substantial evidence as to the necessary elements of an appropriate substitute for the UL and FMRC designation. This definition will assist in maintaining current worker protection levels.

Further rulemaking on this definition is not necessary; adequate notice was given that substantive elements, such as those contained in the NRTL definition, were being considered as part of the regulatory scheme contemplated in the proposed overhaul. The full regulatory scheme contemplated in the proposal is not being implemented at this time for reasons discussed more specifically below. Briefly, the scheme was cumbersome and administratively awkward (see also EX 8–26, pp. 2, 12).

OSHA believes that the regulatory action taken today provides a better resolution to the problem of removing the UL/FM references in the standard and providing objective criteria and procedures for competent laboratories to be able to obtain OSHA recognition to list or approve certain workplace equipment or materials (EX 2–30). It should be noted that this rule in no way extends the requirements for approval to any additional equipment or material not already required by the OSHA standards to be approved. It merely provides a vehicle to allow OSHA as well as employers who have the responsibility for using approved equipment or material under certain OSHA standards to be able to ascertain that the above described equipment or material has been approved and is therefore acceptable.

This rule provides a method for a testing organization to be considered a nationally recognized testing laboratory (NRTL) as defined in this rule. The method requires a testing laboratory to request OSHA recognition as an NRTL. This procedure includes public review of an applicant's operations against the NRTL definitional criteria. The elements of such a mandatory process were discussed in the proposal.

These changes will become effective 60 days after their publication as a final rule. This time period is reasonable in this case, since the definitional requirements of a nationally recognized testing laboratory being promulgated

herein should be readily achievable without an extended period for familiarization.

B. Deletion of UL and FMRC Names

1. Proposal for Deletion

One of the principal changes proposed in the March 6, 1984, Notice of Proposed Rulemaking, was the deletion of the names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) from the safety standards in 29 CFR Part 1910. The Agency stated that it intended to eliminate references to specific third-party testing/inspection organizations, and provide uniformity and consistency in terminology (49 FR 8329, col. 1).

The proposed UL/FMRC deletion was supported by a number of participants in the rulemaking proceeding, including the National Electrical Manufacturers Association and the National Electrical Contractors Association (EX 39; TR 470, 497, 529, 565 and 597). Moreover, no substantial objection has been raised concerning the proposed deletion.

The sole negative comment appears to opt for the status quo, claiming that the proposed change is neither necessary nor desirable. Associated Specialty Contractors, Inc., said:

> The self-regulatory efforts of the private sector have been entirely adequate, and the success of these efforts and the results of the high standards of the testing laboratories which have been performing these services for many years have been remarkable achievements. Almost everyone responsible for preparing products to be tested, for meeting testing standards in design and production, and for using certification of accepted laboratories as a measure of safety is completely familiar with the present arrangements. In fact, the general public widely relies on labels by known laboratories and could be greatly confused by a change in procedures. (EX 8–47)

The Agency believes that this comment does not establish that the references to UL and FMRC must be retained. This is based on the following reasons:

a. The deletion of the names of UL and FMRC is not based on a judgment as to the performance or capabilities of these two testing laboratories (49 FR 8330, col. 3, and 8346, col. 2);

b. No evidence was presented to demonstrate that the private sector system in place today would be incapable of adjusting to these changes easily; and,

c. There is no evidence that the deletion would in any way diminish worker safety and health or that there would be any confusion created by the deletion.

In fact, the evidence in the record indicates that several additional testing laboratories can be expected to provide these services in a reliable and efficient manner (See, for example, TR 529).

A number of witnesses supported these findings. For example, Mr. Gmoser, representing ETL Testing Laboratories, stated that:

> * * * [UL and FMRC] have served a positive and necessary role, but, now, so can many other laboratories. (EX 8–43, pg. 7)

In addition, Mr. O'Neill, representing the American Council of Independent Laboratories, stated that:

> There are certainly a handful of qualified laboratories at this moment who, without any impairment to safety in the workplace, could offer their services in this market. (TR 353)

Mr. Miller, representing Factory Mutual Research Corporation, stated in the record:

> While we are most appreciative of the expression of confidence implicitly rendered by OSHA, we are at the same time cognizant that other organizations are capable of providing similar services . . . There are, in fact, many qualified laboratories who, should they choose, could contribute to maintaining safety in the workplace. (TR 529)

Neither UL nor FMRC opposed OSHA's plan to delete their names from the safety standards at issue (TR 497, 565). In fact, Mr. Collins, representing UL at the hearing, concurred in the proposed deletion, saying:

> We don't want to be singled out, named. Take it out. (TR 470)

Acceptance of this change by manufacturers, who are the principal users of the testing services under consideration in this rulemaking, is evidenced by the post hearing comment of the National Electrical Manufacturers Association, a major organization which participated heavily in this rulemaking:

> NEMA urges OSHA to * * * delete all references to named testing laboratories (*e.g.*, 'Underwriters Laboratories, Inc.,' 'UL,' 'Factory Mutual Research Corp.,' 'Factory Mutual Engineering Corp.,' 'FM', and the like) * * * (EX 39)

Similarly, another participant, the National Electrical Contractors Association, suggested "maybe going a little bit further * * * in deleting the references to the two laboratories, and delete the words, 'Such as, but not limited to, Underwriters Laboratories, Incorporated [sic], and Factory Mutual Engineering Corporation" (TR 597).

Therefore, based on the rulemaking record, OSHA finds that there is general and widespread acceptance of the appropriateness of deleting the names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) from the safety standards in 29 CFR Part 1910.

2. Additional Standards Being Included

In its proposal, the Agency attempted to identify those texts in Part 1910 wherein the UL/FMRC name deletions were to be made. Revisions were proposed for each of nine subparts in the general industry standards (49 FR 8350 through 8353).[3]

OSHA stated its intent to eliminate all references in its standards to specific third-party testing/inspection organizations (49 FR 8329, col. 1) and the public was invited "to identify any provisions in Part 1910 where such requirements are now in effect, but which the Agency may have inadvertently failed to include in this proposed change" (49 FR 8329, col. 1). No additional instances of UL and FMRC references requiring name deletion were submitted to the record by the public.

After the proposal was published, the Agency again conducted a thorough review of the Part 1910 safety standards. As a result of this review, the Agency identified some additional standards where the UL/FMRC names should be deleted. Therefore, the number of standards provisions in Part 1910 subject to this deletion activity have been almost doubled, from the 12 which had been identified at the time of the proposal to 23 identified in this document. (These additional provisions are identified with an asterisk in the listing below.[4]

3. Standards Provisions Affected

The names of Underwriters Laboratories Inc. (UL) and Factory Mutual Research Corporation (FMRC) appear in 23 testing-related provisions in OSHA's general industry safety standards. These specific-name references which appear in Part 1910 can be organized into three categories:

"Acceptable" Definitions—In this category, UL and FMRC have been used as illustrative examples of an undefined "nationally recognized testing

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[3] The deletions of the UL/FMRC names were also among the specific actions described in the "Summary and Explanation of the Proposed Regulation" (49 FR 8332, col. 2, through 8334, col. 2).

[4] Other UL citations which merely reference UL Standards will remain unchanged. For example, 29 CFR 1910.252(b) (2) (i) reads: "Assurance of consideration of safety in design is obtainable by choosing apparatus complying with the Requirements for Electric Arc-Welding Apparatus, NEMA EW–1–1962, National Electrical Manufacturers Association or the Safety Standard for Transformer-Type Arc-Welding Machines ANSI C33.2–1956, Underwriters' Laboratories."

See also: §§ 1910.106(b)(1)(iii)(*a*)(*1*), 1910.107(b)(5)(vi), 1910.107(k), and 1910.155(a)(17).

laboratory" which tests (and lists, labels, etc.) equipment:
(a) Subpart H—§ 1910.111(b)(1)(ii)
(b) Subpart S—§ 1910.111(a)(1)(i)

"Approved" Definitions with NRTL—In this category, both the "nationally recognized testing laboratory" term and the names of UL and FMRC have been used together to define the "approved" requirement for equipment specified in the particular standard:
(a) Subpart H—§ 1910.103(a)(l)(ii)
(b) Subpart H—§ 1910.106(a)(35)
(c) Subpart H—§ 1910.107(a)(8)
(d) Subpart H—§ 1910.108(a)(3)
(e) Subpart H—§ 1910.110(a)(14)
(f) Subpart L—§ 1910.155(c)(3) (i)
(g) Subpart N—§ 1910.178(a)(7)
(h) Subpart Q—§ 1910.251(b)

Text allows only UL/FMRC—In this last category, safety testing, listing or approval by UL and/or FMRC is required for specific products:
(a) Subpart D—§ 1910.28(f)(2)
(b) Subpart D—§ 1910.28(g)(3)
(c) Subpart D—§ 1910.28(h)(2)
(d) Subpart D—§ 1910.28(i)(1)
*(e) Subpart H—§ 1910.109(d)(2)(iii)(*a*)
*(f) Subpart H—§ 1910.110(b)(2)(iii)
*(g) Subpart H—§ 1910.110(c)(5)(i)(*g*)(*l*)
*(h) Subpart H—§ 1910.110(f)(5)(iv)
*(i) Subpart N—§ 1910.180(i)(4)(i)
*(j) Subpart N—§ 1910.181(j)(4)(i)
*(k) Subpart R—§ 1910.265(d)(2)(iv)(*c*)
*(l) Subpart R—§ 1910.266(c)(4)(iii)
*(m) Subpart R—§ 1910.266(c)(4)(iv)

4. Actions Being Taken

In the first two categories described above, when the names of UL and FMRC are removed from the provision in question, the term "nationally recognized testing laboratory" (NRTL) will remain.

For example, in the first category, § 1910.111(b)(1)(ii) previously read:

(ii) It is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory, such as, but not limited to, Underwriter's Laboratories Inc. and Factory Mutual Research Corporation: . . .

It will now read:

(ii) It is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; . . .

Similarly, in the second category, § 1910.103(a)(1)(ii) previously read:

(ii) Approved—Means unless otherwise indicated listed or approved by the following nationally recognized testing laboratories: Underwriters' Laboratories, Inc., and Factory Mutual Engineering Corp.

It will now read:

(ii) Approved—Means, unless otherwise indicated, listed or approved by a nationally recognized testing laboratory.

Concerning the "nationally recognized testing laboratory" (NRTL) term currently in use in 29 CFR Part 1910, the Agency notes that it had proposed, in its NPRM, several substitute terms for this NRTL term. Due to its decision not to adopt the scheme contemplated in the proposal considered as a whole, OSHA has decided to return to the nationally recognized testing laboratory term. The Agency believes that the regulatory text changes described above adequately demonstrate the practicality of this approach.

In items (a) through (h) of the third category, the standard simply designates UL and FMRC. A new term needs to be substituted for UL/FMRC, because the deletion of those names without some substitution would render the entire provision meaningless. Therefore, the term "nationally recognized testing laboratory" will be substituted in these instances.

For example, in § 1910.28(f)(2), the requirement that

The scaffold shall be provided with hoisting machines that meet the requirements of Underwriters' Laboratories or Factory Mutual Engineering Corp.

will become

The scaffold shall be provided with hoisting machines that meet the requirements of a nationally recognized testing laboratory.

Similarly, in § 1910.109(d)(2)(iii)(*a*), the requirement that

Only extinguishers listed or approved by Underwriters' Laboratories, Inc., or the Factory Mutual Engineering Corp. shall be deemed suitable for use on explosives-carrying vehicles.

will become

Only extinguishers listed or approved by a nationally recognized testing laboratory shall be deemed suitable for use on explosives-carrying vehicles.

However, in items (i) through (m) in the third category, it will not be necessary to insert the term nationally recognized testing laboratory. The Agency will simply delete the UL/FMRC names, and rely on the term "approved" which is currently used in the standard. The term "approved" is defined elsewhere in the standards as being accepted, labeled, listed or certified by a nationally recognized testing laboratory.

For example, § 1910.180(i)(4)(i) previously read:

(i) Refueling with small portable containers shall be done with Underwriters' Laboratories or Factory Mutual Laboratories approved, or equivalent, safety type can equipped with an automatic closing cap and flame arrester.

It will now read:

(i) Refueling with small portable containers shall be done with an approved safety type can equipped with an automatic closing cap and flame arrester.

As shown above, OSHA has also deleted the phrase "or equivalent" from §§ 1910.180(i)(4)(i) and 1910.181(j)(4)(i). The Agency interprets this phrase in these current standards as referring back to the two named laboratories. In other words, its inclusion appears to provide for possible acceptance of safety cans tested and accepted by laboratories other than UL and FMRC, a goal accomplished by this final rule in another manner.

Continued inclusion of the "or equivalent" phrase will no longer be necessary under the provisions of this final rule. The current definitions of "approved" in Part 1910—see, for example, § 1910.155(c)(3)(1)—refer to a "nationally recognized testing laboratory," and a suitable definition of that term is contained in this final rule. Since the new NRTL definition will allow for full activity by all nationally recognized testing laboratories, rather than just UL and FRMC, it is unnecessary to retain the term "or equivalent" in §§ 1910.180 and 1910.181.

As part of this revision, OSHA is including cross-references to terms such as "nationally recognized testing laboratory" and "approved" which are defined elsewhere in the Part 1910 standards in order to facilitate understanding of these requirements in the standards. These cross-references will be inserted in each of the 23 provisions included here. A cross-reference to the definition of nationally recognized testing laboratory is also being added to 29 CFR 1910.35(h) which uses this term.

This differs from the proposal, which included a thorough revision of many of the definitions in each Subpart. Such revisions are not necessary to achieve the goal of this final rule, namely the deletion of the names of UL and FMRC and the use or substitution of a newly-defined term, "nationally recognized testing laboratory," or the term "approved" instead. The other changes proposed are not necessary to achieve this end and are therefore not being made.

C. Nationally Recognized Testing Laboratory

1. OSHA Definition of NRTL

As mentioned above, it is necessary for the Agency to provide a definition of "NRTL" in 29 CFR Part 1910, in order to assure no diminution of worker safety as a result of this UL/FMRC name

deletion. The Agency has determined that the term "nationally recognized testing laboratory" needs to be defined at this time and in a manner which does not allow the term to be subject to possible misinterpretation or misapplication (TR 352, 364).

The Agency has decided to define the regulatory term "nationally recognized testing laboratory" (NRTL) using certain elements that had been included in the proposed definitions of "qualified fire testing laboratory" and "qualified electrical testing laboratory" (see proposed 29 CFR 1910.155(c)(46) and 29 CFR 1910.399(a)(99a); 49 FR 8326, 8351 and 8353).

The definition for the "nationally recognized testing laboratory" term being promulgated herein is as follows:

(b) *Laboratory requirements.* The term "nationally recognized testing laboratory" (NRTL) means an organization which is recognized by OSHA in accordance with Appendix A of this section and which tests for safety, and lists or labels or accepts, equipment or materials and which meets all of the following criteria:

(1) For each specified item of equipment or material to be listed, labeled or accepted, the NRTL has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform:

(i) Testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards; or

(ii) Experimental testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards or performance in a specified manner.

(2) The NRTL shall provide, to the extent needed for the particular equipment or materials listed, labeled, or accepted, the following controls or services:

(i) Implements control procedures for identifying the listed and labeled equipment or materials;

(ii) Inspects the run of production of such items at factories for product evaluation purposes to assure conformance with the test standards; and

(iii) Conducts field inspections to monitor and to assure the proper use of its identifying mark or labels on products;

(3) The NRTL is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes; and

(4) The NRTL maintains effective procedures for:

(i) Producing creditable findings or reports that are objective and without bias; and

(ii) Handling complaints and disputes under a fair and reasonable system.

(c) *Test standards.* An "appropriate test standard" referred to in § 1910.7(b)(1)(i) and (ii) is a document which specifies the safety requirements for specific equipment or class of equipment and is:

(1) Recognized in the United States as a safety standard providing an adequate level of safety, and

(2) Compatible with and maintained current with periodic revisions of applicable national codes and installation standards, and

(3) Developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved, or

(4) In lieu of paragraphs (c)(1), (2) and (3), the standard is currently designated as an American National Standards Institute (ANSI) safety-designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials.

(d) *Alternative test standard.* If a testing laboratory desires to use a test standard other than one allowed under paragraph (c) of this section, then the Assistant Secretary of Labor shall evaluate the proposed standard to determine that it provides an adequate level of safety before it is used.

In promulgating this definition, it is not Agency purpose to impose a fixed organizational structure or operational scheme on any testing laboratory. Nor is it the Agency purpose to provide an OSHA-mandated definition of testing laboratories for uniform application to all OSHA standards including those in Subpart Z of this Part. This new definition will be applied only to those safety-related testing provisions in the Part 1910 general industry standards which are the subject of this rulemaking.

2. Overview of NRTL Definition

OSHA's new NRTL definition is comprehensive. It contains four detailed requirements, intended to be specific and exacting, which must be met by any organization intending to have itself considered as an NRTL for these purposes. Without exception, each NRTL must be technically qualified for the tasks it undertakes.

In addition, OSHA's NRTL definition does not require that NRTL status be limited only to those testing laboratories which are qualified to do all such OSHA-required testing, or even a major portion of it. Therefore, there could be an NRTL for only "ground fault circuit interrupters," another for only safety cans. OSHA recognition of a laboratory as an NRTL clearly will require designation of the specific equipment, or category of equipment, which the testing laboratory is found to be technically qualified to third-party test.

a. *Capability for Product Testing.* The first of the NRTL requirements addresses capability. The capability requirement includes proper testing equipment and facilities as well as trained personnel. This is a performance-oriented requirement and OSHA recognizes that the level of staff training and the sophistication of the equipment and facilities appropriate to do the testing to approve or list certain equipment or materials will vary with the particular equipment or materials that are the subject of the application for recognition. Generally, OSHA expects that most applicants will do the testing in-house. However, this is not a requirement of the standard. OSHA recognizes that, in some cases, laboratories may wish to subcontract out the testing of a certain product or aspect thereof due to unique or special testing needs. The laboratory actually doing the work must have the necessary capability to conduct the tests, and the laboratory applying for recognition would retain primary responsibility for fulfilling the requirements of the standard and complying with the procedures set out in Appendix A.

The Agency believes that the capability required for any particular testing laboratory to test a product is primarily influenced by the actual product testing standards, methods and procedures used in that testing. Another aspect of the capability requirement has been subdivided to distinguish between two categories of testing activity conducted by NRTLs.

In the first, the NRTL tests products using testing standards, methods and procedures which are published and recognized in the United States as appropriate for the products being tested. This might be termed "ordinary" or "routine" testing.

A second testing activity, being termed "experimental" in this definition, entails the testing of new or innovative products or the use of new tests on existing products. These products often may not fit well under existing testing standards, methods and procedures of the first category. Many of these testing activities may require revised standards, methods or procedures, or totally new ones for adequate testing. Others may require the use of available standards (revised or unrevised), combined with engineering expertise and decisionmaking as yet unspecified in writing. NRTLs which engage in this type of activity clearly require capabilities different from those utilized for "ordinary" testing. A laboratory which is well qualified for "ordinary" testing may not have the capability to do "experimental" testing.

Each NTRL's capability must be demonstrated in relation to the specific product being tested, the testing standards, methods and procedures

being used (see discussion below), and the quality of engineering decisionmaking needed to reach a workplace safety determination for the product.

b. *Continued Oversight of Products.* The second requirement addresses the need for the NRTL to maintain sufficient oversight of the "product line" (those facsimiles of the successfully tested equipment and materials which bear the NRTL's listing, label or acceptance). An organized product "follow-through" program is necessary so that a testing laboratory can assure itself, and OSHA, of the accuracy of all of its listings, labelings and acceptances. This part of the definition of NRTL has three elements: the implementation of control procedures for identifying the listed or labeled equipment; production line inspection to assure conformance with the test standards; and the initiation of service value determinations through post-marketing field inspections to monitor and assure the proper use of the mark or label.

The requirement for field inspections to monitor and assure the proper use of its identifying marks or labels on products means that the NRTL must evaluate as necessary the field performance of equipment which it has listed or labeled. This field inspection would serve at least three purposes. First, the NRTL would check for the correct use of its labels on products and the possible improper transfer of the laboratory's listing mark. Second, the laboratory would determine, for example, by responding to complaints from customers, whether in fact the product meets the test standards and requirements, or whether due to improper manufacturing or testing, the product does not satisfy the safety requirements of the testing standard when actually used in the workplace. Third, the field inspections may be used in appropriate circumstances to evaluate the effectiveness of the test standard. Where a laboratory uses a test standard which it has developed, it may well be necessary for it to evaluate the effectiveness of its standard through field testing of the actual product. On the other hand, where a third-party standard, such as an ANSI or ASTM standard has been used, such evaluation, beyond that required by the standard itself, should be the responsibility of the developing organization. The requirement is performance-oriented in that it is framed in terms of "to the extent needed for the particular equipment or materials listed or labeled. * * *" This recognizes that the amount of product oversight will vary from product to product and from manufacturer to manufacturer and that the NRTL is in the best position to make rational decisions on a case by case basis as to the level of oversight appropriate.

The elements of this product line/oversight requirement include well known and acceptable techniques for attempting to maintain the integrity of the testing and listing/labeling/acceptance systems in the United States. They include controlled marking/labeling procedures, factory inspections, and field inspections of products.

c. *Organizational Independence.* The third requirement is for independence of the NRTL from manufacturers, suppliers, vendors, and users of the equipment and materials it tests. Absent the direct involvement of the Agency in testing laboratory decisionmaking, this independence requirement is necessary to assure the integrity of the testing activities.

This independence requirement is consistent with longstanding practice by authorities enforcing NFPA codes and related standards. Historically, they have required the use of third-party or independent testing laboratories for fire/electrical safety testing.

d. *Controls and Accountability.* This last requirement is essentially procedural. It includes performance requirements related to the internal control and external accountability of the NRTL. The first subparagraph is intended to result in creditable findings and reports upon which reliance can be placed. The second requires the NRTL to have set procedures for handling complaints and disputes from parties having an interest in the NRTL's activities. These two requirements are focused primarily on promoting the high quality of NRTL operations necessary for workplace safety assurance.

3. Provisions Revised From Proposal

The OSHA definition of NRTL being adopted in this final rule is based on the definition of "qualified testing laboratory" (either fire or electrical) [5] included in the Agency's proposal of March 6, 1984. The proposed definition for these testing laboratories was based on an analysis of (1) OSHA's original section 6(a) and current section 6(b) safety standards (particularly those for electrical and fire safety); (2) past National Fire Protection Association and National Electrical Code documents which were sources for OSHA's standards; and (3) the testing laboratory requirements currently contained in 29 CFR Part 1907.

In this final definition of NRTL, the following changes have been made:

- The "OSHA-designated standards" requirement has been deleted
- The laboratory "capability" requirement is better focused
- The provision concerning "recall" has been deleted
- The "independence" requirement is clarified
- New "control" and "accountability" requirements, relating to "testing quality" and "due process," have been added
- The linkage to "third-party certification" has been deleted.

a. *Deletion of "OSHA-Designated Standards".* The Agency has deleted the phrase "in accordance with OSHA-designated standards" from the "capability" criterion in paragraph (ii) of the proposed definition.[6] In this final rule, the Agency will not be "identifying" or designating the test standards in the manner it had originally proposed in Part 1936.

The question of whether or not to require the use of "OSHA-designated standards" by the laboratories arose during the development of the March 4, 1984, proposal. It was generated by two concerns regarding "OSHA-recognized third-party certification" activity:

(1) There were many claims made to OSHA during the development of the

[5] The originally proposed definition for Subpart S—Electrical, § 1910.399(a)(99a), read as follows:

"(99a) *Qualified electrical testing laboratory.* The validating laboratory of a third-party certification program recognized under Part 1936 of this Title which:

(i) Is completely independent of manufacturers, vendors, and employers subject to this standard,

(ii) has the capability for properly examining and identifying equipment and materials as described in § 1910.303(b) in accordance with OSHA-designated standards, and

(iii) provides, to the extent needed for the particular equipment or materials tested, such controls or services as:

(A) Experimental testing for safety of specified items of equipment and materials referred to in this standard to determine conformance with appropriate test standards or performance in a specified manner;

(B) inspecting the run of such items of equipment and materials at factories for product evaluation to assure conformance with the test standards;

(C) service-value determinations through field inspections to monitor the proper use of labels on products, with provisions for recall in the event a hazardous product is installed; and

(D) controlled procedure for identifying the listed and/or labeled equipment or materials tested." (49 FR 8353; See also 49 FR 8351-2 for proposed § 1910.155(c)(46) in Subpart L—Fire Protection.)

[6] In addition, the phrases "as described in § 1910.303(b)" (Subpart S—Electrical) and ". . . in this subpart" (Subpart L—Fire) have been deleted from the proposed "Qualified testing laboratory" definition. The NRTL definition will serve more than one subpart, which makes these deletions necessary.

proposal as to the caliber and applicability of testing standards, methods and procedures being used in the private sector to test or certify products; and

(2) It was not clear to the Agency whether each third-party certification program should determine its own testing methods and procedures which would be used in its program, or whether those should be stipulated beforehand by OSHA.

The Agency raised the test standard issue in the proposal and invited comments on the necessity for including a requirement that equipment be tested to OSHA-designated standards (49 FR 8334, col. 3). A considerable number of comments were received on this issue (EXs 8–17, 8–22, 8–23, 8–26, 8–30, 8–34, 8–36B, 8–43, 8–44, 8–47, 8–49, 37 and 38). A number of organizations, including NEMA, the National Bureau of Standards (NBS), UL, FMRC, ETL Testing Laboratories, and the Electronic Industries Association, testified on this subject at the hearings (TR 174, 309, 395, 527, 572 and 606).

A large proportion of these commenters (EXs 8–17, 8–22, 8–23, 8–26, 8–34, 8–44 and 8–47; TR 210, 255, 287, 404, 473, 532, 540 and 611) urged OSHA not to engage in designating test standards, suggesting that such action would be both generally impractical and a needless imposition on the manufacturers of these products.

Certain other commenters, particularly NEMA, restated a position that had been argued before the Consumer Product Safety Commission at a hearing prior to the OSHA hearing on this proposal. In summary, that position strongly opposed a CPSC proposal concerning possible "recognition" by that Agency of private-sector voluntary consensus product standards which are acknowledged as essential to national efforts to improve the safety of many products. In the OSHA proceeding, NEMA also opposed this concept and argued that OSHA designation or adoption of specific test standards requires rulemaking under section 6(b) of the OSH Act (EXs 8–36B and 8–49; TR 177, 179, 192, 194–195, 252, 274 and 499). Beyond that, it was also claimed that any other similar action by OSHA in relation to sanctioning test standards for purposes of testing or certification requirements would constitute an evasion of the section 6(b) due process rights of manufacturers (EXs 8–36B, 33 and 39).

OSHA's proposal clearly indicated that it intended to identify the test standards for both manufacturer self-certification and third-party certification (proposed Part 1936), and OSHA may seek additional public comment on this issue in the future (see discussion below, II.c.3.f.). However, the Agency will not designate standards to be tested to in connection with this proceeding, which requires that third-party testing laboratories approving or listing certain equipment or materials required by OSHA standards to be approved must be recognized by OSHA as NRTLs for that purpose.

At this time, the Agency need only decide this issue to the extent that it is relevant to this final rule, i.e., third-party testing performed by nationally recognized testing laboratories. The evidence suggests that in the context of defining the NRTL, there is no need to designate the test standard for every product which must be listed, labeled or approved under the OSHA standards.

The record indicates that the preponderance of test standards being used in this country to test workplace equipment and materials of interest to OSHA in this rulemaking (and to workplaces subject to its standards and enforcement) are ANSI standards developed by Underwriters Laboratories (TR 413). In addition, most of the other standards being used are either those of FMRC (TR 531–539) or those which are in the process of being developed by UL (EX 31, pp. 1, 4). The latter are either proposed ANSI standards (in that they are in published form and have entered into an ANSI-sanctioned review process) or are in a preliminary development stage ("desk standards") and will ultimately be processed through the standards development process (TR 401 thru 404). Therefore, within this limited testing context, the Agency will not specify the specific test standards, methods and procedures to be used by the NRTLs in product evaluation.

In addition, one potential NRTL has indicated in the hearing record that it uses, intends to use, only the ANSI/UL standards (the nationally recognized standards) as part of its testing activities, since it (unlike UL) is not a standards-setting organization (TR 589, 592; EX 31).

It seems reasonable that product testing systems already in place should be able to continue their operations without Agency rulemaking on the testing standards, methods and procedures they are using now and have successfully used in the past. The operation of already-existing product testing systems, such as UL and FRMC, could be seriously disrupted if the Agency attempted to undertake rulemaking on the testing standards, methods and procedures they are using. The Agency is not prepared to make such a change at this time, particularly since the record does not reflect any need to impose such a requirement on these third-party testing laboratories (see EX 31, p. 4).

A related question was raised by NEMA concerning multiple producers of similar standards in the private sector standards community (TR 185). A short list of comparable standards was submitted by NEMA to the record (EX 33, pg. 2 and Appendix B). However, while the record indicates that current safety testing standards and practices may vary slightly among the various third-party safety testing organizations, the testing laboratories themselves indicate that they have compensating mechanisms and controls built into their particular systems which are intended to assure that the ultimate result will fall within an acceptable range (TR 534, 550). The laboratories' claim that they use those testing standards, methods and procedures which adequately address all necessary safety concerns and thereby justify their decision to "pass" the item in question and to allow the use of the laboratory's listing or identifying mark (EX 38, p. 3; TR 552–553).

Based upon its review of the record, the Agency observes that these minor operational differences are considered, and have been considered, as acceptable by the private and other public sector entities participating in the development and enforcement of the NFPA-based fire and electrical safety codes and standards. The Agency has found no evidence in the record which would justify any attempt, based on workplace safety considerations, to modify these currently acceptable practices, or to consider them as antithetical to worker safety and therefore requiring Agency involvement.

The sole purpose of this present action is to remove the specification of UL/FMRC as preferred testing laboratories from the OSHA standards; to provide relief for other laboratories by substituting and defining the term NRTL and to provide a procedure by which they can receive OSHA recognition (EX 30).

The Agency concludes that there is an adequate system of testing standards, methods and procedures currently existing in this country under the auspices of the private sector consensus standards community. Consequently, there appears to be no need at this time for OSHA to undertake the burdensome task of specifying each testing standard, method or procedure to be used by the NRTLs (EX 8–26, pp. 4–5). The recognition scheme adopted herein, as opposed to the more indirect scheme

contemplated in the proposal, provides an ample opportunity for Agency overview of the applying laboratory and its operation (TR 540–541). Therefore, there is no need to decide at this time whether the Agency would need to go through rulemaking in order to designate test standards.

Moreover, the insertion of an "OSHA-designated standards" requirement into the NRTL definition would constitute a substantial change in the current relationship between this Agency and the NRTLs as third-party testing organizations. It is not the purpose of this rulemaking to change these basic relationships.

However, the Agency believes that some guidance should be given to laboratory organizations seeking to be recognized as nationally recognized testing laboratories concerning what test standards will be considered "appropriate test standards."

OSHA has provided a definition of an appropriate test standard in § 1910.7 as follows:

(c) *Test standards.* An "appropriate test standard" referred to in § 1910.7(b)(1) (i) and (ii) is a document which specifies the safety requirements for specific equipment or class of equipment and is:

(1) Recognized in the United States as a safety standard providing an adequate level of safety, and

(2) Compatible with and maintained current with periodic revisions of applicable national codes and installation standards, and

(3) Developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved, or

(4) In lieu of paragraphs (c) (1), (2) and (3), the standard is currently designated as an American National Standards Institute (ANSI) safety-designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials.

(d) *Alternative test standard.* If a testing laboratory desires to use a test standard other than one allowed under paragraph (c) of this section, then the Assistant Secretary of Labor shall evaluate the proposed standard to determine that it provides an adequate level of safety before it is used.

In addition to accepting ANSI test standards as appropriate test standards within the meaning of this rule, OSHA also recognizes the American Society for Testing and Materials' (ASTM) test standards for products and materials as appropriate test standards. ASTM has been the nationally recognized standards development organization for product and materials testing standards since its beginning in 1898. In addition, it should be noted that many of the ANSI standards make use of or incorporate ASTM test standards; for example, the *ANSI/UL 153–1983 Standard for Portable Electric Lamps* makes use of these standards by referencing over nine separate ASTM standards. OSHA believes that the definition of appropriate test standard should specifically include test standards produced by these two organizations (see EX 8–21). OSHA does, however, retain the right to review the test standards and revisions to test standards of these two organizations. If OSHA believes that one of these test standards would compromise or diminish worker safety, OSHA would take appropriate action to disallow the use by nationally recognized testing laboratories of the standard in question.

This definition is intended to allow competent testing laboratories applying for OSHA recognition to continue following the responsible, safety enhancing practices which they have already been following successfully (see TR 529). In other words, it is an attempt to incorporate into the procedure successful past practice in the area. The record shows that testing laboratories prefer, where possible, to use test standards already developed by ANSI through an elaborate consensus process. Since it is not OSHA's intention to change this successful relationship but merely to codify it, ANSI standards are clearly stated to be presumed to be acceptable (see TR 531). The definition also allows necessary flexibility; even where an appropriate ANSI standard exists, applying laboratories may use alternative test procedures so long as they provide an adequate level of safety (EX 8–26, pp. 4–5; TR 532, 539, 547, 559). The definition also addresses the issue of that small percentage of cases where there is no test standard developed: the applying laboratory will determine how best to test the materials or equipment in question and the Secretary will ascertain as part of the recognition procedure that the testing will produce an adequate level of safety. This definition is intended to be fluid and dynamic to enable testing laboratories to meet the challenge of new products in a timely manner. For example, in some cases such a burden would be met by combining parts of already established test standards to adapt the test procedure to an innovative product (see TR 532–533, 543).

b. *Laboratory Capability.* In the NRTL definition, new paragraph (1) addresses "capability" and requires that the laboratory:

> (1) For each specified item of equipment or material to be listed, labeled, or accepted, the NRTL has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform:
>
> (i) Testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards; or
>
> (ii) Experimental testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards or performance in a specified manner.

This criterion relates to paragraph (ii) in the proposal.[7]

In establishing this capability requirement, the Agency has sought to allow the flexibility in approach which each testing laboratory will need in order to determine its NRTL capabilities, and also has sought to promote the exercise of rational decisionmaking by the Agency and others in determining the adequacy of these NRTLs.

As now written, this performance-related capability requirement would allow each testing laboratory to continue to determine its own level of competence, as long as those which operate as NRTLs in the OSHA sense meet the requirements of the NRTL definition (see generally, TR 534).

This performance (as opposed to specification) requirement allows for sufficient flexibility so that testing laboratories will not have to be overqualified for the task at hand merely to meet OSHA requirements (TR 552). Nor does the Agency consider it necessary to establish a specific model as the sole criterion against which all other NRTLs providing OSHA-related testing are to be evaluated.

As mentioned previously, it is the particular equipment or material which is to be tested (and then listed, labeled or accepted), combined with the particular testing standards, methods and procedures available for that testing, which will determine the capability level necessasry for the NRTL to make the workplace safety determination needed for that product.

Therefore, the NRTL capability requirement in this definition establishes two categories of NRTL operation:

(1) "Ordinary" testing for workplace safety purposes, and

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[7] See footnote 5 above (or 49 FR 8353).

(2) "Experimental" testing for the same purpose. Each category is based on the current status of the testing standards, methods and procedures being used. An NRTL can be recognized to do both types of testing, ordinary as well as experimental.

As mentioned above, "appropriate standards" form the basis of the "ordinary" testing mode for NRTLs. These appropriate standards are those testing standards, methods and procedures which are published and recognized in the United States as appropriate for product evaluation safety level purposes. They include but are not limited to ANSI or ASTM test standards.

The second testing category addresses testing of "new or innovative" products against these "appropriate standards." This category also includes the testing of a product for performance in a specified manner, or for conformance with other pertinent codes and standards accepted and used in the United States, either during such time when these testing standards, methods or procedures are still unpublished or in the occasional absence of such appropriate standards. An example of this category would be the testing of tray cable (TR 181; EX 32, pg. 4; EX 33, pg. 1, Appendix A).

An experimental testing designation does not imply any diminished OSHA role in overseeing the recognition process. Those applying for recognition must specify in their application the test standard or standards that they will be using for a particular type of equipment or material to be tested. OSHA will then evaluate the proposed standard to determine that it provides an adequate level of safety before granting a recognition where the NRTL will use that standard as part of its testing. The alternative test standard provisions found in paragraph (d) of the new rule were included at least in part to provide flexibility to deal with products that are new or innovative and for which no other standard exists. However, even laboratories doing "ordinary" testing can avail themselves of the alternative standard provisions if they wish to use test standards that do not meet the criteria in paragraph (c) provided, of course, that the Assistant Secretary agrees that the test standards in question provide an adequate level of safety.

The capability requirements for NRTLs also specifically mention important elements of capability including "proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs." These capability requirements, and others, are already routinely included within existing laboratory evaluation and accreditation documents used by the private sector, such as ASTM E548–84.

The Agency believes that accreditation is an increasingly valuable tool for testing laboratories in demonstrating their capability. OSHA encourages the voluntary use of properly designed and operated accreditation systems. They provide an excellent means of identifying those laboratories which have the capability to engage in product safety testing, including third-party testing as nationally recognized testing laboratories. However, as noted above, for the present OSHA has decided not to require accreditation.

c. *Deletion of "Recall".* In this final rule, as part of the "controls and services" portion of the NRTL definition, the testing laboratory is required in paragraph (b)(2)(iii) to provide services such as:

> (iii) Conducts service-value determinations through field inspections to monitor and to assure the proper use of its identifying mark or labels on products;

In the original proposal, subparagraph (iii)(C) required the qualified laboratory to make service-value determinations through field inspections to monitor the proper use of labels on products "with provisions for recall in the event a hazardous product is installed . . ." [8]

The recall phrase has been deleted in the final rule because there was considerable confusion as to its purpose. The deletion reflects the Agency's position, disclosed in the hearing record, that the purpose of this subparagraph is to insure monitoring of the proper use of the laboratory's identifying mark and labels on products (TR 32, 83, 265, 372, 388, 441, 489, 490, 566, 587).

Six commenters had specifically addressed the recall issue initially (EXs 8–16, 8–30, 8–33, 8–36C, 8–43, 8–45). The National Electrical Manufacturers Association (NEMA) suggested that the inclusion of "recall" in the proposed definition of "qualified electrical testing laboratory" in Subpart S may have been inappropriate when compared with NFPA/NEC texts (EX 8–36C). To some extent, UL paralleled this by stating its general impression that entities such as itself do not have "delegated" authority relative to the recall of products (EX 8–30). OSHA agrees; it was never its intention in the proposed definition to "empower" anyone to require recalls (EX 8–33).

During the development of the proposal, the recall clause in proposed subparagraph (iii)(C) originally was related to the criteria in proposed § 1936.111 concerning identification and control of certified equipment. Proposed § 1936.111 reflected industry practice whereby a laboratory already would have established all appropriate procedures it considers necessary to prevent misuse of a mark, including corrective actions to be taken when necessary to maintain the integrity of the certification program. These would then be made operative through contractual arrangements with the manufacturer or product supplier. The Agency expected that the same would hold true for the marks used by these product testing laboratories for identifying successfully tested equipment.

Indeed, the Agency continues to expect that entities performing product safety testing functions will take all necessary control and remedial measures needed to maintain the integrity of their activities, including pre-established procedures and such supplementary contractual arrangements with manufacturers as may be needed. The testing laboratory may use recall or any other means to achieve the objective of assuring the proper use of its marks. OSHA considers this to be appropriate and necessary for workplace safety reasons. Program integrity would be quickly compromised by hazardous products being listed or bearing these marks or labels. This remedial activity would continue to be a contractually-based private sector activity; it involves no grant of authority from this Federal agency.

d. *"Independent Testing" Still Required.* In the Agency's proposal, the "Qualified testing laboratory" was required to be "completely independent of manufacturers, vendors and employers subject to this standard" under proposed paragraph (i).[9]

Several commenters addressed this question of independence (or "third-party" status) of testing laboratories (EXs 8–8, 8–17, 8–30, 8–33, 8–37). Seven organizations commented on this issue at the informal public hearing, including Iron Age Protective Company, NEMA, the American Plywood Association (APA), the Safety Equipment Institute (SEI), UL, FMRC and ETL (TR 92, 152, 176, 191, 302, 340, 370, 496, 569, 578).

The record supports the need for independent testing in the NFPA-related fire/electrical safety testing arena (EXs 5–2, 5–13, 5–15, 8–6, 8–17; TR 176, 578).

[8] See footnote 5 above (or 49 FR 8353, col. 2).

[9] See footnote 5 above (or proposed § 1910.399(a)(99a)(i), 49 FR 8353, col. 2).

The Agency finds nothing substantial in the record to dispute its historical interpretation (unchanged since 1971) that "authorities having jurisdiction" [10] which adopt and enforce NFPA codes and related standards (including the National Electrical Code (NEC)) have always relied upon this type of "independence" for proper operation of the testing requirements. NEMA corroborates this by stating that OSHA's electrical safety standards (Subpart S of 29 CFR Part 1910) require third-party testing (TR 302). The Fire Equipment Manufacturer's Association, Inc. (FEMA) also supports the need for independent, third-party testing and indicates that it is necessary when addressing fire protection equipment (Subpart L of 29 CFR Part 1910) (EX 8–17). Since this standard is merely elaborating on what is already in place, it is appropriate that the element of independence be specifically preserved.

The reliance on "independence" by the users of these codes and standards does not adversely reflect on the caliber or motivation of company-owned testing laboratories. Rather, it appears to call for special analytical and decisionmaking relationships to be maintained through the fire/electrical safety testing process for the benefit of all potential users of this equipment.

Certain manufacturers also appear to accept and value a third-party relationship. As NEMA stated:

> We support that concept of third party testing where the user, if you will, requests it and requires it. And some manufacturers may on their own, I know of several manufacturers who will not produce any product unless it has third party listing. They use that as a matter of manufacturing and sales policy. (TR 191)

In the Agency's new NRTL definition, the testing laboratory is required to be "independent" in that it:

> (b)(3) . . . is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

The revised format for this requirement emphasizes that products and their producers, i.e., manufacturers, suppliers, and vendors, are not directly subjected to these testing requirements by the 23 OSHA testing-related provisions in Part 1910 discussed above. Instead, they are indirectly influenced by the OSHA-employer relationships established under the OSH Act and the standards.

The independence requirement being specified in paragraph (3) of the NRTL definition in this final rule applies only to this NRTL definition and to the 23 NFPA-derived testing requirements in Part 1910 which are the subject of this rule. It is not intended for other applications without further rulemaking action by OSHA. In particular, OSHA notes that this determination on independence is not relevant to the concerns raised by the American Plywood Association (APA) (Exs 8–37, 28; TR 92).

This means that the Agency's adoption of this independence requirement for the NRTLs in Part 1910 does not preclude it from reaching a different decision on the "independence" concept—either as to the requirement itself or as to any specific criteria which define it—in future rulemaking related to other testing or laboratory requirements in its other safety standards, or to any future third-party certification program requirements. This will be especially pertinent in situations where testing requirements are derived from non-NFPA standards sources, or are based on other historical practices, or simply are new OSHA requirements. The Agency will continue to review these independence requirements in the context of third-party certification.

e. *Testing Quality and Fairness Requirements.* This last requirement in OSHA's new NRTL definition reads:

> (b)(4) The NRTL maintain effective procedures for:
> (i) Producing creditable findings or reports that are objective and without bias; and
> (ii) Handling complaints and disputes under a fair and reasonable system.

This requirement is essentially a procedural one. It includes performance requirements related to the internal and external accountability of the NRTL.

The first subparagraph is intended to result in creditable findings and reports upon which reliance can be placed routinely. It is essential that the testing results, i.e., the findings and reports, be totally reliable, objective and without bias. If they are not, employee safety may be adversely affected. Moreover, the employer would not know whether any particular listing, labeling or approval was worthy of acceptance; thus, the entire purpose of the tested equipment requirement would be undermined.

This requirement is indirectly derived from that part of the Agency's proposal which proposed a new *§ 1910.7, "Valid testing data and certifications for safety."* While the scheme proposed for § 1910.7 is not being adopted at this time, its intent needs to be incorporated into this final NRTL definition.

In the proposal, the Agency stated:

> Since OSHA is not a testing or certifying organization, OSHA believes that the most appropriate means to provide assurance to employers and workers, and to itself, that specific equipment or material will conform to the Agency's requirements is to require valid testing data and valid certifications. The Agency proposes that whenever OSHA standards require that equipment be tested or certified, the validity of the testing or certification is the prerequisite of the equipment's acceptability.
> This entire activity would be based on fundamental OSHA requirements for the validity of testing data combined with whatever level of product manufacturing quality control is considered necessary for worker safety under each of OSHA's safety standards. (49 FR 8327, col. 3) [11]

No comments were received on this aspect of proposed § 1910.7. However, since (1) the issue was raised in the proposal, (2) the need for the requirement is evident, and (3) UL and FMRC, and also ETL, give sufficient indirect evidence in their comments and testimony that such quality control systems are necessary and in place, the Agency believes that this requirement is justifiably included in this final rule.

The exact design and operation of such an "internal quality control" system for each NRTL is being left for each NRTL to determine in light of OSHA's requirement.

The second subparagraph addresses complaints and disputes which could arise from external sources concerning an NRTL's activites. It requires that such complaints and disputes be handled in a planned and organized manner by the NRTL.

The handling of complaints and disputes was raised as a question regarding proposed § 1936.402 "Dispute resolution procedures" in the Agency's proposal:

> * * * this regulation will include provisions for resolving complaints * * * concerning testing * * * practices related to safety * * * Comments are requested from the public * * * on this subject area. Constructive proposals submitted for the rulemaking record will be considered for

[10] "Authority having jurisdiction" is a term of art used originally in materials produced by the National Fire Protection Association (NFPA). The NFPA has defined it as an "organization, office or individual responsible for 'approving' equipment, an installation, or a procedure," with an added note "The phrase . . . is used in NFPA documents in a broad manner since jurisdictions and 'approval' agencies vary as do their responsibilities . . ." (NFPA 70E–1979). This is also reflected in the definition of "Approved" in § 1910.399(a)(7).

[11] The "product manufacturing quality control" considered by the Agency as necessary for these NFPA-related OSHA safety standards is covered separately in paragraph (2)(ii) of the NRTL definition.

incorporation in the final rule. (49 FR 8341, col. 2)

Although there was little substantive comment in the public record, OSHA is acting on its belief that this subject is of importance to workers, and their representatives, as well as manufacturers and testing laboratories (TR 11). At the informal public hearing, OSHA presented as one of its witnesses David Swankin, Esq., a recognized expert on questions of consumer affairs, testing and certification, and product safety in the United States.

Mr. Swankin discussed those mechanisms needed to assure the public that complaints and disputes which may arise in relation to testing activities would be properly handled by the appropriate responsible person or entity (TR 115). He indicated that a "fair and reasonable system for handling both procedural and technical complaints" was necessary and that it should be included in "any final rule" (TR 116):

> * * * it is clear that with recognition goes a tremendous responsibility to test properly. Because of this, it is essential that the rights of all interested parties are protected. A fair and reasonable complaint system is one of the essential ways in which such rights can indeed be protected* * * (TR 145–146)

To demonstrate that "an appeals system for handling complaints is an essential ingredient of due process," Mr. Swankin discussed recent activities of various institutions and their end products, such as the "National Policy on Standards for the United States," OMB Circular A–119, the *ASME* v. *Hydrolevel* decision of the U.S. Supreme Court (456 U.S. 556, 102 S. Ct. 1935 (1982)), the FTC Proposed Trade Regulation Rule Governing Standards and Certification (43 FR 57269, December 7, 1978), the provisions contained in the Presiding Officers Report on the above FTC issue (16 CFR Part 457, Public Record 215–61, June 1983), the laboratory accreditation criteria of the American Association for Laboratory Accreditation (AALA) and the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Bureau of Standards, Guides 25 and 40 of the International Organization for Standardization (ISO), and the voluntary standard ASTM E–548 (TR 116–123).

Mr. Swankin also suggested specific criteria to be used and the language which should be incorporated in any OSHA rule (TR 123–125, 144, 146–148). In summary, Mr. Swankin urged:

> * * * it behooves OSHA to insure that its final rule recognizes the need for any of these organizations that seek recognition to assure full due process and, in particular, to assure adequate complaint mechanisms. (TR 145)

Subsequent comments by NEMA, UL, FMRC and ETL during the informal public hearing were generally positive ((TR 290, 445, 562, 563, 593). An additional 30 day period was given after the close of the hearing for additional comments on dispute handling requirements, and any alternative methods of appeals handling (49 FR 47049). There were five post-hearing comments submitted on this topic. They generally agreed with the due process concept proposed by Mr. Swankin (EXs 31, 32, 33, 37 and 38).

OSHA has determined that Mr. Swankin's suggestion is consistent with the purposes of this final rule, and will significantly contribute to its effectiveness. Therefore, the Agency has incorporated the requirement that NRTLs have effective procedures for complaint and dispute settlement within the new NRTL definition.

The dispute/complaint resolution system actually used by each NRTL must be fair and reasonable, but the exact design and operation of the system is being left to each testing laboratory to determine. As mentioned above, specific criteria which might be used by NRTLs have been described in Mr. Swankin's testimony, and in the exhibits he submitted to the record.

f. *"Third-Party Certification" Inappropriate.* The beginning of the NRTL definition reads:

> The term "nationally recognized testing laboratory" (NRTL) means an organization which is recognized by OSHA in accordance with Appendix A of this section and which tests for safety, and lists or labels or accepts, equipment or materials and which meets all of the following criteria:

This new phrasing replaces the beginning of the proposed definition of "Qualified testing laboratory," which would have required that the laboratory be the "validating laboratory of a third-party certification program recognized under Part 1936 of this Title * * *"[12]

The proposed phrasing was consistent with the regulatory scheme which formed the basis of the March 6, 1984, proposal. That scheme was based on the adoption of third-party certification procedures to handle the fire/electrical safety testing requirements. In that proposal, OSHA stated that it had "categorically classified all UL, FM, testing laboratory, and 'nationally recognized testing laboratory' terms and requirements as having been third-party certification requirements under its safety standards" (49 FR 8329, col. 3).

This classification was being applied across the board to the various testing-related provisions in 29 CFR Part 1910 which were included in the proposal. The proposed definition of "Qualified testing laboratory" was developed to reflect this determination.

The written record developed as the result of the March 6, 1984 proposal contains only one substantive challenge to the Agency's intended "classification" action described above. Harvey Hubbell, Incorporated, a manufacturer of electrical products, stated:

> On page 8329 there is the statement that OSHA has "categorically classified all UL, FM, testing laboratory and 'nationally recognized testing laboratory' terms and requirements as having been third party certification requirements". . . The "categorical classification" seems to be an arbitrary action by OSHA. (EX 8–23, pg. 3)

In support of its claim, the firm explained its qualifications and intent:

> Hubbell has been in business since 1888 and it has correspondence in its files indicating a relationship with Underwriters Laboratory (UL) since 1907. As a result of this long experience in working with UL, we have become familiar with the process and we feel competent to comment on the OSHA proposal. We are particularly interested in the effect of the [proposal] on Subpart S of Part 1910, and our comments should be construed as being limited to the effect of the proposed rule on this Subpart. (EX 8–23, pg. 1)

After carefully reviewing the entire record of this proceeding, and as a result of its recent reexamination of the many testing-related provisions proposed for revision, OSHA has concluded that the "third-party certification" claim it made in the proposal was incorrect. There exists no clear pattern, either in the record or in the Part 1910 standards themselves, which indicates that the affected workplace equipment and materials must be certified (as opposed to tested) for safety.

Instead, the Agency now believes the product safety testing requirements already contained in the standards in question to be comparatively simple. As indicated in each of the 23 standards provisions included in the final rule, employers may use only equipment and materials which have been tested successfully as conforming to the NEC, to nationally recognized standards, to Federal regulations, or to other NFPA codes and related standards. For such products to be acceptable, this testing must have been conducted by an appropriate safety testing organization, i.e., a "nationally recognized testing

[12] See footnote 5 above (or proposed § 1910.399(a)(99a), 49 FR 8353, col. 2).

laboratory," and may be evidenced by that organization's identifying mark, label or listing.[13] In other words, re-examination of the provisions in question supports the view that approval contemplated third-party testing as opposed to third-party certification.

Since the third-party certification linkage is not being established for the 23 standards provisions covered in this final rule, the Agency has determined that the proposed certification-related terminology is clearly inappropriate for the new NRTL definition. Therefore, it will not be used.

Instead, the text at the beginning of the NRTL definition reflects the sense of the definition of "Acceptable" currently in the Part 1910 standards. For example, § 1910.399(a)(1) states:

> (1) Acceptable. An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart S: (i) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory. . .

Clearly, the new NRTL definition tracks the term "acceptable" by simply characterizing the laboratory organization as one which tests for safety, and which then lists, labels or accepts the equipment and materials.[14]

g. *Requirement for OSHA Recognition.* The proposed rule intended to revise completely OSHA's unimplemented regulation at 29 CFR Part 1907, "Accreditation of Testing Laboratories." Major portions of Part 1907 were to be revised and redesignated as part of a proposed new Part 1936; other provisions of questionable utility were to be revoked.

Part 1907 was never implemented by OSHA, and was proposed for revocation on June 3, 1974 (although no actual revocation ever took place). Part 1907 contains the criteria and procedures which OSHA intended to use to "accredit" independent testing laboratories. The accredited laboratories were to test and certify equipment which is required to be "acceptable" or "approved" under OSHA safety standards.

A new 29 CFR Part 1936—entitled: "OSHA Recognition of Testing-Related Agencies and Certification Programs"—proposed a new framework for recognition by OSHA of enterprises it considered competent to perform activities related to the testing or certification requirements contained in the Part 1910 safety standards.

It would have included considerations related to (1) laboratory accreditation agencies and accredited laboratories, and (2) product certification systems, including both manufacturer self-certification and third-party certification programs.

As stated earlier, OSHA believes that, based on a thorough review of the public comments and testimony in the record, a "comprehensive overhaul" which it originally proposed need not be undertaken at this time. OSHA therefore is not creating a new 29 CFR Part 1936 in this rulemaking, and is dropping for the present that proposed framework for recognition by OSHA.

At this time, it is establishing in its place a mandatory requirement for OSHA recognition, using approval procedures similar to those in Part 1907.

The Agency believes that its definition of NRTL, in order to be most effective, should address only the minimum necessary criteria which must be met by such laboratories. OSHA's definition provides the means of identifying those laboratories which are properly engaged in the required testing and whose activities meet OSHA's requirements, and thereby should be acceptable to employers, workers, OSHA and other safety-related personnel. OSHA believes that a reliable means must be provided in the absence of a new Part 1936 by which these laboratories can be recognized as meeting these criteria, and by which the concerned public can be informed of the results of a recognition process. OSHA has determined therefore that it will fill this role at this time (TR 528–529). OSHA will evaluate this mandatory process with an eye to future rulemaking that will look for alternatives to a major OSHA involvement.

It should be noted that under all of the schemes under consideration since before the promulgation of Part 1907 in 1973, some element of OSHA recognition or accreditation has always been included. See for example, 29 CFR 1907.1(b); proposed 29 CFR 1936.100, 49 FR 8356. The proposed definition of qualified testing laboratory also required that it be "recognized under Part 1936." The Agency believes that a requirement for universal OSHA recognition of these testing laboratories is necessary and appropriate.

Although the issue of OSHA recognition was extremely controversial and was opposed by many participants (see, for example, EX 8–36C and TR 530), a thorough review of this rulemaking record has led OSHA to conclude that it is necessary to impose an "OSHA-recognition" requirement upon these laboratories as part of the NRTL definition itself.

The Agency even considered allowing testing laboratories to designate themselves as nationally recognized testing laboratories, certifying in effect that they meet all of the elements of the definition (EX 61). Various comments from the public expressed concern that incompetent laboratories might avail themselves of this process and thereby diminish workplace safety while lending a false sense of security to employers who bought materials or equipment labeled by such laboratories. It would be very difficult for employers under such a scheme to have any idea as to whether the equipment they purchase would be acceptable to OSHA. Moreover, it would be difficult for OSHA compliance personnel in the field to easily determine if a given piece of equipment had been approved by a legitimate laboratory which might be many miles or continents away. The spectre of unfair competition between "legitimate" and "illegitimate" or incompetent laboratories was also raised. Finally, some felt that a mandatory recognition process was the only way to undo the preferential treatment that the OSHA standards unwittingly may have accorded UL and FM.

The March 4, 1984, proposal was wide-ranging in scope: it set up procedures for all aspects of product/equipment safety testing, proposing procedures for OSHA recognition of laboratory accrediting agencies, requiring all validating laboratories in third-party certification programs to be accredited by an OSHA-recognized laboratory accreditation system within six years, and also setting up procedures for manufacturer self-certification. The proposal also addressed other issues that are relevant to the testing field in general, but are not relevant to the issue at hand, i.e., providing a mechanism whereby competent laboratories can approve equipment or material already required by OSHA standards to be acceptable. In fact, some topics covered by the proposal (e.g., manufacturer self-certification) are not presently required by any existing OSHA standard; they would have been triggered only if and when a substantive regulation would require manufacturer self-certification. In other words, the proposal attempted to set up a comprehensive framework

[13] Only two minor exceptions are allowed. Refer to any definition of "Acceptable"—29 CFR 1910.399(a)(1), for example—for the details of these two exceptions.

[14] These are the activities which have been characteristic of product safety testing laboratories such as UL and FMRC (now being deleted from the definition of "Acceptable" and from other standards). The Agency anticipates that these activities will continue to be performed in the future by whichever testing laboratories meet the requirements of its new NRTL definition.

for numerous aspects of product and equipment safety testing, ambitious but far more comprehensive than necessary to resolve any problems posed by the lawsuit or the requirements of OSHA standards presently in effect.

The main thrust of the proposal was setting up a framework to recognize accrediting agencies, who would in turn accredit third-party certifiers. OSHA subsequently determined that the standards in question contemplate third-party testing, rather than requiring third-party certification. FMRC and others expressed concern that the proposal would result in a diminution of the safety afforded by the present system. To assure that a uniform high level of performance in safety testing be maintained, FMRC urged OSHA "to modify the proposal so that responsibility for the recognition or accreditation of testing laboratories and certification programs will remain vested with the federal government" (TR 423, 530, 559–560). FMRC stated:

> It is our view that rule making, to delegate this activity to private sector agencies, should not be proposed until it is clear that such agencies are fully prepared to carry out the entire scope of the activity required. (TR 530)

This is not to say that presently existing laboratory accrediting systems would not be capable of performing satisfactorily in the proposed regulatory scheme. However, it must be noted that no private sector accrediting system is presently recognized by OSHA. Moreover, since OSHA subsequently determined that the standards in question contemplate third-party testing rather than third-party certification, it is not necessary to resolve all of these issues at this time.

OSHA is adopting therefore a streamlined approach that will provide for recognition of testing laboratories listing or approving certain workplace equipment and materials as required by OSHA standards (see TR 565). This approach has substantial support in the record (e.g., EXs 2–7, 2–8, 5–25, 5–31, 5–32). OSHA intends to monitor the program being put into place today and to look for alternatives to OSHA recognition of testing laboratories. One such alternative would be to amend the pertinent OSHA standards to require third-party certification, and to engage in further investigation concerning the ability of other enterprises to carry out this activity. In this regard, there are a number of unanswered questions that need to be studied (see, e.g., EX. 8–26, p. 8).

D. *Procedures for Obtaining OSHA Recognition*—1. Accepting Applications for Recognition. OSHA has determined, on the basis of its review of the entire record, that a testing laboratory which wants to function as a "nationally recognized testing laboratory" under the OSHA standards must obtain recognition from OSHA that the laboratory satisfies the criterial for an NRTL. This recognition will be reflected in a letter from OSHA. Recognition will be granted only with the respect to those items of equipment which the application requested and the review under Appendix A to this section clearly supports. In the event that the application is acceptable as to some items of equipment or material but does not presently meet the criteria for other requested areas of recognition, the Agency may issue a letter of recognition limited to those areas where the applicant has demonstrated that it meets the criteria. Opportunities for public input in this review process are also provided.

Appendix A to this section, which establishes the procedures for obtaining OSHA recognition, is based primarily on Subpart D of proposed Part 1936 (49 FR 8337, March 6, 1984). The procedures adopted in this final rule focus on the key elements necessary to assure a reasonable process, which is fair to the applicants for recognition and to others whose safety is affected by the decisions made. More detailed procedures may develop as OSHA and the regulated community gain experience with implementation of these provisions.

2. Procedure

Certain highlights of the procedure for recognition in Appendix A are discussed below.

Any testing organization is allowed to apply to OSHA for recognition. At the request of the Office of the U.S. Trade Representative, however, some restrictions may be placed on foreign entities in cases where the foreign government does not recognize U.S. testing laboratories (EX 8–39).

Like the proposal, the final rule requires that the application contain sufficient detail, including the scope of the recognition which is sought. No specific form is required for the application, as long as the necessary information is submitted. Applications which are submitted will be accepted and acknowledged by OSHA in writing.

The proposed procedure in Subpart D of Part 1936 contained several points, such as § 1936.121(d)(5) (ii) and (iii), where action would have been automatically discontinued by the Agency if the applicant unreasonably delayed in providing requested data and information. Similar provisions are included in this final rule; for example, in paragraph I.A.4.b. of Appendix A. The applicant, not the Agency, bears the responsibility for the completeness of the application. This will also be reflected in Agency procedural directives, as appropriate. This is necessary so that the Agency can deal expeditiously with fully completed applications and not waste resources on incomplete applications.

New Appendix A includes the following provisions:

- On-site review of testing facilities, and administrative and technical practices.
- Technically qualified experts to be involved.
- Written reports of all reviews available to applicant.

These provisions were originally included as part of proposed § 1936.121.

A decision by Agency staff to proceed with a positive finding will be sent to the Assistant Secretary for ratification of the staff work and conclusions (paragraph I.B.2., Appendix A).

At this point a new process is added to the evaluation procedure under Appendix A. The public is given an opportunity, after **Federal Register** notice, to review and comment upon the entire application which has been preliminarily acted upon by the Assistant Secretary. This is a much more open procedure than had been envisioned in the original Part 1907. This procedure with increased public participation was proposed as part of § 1936.121 and there were no objections.

During a 60-day period, any member of the public may supply written comments concerning the applicant's fulfillment of the criteria for recognition. At this point, while the application has been "accepted" by the Assistant Secretary, it has not received any official sanction, nor has there been any interim or temporary recognition given to the applicant.

Assuming smooth processing through the public comment period, with no need to do follow-up work concerning the application, the Assistant Secretary will proceed to make a final decision and, after giving notice in the **Federal Register**, initiate a five-year recognition period.

There could be, on occasion, significant objection raised to the applicant's proposal, either from the Agency staff or from the public during the public comment period. If so, special additional reviews, a reopening of the public record for more documentary submissions, or the convening of an informal hearing may be undertaken. This will lead ultimately to a decision on

every application, using a procedure which allows every opportunity for each applicant to complete the application process successfully, or know clearly why the application process was unsuccessful.

Appendix A also includes a section on special terms and conditions, including details on:

- Letter of recognition
- Periods of recognition
- Consistency in NRTL operations
- Accurate and controlled publicity
- Handling test method changes

A careful reading of the text of Appendix A will show each of these various factors built into OSHA's rule. Additionally, the remainder of the rule covers other aspects of recognition such as expansions of recognitions, renewals, and possible revocations of recognition which are all treated in a similar manner to those in proposed Part 1936.

3. Temporary Recognition of Certain NRTLs.

The issue of how to treat Underwriters Laboratories (UL) and Factory Mutual Research Corporation (FMRC) has been carefully considered. In many people's opinion, both laboratories have been recognized by OSHA for many years as the very definition of nationally recognized testing laboratories. The Agency finds no support in the record for forcing either of these two organizations to apply initially for recognition. If these two organizations were forced to apply immediately for recognition, it might cause undue disruption and gaps in employee protection during the OSHA recognition process. There would be a hiatus in the ability of employers to comply with certain OSHA standards that require the use of approved equipment. Ongoing approval activity would be disrupted if OSHA were not to accord temporary recognition to these two laboratories. Moreover, the processing of recognition applications from heretofore unrecognized laboratories might be unduly delayed. However, it might be inappropriate to "grandfather" these laboratories indefinitely. In fact, neither of these organizations requested permanent recognition (TR 427–428, 531). Therefore, the Agency has included in Appendix A, at I.C.6., a section entitled, "Temporary Recognition of Certain NRTLs." This section would establish temporary recognition of UL and FM for a period of five years beginning with the effective date of the final rule. Five years was selected since that is the period of OSHA initial recognition for other laboratories which seek OSHA recognition. At the end of the five-year period, the two temporarily recognized laboratories will need to apply for renewal of OSHA recognition, as will all other recognized laboratories.

III. Detailed Summary of CFR Changes

A. Subpart A—General

A new § 1910.7, is being added to Subpart A of Part 1910 to provide a single definition of "nationally recognized testing laboratory" as it applies to Part 1910 provisions. The definition parallels that which was proposed for "Qualified fire testing laboratory" (49 FR 8351, col. 3), and "Qualified electrical testing laboratory" (49 FR 8353, col. 1), amended as has been described previously.

Paragraph (a) restricts use of this definition to those provisions in Part 1910 which use the term "nationally recognized testing laboratory."

The four subparagraphs in the definition in § 1910.7(b) provide four separate criteria, all of which must be met in order that any organization may be considered a "nationally recognized testing laboratory."

Paragraphs (c) and (d) define appropriate test standards and paragraph (e) and Appendix A provide a method for a testing organization to be considered an NRTL. The method provides that a testing laboratory must request that OSHA review its operations against the NRTL definitional criteria.

Appendix A to § 1910.7

This new appendix implements the method provided in § 1910.7. Entitled: "OSHA Recognition Process for Nationally Recognized Testing Laboratories," this Appendix establishes procedures for use by testing organizations and OSHA.

The Appendix consists of two parts:

- Procedures for initial OSHA recognition
- Supplementary procedures

Part I—*Procedures for Initial OSHA Recognition*—consists of three sections:

- Applications
- Review and Decision Process
- Terms and Conditions of Recognition

Section A. Applications addresses eligibility, content of application, filing office location and amendments.

In particular, paragraph A.1. provides eligibility for this procedure to any testing organization believing it fulfills the definition of NRTL in § 1910.7, while providing a possible ineligibility for NRTLs in nations whose practices in this regard are not similar to those incorporated in the text of this standard and Appendix.

Paragraph A.2. allows eligible applicants to determine the content and scope of their application, as long as it is sufficient to allow the Assistant Secretary to make an informed decision of each applicant's case. In other words, it establishes the minimum information which must be included. Also, no fixed Federal application form will be required.

Paragraphs A.3. and A.4. provide specific administrative details for use by the applicant.

Section B. Review and decision process details the steps to be followed by the Assistant Secretary and the applicant. It consists of seven paragraphs:

- Acceptance and on-site review
- Positive finding by staff
- Negative finding by staff
- Preliminary finding by Assistant Secretary
- Public review and comment period
- Action after public comment
- Action after public objection

Paragraph B.1. covers acceptance and on-site review requirements. In particular, subparagraphs B.1.b. and c. establish that an on-site review of the applicant's administrative and testing practices and the testing facilities themselves will be conducted. A written report may be prepared, as well as documentation of all standards used in the process, which will be made available to the applicant.

Paragraph B.2. provides that OSHA conduct a review of the application, supporting documents, on-site review reports to determine whether the applicant appears to meet the requirement for recognition. If positive, a written recommendation for approval shall be submitted by OSHA staff to the Assistant Secretary.

Paragraph B.3. provides, in the case of a negative finding, that no recommendation be made to the Assistant Secretary at that occasion. Instead, responsible OSHA staff will provide the applicant with a listing of shortcomings, and provide a reasonable time to respond to this negative finding. The applicant may submit a revised application, or make a request, that the application be processed despite the negative staff finding. This revision procedure is limited to one use per application, in the interest of expediting the procedure. If more revisions are necessary, the application must be refiled.

Paragraph B.4. provides for a preliminary finding by the Assistant Secretary based on the results of paragraphs B.2. and B.3. Each preliminary finding is a straightforward yes or no decision. Documentation is not

required of the Assistant Secretary, except that notification will be made in writing to the applicant. Notice will also be published in the **Federal Register**; no status accrues to any applicant by such publication.

Paragraph B.5. establishes a public review and comment period of 60 days on the question of whether the applicant has fulfilled the requirements for recognition. All materials submitted or developed during this procedure under Appendix A to § 1910.7 will be available for public inspection and copying. Any member of the public may provide comments in writing during the review period.

Paragraph B.6. provides for a final decision to be made by the Assistant Secretary on recognition of the applicant if there are no serious objections or substantive claims contrary to the preliminary finding that was published. The published preliminary finding by the Assistant Secretary may have been positive or negative, and, therefore, a "positive recognition" or a "denial" could be forthcoming in the final decision in subparagraph B.6.a. This final decision shall be based on all materials provided through the preliminary finding by the Assistant Secretary, supplemented by the information received through the public review and comment period. A copy will be provided to the applicant and published in the **Federal Register**.

Subparagraph B.6.c. states that, at this point, Agency action is complete and that there is no review available in the Department to the Assistant Secretary's final decision.

Paragraph B.7. covers what will be done if serious objections or substantial claims contrary to the preliminary finding have been received during the public review and comment period. The Assistant Secretary has the authority to assign or engage Federal, State or contract personnel to initiate special reviews of information in the public comment record which require resolution. Each special review will be included in the public record, also. Based on the results, the Assistant Secretary will either reopen the written comment period for further comments, or convene an informal hearing for the same purpose. (While this informal hearing would be conducted under applicable OSHA procedures for similar hearings, the discretion as to its necessity and utility remains with the Assistant Secretary at all times.) Once this extended public review and comment period or informal hearing phase is complete, a final decision will be made by the Assistant Secretary. The remaining procedures track the procedure established in subparagraphs B.6.a., b., and c. above.

Section C. Terms and Conditions of Recognition provides what will be the terms and conditions of every recognition. There will be a written letter of recognition containing details of the scope, the specific equipment and materials, and any additional special conditions; and a period of validity, usually five years; and a requirement for continuous conformity. This section also addresses questions related to proper advertising to avoid misleading employers, vendors, or workers themselves as to the meaning of "OSHA-recognized NRTL." The fifth paragraph provides for temporary recognition of UL and FMRC.

Part II—*Supplementary Procedures*—consists of five sections:

- Test standard changes;
- Expansion of current recognition;
- Renewal of OSHA recognition;
- Voluntary termination by laboratory;
- Revocation of recognition for cause by OSHA.

Section A. Test standard changes requires the already recognized testing laboratory to notify the Assistant Secretary of any changes they intend to make in the test standards that are being used, certify that the revised test standard will be at least as effective as the one for which they received aproval, and provide data to support this conclusion. However, it is not OSHA's intention to require the NRTL to notify it of a change in ANSI or ASTM test standards. In general, currently designated ANSI safety-designated product standards or ASTM test standards used for evaluation of products or materials as well as future revisions to test standards in this category are presumed to be acceptable to OSHA. OSHA does, however, retain the right to specifically disallow the use of any one of these test standards by its recognized laboratories if this use might compromise or diminish employee safety.

This section does not require prior OSHA approval before a recognized NRTL may use a new test standard. Laboratories that have already been recognized by OSHA will have already undergone close scrutiny of all aspects of their operation as it relates to the testing of specified equipment or materials. Therefore, OSHA sees no need to delay the implementation of a new test standard. The Agency does reserve the right, however, after evaluating the new test standard, to disapprove it if it will not provide a substantially equivalent level of safety to that obtained from the prior test standard. In the event that OSHA disapproves the new test standard, the Agency will initiate proceedings to discontinue that aspect of the recognition affected by the modification.

Section B. Expansion of current recognition addresses the questions of eligibility and procedure. Eligibility is limited only to currently OSHA-recognized NRTLs under paragraph B.1.; the procedure followed will be that in I.B., except that on-site reviews may not be necessary in many cases.

Section C. Renewal of OSHA recognition also consists of eligibility and procedural items. A renewal request must be filed within one year and not less than nine months before the expiration date of the current recognition (paragraph 2.a.). A renewal visit will be performed only at OSHA's discretion. However, should the Agency receive, during the comment period specific and substantial evidence indicating the need for them, the need for these on-site reviews will be reevaluated (paragraph 2.b.). Properly filed renewal requests will ensure that the current recognition will not expire until a final decision has been made by OSHA.

Renewal procedures are both necessary and appropriate to assure continuing compliance with the standard and to guard against a diminution of worker safety. Therefore, NRTLs wishing to continue their recognition must make timely application for renewal. However, after a NRTL has successfuly obtained the renewal of its recognition once, subsequent renewals may be obtained by certifying that the laboratory is in continuing compliance with the terms of its letter of recognition as well as 29 CFR 1910.7 (paragraph 2.d.). It is felt that this provision will provide some relief from any possible burden that might be caused by forcing the NRTL to go through the recognition process again and again. After a 10-year track record (original recognition and one five year renewal), it is felt that the Agency would have enough experience with a particular laboratory to make laboratory self-certification of continuing compliance acceptable.

Under certain circumstances, a recognized laboratory would not have to go through the procedure of submitting a renewal application and would merely be required to certify its continuing compliance with the standard and its letter of recognition (paragraph 3). This alternative procedure would apply where OSHA makes a finding that there is a sufficient basis for continuing the

recognition and good cause to dispense with the renewal procedure.

Section D. Voluntary termination provides a procedure to end a recognition when an OSHA-recognized NRTL decides to discontinue participation under Appendix A.

Section E. Revocation by OSHA is provided to use when OSHA, for cause, decides to withdraw current recognition. It addresses potential causes for revocation action, procedures which must be followed, special factors involved in making the final decision, and the public announcement.

In paragraph E.1., three potential causes are described: failure substantially to satisfy § 1910.7 and Appendix A requirements; poor performance of testing requirements which are described in its letter of recognition; or misrepresentation in any documentation used under this procedure or misrepresentation of the scope or conditions of its recognition. The rule allows for complete or partial revocation decisions.

Paragraph E.2. requires OSHA to identify alleged deficiencies and give a reasonable period to the OSHA-recognized NRTL to reconcile or correct them. If the NRTL fails to take acceptable action, OSHA will propose to revoke, in 60 days, in a letter directed to the recognized NRTL but not otherwise publicized. The recognized NRTL will be expected to correct the deficiencies or request a hearing in writing. Parties to the hearing would be OSHA, the recognized NRTL, and such other parties as OSHA may determine could be useful to the purpose of the proceeding.

Under paragraph E.3., the Administrative Law Judge (ALJ) shall issue a decision based on the entirety of the record, with the burden of proof on OSHA to prove why recognition should be revoked. Exceptions to the ALJ decision will be accepted for 20 days. If no exceptions are filed, this will become the final decision of the Assistant Secretary. If exceptions are filed, the ALJ decision, the exceptions filed, and the entire file will be forwarded to the Assistant Secretary for final decision. Additional administrative procedures related to the final decision, discussed above, are also included here to complete the procedure.

B. Subpart D—Walking-Working Surfaces

§ 1910.28 Safety requirements for scaffolding is revised to delete the names of "Underwriters' Laboratories" and "Factory Mutual Engineering Corp." from four paragraphs—(f)(2), (g)(3), (h)(2) and (i)(1)—in the standard. Inserted in their stead is the term "nationally recognized testing laboratory," which is defined at § 1910.7 in Subpart A—General. Additional text provides a cross-reference to the Subpart A definition for the user.

C. Subpart E—Means of Egress

§ 1910.35 Definitions is amended in paragraph (h), Approved, to add a cross-reference to the definition of Listed located in Subpart L—Fire Protection, and Nationally recognized testing laboratory in Subpart A. The definition of Approved remains unchanged from the current text in the CFR. The text references are included for the purpose of providing consistency throughout the safety standards in Part 1910 as regards these requirements.

D. Subpart H—Hazardous Materials

A revision is being made to Subpart H which consists of 10 separate amendments being made to seven sections. Each amendment deletes the names of "Underwriters' Laboratories, Inc." and/or "Factory Mutual Engineering Corp." (or "Factory Mutual Research Corporation") from the standards involved.

Only four provisions had been indicated in the original proposal. However, all 10 include specific laboratory name references which are the subject of this proceeding and therefore are being amended in this final rule. In each instance, additional text provides cross-references to related terms in Part 1910 for the user.

§ 1910.103 Hydrogen is revised to delete the testing laboratory names from paragraph (a)(1)(ii) and to provide a cross-reference to the definition of Nationally recognized testing laboratory.

§ 1910.106 Flammable and combustible liquids is similarly changed in paragraph (a)(35).

§ 1910.107 Spray finishing using flammable and combustible materials is revised to delete the testing laboratory names from paragraph (a)(8) and to provide a cross-reference to the definition of Nationally recognized testing laboratory.

§ 1910.108 Dip tanks containing flammable or combustible liquids is revised to change paragraph (a)(3) similarly.

§ 1910.109 Explosives and blasting agents is revised in paragraph (d)(2)(iii)(*a*) to delete the testing laboratory names, to insert in their stead the "nationally recognized testing laboratory" term, and to insert a cross-reference to the definitions of Listed in Subpart L—Fire Protection, and the NRTL in Subpart A.

§ 1910.110 Storage and handling of liquefied petroleum gases is revised in four separate locations.

In § 1910.110(a)(14), the testing laboratory names are deleted from the "Approved" definition, and a cross-reference to the definition of NRTL in Subpart A is included.

In §§ 1910.110(b)(2)(iii), 1910.110(c)(5)(i)(*g*)(*1*) and 1910.110(f)(5)(iv), the testing laboratory names, or the name of UL alone, have been deleted from the text and the NRTL term substituted instead, with a cross-reference to the NRTL definition in Subpart A.

§ 1910.111 Storage and handling of anhydrous ammonia is revised in paragraph (b)(1)(ii) to delete the illustrative example, which included the names of UL and FMRC, leaving simply the NRTL term. A new paragraph (b)(1)(vi) referencing the NRTL definition in Subpart A has been added.

E. Subpart L—Fire Protection

§ 1910.155 Scope, application and definitions applicable to this subpart is revised in paragraph (c)(3) to delete the illustrative example of "such as, but not limited to, Underwriter's Laboratories, Inc. or the Factory Mutual System" and to use only the already existing "nationally recognized testing laboratory" (NRTL) term. A new paragraph (c)(3)(iv)(E) has been added to refer the user to the NRTL definition being included in Subpart A—General.

F. Subpart N—Materials Handling and Storage

§ 1910.178 Powered industrial trucks is revised in paragraph (a)(7) to delete the example, which included two testing laboratory names, and to use only the "nationally recognized testing laboratory" (NRTL) term. A cross-reference is included to refer the user to the definition of Listed in Subpart L, and the NRTL in Subpart A.

In addition to revising paragraph (a)(7), revision is being made to two other sections in Subpart N. Each revision deletes the testing laboratory names from these standards.

§ 1910.180 Crawler, locomotive and truck cranes is revised in paragraph (i)(4)(i) to delete the names of "Underwriters Laboratories" and "Factory Mutual Laboratories" from the text, leaving the qualification of "approved" as the operative requirement, and to add a cross-reference to the definition of Approved in Subpart L. The term "or equivalent" has been deleted as redundant since the names of specific laboratories have been removed.

§ 1910.181 Derricks is revised similarly in paragraph (j)(4)(i).

G. Subpart Q—Welding, Cutting, and Brazing

§ 1910.251 Definitions is revised in paragraph (b) to delete the illustrative example, which included the names of "Factory Mutual Engineering Corp." and "Underwriters' Laboratories, Inc.," and to use the already existing "Nationally recognized testing laboratory" (NRTL) term. Additional text refers the user to the definitions of Listed or NRTL in other subparts.

H. Subpart R—Special Industries

Revision is being made to two sections in Subpart R which had not been included in the March 6, 1984, proposal. Each revision will delete the testing laboratory names from these standards.

§ 1910.265 Sawmills is revised in paragraph (d)(2)(iv)(*c*) to delete the name of "Underwriters' Laboratories, Inc." from the text, leaving "approved" as the operational requirement, and to add new text referring the user to the definition of Approved in Subpart L.

§ 1910.266 Pulpwood logging is revised similarly in paragraphs (c)(4)(iii) and (iv), after deleting the names of "Underwriter's Laboratories" and "Factory Mutual Engineering Corp."

I. Subpart S—Electrical

§ 1910.399 Definitions applicable to this subpart is revised by the amendment of existing paragraph (a)(1).

"Acceptable" is revised to delete the illustrative example, which included the names of "Underwriters' Laboratories, Inc." and "Factory Mutual Engineering Corp." This leaves simply the NRTL term, with an added reference to the NRTL definition being provided in § 1910.7(b) in Subpart A—General. (Although § 1910.399(a)(1) is only partially revised, the entire text of the revised paragraph is being reprinted for the benefit of users of this document.)

IV. Regulatory Assessment

A. Regulatory Impact Assessment

1. Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has assessed the potential economic impact of this final rule. OSHA has determined that this final rule is not a "major" action requiring a Regulatory Impact Analysis (RIA) because the annual cost of compliance would be between $167,000 and $235,000. In addition, OSHA has determined that this final rule would increase competition in the affected markets while maintaining the necessary level of employee safety. Thus, OSHA has concluded that this final rule does not require an RIA.

2. Data Sources

The primary data sources for this section are: the May 1985 Final Report by Eastern Research Group (ERG) entitled, "Supporting Analysis for Economic Impact Study of the Final Rule on Equipment Testing or Certification"; the Docket compiled in response to OSHA's January 4, 1983, Advance Notice of Proposed Rulemaking (ANPR) on the Accreditation of Testing Laboratories; the record compiled in response to OSHA's March 6, 1984, Notice of Proposed Rulemaking (NPRM) on the Safety Testing or Certification of Certain Workplace Equipment and Materials; the testimony from the September 25, 26, and October 1, 1984, public hearings on the NPRM; and the post-hearing comments submitted to the Docket.

3. Industry Profile

Those most significantly affected by this final rule are the following: (1) Employers and employees using products that OSHA requires to be tested for use in the workplace; (2) manufacturers of those products; and (3) domestic and foreign testing laboratories. This final rule does not impose any new requirements for product testing. It provides a mechanism in which various testing organizations can perform testing already required by OSHA safety standards by showing that they are NRTLs.

As this final rule is not concerned with whether any specific product testing requirement in Part 1910 is necessary, detailed information concerning the affected employers and employees is not needed.

The types of products that OSHA requires to be tested are items such as electrical wiring and equipment; valves and other equipment used in the handling of hazardous substances; equipment necessary for fire protection; and equipment necessary for motor vehicles used in hazardous work areas, etc. Generally, these requirements are based on requirements in the National Electric Code (NEC).

These products are manufactured by firms of all sizes and are sold in all types of markets. They are frequently used in situations other than those exclusively regulated by OSHA; e.g., electrical equipment must meet both OSHA requirements and, often, consumer product safety requirements as well as state and local building code requirements. In addition, manufacturers have products examined by testing laboratories in order to meet the demands of their product liability insurers as well as to improve the product.

Based on the ERG report, OSHA has estimated that the total projected value of products that will be tested for safety considerations would be approximately $20 billion to $30 billion, of which approximately $2 billion to $3 billion would be the value of products affected by OSHA standards.

An independent testing laboratory (e.g., Underwriters Laboratories, Inc. (UL), Factory Mutual Research Corporation (FMRC), Maryland Electrical Testing (MET), etc.) is a laboratory that is not affiliated with a manufacturer and is one that tests products for many different firms.

A profitmaking independent testing laboratory is one run as a typical profitmaking business, whereas a non-profit independent testing laboratory (government controlled or privately controlled) charges its clients only enough to cover expenses.

Based upon the ERG report, OSHA has estimaed that in 1983 there were approximately 2,500 independent testing laboratories, of which 2,275 were profitmaking and 225 were non-profit. Total receipts for these laboratories were approximately $950 million, of which profitmaking laboratories received approximately $820 million, and non-profit laboratories received approximately $130 million.

Total employment in these independent laboratories was approximately 38,500. Most of these laboratories are very small entities—45 percent have four or fewer employees, and 85 percent have fewer than 20 employees. About 82 percent of these laboratories have annual revenues of less than $500,000.

Most of these small laboratories specialize in very specific types of tests and very specific products. Even the larger testing laboratories tend to have specialty areas and do not test every product category.

Only eight laboratories employ more than 250 workers, and of those, only three employ more than 1,000. These eight laboratories generated approximately 20 percent of the total testing laboratory revenues.

Both domestic and foreign testing laboratories may be affected by this final rule. The Canadian Standards Association (CSA) is the only foreign organization that has entered the American product testing market to any significant degree. Its program is

recognized by several state and local building code agencies.

4. Annual Market Projection

The market for product testing directly affected by the OSHA requirements has been estimated by OSHA, based upon the ERG report, to have total sales of between $70 million and $100 million. Of that total, $50 million goes to UL; $5 million to FMRC; between $10 million and $35 million to manufacturer-affiliated laboratories, and between $5 million and $10 million to independent testing laboratories.

As has been described, much of the product testing performed for OSHA-related purposes is also performed to comply with state and local building code requirements, as well as with product liability insurance demands.

Nevertheless, conformance by a testing laboratory with the criteria in the NRTL definition would probably lead that laboratory to claim that it thereby demonstrated the competence and capability required for such testing, and to attempt to obtain OSHA recognition as a nationally recognized testing laboratory. Obtaining such a status would then, in turn, improve that testing laboratory's ability to compete for the total yearly testing market business of $950 million.

Finally, this market also includes the testing of foreign manufactured products for safety. Based upon the ERG report, this foreign product share of the market is approximately $13 million of which UL receives approximately $12 million. No foreign testing laboratory or foreign manufacturer has submitted any testimony or comment concerning the ANPR or the NPRM, and OSHA has concluded that this final rule would not significantly affect them.

5. Current Regulatory Environment

OSHA has examined the existing regulatory environment from two perspectives. The first perspective is whether the intent of the Part 1910 provisions requiring product testing—ensuring that workers have safe equipment—has been met. The second perspective is the economic impact of the existing requirements.

In terms of the first issue, OSHA has found that the existing system has generated safe products and equipment. Thus, the safety intentions underlying the testing requirements in Part 1910 have been met.

From the manufacturer's point of view, the price of testing entails not only the direct testing service charges, but also the length of time taken by the testing process. In other words, the time spent by the manufacturer waiting for his product to be tested is time during which the product is not being sold and the manufacturer is not receiving the income necessary to offset the expenses of designing the product, establishing a production line, etc.

In addition to the time component, there is the issue of the actual fees charged by testing laboratories. OSHA has determined that within the likely range of these fees, the manufacturer demand for testing services is highly competitive and the price inelastic because, in general, the price for testing services is a very small component of the overall costs of the product. Consequently, even a relatively large increase in testing fees would likely not cause a manufacturer to abandon the testing service. The current situation therefore contains little incentive for serious cost containment.

OSHA suggests it is likely that—as a byproduct of increasing competition in this market—the nationally recognized testing laboratories may find new and innovative ways of testing products more rapidly and at lower costs than is currently being done, without reducing the current level of workplace safety provided through OSHA's safety testing requirements.

6. The Regulatory Environment Expected from the Final Rule

The final rule has been designed to maintain the existing level of worker safety gained from product testing, in the most cost-effective manner.

This final rule will eliminate the specific references to UL and FMRC in Part 1910. OSHA has determined that allowing nationally recognized testing laboratories into this market will increase competition which, in turn, will likey result in reduction in both product testing fees and product testing time. Tha main beneficiaries will be the product manufacturers and nationally recognized testing laboratories. The primary groups that may be adversely affected are UL and FMRC.

In order to ensure a continuation of worker safety, OSHA has established a review and evaluation procedure for testing labs. Based on the ERG Report, OSHA estimates that between 25 and 50 testing labs will seek OSHA recognition as meeting the criteria with respect to testing equipment for compliance with Part 1910. Of these testing labs, about 10 will seek acceptance for a wide variety of products within a major testing discipline (e.g., electrical, thermal, etc.), whereas, between 15 and 40 will seek acceptance for a specialized subset of products within a major testing discipline. On average, the larger testing labs will test about 50 types of products, and the smaller testing labs will test about 10 types of products.

Based on the ERG Report, OSHA has determined that certain work practices of some testing labs would need to be upgraded before the testing lab would be recognized by OSHA. In particular, improvements in the follow-up testing procedures will be necessary. On that basis, OSHA estimates that the annual costs of this upgrading for all of these testing labs would be between $144,500 and $200,000. The costs of applying and being reviewed by OSHA would have an annual cost to these testing labs of between $23,000 and $34,700. Thus, the total annual costs to these testing labs would be between $167,500 and $234,700.

In addition, UL and FM would be required to apply to OSHA acceptance five years from the promulgation of this standard. This application would impose costs upon UL and FM. In particular, the requirements for making all test standards available to OSHA and the OSHA on-site investigation of these testing labs would be the two major components of these costs. OSHA estimates that the annual costs starting in five years to UL would be $23,000 and the annual costs starting in five years to FM would be $2,300.

Even though OSHA does not have a quantitative basis for demonstrating that this final rule will provide net benefits to the economy, OSHA does have a qualitative basis for its expectation that there will be net benefits. This regulation makes entry into product safety testing markets accessible to a larger number of testing organizations; however, no individual testing laboratory will have to participate. To the extent that any of these enterprises enter these markets, it is self-evident that they will do so with the expectation of making a profit or, at least, breaking even.

OSHA has also determined that the final rule will maintain the existing level of worker safety because only testing laboratories that are recognized by OSHA as being well qualified in that product area will be utilized to test products covered under Part 1910.

The interlocking relationships mentioned above, including activities of other federal agencies, state and local governments, the insurance industry, and the testing industry, when combined with the criteria in the NRTL definition and the OSHA recognition process provided in this final rule, will assure a high level of competence among nationally recognized testing laboratories. This arrangement provides sufficient assurance to the Agency that

worker safety will not be reduced by the definitional changes being made in this final rule.

Therefore, OSHA has determined that this final rule is a cost-effective solution to the problem of redressing any existing economic inequity in the product safety testing market while maintaining the existing high level of worker safety.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (P.L. 96–353, 94 Stat. 1164 [5 U.S.C. 60 et seq.], the Assistant Secretary has evaluated the impact of the final rule and has concluded that it would not have a significant adverse impact upon a substantial number of small entities. Some 82 percent of the testing laboratories have yearly sales of less than $500,000. This final rule, by opening a market to small testing laboratories, would likely have a positive impact upon them. Thus, this final rule would not adversely affect any small entity and would likely benefit small entities.

C. International Trade Impacts

This rule does not impact heavily on international trade nor affect a trade-sensitive activity, although it may have a minor impact. Nevertheless, no comments were received from foreign governments, industries, or other interests on this issue during the public comment period.

D. Environmental Impact Assessment and Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The final revisions to 29 CFR Part 1910—Deletion of Specific Testing Laboratory Names and Definition of Nationally Recognized Testing Laboratory—focus on changes in language, definition, and format of the standard. These revisions as such do not impact on air, water, or soil quality, on plant or animal life, or on the use of land or energy, or other aspects of the environment. Moreover, as safety standards these revisions can be categorized as excluded actions according to the DOL NEPA regulations (29 CFR 11.10(a)(1)).

V. OMB Approval Under the Paperwork Reduction Act

Appendix A to § 1910.7 of this section contains a collection of information as defined by OMB at 5 CFR Part 1320. The Appendix requires organizations, who want to be recognized by OSHA as a nationally recognized testing laboratory, to provide certain information to OSHA for evaluation. OMB has reviewed this collection and approved it. The approval number is OMB No. 1218–0147.

VI. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the effective date of the final rule. These States and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New York (for State and local government employees only), New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

List of Subjects in 29 CFR Parts 1907 and 1910

Laboratory, Occupational safety and health, Reporting and recordkeeping requirements, Safety, Testing.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Part 1910 is amended, as set forth below, effective June 13, 1988.

Signed at Washington, DC, this 5th day of April 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1907—[REMOVED]

Part 1907 of Title 29 of the Code of Federal Regulations is hereby removed.

PART 1910—[AMENDED]

Effective June 13, 1988, 29 CFR Part 1910 is amended as follows:

Subpart A—General

1. The authority citation for Subpart A of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 41, Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Sections 1910.6(a) and 1910.7 also issued under 29 CFR Part 1911.

2. A new § 1910.7 is added to 29 CFR, to read as follows:

§ 1910.7 Definition and requirements for a nationally recognized testing laboratory.

(a) *Application.* This section shall apply only when the term "nationally recognized testing laboratory" is used in other sections of this Part.

(b) *Laboratory requirements.* The term "nationally recognized testing laboratory" (NRTL) means an organization which is recognized by OSHA in accordance with Appendix A of this section and which tests for safety, and lists or labels or accepts, equipment or materials and which meets all of the following criteria:

(1) For each specified item of equipment or material to be listed, labeled or accepted, the NRTL has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform:

(i) Testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards; or

(ii) Experimental testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards or performance in a specified manner.

(2) The NRTL shall provide, to the extent needed for the particular equipment or materials listed, labeled, or accepted, the following controls or services:

(i) Implements of control procedures for identifying the listed and labeled equipment or materials;

(ii) Inspects the run of production of such items at factories for product evaluation purposes to assure conformance with the test standards; and

(iii) Conducts field inspections to monitor and to assure the proper use of

its identifying mark or labels on products;

(3) The NRTL is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes; and,

(4) The NRTL maintains effective procedures for:

(i) Producing creditable findings or reports that are objective and without bias; and

(ii) Handling complaints and disputes under a fair and reasonable system.

(c) *Test standards.* An "appropriate test standard" referred to in § 1910.7(b)(1) (i) and (ii) is a document which specifies the safety requirements for specific equipment or class of equipment and is:

(1) Recognized in the United States as a safety standard providing an adequate level of safety, and

(2) Compatible with and maintained current with periodic revisions of applicable national codes and installation standards, and

(3) Developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved, or

(4) In lieu of paragraphs (c) (1), (2), and (3), the standard is currently designated as an American National Standards Institute (ANSI) safety-designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials.

(d) *Alternative test standard.* If a testing laboratory desires to use a test standard other than one allowed under paragraph (c) of this section, then the Assistant Secretary of Labor shall evaluate the proposed standard to determine that it provides an adequate level of safety before it is used.

(e) *Implementation.* A testing organization desiring recognition by OSHA as an NRTL shall request that OSHA evaluate its testing and control programs against the requirements in this section for any equipment or material it may specify. The recognition procedure shall be conducted in accordance with Appendix A to this section.

Subpart D—Walking-Working Surfaces

3. The authority citation for Subpart D of Part 1910 continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Sections 1910.23, 1910.24, 1910.25, 1910.26 and 1910.28 are also issued under 29 CFR Part 1911.

4. In § 1910.28, paragraphs (f)(2) introductory text, (g)(3), (h)(2), and (i)(1) are revised to read as follows:

§ 1910.28 Safety requirements for scaffolding.

* * * * *

(f) * * *

(2) The scaffold shall be provided with hoisting machines that meet the requirements of a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(g) * * *

(3) When hoisting machines are used on two-point suspension scaffolds, such machines shall be of a design tested and approved by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(h) * * *

(2) The hoisting machine and its supports shall be of a type tested and listed by a nationally recognized testing laboratory. Refer to § 1910.399(a)(77) for definition of listed, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

(i) * * *

(1) The scaffolding, including power units or manually operated winches, shall be a type tested and listed by a nationally recognized testing laboratory. Refer to § 1910.399(a)(77) for definition of listed, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

Subpart E—Means of Egress

5. The authority citation for Subpart E of Part 1910 continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.35, .37, .38 and .40 are also issued under 29 CFR Part 1911.

6. In § 1910.35, paragraph (h) is revised to read as follows:

§ 1910.35 Definitions.

* * * * *

(h) *Approved.* For the purpose of this subpart approved shall mean listed or approved equipment by a nationally recognized testing laboratory. Refer to § 1910.155(c)(3)(iv)(A) for definition of listed, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

Subpart H—Hazardous Materials

7. The authority citation for Subpart H of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.103, .106, .107, .108, .109, .110 and .111 are also issued under 29 CFR Part 1911.

8. In § 1910.103, paragraph (a)(1)(ii) is revised to read as follows:

§ 1910.103 Hydrogen.

(a) * * *

(1) * * *

(ii) Approved—Means, unless otherwise indicated, listed or approved by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

9. In § 1910.106, paragraph (a)(35) is revised to read as follows:

§ 1910.106 Flammable and combustible liquids.

(a) * * *

(35) Approved unless otherwise indicated, approved, or listed by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

10. In § 1910.107, paragraph (a)(8) is revised to read as follows:

§ 1910.107 Spray finishing using flammable and combustible materials.

(a) * * *

(8) *Approved.* Shall mean approved and listed by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

11. In § 1910.108, paragraph (a)(3) is revised to read as follows:

§ 1910.108 Dip tanks containing flammable or combustible liquids.

(a) * * *

(3) *Approved.* Unless otherwise indicated, approval or listing by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

12. In § 1910.109, paragraph (d)(2)(iii)(*a*) is revised to read as follows:

§ 1910.109 Explosives and blasting agents.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

(*a*) Only extinguishers listed or approved by a nationally recognized testing laboratory shall be deemed suitable for use on explosives-carrying vehicles. Refer to § 1910.155(c)(3)(iv)(A) for definition of listed, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

13. In § 1910.110, paragraphs (a)(14), (b)(2)(iii), (c)(5)(i)(*g*)(*1*) and (f)(5)(iv) are revised to read as follows:

§ 1910.110 Storage and handling of liquified petroleum gases.

(a) * * *

(14) Approved—unless otherwise indicated, listing or approval by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(b) * * *

(2) * * *

(iii) In systems utilizing containers of over 2,000 gallons water capacity, each regulator, container valve, excess flow valve, gaging device, and relief valve installed on or at the container, shall have its correctness as to design, construction, and performance determined by listing by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(*g*)(*1*) Hose shall be designed for a working pressure of at least 250 p.s.i.g. Hose and hose connections shall have their correctness as to design, construction and performance determined by listing by a nationally recognized testing laboratory. The hose length may exceed the length specified in paragraph (b)(9)(vii)(*b*) of this section, but shall be as short as practicable. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

(f) * * *

(5) * * *

(iv) Each opening from such storage rooms to other parts of the building shall be protected by a 1½ hour (B) fire door listed by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

14. In § 1910.111, paragraph (b)(1)(ii) is revised, and new paragraph (b)(1)(vi) added, to read as follows:

§ 1910.111 Storage and handling of anhydrous ammonia.

* * * * *

(b) * * *

(1) * * *

(ii) It is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; or

* * * * *

(vi) For the purposes of this paragraph (b)(1), refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

Subpart L—Fire Protection

15. The authority citation for Subpart L is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or No. 9–83 (48 FR 35736), as applicable.

Sections 1910.155, 1910.158, 1910.160 and 1910.161 also issued under 29 CFR Part 1911.

16. In § 1910.155, paragraph (c)(3)(i) is revised, and new paragraph (c)(3)(iv)(E) is added, to read as follows:

§ 1910.155 Scope, application and definitions applicable to this subpart.

* * * * *

(c) * * *

(3) * * *

(i) If it is accepted, or certified, or listed, or labeled or otherwise determined to be safe by a nationally recognized testing laboratory; or

* * * * *

(iv) * * *

(E) Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

Subpart N—Materials Handling and Storage

17. The authority citation for Subpart N of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059 (or 9–83 (48 FR 35736), as applicable.

Sections 1910.177, .178, .179, .180, .181, .183, .184, .189 and .190 also issued under 29 CFR Part 1911.

18. In § 1910.178, paragraph (a)(7) is revised to read as follows:

§ 1910.178 Powered industrial trucks.

(a) * * *

(7) As used in this section, the term, "approved truck" or "approved industrial truck" means a truck that is listed or approved for fire safety purposes for the intended use by a nationally recognized testing laboratory, using nationally recognized testing standards. Refer to § 1910.155(c)(3)(iv)(A) for definition of listed, and to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

19. In § 1910.180, paragraph (i)(4)(i) is revised to read as follows:

§ 1910.180 Crawler locomotive and truck cranes.

* * * * *

(i) * * *

(4) * * *

(i) Refueling with small portable containers shall be done with an approved safety type can equipped with an automatic closing cap and flame arrester. Refer to § 1910.155(c)(3) for definition of approved.

* * * * *

20. In § 1910.181, paragraph (j)(4)(i) is revised to read as follows:

§ 1910.181 Derricks.

* * * * *

(j) * * *

(4) * * *

(i) Refueling with portable containers shall be done with approved safety type containers equipped with automatic closing cap and flame arrester. Refer to § 1910.155(c)(3) for definition of Approved.

* * * * *

Subpart Q—Welding, Cutting, and Brazing

21. The authority citation for Subpart Q of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Section 1910.251 also issued under 29 CFR Part 1911.

22. In § 1910.251, paragraph (b) is revised to read as follows:

§ 1910.251 Definitions.

* * * * *

(b) "Approved" means listed or approved by a nationally recognized testing laboratory. Refer to § 1910.155(c)(3) for definitions of listed

and approved, and § 1910.7 for nationally recognized testing laboratory.

* * * * *

Subpart R—Special Industries

23. The authority citation for Subpart R of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

24. In § 1910.265, paragraph ((d)(2)(iv) (*c*) is revised to read as follows:

§ 1910.265 Sawmills.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(*c*) Boat fuel shall be transported and stored in approved safety containers. Refer to § 1910.155(c)(3) for definition of approved.

* * * * *

25. In § 1910.266, paragraphs (c)(4)(iii) and (iv) are revised to read as follows:

§ 1910.266 Pulpwood logging.

* * * * *

(c) * * *

(4) * * *

(iii) An approved fire extinguisher shall be provided at locations where machines are operating and/or on each vehicle. Refer to § 1910.155(c)(3) for definition of approved.

(iv) Fuel shall be stored only in approved well-marked containers located for safe access for fueling vehicles and equipment and at a safe distance from all fire hazards. Refer to § 1910.155(c)(3) for definition of approved.

* * * * *

Subpart S—Electrical

26. The authority citation for Subpart S continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657); Secretary of Labor's Order No. 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

27. In § 1910.399, paragraph (a)(1) is revised to read as follows:

§ 1910.399 Definitions applicable to this subpart.

(a) * * *

(1) *Acceptable.* An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart S: (i) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; or (ii) with respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency, or by a State, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code and found in compliance with the provisions of the National Electrical Code as applied in this Subpart; or (iii) with respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary and his authorized representatives. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

* * * * *

28. A new Appendix A and OMB numbers are added to § 1910.7 to read as follows:

Appendix A to § 1910.7— OSHA Recognition Process for Nationally Recognized Testing Laboratories

Introduction

This Appendix provides requirements and criteria which OSHA will use to evaluate and recognize a Nationally Recognized Testing Laboratory (NRTL). This process will include the the evaluation of the product evaluation and control programs being operated by the NRTL, as well as the NRTL's testing facilities being used in its program. In the evaluation of the NRTLs, OSHA will use either consensus-based standards currently in use nationally, or other standards or criteria which may be considered appropriate. This Appendix implements the definition of NRTL in 29 CFR 1910.7 which sets out the criteria that a laboratory must meet to be recognized by OSHA (initially and on a continuing basis). The Appendix is broader in scope, providing procedures for renewal, expansion and revocation of OSHA recognition. Except as otherwise provided, the burden is on the applicant to establish by a preponderance of the evidence that it is entitled to recognition as an NRTL. If further detailing of these requirements and criteria will assist the NRTLs or OSHA in this activity, this detailing will be done through appropriate OSHA Program Directives.

I. Procedures for Initial OSHA Recognition

A. Applications.

1. *Eligibility.* a. Any testing agency or organization considering itself to meet the definition of nationally recognized testing laboratory as specified in § 1910.7 may apply for OSHA recognition as an NRTL.

b. However, in determining eligibility for a foreign-based testing agency or organization, OSHA shall take into consideration the policy of the foreign government regarding both the acceptance in that country of testing data, equipment acceptances, and listings, and labeling, which are provided through nationally recognized testing laboratories recognized by the Assistant Secretary, and the accessibility to government recognition or a similar system in that country by U.S.-based safety-related testing agencies, whether recognized by the Assistant Secretary or not, if such recognition or a similar system is required by that country.

2. *Content of application.* a. The applicant shall provide sufficient information and detail demonstrating that it meets the requirements set forth in § 1910.7, in order for an informed decision concerning recognition to be made by the Assistant Secretary.

b. The applicant also shall identify the scope of the NRTL-related activity for which the applicant wishes to be recognized. This will include identifying the testing methods it will use to test or judge the specific equipment and materials for which recognition is being requested, unless such test methods are already specified in the test standard. If requested to do so by OSHA, the applicant shall provide documentation of the efficacy of these testing methods.

c. The applicant may include whatever enclosures, attachments, or exhibits the applicant deems appropriate. The application need not be submitted on a Federal form.

3. *Filing office location.* The application shall be filed with: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Amendments and withdrawals.* a. An application may be revised by an applicant at any time prior to the completion of activity under paragraph I.B.4. of this Appendix.

b. An application may be withdrawn by an applicant, without prejudice, at any time prior to the final decision by the Assistant Secretary in paragraph I.B.7.c. of this Appendix.

B. Review and Decision Process; Issuance or Renewal.

1. *Acceptance and on-site review.* a. Applications submitted by eligible testing agencies will be accepted by OSHA, and their receipt acknowledged in writing. After receipt of an application, OSHA may request additional information if it believes information relevant to the requirements for recognition has been omitted.

b. OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, as well as the applicant's administrative and technical practices, and, if necessary, review any additional documentation underlying the application.

c. These on-site reviews will be conducted by qualified individuals technically expert in these matters, including, as appropriate, non-Federal consultants/contractors acceptable to OSHA. The protocol for each review will be based on appropriate national consensus

standards or international guides, with such additions, changes, or deletions as may be considered necessary and appropriate in each case by OSHA. A written report shall be made of each on-site review and a copy shall be provided to the applicant.

2. *Positive finding by staff.* If, after review of the application, and additional information, and the on-site review report, the applicant appears to have met the requirements for recognition, a written recommendation shall be submitted by the responsible OSHA personnel to the Assistant Secretary that the application be approved, accompanied by a supporting explanation.

3. *Negative finding by staff.*—a. *Notification to applicant.* If, after review of the application, any additional information and the on-site review report, the applicant does not appear to have met the requirements for recognition, the responsible OSHA personnel shall notify the applicant in writing, listing the specific requirements of § 1910.7 and this Appendix which the applicant has not met, and allow a reasonable period for response.

b. *Revision of application.* (i) After receipt of a notification of negative finding (i.e., for intended disapproval of the application), and within the response period provided, the applicant may:

(*a*) Submit a revised application for further review, which could result in a positive finding by the responsible OSHA personnel pursuant to subsection I.B.2. of this Appendix; or

(*b*) Request that the original application be submitted to the Assistant Secretary with an attached statement of reasons, supplied by the applicant of why the application should be approved.

(ii) This procedure for applicant notification and potential revision shall be used only once during each recognition process.

4. *Preliminary finding by Assistant Secretary.* a. The Assistant Secretary, or a special designee for this purpose, will make a preliminary finding as to whether the applicant has or has not met the requirements for recognition, based on the completed application file, the written staff recommendation, and the statement of reasons supplied by the applicant if there remains a staff recommendation of disapproval.

b. Notification of this preliminary finding will be sent to the applicant and subsequently published in the **Federal Register.**

c. This preliminary finding shall not be considered an official decision by the Assistant Secretary or OSHA, and does not confer any change in status or any interim or temporary recognition for the applicant.

5. *Public review and comment period.*—a. The **Federal Register** notice of preliminary finding will provide a period of not less than 60 calendar days for written comments on the applicant's fulfillment of the requirements for recognition. The application, supporting documents, staff recommendation, statement of applicant's reasons, and any comments received, will be available for public inspection in the OSHA Docket Office.

b. Any member of the public, including the applicant, may supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements of the definition in 29 CFR § 1910.7 and this Appendix. Submission of pertinent documents and exhibits shall be made in writing by the close of the comment period.

6. *Action after public comment.*— a. *Final decision by Assistant Secretary.* Where the public review and comment record supports the Assistant Secretary's preliminary finding concerning the application, i.e., absent any serious objections or substantive claims contrary to the preliminary finding having been received in writing from the public during the comment period, the Assistant Secretary will proceed to final written decision on the application. The reasons supporting this decision shall be derived from the evidence available as a result of the full application, the supporting documentation, the staff finding, and the written comments and evidence presented during the public review and comment period.

b. *Public announcement.* A copy of the Assistant Secretary's final decision will be provided to the applicant. Subsequently, a notification of the final decision shall be published in the **Federal Register.** The publication date will be the effective date of the recognition.

c. *Review of final decision.* There will be no further review activity available within the Department of Labor from the final decision of the Assistant Secretary.

7. *Action after public objection.*— a. *Review of negative information.* At the discretion of the Assistant Secretary or his designee, OSHA may authorize Federal or contract personnel to initiate a special review of any information provided in the public comment record which appears to require resolution, before a final decision can be made.

b. *Supplementation of record.* The contents and results of special reviews will be made part of this record by the Assistant Secretary by either:

(i) Reopening the written comment period for public comments on these reviews; or

(ii) Convening an informal hearing to accept public comments on these reviews, conducted under applicable OSHA procedures for similar hearings.

c. *Final decision by the Assistant Secretary.* The Assistant Secretary shall issue a decision as to whether it has been demonstrated, based on a preponderance of the evidence, that the applicant meets the requirements for recognition. The reasons supporting this decision shall be derived from the evidence available as a result of the full application, the supporting documentation, the staff finding, the comments and evidence presented during the public review and comment period, and written to transcribed evidence received during any subsequent reopening of the written comment period or informal public hearing held.

d. *Public announcement.* A copy of the Assistant Secretary's final decision will be provided to the applicant, and a notification will be published in the **Federal Register** subsequently announcing the decision.

e. *Review of final decision.* There will be no further review activity available within the Department of Labor from the final decision of the Assistant Secretary.

c. *Terms and conditions of recognition.* The following terms and conditions shall be part of every recognition:

1. *Letter of recognition.* The recognition by OSHA of any NRTL will be evidenced by a letter of recognition from OSHA. The letter will provide the specific details of the scope of the OSHA recognition, including the specific equipment or materials for which OSHA recognition has been granted, as well as any specific conditions imposed by OSHA.

2. *Period of recognition.* The recognition by OSHA of each NRTL will be valid for five years, unless terminated before the expiration of the period. The dates of the period of recognition will be stated in the recognition letter.

3. *Constancy in operations.* The recognized NRTL shall continue to satisfy all the requirements or limitations in the letter of recognition during the period of recognition.

4. *Accurate publicity.* The OSHA-recognized NRTL shall not engage in or permit others to engage in misrepresentation of the scope or conditions of its recognition.

5. *Temporary Recognition of Certain NRTLs.* a. Notwithstanding all other requirements and provisions of § 1910.7 and this Appendix, the following two organizations are recognized temporarily as nationally recognized testing laboratories by the Assistant Secretary for a period of five years beginning June 13, 1988 and ending on July 13, 1993:

(i) Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(ii) Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062.

b. At the end of the five-year period, the two temporarily recognized laboratories shall apply for renewal of OSHA recognition utilizing the following procedures established for renewal of OSHA recognition.

II. Supplementary Procedures.

A. Test standard changes.

A recognized NRTL may change a testing standard or elements incorporated in the standard such as testing methods or pass-fail criteria by notifying the Assistant Secretary of the change, certifying that the revised standard will be at least as effective as the prior standard, and providing the supporting data upon which its conclusions are based. The NRTL need not inform the Assistant Secretary of minor deviations from a test standard such as the use of new instrumentation that is more accurate or sensitive than originally called for in the standard. The NRTL also need not inform the Assistant Secretary of its adoption of revisions to third-party testing standards meeting the requirements of § 1910.7(c)(4), if such revisions have been developed by the standards developing organization, or of its adoption of revisions to other third-party test standards which the developing organization has submitted to OSHA. If, upon review, the Assistant Secretary or his designee determines that the proposed revised standard is not "substantially equivalent" to the previous version with regard to the level

of safety obtained, OSHA will not accept the proposed testing standard by the recognized NRTL, and will initiate discontinuance of that aspect of OSHA-recognized activity by the NRTL by modification of the official letter of recognition. OSHA will publicly announce this action and the NRTL will be required to communicate this OSHA decision directly to affected manufacturers.

B. Expansion of current recognition

1. *Eligibility.* A recognized NRTL may apply to OSHA for an expansion of its current recognition to cover other categories of NRTL testing in addition to those included in the current recognition.

2. *Procedure.* a. The application for expansion will be acted upon and processed by OSHA in accordance with subsection I.B. of this Appendix.

b. In that process, OSHA may decide not to conduct an on-site review, where the substantive scope of the request to expand recognition is closely related to the current area of recognition.

c. The expiration date for each expansion of recognition shall coincide with the expiration date of the current basic recognition period.

C. Renewal of OSHA recognition

1. *Eligibility.* A recognized NRTL may renew its recognition by filing a renewal request at the address in paragraph I.A.3. of this Appendix not less than nine months, nor more than one year, before the expiration date of its current recognition.

2. *Procedure.* a. The renewal request will be processed in accordance with subsection I.B. of this Appendix.

b. In that process, OSHA may determine not to conduct the on-site reviews in I.B.1.a. where appropriate.

c. When a recognized NRTL has filed a timely and sufficient renewal request, its current recognition will not expire until a final decision has been made by OSHA on the request.

d. After the first renewal has been granted to the NRTL, the NRTL shall apply for a continuation of its recognition status every five years by submitting a renewal request. In lieu of submitting a renewal request after the initial renewal, the NRTL may certify its continuing compliance with the terms of its letter of recognition and 29 CFR 1910.7.

3. *Alternative procedure.* After the initial recognition and before the expiration thereof, OSHA may (for good cause) determine that there is a sufficient basis to dispense with the renewal requirement for a given laboratory and will so notify the laboratory of such a determination in writing. In lieu of submitting a renewal request, any laboratory so notified shall certify its continuing compliance with the terms of its letter of recognition and 29 CFR 1910.7.

D. Voluntary termination of recognition.

At any time, a recognized NRTL may voluntarily terminate its recognition, either in its entirety or with respect to any area covered in its recognition, by giving written notice to OSHA. The written notice shall state the date as of which the termination is to take effect. The Assistant Secretary shall inform the public of any voluntary termination by **Federal Register** notice.

E. Revocation of recognition by OSHA.

1. *Potential causes.* If an NRTL either has failed to continue to substantially satisfy the requirements of § 1910.7 or this Appendix, or has not been reasonably performing the NRTL testing requirements encompassed within its letter of recognition, or has materially misrepresented itself in its applications or misrepresented the scope or conditions of its recognition, the Assistant Secretary may revoke the recognition of a recognized NRTL, in whole or in part. OSHA may initiate revocation procedures on the basis of information provided by any interested person.

2. *Procedure.* a. Before proposing to revoke recognition, the Agency will notify the recognized NRTL in writing, giving it the opportunity to rebut or correct the alleged deficiencies which would form the basis of the proposed revocation, within a reasonable period.

b. If the alleged deficiencies are not corrected or reconciled within a reasonable period, OSHA will propose, in writing to the recognized NRTL, to revoke recognition. If deemed appropriate, no other announcement need be made by OSHA.

c. The revocation shall be effective in 60 days unless within that period the recognized NRTL corrects the deficiencies or requests a hearing in writing.

d. If a hearing is requested, it shall be held before an administrative law judge of the Department of Labor pursuant to the rules specified in 29 CFR Part 1905, Subpart C.

e. The parties shall be OSHA and the recognized NRTL. The Assistant Secretary may allow other interested persons to participate in these hearings if such participation would contribute to the resolution of issues germane to the proceeding and not cause undue delay.

f. The burden of proof shall be on OSHA to demonstrate by a preponderance of the evidence that the recognition should be revoked because the NRTL is not meeting the requirements for recognition, has not been reasonably performing the product testing functions as required by § 1910.7, this Appendix A, or the letter of recognition, or has materially misrepresented itself in its applications or publicity.

3. *Final decision.* a. After the hearing, the Administrative Law Judge shall issue a decision stating the reasons based on the record as to whether it has been demonstrated, based on a preponderance of evidence, that the applicant does not continue to meet the requirements for its current recognition.

b. Upon issuance of the decision, any party to the hearing may file exceptions within 20 days pursuant to 29 CFR 1905.28. If no exceptions are filed, this decision is the final decision of the Assistant Secretary. If objections are filed, the Administrative Law Judge shall forward the decision, exceptions and record to the Assistant Secretary for the final decision on the proposed revocation.

c. The Assistant Secretary will review the record, the decision by the Administrative Law Judge, and the exceptions filed. Based on this, the Assistant Secretary shall issue the final decision as to whether it has been demonstrated, by a preponderance of evidence, that the recognized NRTL has not continued to meet the requirements for OSHA recognition. If the Assistant Secretary finds that the NRTL does not meet the NRTL recognition requirements, the recognition will be revoked.

4. *Public announcement.* A copy of the Assistant Secretary's final decision will be provided to the applicant, and a notification will be published in the **Federal Register** announcing the decision, and the availability of the complete record of this proceeding at OSHA. The effective date of any revocation will be the date the final decision copy is sent to the NRTL.

5. *Review of final decision.* There will be no further review activity available within the Department of Labor from the final decision of the Assistant Secretary.

(Approved by the Office of Management and Budget under Control Number 1218–0147)

[FR Doc. 88–7782 Filed 4–6–88; 8:45 am]

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Federal Register

Tuesday
April 12, 1988

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 25, 31, and 52
Federal Acquisition Regulation; Restrictions on Federal Public Works Projects, and Promotion of American Aerospace Exports at Domestic and International Exhibits; Interim Rule With Request for Comments and Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25, 31, and 52

[Federal Acquisition Circular 84-36]

Federal Acquistion Regulation (FAR); Restrictions on Federal Public Works Projects, and Promotion of American Aerospace Exports at Domestic and International Exhibits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments and final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-36 amends the Federal Acquisition Regulation as an interim rule with respect to Government acquisition of construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of certain foreign countries or any supplier of products of such foreign countries and as a final rule the allowability of costs to promote American aerospace exports at domestic and international exhibits.

DATES: Effective date: April 12, 1988.

COMMENT DATE: Comments on the interim rule, Parts 25 and 52, should be submitted to the FAR Secretariat at the address shown below on or before June 13, 1988 to be considered in the formulation of a final rule. Please cite FAC 84-36 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Item I, FAC 84-36 (Interim Rule). Pub. L. 100-202, enacted December 22, 1987, Making Further Appropriations for the Fiscal Year Ending September 30, 1988, contains restrictions concerning the use of Federal funds for construction services and products on public works. Section 109(a) of Pub. L. 100-202 prohibits the obligation or expenditure of funds appropriated for Fiscal Year 1988 by Pub. L. 100-202 or any other law to enter into any contract for construction, alteration, or repair of any public building or work with any contractor or subcontractor of a foreign country or any supplier of products of a foreign country that is identified by the United States Trade Representative (USTR) or by Pub. L. 100-202 as discriminating against U.S. firms in conducting acquisitions for public works projects. On December 30, 1987, the USTR published an initial list in the **Federal Register** identifying only one country, Japan, that discriminates against U.S. firms.

The USTR may add other countries to its list as a result of its ongoing review of countries' practices that may deny fair and equitable market opportunities to U.S. firms.

Item II, FAC 84-36 (Final Rule). The Defense Acquisition Regulatory and Civilian Agency Acquisition Councils made major revisions to FAR 31.205-1, Public relations and advertising costs, as a result of Pub. L. 99-145, Defense Procurement Improvement Act of 1985. The revisions were promulgated in Federal Acquisition Circular (FAC) 84-15 effective April 7, 1986 (51 FR 12296), and published in the **Federal Register** on April 9, 1986. Recently, Congress further addressed this matter in Sec. 4, Chap. II, of Title I of the Supplemental Defense Appropriations Act of 1987 (Pub. L. 100-71). More recently, Congress again addressed this matter in Section 8056 of the 1988 Appropriations Act. Twenty-six letters of comment on the proposed rule were received. None objected to the liberalizing direction of the proposed rule, while thirteen commenters suggested changes. All comments were carefully considered, but none were adopted. Accordingly, the Councils hereby amended FAR 31.205-1, Public relations and advertising costs, to reflect the new law.

B. Regulatory Flexibility Act

Item I, FAC 84-36. The interim rule may 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 l601, et seq., principally with respect to its implementation of statutory limitations on subcontracting with or providing materials of foreign countries listed by the USTR. While foreign contractors are generally excluded from the definition of small entities, the interim rule would prohibit small entities from obtaining a government contract if they offer material or services from prohibited countries.

Pursuant to the authority contained in section 608(a) of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) a determination has been made that the circumstances require delay in preparation of an Initial Regulatory Flexibility Analysis in order to issue regulatory guidance in consonance with the December 22, 1987, effective date of section 109(a) of Pub. L. 100-202. It is anticipated that an Initial Regulatory Flexibility Analysis will be prepared and forwarded to the Chief Counsel for Advocacy of the SBA within 120 days. 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 88-610 in correspondence.

Item II, FAC 84-36. Dod, GSA, and NASA certify that the change to FAR 31.205-1 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the number of small entities and exhibition at air shows and the like is considered insignificant in relation to the overall small business community. Furthermore, the costs involved and the potential recovery from the Government of related promotional costs should not involve

amounts great enough to have a "significant economic impact" on the small businesses that may participate in such shows. At any rate, the more favorable treatment of contractor costs caused by this FAR revision will benefit all contractors equally in line with statutory requirements. The proposed rule stated that this rule would not have a significant economic impact on a substantial number of small entities. None of the comments received would lead to a different conclusion.

C. Determination To Issue an Interim Regulation

Item I, FAC 84–36. A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in FAC 84–36 as an interim rule. This action is necessary because the statutory prohibition was effective December 22, 1987. DoD, GSA, and NASA have determined that compelling reasons exist to promulgate an interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

D. Paperwork Reduction Act

Item I, FAC 84–36. This interim rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., and regulations prescribed by OMB at 5 CFR Part 1320. Accordingly, OMB approval of the interim rule is not required.

Item II, FAC 84–36. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 350.1 et seq.

List of Subjects in 48 CFR Parts 25, 31, and 52

Government procurement.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–36]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–36 is effective April 8, 1988.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Paul Trause,

Deputy Administrator, GSA.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–36 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Restrictions on Federal Public Works Projects

This interim rule, FAR Subpart 25.10, Restrictions on Federal Public Works Projects, and the provision at 52.225–12, Restrictions on Federal Public Works Projects Certification, and the clause at 52.225–13, Restrictions on Federal Public Works Projects, are added to implement section 109(a) of Pub. L. 100–202. Pub. L. 100–202 specifies that none of the funds appropriated for Fiscal Year 1988 by it or any other law may be obligated or expended to enter into any contract for the construction, alteration or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country is listed by the United States Trade Representative. The restriction applies to all projects for which funds appropriated for FY 1988 are obligated or expended on contracts awarded on or after December 22, 1987, regardless of when the funds were appropriated.

This subpart is effective on April 12, 1988. It applies to situations where (1) the prime contract and subsequent subcontracts thereunder were awarded on or after December 22, 1987, or (2) the prime contract was awarded prior to December 22, 1987, but a subsequent subcontract thereunder was awarded on or after December 22, 1987. Solicitations shall be amended and contracts modified in accordance with this subpart. In the event that the contracting officer is unable to obtain a waiver for or modify without cost to the Government a contract that is not in compliance and is described in situation (1) of this paragraph, the contract shall be terminated without cost to the Government. If the contracting officer is unable to obtain a waiver for or modify a contract that is not in compliance and is described in situation (2) of this paragraph, the contract shall be terminated in whole or in part in accordance with applicable law.

Waivers to the subpart may be granted in accordance with § 25.1003. Although any decision to waive a contract must be made after a review of the specific contract involved, it is more likely that it is in the public interest to waive the termination of a contract already entered into rather than to waive the prohibition on entering into a contract that has not yet been awarded. Factors that should be considered include: the national security interests of the United States; the availability of necessary products or services; and costs to the taxpayer that significantly exceed the costs associated with terminating the contract and awarding another contract for similar products or services.

The restrictions of this subpart are in addition to any other restrictions contained in Federal law, including the Buy American Act, 41 U.S.C. 10a–10d.

Item II—Promotion of American Aerospace Exports at Domestic and International Exhibits

Under the 1987 DoD Supplemental Appropriations Act (Pub. L. 100–71), the Congress permitted reimbursement of contractors costs to promote American aerospace exports at domestic and international exhibits. Under the 1988 Appropriations Act, the Congress directed that the regulations be amended to reimburse contractors costs to promote American aerospace exports at domestic and international exhibits. FAR 31.205–1 is modified as a final rule to make these costs allowable. Therefore, 48 CFR Parts 25, 31, and 52 are amended as set forth below:

1. The authority citation for Parts 25, 31, 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 25—FOREIGN ACQUISITION

2. Subpart 25.10, consisting of §§ 25.1000 through 25.1003, is added to read as follows:

Subpart 25.10—Restrictions on Federal Public Works Projects

Sec.

25.1000 Scope of subpart.
25.1001 Applicability.
25.1002 Solicitation provisions and contract clauses.
25.1003 Waivers.

Subpart 25.10—Restrictions on Federal Public Works Projects

25.1000 Scope of subpart.

This subpart implements section 109(a), Pub. L. 100–202, enacted December 22, 1987, Making Further Appropriations for the Fiscal Year ending September 30, 1988. That section

prohibits the obligation or expenditure of funds appropriated for Fiscal Year 1988 by Pub. L. 100–202 or any other law to enter into any contract for construction, alteration, or repair of any public building or work with any contractor or subcontractor of a foreign country or any supplier of products of a foreign country that is identified by the United States Trade Representative (USTR) or by Pub. L. 100–202 as discriminating against U.S. firms in conducting acquisitions for public works projects. On December 30, 1987 (52 FR 49244), the USTR published an initial list in the **Federal Register** identifying only one country, Japan, that discriminates against U.S. firms. The USTR may add other countries to its list as a result of its ongoing review of countries' practices that may deny fair and equitable market opportunities to U.S. firms.

25.1001 Applicability.

(a) The restrictions imposed by section 109(a) of Pub. L. 100–202 apply to contracts and subcontracts awarded on or after December 22, 1987, using funds appropriated for FY 1988 regardless of when the funds were appropriated. The prohibition only applies to public buildings and public works projects in the United States or any territory or possession of the United States.

(b) The restrictions in this subpart apply to any contract or subcontract for construction, alteration, or repair, and architect, engineering, or other services directly related to the preparation for or performance of construction, alteration, or repair of public buildings or public works. The restrictions include all products used in the construction, alteration, or repair of public buildings or public works: *Provided, however,* That the restrictions do not cover construction equipment or vehicles that do not become part of a delivered structure, product, or project.

25.1002 Solicitation provisions and contract clauses.

(a) Contracting officers shall insert the provision at 52.225–12, Restrictions on Public Works Projects Certification, in solicitations containing the clause at 52.225–13, Restrictions on Federal Public Works Projects.

(b) The contracting officer shall insert the clause at 52.225–13, Restrictions on Federal Public Works Projects, in each solicitation and contract—

(1) Involving the obligation or expenditure of funds appropriated for FY 1988; and

(2) For the acquisition of construction, alteration or repair, architectural, engineering, or other services directly related to the preparation for, or performance of, construction, alteration or repair of public buildings or public works projects in the United States, or any territory or possession of the United States, unless the President or the Head of the Agency issues a waiver in accordance with 25.1003.

25.1003 Waivers.

(a) The President or the Head of the Agency, on a nondelegable basis, may waive the restrictions imposed by section 109(a) of Pub. L. 100–202 with respect to an individual contract or subcontract upon a determination that such action is necessary in the public interest.

(b) Notice of any waiver shall be published in the **Federal Register** within 10 days. The notice shall describe in detail the contract or subcontract involved and the specific reasons for granting the waiver.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 31.205–1 is amended by redesignating the existing paragraph (g) as paragraph (h) and adding a new paragraph (g) to read as follows:

31.205–1 Public relations and advertising costs.

* * * * *

(g) Notwithstanding the provisions of paragraph (d) and subparagraph (f)(2) of this subsection, reasonable costs incurred to promote American aerospace exports at domestic and international exhibits, such as air shows, trade shows, and conventions, are allowable. Such reasonable costs include transportation of the aircraft, aerospace parts and equipment, and other associated support cost. However, such allowable costs shall not include the cost of entertainment, hospitality suites or chalets, advertising media other than exhibits, and other costs not necessary to establish, operate or maintain an exhibit, display, or demonstration so long as Section 8062 of Pub. L. 100–202, or a similar provision in a subsequent act, is in effect.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 52.225–12 and 52.225–13 are added to read as follows:

52.225–12 Restrictions on Federal Public Works Projects Certification.

As prescribed in 25.1002(a), insert the following provision:

RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS CERTIFICATION (APR 1988)

(a) *Definitions.* The definitions pertaining to this provision are those that are set forth in the clause entitled, "Restrictions on Federal Public Works Projects."

(b) *Certification.* Except as provided in paragraph (c) of this provision, by submission of its offer, the offeror certifies that it—

(1) Is not a Contractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR) (see paragraph (h) of this provision);

(2) Has not or will not enter into any subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; and

(3) Will not provide any product of a country included on the list of foreign countries that discriminate against U.S. firms published by the USTR.

(c) *Inability to certify.* An offeror unable to certify in accordance with paragraph (b) of this provision shall submit with its offer a written explanation fully describing the reasons for its inability to make the certification.

(d) *Applicability of 18 U.S.C. 1001.* The certification in paragraph (b) of this provision concerns a matter within the jurisdiction of any 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.

(e) *Notice.* 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.

(f) *Restrictions on contract award.* Unless a waiver to these restrictions is granted by the President of the United States or the Head of the Agency, no contract will be awarded to an offeror (1) who is owned or controlled by a citizen or national of a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the USTR, (2) whose subcontractors are owned or controlled by citizen(s) or national(s) of a foreign country on such USTR list or, (3) who incorporates any product of a foreign country on such USTR list in the Federal public works project.

(g) *Recordkeeping.* 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 (b) of this provision. 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.

(h) *USTR list.* The USTR published an initial list in the **Federal Register** on December 30, 1987 (53 FR 49244), which identified one country, Japan. The USTR can add countries to the list, and delete countries

from it, in accordance with section 109(c) of Pub. L. 100–202.

(End of provision)

52.225–13 Restrictions on Federal Public Works Projects

As prescribed in 25.1002(b), insert the following clause:

RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS (APR 1988)

(a) Definitions.

"Component," as used in this clause, means those articles, materials, and supplies incorporated directly into the product.

"Contractor or subcontractor of a foreign country," as used in this clause, means any Contractor or subcontractor that is a citizen or national of a foreign country, or is controlled directly or indirectly by citizens or nationals of a foreign country. A Contractor or subcontractor shall be considered to be a citizen or national of a foreign country, or controlled directly or indirectly by citizens or nationals of a foreign country—

(1) If 50 percent or more of the Contractor or subcontractor is owned by a citizen or a national of the foreign country;

(2) If the title to 50 percent or more of the stock of the Contractor or subcontractor is held subject to trust or fiduciary obligation in favor of a citizen(s) or national(s) of the foreign country;

(3) If 50 percent or more of the voting power in the Contractor or subcontractor is vested in or exercisable on behalf of a citizen(s) or national(s) of the foreign country;

(4) In the case of a partnership, if any general partner is a citizen of the foreign country;

(5) in the case of a corporation, if its president or other chief executive officer or the chairman of its board of directors is a citizen of the foreign country or the majority of any number of its directors necessary to constitute a quorum are citizens of the foreign country or the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(6) In the case of a contractor or subcontractor who is a joint venture, if any participant is a citizen or national of a foreign country or meets any of the criteria in subparagraphs (a)(1) through (5) of this clause.

"Product," as used in this clause, means construction materials; i.e., articles, materials, and supplies brought to the construction site for incorporation into the public works project. In determining the origin of a product, Federal agencies or recipients of Federal funds are to consider a product as produced in a foreign country if it has been assembled or manufactured in the foreign country, or if the cost of the components mined, produced, or manufactured in the foreign country exceed 50 percent of the cost of all its components.

(b) *Restrictions.* The Contractor shall not (1) knowingly enter into any subcontract under this contract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (USTR) (see paragraph (c) of this clause), or (2) supply any product under this contract of a country included on the list of foreign countries that discriminate against U.S. firms published by the USTR.

(c) *USTR list.* The USTR published an initial list in the **Federal Register** on December 30, 1987 (53 FR 49244), which identified one country, Japan. The USTR can add other countries to the list, and delete countries from it, in accordance with section 109(c) of Pub. L. 100–202.

(d) *Certification.* The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR and that products supplied by such subcontractor for use on the Federal public works project under this contract are not products of a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the USTR, unless the Contractor has knowledge that the certification is erroneous.

(e) *Subcontracts.* The Contractor shall incorporate this clause, modified only to properly identify the parties, including this paragraph (e), in all subcontracts.

(End of clause)

[FR Doc. 88–7992 Filed 4–11–88; 8:45 am]

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federal register

Tuesday
April 12, 1988

Part IV

The President

Executive Order 12635—Prohibiting Certain Transactions With Respect to Panama

Federal Register
Vol. 53, No. 70
Tuesday, April 12, 1988

Presidential Documents

Title 3—

The President

Executive Order 12635 of April 8, 1988

Prohibiting Certain Transactions With Respect to Panama

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code,

I, RONALD REAGAN, President of the United States of America, find that the policies and actions in Panama of Manuel Antonio Noriega and Manuel Solis Palma constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency to deal with that threat.

Section 1. I hereby order blocked all property and interests in property of the Government of Panama that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of persons located within the United States. For purposes of this Order, the Government of Panama is defined to include its agencies, instrumentalities and controlled entities, including the Banco Nacional de Panama and the Caja de Ahorros.

Sec. 2. Except to the extent provided in regulations which may hereafter be issued pursuant to this Order:

(a) Any direct or indirect payments or transfers from the United States to the Noriega/Solis regime of funds, including currency, cash or coins of any nation, or of other financial or investment assets or credits are prohibited. All transfers, or payments owed, to the Government of Panama shall be made into an account at the Federal Reserve Bank of New York, to be held for the benefit of the Panamanian people. For purposes of this Order, the term "Noriega/Solis regime" shall mean Manuel Antonio Noriega, Manuel Solis Palma, and any agencies, instrumentalities or entities purporting to act on their behalf or under their asserted authority.

(b) Any direct or indirect payments or transfers to the Noriega/Solis regime of funds, including currency, cash or coins of any nation, or of other financial or investment assets or credits, by any United States person located in the territory of Panama, or by any person organized under the laws of Panama and owned or controlled by a United States person, are prohibited. All transfers, or payments owed, to the Government of Panama by such persons shall be made into an account at the Federal Reserve Bank of New York, to be held for the benefit of the Panamanian people. For purposes of Section 2(b), "United States person" is defined to mean any United States citizen, permanent resident alien, juridical person organized under the laws of the United States, or any person in the United States.

Sec. 3. Sections 1 and 2 shall not be deemed to block property or interests in property of the Government of Panama, including, but not limited to, accounts established at the Federal Reserve Bank of New York as described in section 2, with respect to which transactions are authorized by, or on behalf of, the recognized representative of the Government of Panama as certified by the Secretary of State, or are otherwise authorized in regulations which may hereafter be issued pursuant to this Order. Section 2 shall not be deemed to prohibit interbank clearing payments.

Sec. 4. The measures taken pursuant to this Order are intended to extend the effectiveness of actions initiated in cooperation with the Government of Panama and its President, Eric Arturo Delvalle, and are not intended to block private Panamanian assets subject to the jurisdiction of the United States or to prohibit remittances by United States persons to Panamanian persons other than the Noriega/Solis regime.

Sec. 5. This Order shall take effect at 4:00 p.m. Eastern Daylight Time on April 8, 1988, except as otherwise provided in regulations issued pursuant to this Order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act, as may be necessary to carry out the purposes of this Order. The Secretary of the Treasury may redelegate any of these functions to other officers or agencies of the Federal Government.

Sec. 7. Nothing contained in this Order shall confer any substantive or procedural right or privilege on any person or organization, enforceable against the United States, its agencies or its officers, or the Federal Reserve Bank of New York or its officers.

This Order shall be transmitted to the Congress and published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
April 8, 1988.

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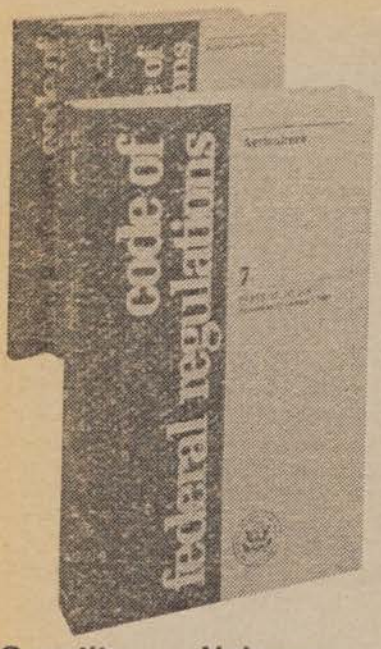
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