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Title 3—

The President

Executive Order 12643 of June 23, 1988

International Committee of the Red Cross

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the International Organizations Immunities Act (P.L. 79–291, as amended by Section 743 of P.L. 100–204), I hereby extend to the International Committee of the Red Cross the privileges, exemptions, and immunities provided by the International Organizations Immunities Act.

This Order is not intended to abridge in any respect privileges, exemptions, or immunities that the International Committee of the Red Cross may have acquired or may acquire by international agreements or by statute.

Ronald Reagan

THE WHITE HOUSE,
June 23, 1988.

[FR Doc. 88-14639
Filed 6-24-88; 3:12 pm]
Billing code 3195-01-M

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.
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 405

[Docket No. 5762S]

Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of earlier sales closing date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice that it intends to change the sales closing date for accepting applications for apple crop insurance in counties in Idaho, Oregon, Utah, and Washington wherein such insurance is offered, effective for the 1989 crop year only. This action is necessary because the weather conditions and lack of available water in that area constitute a potential for excessive risk on the 1989 crops which would prohibit the continued sale of 1989 apple crop insurance policies. The intended effect of this notice is to advise all interested parties of the change to an earlier sales closing date and to comply with the provisions of the apple crop insurance regulations with respect to the Manager's authority to discontinue acceptance of apple crop insurance applications.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: Under the provisions of 7 CFR 405.7(b), FCIC may discontinue accepting applications in any country upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application.

In Idaho, Oregon, Utah, and Washington States, weather conditions have deteriorated and the present available water appears inadequate for the crop needs. Continuation of these conditions would constitute a potential for excessive risk under the provisions of § 405.7(b).

For this reason, FCIC has determined that the sales closing date for accepting applications for apple crop insurance in Idaho, Oregon, Utah, and Washington States should be moved back from November 5 to September 30, effective for the 1989 crop year only.

Notice

Accordingly, pursuant to the authority contained in 7 CFR § 405.7(b), the Federal Crop Insurance Corporation herewith gives notice that the sales closing date for accepting applications for apple insurance in all counties in Idaho, Oregon, and Washington States where such insurance is offered, is hereby changed from November 5, 1988, to the close of business on September 30, 1988, effective for the 1989 crop year only.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on June 17, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-14551 Filed 6-27-88; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 411

[Docket No. 5763S]

Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of earlier sales closing date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its intent to change the sales closing date for accepting applications for grape crop insurance in counties in Idaho, Oregon, and Washington wherein such insurance is offered, effective for the 1989 crop year only. This action is necessary because the weather conditions and lack of available water in that area constitute a potential for excessive risk on the 1989 crops which would prohibit the continued sale of 1989 grape crop insurance policies. The intended effect of this notice is to advise all interested parties of the change to an earlier sales closing date and to comply with the provisions of the grape crop insurance regulations with respect to the Manager's authority to discontinue acceptance of grape crop insurance applications.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: Under the provisions of 7 CFR 411.7(b), FCIC may discontinue accepting applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application.

In Idaho, Oregon, and Washington, weather conditions have deteriorated and the present available water appears inadequate for the crop needs. Continuation of these conditions would constitute a potential for excessive risk under the provisions of § 411.7(b).

For this reason, FCIC has determined that the sales closing date for accepting applications for grape crop insurance in Idaho, Oregon, and Washington States should be moved back from November 10 in Washington, and December 10 in Idaho and Oregon to September 30, effective for the 1989 crop year only.

Notice

Accordingly, pursuant to the authority contained in 7 CFR § 411.7, the Federal Crop Insurance Corporation herewith gives notice that the sales closing date for accepting applications for grape insurance in all counties in Idaho, Oregon, and Washington States where such insurance is offered, is hereby changed from November 10, 1988, in Washington, and December 10, 1988, in Idaho and Oregon to the close of business on September 30, 1988, effective for the 1989 crop year only.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on June 17, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-14550 Filed 6-27-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Parts 905 and 928

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 905 and 928 for the 1988–89 fiscal year established for each order. Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture (USDA) for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1988, through June 30, 1989 (§ 928.218); August 1, 1988, through July 31, 1989 (§ 905.227).

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; and 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos, and 122 handlers of Hawaiian papayas subject to regulations under their respective orders, and approximately 13,000 Florida orange, grapefruit, tangerine and tangelo producers, and 344 Hawaiian papaya producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A substantial minority of the Florida citrus handlers, and a great majority of the Florida citrus producers and the Hawaiian papaya handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Citrus Administrative Committee met on May 3, 1988, and unanimously recommended 1988–89 marketing order expenditures of $190,000 and an assessment rate of $0.003 per ⅘ bushel carton of fresh oranges, grapefruit, tangerines, and tangelos shipped under M.O. 905. In comparison, 1987–88 fiscal year budgeted expenditures were $239,375 and the assessment rate is $0.00375 per ⅘ bushel carton. Most of the expenditure categories in the1988–89 budget are for program administration. Assessment income for 1988–89 is expected to total $186,000, based on shipments of 62,000,000 cartons (⅘ bushel) of oranges, grapefruit, tangerines, and tangelos. Interest income will amount to approximately $4,000.

The Papaya Administrative Committee met on April 20, 1988, and unanimously recommended 1988–89 marketing order expenditures of $743,360 and an assessment rate of $0.007 per pound of fresh papayas shipped under M.O. 928. In comparison, 1987–88 fiscal year budgeted expenditures were $628,140 and the assessment rate was $0.007 per pound. Major expenditure categories in the 1988–89 budget are $350,000 for advertising and promotion and $60,000 for research, with most of the remainder for program administration. Total income for 1988–89 is expected to amount to $743,360, with assessment income at $476,000 based on shipments of 68,000,000 pounds of papayas. Additional estimated income includes $150,000 from the Hawaii Department of Agriculture, $63,360 from the USDA's Foreign Agricultural Service, and $54,000 from miscellaneous sources.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 905.227 and 928.218, and is based on committee recommendations and other

information. A proposed rule was published in the June 2, 1988, issue of the Federal Register (53 FR 20121). Comments on the proposed rule were invited from interested persons until June 13, 1988. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 905 and 928

Marketing agreements and orders, Oranges, Grapefruit, Tangerines, Tangelos (Florida), Papayas (Hawaii).

For the reasons set forth in the preamble, new §§ 905.227 and 928.218 are added as follows:

1. The authority citation for 7 CFR Parts 905 and 928 continues to read as follows:

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

2. New §§ 905.227 and 928.218 are added to read as follows:

Note.—These sections will not appear in the Code of Federal Regulations.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.227 Expenses and assessment rate.

Expenses of $190,000 by the Citrus Administrative Committee are authorized, and an assessment of $0.003 per ⅘ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1989. Unexpended funds may be carried over as a reserve.

PART 928—PAPAYAS GROWN IN HAWAII

§ 928.218 Expenses and assessment rate.

Expenses of $743,360 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.007 per pound of assessable papayas is established for the fiscal year ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: June 23, 1988.

William J. Doyle,

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

[FR Doc. 88–14503 Filed 6–27–88; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R–0620]

Regulation CC; Availability of Funds and Collection of Checks; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: The Board is correcting Appendix A of Regulation CC, regarding availability of funds and collection of checks which appeared in the Federal Register on May 27, 1988 (53 FR 19372).

FOR FURTHER INFORMATION CONTACT: Louise Roseman, Assistant Director, Division of Federal Reserve Bank Operation (202/452–2789); for the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (202/452–3254).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board adopted Regulation CC (12 CFR Part 229) to implement the Expedited Funds Availability Act of 1987 (Title VI of Pub. L. 100–86). Appendix A to Regulation CC is a guide for banks and bank customers to use in identifying those checks that would be considered local checks and other checks that are among those entitled to next-day availability under the Act and Subpart B of Regulation CC. This notice makes technical changes to Appendix A to make the appendix conform to the actual check processing patterns of the Federal Reserve Banks and to include all the routing used by the Federal Home Loan Banks. As these are technical amendments that do not change the substance of Regulation CC, publication of these changes for comment is not required by 5 U.S.C. 553.

The following corrections are made to Appendix A to Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229) published in the Federal Register on May 27, 1988 (53 FR 19372).

1. On page 19446, second column, under the heading "First Federal Reserve District,"

a. Under the subheading "Head Office," remove the numbers "0116," "0117," "2116," and "2117."

b. Under the subheading "Windsor Locks Office," add the numbers "0116" and "0117" after the number "0111," and add the numbers "2116" and "2117" after the number "2111."

2. On page 19446, second column, under the heading "Second Federal Reserve District,"

a. Under the subheading "Head Office," remove the number "0223."

b. Under the subheading "Jericho Office," remove the number "2280."

3. On page 19447, third column, under the heading "Twelfth Federal Reserve District" and the subheading "Head Office," remove the numbers "1214" and "3214."

4. On page 19447, third column, revise the section on "U.S. Treasury Checks and Postal Money Orders" as follows:

"U.S. Treasury Checks

"0000 0050 5
0000 0051 8

"Postal Money Orders

"0000 0119 3
0000 0800 2"

5. On page 19448, first column, under the heading "Federal Home Loan Banks," revise the list to read as follows:

"Federal Home Loan Banks

"0110 0053 6
0212 0639 1
0215 0212 1
0260 0973 9
0410 0291 5
0420 0091 6
0430 0143 5
0530 1174 5
0610 0876 6
0640 0091 0
0710 0450 1
0724 1338 2
0730 0091 4
0740 0101 9
0810 0091 9
0820 0125 0
0910 0091 2
1010 0091 2
1011 0194 7
1020 0603 8
1030 0362 9
1040 0019 7
1119 1083 0
1210 0070 1
1211 3994 4
1222 4014 6
1250 0050 3"

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(7), June 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14477 Filed 6-27-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-28; Amdt. 39-5962]

Airworthiness Directives; Boeing Helicopter Co. (Boeing Vertol; Vertol) Model 107-II and Kawasaki Heavy Industries, Ltd., Model KV107-II and KV107-IIA Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which imposes a 50-hour repetitive eddy current or dye penetrant inspection of the plate area of main rotor head hubs, Part Number (P/N) 107R2550, which have 1,200 or more hours' time in service on Boeing Helicopter Company Model 107-II and Kawasaki Heavy Industries, Ltd., Model KV107-II and KV107-IIA series helicopters. The AD is prompted by a report of a main rotor hub crack which could result in loss of a main rotor head and subsequent loss of the helicopter.

EFFECTIVE DATE: July 5, 1988.

Compliance: Compliance required within the next 10 hours' time in service after the effective date of this AD for parts with 1,200 or more hours' time in service, and every 50 hours thereafter.

ADDRESSES: The applicable service information may be obtained from Boeing Helicopter Company, Boeing Center, P.O. Box 16858, Philadelphia, Pennsylvania 19142. A copy of the documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chrastil, ANE-172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone No. (516) 791-6221.

SUPPLEMENTARY INFORMATION: During a routine overhaul and inspection of a forward main rotor head hub, a crack, approximately 1 inch long, was found in the lower plate starting in the lag lug-to-plate transition radius. The crack was found by magnetic particle inspection on a part having 2,505 hours' time in service. In accordance with approved procedures, the hub was scheduled to be inspected, inverted, and moved to the aft head for an additional 3,000 hours of utilization. The hub was manufactured by "Evergreen Industries" of Everett, Washington. Boeing Helicopter Engineering considers this a low stress area, and this is the first time a crack has been found in this area. A number of other hubs have been retired from service with much higher total times. A detailed examination of the hub was conducted by Boeing Helicopter Company Engineering, and although the crack was of a fatigue type, no abnormalities were found. Boeing Helicopter Company Service Bulletin No. 107-372 dated March 2, 1988, addresses this problem.

This AD requires a repetitive eddy current inspection of the hub lower plate area every 50 hours for hubs with 1,200 or more hours' time in service within the next 10 hours' time in service after the effective date of this AD. In addition, hubs that have been inverted and moved to the other head must have both the upper and lower plate areas inspected.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires a repetitive inspection of plate areas of the main rotor hubs referenced in Boeing Helicopter Company Service Bulletin No. 107-372, dated March 2, 1988, paragraph 2, "Accomplishment Instructions," on Boeing Helicopter Model 107-II and Kawasaki Model KV107-II and -IIA series helicopters.

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

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39.

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Boeing Helicopter Company (Boeing Vertol; Vertol) and Kawasaki Heavy Industries, Ltd: Applies to Boeing Helicopter Model 107-II and Kawasaki Model KV107-II and KV107-IIA helicopters certificated in any category. (Docket No. 88-ASW-28)

Compliance is required as indicated, unless already accomplished.

To prevent failure of a main rotor hub, P/N 107R2550, which could result in loss of control of the helicopter accomplish the following:

(a) Within the next 10 hours' time in service (TIS) after the effective date of this AD, unless accomplished within the last 40 hours TIS, or before the accumulation of 1,200 hours TIS, whichever comes later, gain access to the forward and aft main rotor hubs, remove paint from the lower surface on both forward and aft center hubs, and conduct an inspection of the lower plate area of the forward and aft main rotor hubs for cracks as follows:

(1) Conduct an eddy current inspection of the lower plate surface.

(i) Direct particular attention to the transition radius between the lag lug and lower plate.

(ii) Replace cracked hubs with serviceable parts.

(2) If eddy current facilities are not available, conduct a dye penetrant inspection of the lower plate surface.

(i) Apply dye penetrant to the lower plate surface.

(ii) Allow 5 to 15 minutes of dwell time for dye penetration before removal.

(iii) Remove excess penetrant.

(iv) Apply the developer to the lower plate surface.

(v) Allow 5 to 15 minutes of drying time for the developer.

(vi) Visually inspect the developed areas for cracks (dye bleed through).

(vii) Direct particular attention to the transition radius between the lag lug and lower plate.

(viii) Clean surface to remove penetrant and developer from hubs.

(ix) After cleaning, reinspect the transition radius using a 7X power (or greater) magnifying glass.

(x) Replace cracked hubs with serviceable parts.

Note: Do not paint the lower surface of the forward and aft center hubs after the inspections. Also, Boeing Helicopter Company Service Bulletin No. 107–372 pertains to this inspection.

(b) Inspect, in accordance with paragraph (a), both the upper and lower plate areas of hubs have been inverted and moved to the other head.

(c) After the initial inspections of paragraphs (a) and (b), repeat the inspections at intervals not to exceed 50 hours TIS from the last inspection.

(d) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance times specified in this AD.

(e) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

(f) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the requirements of this AD may be accomplished.

This amendment becomes effective July 5, 1988.

Issued in Forth Worth, Texas, on June 15, 1988.

Wm. Jack Sasser,

Acting Director, Southwest Region.

[FR Doc. 88–14474 Filed 6–27–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–37]

Revision of Transition Area; Dalhart, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the legal description of the Dalhart, TX, Transition Area. The original final rule document which added a south arrival extension incorrectly described the existing north arrival extension as being "12 miles north of the airport." The correct description is "12 miles north of the VORTAC." The intended effect of this action is to correctly describe the north arrival extension to the Dalhart, TX, Transition Area which was not intended to be changed by the amendment.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

Docket No. 87–ASW–37 was published on May 6, 1988, as a final rule revising the existing Dalhart, TX, Transition Area by adding a new arrival extension to the south of the Dalhart Airport. (53 CFR 16253). The development of a new standard instrument approach procedure to Runway 35 made this revision necessary. The existing arrival extension to the north was to remain unchanged. However, the arrival extension to the north was inadvertently described as being "12 miles north of the airport" when the correct description is "12 miles north of the VORTAC."

Since this amendment only corrects a clerical error and imposes no additional burden on the public, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Due to the safety need to correct this description, good cause exists for making this amendment effective in less than 30 days. For the same reasons, it: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation. Further, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document FR 88 10040, on page 16253 of the **Federal Register** on May 6, 1988, is corrected to read as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Dalhart, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Dalhart Municipal Airport (latitude 36°01'16" N., longitude 102°32'52" W.), within 2 miles each side of the 002° radial of the Dalhart VORTAC (latitude 36°05'39" N., longitude 102°32'39" W.), extending from the 9.5-mile radius area to 12 miles north of the Dalhart VORTAC; and within 2 miles each side of the 181° radial of the Dalhart VORTAC extending from the 9.5-mile radius area to 14.5 miles south of the airport.

Issued in Fort Worth, TX, on June 6, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–14475 Filed 6–27–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 75

[Airspace Docket No. 87–ASW–44]

Alteration of VOR Federal Airway V–68 and Jet Routes; New Mexico

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter the descriptions of Federal Airway V–68, Jet Routes J–19, J–102, J–142 and establish new Jet Route J–231 located in the vicinity of Albuquerque, NM. The FAA is redesigning the airspace in the Albuquerque area to improve the flow of traffic in the terminal areas of several airports. These actions reduce controller workload.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-

240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On October 29, 1987, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of VOR Federal Airway V-68 and Jet Routes J-19, J-102, J-142, and add new Jet Route J-231 located in the vicinity of Albuquerque, NM (52 FR 41587). The FAA is redesigning the airspace in that area to improve the traffic flow and reduce delays in several terminal areas. This action significantly reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

A comment objecting to the proposal was received from the Air Transport Association (ATA). They expressed concern that the realignment to the Jet Routes is premature based on informal information received concerning plans for developing new Phoenix, AZ, terminal area procedures. Also, ATA objects to the proposed realignment of J-19, because they believe this change adds a few miles to the route between these points. The FAA did consider a sector boundary change before proposing the amendment to J-19. However, we determined this change would cause adjacent sectors to overload, thereby reducing sector and system capacity. These jet route amendments are part of a comprehensive plan to improve traffic flow into and out of the Phoenix, AZ, area, while increasing system capacity. We believe this action will also reduce controller workload and decrease the possibility of sector overload. We also have determined that the few miles added to J-19 are insignificant when consideration is given to the reduced ground and en route delays as the result of the dogleg in that route.

In the NPRM, we published that J-102 would begin at Zuni, NM; however, after careful consideration, it was decided to maintain the current alignment between Salt River, AZ, and Zuni, NM. Except for the above change and editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations alter the description of Federal Airway V-68, Jet Routes J-19, J-102, J-142 and establish new Jet Route J-231 located in the vicinity of Albuquerque, NM. The FAA is redesigning the airspace in the Albuquerque area to improve the flow of traffic in the terminal areas of several airports. These actions reduce controller workload.

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

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-68 [Amended]

By removing the words "Hobbs, NM, via INT Hobbs 120° and Midland, TX, 312° radials; Midland;" and by substituting the words "Hobbs, NM; Midland, TX;"

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for Part 75 continues to read as follows:

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

§ 75.10 [Amended]

4. Section 75.100 is amended as follows:

J-19 [Amended]

By removing the words "Zuni; Las Vegas, NM;" and substituting the words "Zuni; INT Zuni 059° and Las Vegas, NM, 268° radials; Las Vegas;"

J-102 [Revised]

From Salt River, AZ; INT Salt River 066° and Zuni, NM, 226° radials; Zuni, NM; Gallup, NM, Alamosa, CO; Lamar, CO; to Salina, KS.

J-142 [Amended]

By removing the words "to Socorro." and by substituting the words "Socorro; Anton Chico, NM; to Borger, TX."

J-231 [New]

From St. Johns, AZ; Anton Chico, NM; to Liberal, KS.

Issued in Washington, DC, on June 16, 1988.

Temple H. Johnson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-14473 Filed 6-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 88-AWP-5]

Alteration of Restricted Area R-4816S Dixie Valley, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action corrects the description of the designated altitudes for Restricted Area R-4816S Dixie Valley, NV. On January 14, 1988, the boundaries of R-4816S were realigned to delete that portion of the restricted area overlying and to the southeast of U.S. Highway 50 (Docket No. 86-AWP-27, 52 FR 44382). Docket No. 86-AWP-27 amended the boundaries of R-4816S, but did not delete the visual flight rules (VFR) corridor exclusion as described in the designated altitudes portion of the R-4816S legal description. This action deletes reference to the VFR corridor which is no longer required due to the realignment of R-4816S.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations corrects the designated altitudes portion of the legal description of Restricted Area R-4816S Dixie Valley, NV. The current description refers to exclusions of airspace associated with the old VFR corridor along U.S. Highway 50. On January 14, 1988, Restricted Area R-4816S was realigned so as not to conflict with the VFR corridor (52 FR 44382). This exclusion is, therefore, no longer pertinent to R-4816S. At the time of that action, the boundaries of R-4816S were amended, but the designated altitudes section was not revised to delete the exclusion. This action merely corrects the description of the area without change to its current dimensions. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.48 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as amended (52 FR 44382) is further amended, as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.48 [Amended]

2 Section 73.48 is amended as follows:

R-4816S Dixie Valley, NV [Amended]

By removing the present designated altitudes and substituting the following:

Designated altitudes. 500 feet AGL to but not including FL 180.

Issued in Washington, DC, on June 16, 1988

Temple H. Johnson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-14472 Filed 6-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 88-ANM-1]

Alteration of Jet Routes; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of J-64 and J-197 located in the vicinity of Pueblo, CO. Air traffic congestion in the Lamar, CO, and Gunnison, CO, terminal areas has caused significant delays due to the location of J-64 and J-197. This action moves J-64 and J-197 to an area that distributes the workload among other air traffic control (ATC) sectors, thereby reducing controller workload and reducing ATC delays.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On March 30, 1988, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J-64 and J-197 (53 FR 10255). The FAA has identified the need for reducing air traffic congestion in the vicinity of Lamar, CO, and Gunnison, CO. These terminal areas have critical arrival/departure problems during peak traffic periods. This action distributes the workload among several ATC sectors, thereby reducing delays. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of J-64 and J-197 located in the vicinity of Pueblo, CO. Air traffic congestion in the Lamar, CO, and Gunnison, CO, terminal areas has caused significant delays due to this former location of J-64 and J-197. This action relocates J-64 and J-197 to an area that redistributes the workload among other air traffic control sectors.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

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

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

2. Section 75.100 is amended as follows:

J–64 [Amended]

By removing the words "Farmington, NM; Alamosa, CO; Hill City, KS;" and substituting the words "Farmington, NM; Pueblo, CO; Hill City, KS;"

J–197 [Revised]

From Dove Creek, CO; Hugo, CO; Goodland, KS; Wolbach, NE; to Sioux Falls, SD.

Issued in Washington, DC, on June 16, 1988.

Temple H. Johnson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–14471 Filed 6–27–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 442

[Docket No. 88N–0121]

Antibiotic Drugs; Cefixime Trihydrate; Cefixime Trihydrate Tablets and Cefixime Trihydrate Powder for Oral Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for (1) inclusion of accepted standards for a new antibiotic drug, cefixime trihydrate, and (2) use of the antibiotic drug in two dosage forms, cefixime trihydrate tablets and cefixime trihydrate powder for oral suspension. The manufacturer has supplied sufficient data and information to establish their safety and efficacy.

DATES: Effective June 28, 1988; comments, notice of participation, and request for hearing by July 28, 1988; data, information, and analysis to justify a hearing by August 29, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, cefixime trihydrate and its use in two dosage forms, cefixime trihydrate tablets and cefixime trihydrate powder for oral suspension. The agency has concluded that the data suppled by the manufacturer concerning these antibiotic drugs are adequate to establish their safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR Parts 430, 436, and 442 to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective June 28, 1988. However interested persons may, on or before July 28, 1988, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before July 28, 1988, a written notice of participation and request for hearing, and (2) on or before August 29, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR Part 430 continues to read as follows:

Authority: Secs. 507, 701(a), 59 Stat. 463, as amended, 52 Stat. 1055 (21 U.S.C. 357, 371(a)); 21 CFR 5.10.

2. Section 430.4 is amended by adding a new paragraph (a)(59) to read as follows:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(59) *Cefixime.* Cefixime is a semisynthetic antibiotic substance produced by the acylation of the amino group at the 7 position of 7-aminocephalosporanic acid with a β-[(2-amino-4-thiazolyl) (carboxymethozy)imino] acetyl group and the introduction of a vinyl group at the 3 position.

3. Section 430.5 is amended by adding new paragraphs (a)(93) and (b)(95) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(93) *Cefixime.* The term "cefixime master standard" means a specific lot of cefixime that is designated by the Commissioner as the standard of comparison in determining the potency of the cefixime working standard.

(b) * * *

(95) *Cefixime.* The term "cefixime working standard" means a specific lot of a homogeneous preparation of cefixime.

4. Section 430.6 is amended by adding a new paragraph (b)(95) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(95) *Cefixime.* The term "microgram" applied to cefixime means the cefixime activity (potency) contained in 1.126 micrograms of the cefixime master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

5. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

6. Section 436.215 is amended by alphabetically adding a new entry into the table in paragraph (b) and by adding a new pragraph (c)(10) to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Rotation sampling		
		Rate [1]	Times(s)	Apparatus
* * * * *	* * * * *	*		
Cefixime tablets	900 mL 0.05 *M* potassium phosphate buffer, pH 7.2	100	45 min	1
* * * * *	* * * * *	*		

[1] Rotation rate of basket of paddle stirring element (revolutions per minute).

(c) * * *

(101) *Cefixime*—(i) *Preparation of working standard solution.* Accurately weigh approximately 25 milligrams of cefixime working standard into a 500-milliliter volumetic flask. Wet the powder with 0.5 milliliters of methanol, and dilute to volume with 0.05 *M* potassium phosphate buffer, pH 7.2 (prepared by dissolving 6.8 grams of monobasic potassium phosphate in distilled water to a volume of one liter. The pH is adjusted to 7.2 with 1.0*N* NaOH). Sonicate to assure dissolution and mix.

(ii) *Preparation of sample solution.* Forty-five minutes after the beginning of the rotation, withdraw and filter a portion of the solution. For the 400-milligram tablets, pipet 10.0 milliliters of the filtered sample solution into a 100-milliliter volumetric flask. For the 200-milligram tablets, pipet 10.0 milliliters of the filtered sample into a 50-milliliter volumetric flask. Dilute to volume with 0.05 *M* postassium phosphate buffer, pH 7.2.

(iii) *Procedure.* Proceed as directed in paragraphs (c)(1) (iii) and (iv) of this section, except measure the absorbence of the peak of approximately 320 nanometers using 0.05 *M* potassium phosphate buffer, pH 7.2 as the blank.

* * * * *

PART 442—CEPHA ANTIBIOTIC DRUGS

7. The authority citation for 21 CFR Part 442 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

8. Part 442 is amended by adding new § 442.15 to read as follows:

§ 442.15 Cefixime trihydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefixime trihydrate is the trihydrate form of [6*R*-[6 α, 7B(*Z*)]]-7-[[(2-amino-4-thiazolyl) [(carboxymethoxy)imino]acetyl]amino]-3-etheryl-8-oxo-5-thia-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid. It is so purified and dried that:

(i) Its potency is not less than 950 micrograms and not more than 1,030 micrograms of cefixime activity per milligram, on an anhydrous basis.

(ii) Its moisture content is not less than 9.0 percent and not more than 12.0 percent.

(iii) The pH of an aqueous solution containing the equivalent of 0.7 milligram per milliliter is not less than 2.6 and not more than 4.1.

(iv) It is crystalline.

(v) The specific rotation in a 2.0 percent sodium bicarbonate solution containing 10.0 milligrams of cefixime per milliliter at 25 °C is between −75° and −88° calculated on an anhydrous basis.

(vi) It gives a positive identity test for cefixime.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch of potency, moisture, pH, crystallinity, specific rotation, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research: 10 packages, each containing approximately 500 milligrams, and 1 package containing approximately 5 grams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.216 of this chapter, using an ultraviolet direction system operating at a wavelength of 254 nanometers, and a column (typically 3 centimeters × 4.6 millimeters) packed with a 3-micron octadecyl hydrocarbon bonded silica or equivalent at ambient temperature. Reagents, working standard, test and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(A) *Phosphoric acid solution.* Add 10 milliliters of concentrated phosphoric acid to 90 milliliters of water.

(B) *Tetrabutylammonium hydroxide solution.* Dilute 25 milliliters of 0.4*M* tetrabutylammonium hydroxide solution to 1,000 milliliters with water. Adjust the pH to 7.0 with phosphoric acid solution.

(C) *Mobile phase.* Add 775 milliliters of the tetrabutylammonium hydroxide solution to 225 milliliters of acetonitrile. Filter the mobile phase through a suitable glass filter or equivalent which is capable of removing particulate contamination greater than 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(D) *0.1M Phosphate buffer, pH 7.0.* Add 6.8 milliliters of concentrated phosphoric acid to 300 milliliters of water. Adjust the pH to 7.0 with 10*N* sodium hydroxide. Dilute to 1,000 milliliters with water.

(ii) *Preparation of working standard, test and sample solutions*—(A) *Working standard solution.* Dissolve an accurately weighed portion of the cefixime standard with sufficient 0.1*M* phosphate buffer, pH 7.0, to obtain a solution of known concentration containing approximately 2 milligrams of cefixime activity per milliliter. Further dilute quantitatively to a final concentration of 0.2 milligram of cefixime activity per milliliter in mobile phase. Prepare the working standard solution just prior to its introduction into the chromatograph.

(B) *System suitability test solution.* Dissolve an accurately weighed portion of cefixime working standard in distilled water to obtain a solution containing approximately 1.0 milligram of cefixime activity per milliliter. Heat this solution at 95 °C (in an oil bath) for 45 minutes. This procedure allows the (E)-isomer of cefixime to be generated *in situ.* Prepare the test solution just prior to its introduction into the chromatograph.

(C) *Sample solution.* Accurately weigh approximately 100 milligrams of the sample into a 50-milliliter volumetric flask. Dilute to volume with 0.1*M* phosphate buffer, pH 7.0, to obtain a stock solution containing approximately 2 milligrams of cefixime activity per milliliter. Mix well. Immediately prior to chromatography, further dilute 10 milliliters of stock solution to 100 milliliters with mobile phase to obtain a solution containing 0.2 milligram of cefixime activity per milliliter (estimated).

(iii) *System suitability requirements*—(A) *Asymmetry factor.* Calculate the asymmetry factor (A_s), measured at a point that is 10 percent of the cefixime peak height from the baseline, as follows:

$$A_s = \frac{a+b}{2a}$$

where:
a = Horizontal distance from point of ascent to point of maximum peak height; and
b = horizontal distance from the point of maximum peak height to point of descent.

The asymmetry factor (A_s) is satisfactory if it is not less than 0.85 and not more than 1.5.

(B) *Efficiency of the column.* From the number of theoretical plates (n) calculated as described in § 436.216(c)(2) of this chapter calculate the reduced plate height (h_r) for the cefixime peak as follows:

$$(h_r) = \frac{(L)\ (10{,}000)}{(n)\ (d_p)}$$

where:
L = Length of the column in centimeters;
n = number of theoretical plates; and
(d_p) = Average diameter of the particles in the column in micrometers.

The absolute efficiency (h_r) is satisfactory if it is not more than 15 for the cefixime peak.

(C) *Resolution.* The resolution (R) between the peak for cefixime and the peak for the (E)-isomer of cefixime (generated *in situ*) is not less than 1.1.

(D) *Coefficient of variation (relative standard deviation).* The coefficient of variation (S_R) in percent) of five replicate injections is satisfactory if not more than 2.0 percent

(E) Capacity factor (k). Calculate the capacity factor (k) for cefixime as follows:

$$(k)\ \frac{t_r - t_m}{t_m}$$

where:
t_r = Retention time of solute; and
t_m = Retention time of solvent or unretained substance, calculated as follows:

$$t_m\ \frac{(3.1416)(D^2)(L)(0.75)}{4F}$$

where:
D = Column diameter in centimeters;
L = Column length in centimeters;
0.75 = Average total column porosity; and
F = Flow rate in milliliters per minute.

The capacity factor (k) for cefixime is satisfactory if it is not less than 5 and not more than 11.

If the system suitability requirements have been met, then proceed as described in § 436.216(b) of this chapter. Alternate chromatographic conditions are acceptable provided that the system suitability parameters are met. However, the sample preparation described in paragraph (b)(1)ii)(C) of this section should not be changed.

(iv) *Calculations.* Calculate the micrograms of cefixime anhydrous free acid per milligram as follows:

$$\text{Micrograms of cefixime per milligram} = \frac{A_u X P_s X 100}{A_s X C_u X (100 - m)}$$

where:
A_u = Area of the cefixime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_s = Area of the cefixime peak in the chromatogram of the cefixime working standard;
P_s = Cefixime activity in the cefixime working standard solution in micrograms per milliliter;
C_u = Milligrams of sample per milliliter of sample solution; and
m = Percent moisture content of the sample.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 0.7 milligram per milliliter.

(4) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(5) *Specific rotation.* Dissolve and dilute an accurately weighed sample with sufficient 2 percent sodium bicarbonate to obtain a concentration of approximately 10 milligrams of cefixime per milliliter. Proceed as directed in § 436.210 of this chapter, using a 1.0-decimeter polarimeter tube. Calculate the specific rotation on the anhydrous basis.

(6) *Identity.* Proceed as directed in § 436.211 of this chapter, using a potassium bromide disc containing 0.5 percent of cefixime. Dissolve 5 to 6 milligrams of cefixime in 2 milliliters of methanol. Triturate to insure solution. Evaporate the solvent to dryness and using the dried sample, prepare the potassium bromide disc.

9. Part 442 is amended by adding new §§ 442.115, 442.115a, and 442.115b to read as follows:

§ 442.115 Cefixime trihydrate oral dosage forms.

§ 442.115a Cefixime trihydrate for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefixime trihydrate for oral suspension is cefixime trihydrate with one or more suitable and harmless preservatives, suspending agents, diluents, and flavorings. When reconstituted as directed in the labeling, each milliliter contains the equivalent of 20 milligrams of cefixime. Its cefixime trihydrate potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefixime that it is represented to contain. Its moisture content is not more than 2.0 percent. When reconstituted as described in labeling, the pH of the suspension is not less than 2.5 and not more than 4.5. It passes the identity test for the presence of the cefixime moiety. The cefixime trihydrate used conforms to the standards prescribed by § 442.15(a)(1) of this part.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 436.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefixime trihydrate used in making the batch, for potency, moisture, pH, crystallinity, specific rotation, and identity.

(B) The batch, for content, moisture, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research.

(A) The cefixime used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 10 immediate containers.

(b) *Tests and methods of assay*—(1) *Content.* Proceed as directed in § 442.15(b)(1) of this part, preparing the sample solution and calculating the cefixime content as follows:

(i) *Preparation of the sample solution.* Reconstitute as directed in the labeling. Transfer a 5.0-milliliter portion of the suspension into an appropriately sized volumetric flask and quantitatively dilute stepwise with 0.1*M* phosphate buffer, pH 7.0, to obtain a concentration of 0.2 milligram of cefixime activity per milliliter (estimated).

(ii) *Calculations.* Calculate the cefixime content as follows:

$$\text{Miligrams of cefixime per 5 milliliters of sample} = \frac{A_u \times P_s \times d}{A_s \times 1.000}$$

where:

A_u = Area of the cefixime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefixime peak in the chromatogram of the cefixime working standard.

P_s = Cefixime activity in the cefixime working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the drug reconstituted as directed in the labeling.

(4) *Identity.* The high performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section, compares qualitatively to that of the cefixime working standard.

§ 442.115b Cefixime trihydrate tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefixime trihydrate tablets are composed of cefixime trihydrate and one or more suitable and harmless diluents, binders, lubricants, colorings, and coating substances. Each tablet contains cefixime trihydrate equivalent to either 200 milligrams or 400 milligrams of cefixime. Its cefixime trihydrate content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of cefixime that it is represented to contain. Its moisture content is not more than 10.0 percent. It passes the dissolution test. It passes the identity test for the presence of the cefixime moiety. The cefixime used conforms to the standards prescribed by § 442.15(a)(1) of this part.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefixime used in making the batch for potency, moisture, pH, crystallinity, specific rotation, and identity.

(B) The batch, for content, moisture, dissolution, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research.

(A) The cefixime used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 10 immediate containers.

(b) *Tests and methods of assay*—(1) *Content.* Proceed as directed in § 442.15(b)(1) of this part, preparing the sample solution and calculating the cefixime content as follows:

(i) *Preparation of sample solution.* Grind one or a known number of tablets using a mortar and pestle. Quantitatively transfer the ground tablet(s) into a suitable volumetric flask, sonicate and dilute with 0.1*M* phosphate buffer, pH 7.0 to a concentration of 4 milligrams per milliliter. Centrifuge the sample at 3,000 revolutions per minute for 10 minutes. Take an aliquot of the supernatant and qualitatively dilute to a concentration of 0.2 milligram of cefixime activity per milliliter in 0.1*M* phosphate buffer, pH 7.0 (estimated).

(ii) *Calculations.* Calculate the cefixime content as follows:

$$\text{Milligrams of cefixime per tablet} = \frac{A_u \times P_s \times d}{A_s \times n}$$

where:

A_u = Area of the cefixime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefixime peak in the chromatogram of the cefixime working standard.

P_s = Cefixime activity in the cefixime working standard solution in micrograms per milliliter;

d = Dilution factor of the sample; and

n = Number of tablets in the sample.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Dissolution test.* Proceed as directed in § 436.215 of this chapter. The quantity Q (the amount of cefixime dissolved) is 75 percent within 45 minutes.

(4) *Identity.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the cefixime working standard.

Dated: June 14, 1988.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-14119 Filed 6-27-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR part 558

New Animal Drugs for Use in Animal Feeds, Narasin and Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Products Co. The NADA provides for using separately approved Type A medicated articles containing either narasin or roxarsone to manufacture a combination Type C medicated feed for the prevention of coccidiosis in broiler chickens.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Lubomyr Babiak, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, has filed NADA 140–445 providing for combining separately approved narasin and roxarsone Type A medicated aritcles to make a Type C medicated feed containing 54 to 72 grams of narasin per ton and 45.4 grams of roxarsone per ton for use in broiler chickens for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati* including some field strains of *E. tenella* which are more susceptible to roxarsone combined with narasin than to narasin alone.

The application is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.363 is amended by revising paragraph (c) to read as follows:

§ 558.363 Narasin.

* * * * *

(c) *Conditions of use.* It is used as follows:

(1) *Broiler chickens*—(i) *Amount per ton.* Narasin, 54 to 72 grams.

(A) *Indications for use.* For prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(B) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal.

(ii) *Amount per ton.* Narasin, 54 to 72 grams, plus roxarsone 45.4 grams (0.005 percent).

(A) *Indications for use.* For the prevention of coccidiosis in broiler chickens caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati* including some field strains of *E. tenella* which are more susceptible to roxarsone combined with narasin than to narasin alone.

(B) *Limitations.* For broiler chickens only; feed continuously as the sole ration; do not feed to laying chickens; may be fatal if accidentally fed to adult turkeys or to horses; withdraw 5 days before slaughter; as sole source of organic arsenic; not approved for use with pellet binders.

(2) [Reserved]

3. Section 558.530 is amended by adding new paragraph (d)(4)(vi) to read as follows:

§ 558.530 Roxarsone.

* * * * *

(d) * * *

(4) * * *

(vi) Roxarsone may be used in combination with narasin as in § 558.363 of this part.

Dated: June 14, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–14264 Filed 6–27–88; 8:45 am]

BILLING CODE 4160–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 206

Testimony by Employees and the Production of Documents in Proceedings Where A.I.D. Is Not Party

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: This rule adds a new Part 206 to Title 22 of the Code of Federal Regulations. It generally provides that A.I.D. employees may not give testimony or provide documents as part of their official duties without the approval of A.I.D.'s General Counsel or his designee in litigation where A.I.D. is not a party. The purpose of this regulation is to maintain the A.I.D. policy of strict impartiality with respect to private litigants and to minimize the distruption of official duties.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Gary M. Winter, Assistant General Counsel for Litigation and Enforcement, Agency for International Development, Washington, DC 20523, (202) 647–8874.

SUPPLEMENTARY INFORMATION: On May 10, 1988, A.I.D. requested comments on a proposed new Part 206 to Title 22 of the Code of Federal Regulations. (53 FR 16559–60). No public comments were received during the thirty-day comment period.

List of Subjects in 22 CFR Part 206

Administrative practice and procedure.

Accordingly, Title 22 of the Code of Federal Regulations is amended by adding a new Part 206 as follows:

PART 206—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF DOCUMENTS IN PROCEEDINGS WHERE A.I.D. IS NOT A PARTY

Sec.

206.1 Purpose and scope.
206.2 Production or disclosure prohibited unless approved by the General Counsel.
206.3 Procedure in the event of a demand for production or disclosure.

Sec.
206.4 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.
206.5 Procedure in the event of an adverse ruling.
206.6 Considerations in determining whether production or disclosure should be made pursuant to a demand.

Authority: Sec. 621, Foreign Assistance Act of 1961, as amended, 75 Stat. 424 (22 U.S.C. 2381).

§ 206.1 Purpose and scope.

(a) This part sets forth the procedures to be followed in proceedings in which the U.S. Agency for International Development (the "Agency") is not a party, whenever a subpoena, order or other demand (collectively referred to as a "demand") of a court or other authority set forth in § 206.1(d) of this part is issued for the production or disclosure of (1) any material contained in the files of the Agency, (2) any information relating to material contained in the files of the Agency, or (3) any information or material acquired by any person while such person was an employee of the Agency as a part of the performance of his official duties or because of his official status.

(b) For purposes of this part, the term "employee of the Agency" includes all officers and employees of the Agency appointed by, or subject to the supervision, jurisdiction or control of, the Administrator of the Agency, including personal services contractors.

(c) This part is intended to provide instructions regarding the internal operations of the Agency, and is not intended, and does not and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by a party against the Agency.

(d) This part applies to:

(1) State and local court, administrative and legislative proceedings.

(2) Federal court and administrative proceedings.

(e) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or documents.

(2) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.). Any question whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the General Counsel or his designee.

(f) Nothing in this part affects disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, the Sunshine Act, 5 U.S.C. 552b, or the Agency's implementing regulations. Nothing in this part otherwise permits disclosure of information by the Agency except as is provided by statue or other applicable law.

§ 206.2 Production or disclosure prohibited unless approved by the General Counsel.

No employee or former employee of the Agency shall, in response to a demand of a court or other authority set forth in § 206.1(d), produce any material or disclose any information described in § 206.1(a) without the approval of the General Counsel or his designee.

§ 206.3 Procedure in the event of a demand for production or disclosure.

(a) Whenever an employee or former employee of the Agency receives a demand for the production of material or the disclosure of information described in § 206.1(a), he shall immediately notify and provide a copy of the demand to the General Counsel or his designee. The General Counsel, or his designee, shall be furnished by the party causing the demand to be issued or served a written summary of the information sought, its relevance to the proceeding in connection with which it was served and why the information sought is unavailable by any other means or from any other sources.

(b) The General Counsel, or his designee, in consultation with appripriate Agency officials, and in light of the considerations listed in § 206.6, will determine whether the person on whom the demand was served should respond to the demand.

(c) To the extent he deems it necessary or appropriate, the General Counsel, or his designee, may also require from the party causing such demand to be issued or served a plan of all reasonably foreseeable demands, including but not limited to names of all employees and former employees from whom discovery will be sought, areas of inquiry, length of time of proceedings requiring oral testimony and identification of documents to be used or whose production is sought.

§ 206.4 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.

If the response to the demand is required before the instructions from the General Counsel, or his designee, are received, an attorney designated by the Department of Justice for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the General Counsel and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

§ 206.5 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 206.4 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employuee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing this part and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

§ 206.6 Considerations in determining whether production or disclosure should be made pursuant to a demand.

(a) In deciding whether to make disclosures pursuant to a demand, the General Counsel, or his designee, may consider, among things:

(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(b) Among the demands in response to which disclosure will not be made are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a statute or a rule of procedure,

(2) Disclosure would violate a specific regulation,

(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

(4) Disclosure would reveal trade secrets or proprietary information without the owner's consent,

(5) Disclosure would otherwise adversely affect the foreign policy interets of the United States or impair the foreign assistance program of the United States, or

(6) Disclosure would impair an ongoing Inspector General or Department of Justice investigation.

Dated: June 20, 1988.
Howard M. Fry,
General Counsel.
[FR Doc. 88-14535 Filed 6-27-88; 8:45 am]
BILLING CODE 6116-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Approval of the Abandoned Mine Land Reclamation Plan of the Hopi Tribe Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA)

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

ACTION: Final rule.

SUMMARY: In 1982, the Hopi Tribe (the Tribe) submitted its proposed Abandoned Mine Land Reclamation Plan (the Plan) to OSMRE under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSMRE published notice of its receipt of the draft Plan and requested public comments. The comment period remained open, but no further action was taken at that time due to the lack of authorizing legislation under section 710 of SMCRA.

On July 11, 1987, legislation was enacted that authorized the Crow, Navajo and Hopi Tribes to adopt abandoned mine land reclamation (AMLR) programs without prior approval of Tribal surface mining regulatory programs. OSMRE reopened the comment period for consideration of adequacy of the Hopi Tribe's Plan. No public comments on the Hopi Plan were received. After consideration of revisions the Tribe made to the Plan in response to OSMRE's review comments, the Assistant Secretary for Land and Minerals Management of the Department of the Interior has determined that the Hopi Tribe's Abandoned Mine Land Reclamation Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Hopi Plan.

EFFECTIVE DATE: June 28, 1988.

ADDRESSES: Copies of the full text of the Hopi Plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, S.W., Suite 310, Albuquerque, NM 87102

Hopi Abandoned Mine Land Program, The Hopi Tribe, Hopi Tribal Complex, Honahni Building, Kykotsmovi, AZ 86039

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director of the Albuquerque Field Office, at (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed AMLR Plan
III. Assistant Secretary's Findings
IV. Public Comment
V. Assistant Secretary's Decision
VI. Procedural Matters

I. Background

Title IV of SMCRA establishes an AMLR program for the purpose of reclaiming land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed on coal production. Lands and waters eligible for reclamation under Title IV include those that were mined or were affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing responsibility for reclamation under State, Federal, or Tribal laws.

Title IV provides for State or Tribal submittal to OSMRE of an AMLR program. The Secretary adopted regulations in 30 CFR Parts 870 through 888 that implement Title IV of SMCRA. Under those regulations the Secretary is required to review reclamation plans and solicit and consider comments of State and Federal agencies and the public. Based on such comments and review, the Secretary will determine if a State or Tribe has the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary may approve a State or Tribal program and grant the State or Tribe exclusive authority to administer its approved program.

Ordinarily, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR program to OSMRE as required by section 405 of SMCRA. However, on July 11, 1987, President Reagan signed legislation that authorized the Crow, Navajo, and Hopi Tribes to obtain AMLR programs without prior approval of regulatory programs.

States and Indian Tribes are also allowed to request authority to conduct emergency response reclamation activities. Guidelines for AMLR Plan provisions concerning assumption of emergency response authority were published on September 29, 1982 in the **Federal Register**, 47 FR 42729, and provide the applicable criteria by which to judge the adequacy of the AMLR Plan provisions. Emergency reclamation activities are set forth in section 410 of SMCRA. The Hopi Tribe's AMLR Plan does not request emergency response authority.

II. Proposed AMLR Plan

The Hopi Tribe submitted a Plan to OSMRE on June 10, 1982. OSMRE announced receipt of the draft Plan and requested public comments in the July 22, 1982 **Federal Register**, 47 FR 31709-31711. No closing date for that comment period was set.

The Hopi Tribe submitted a revised draft AMLR Plan on July 25, 1983, but further action on the Plan was postponed pending authorizing legislation under section 710 of SMCRA.

On July 11, 1987, President Reagan signed a supplemental appropriations Bill, Pub. L. 100-71, which authorized the Crow, Navajo, and Hopi Tribes to obtain AMLR programs without prior approval of surface mining regulatory programs as ordinarily required by section 405 of SMCRA. In response to that legislation, OSMRE notified the Hopi Tribe that it would reopen its review of the Tribe's Plan. OSMRE reviewed the Plan in September 1987 and provided the Tribe with suggestions for revising it to meet the requirements of SMCRA. A request for public comments and a closing date for the comment period was announced in the December 4, 1987 **Federal Register**, 52 FR 46095-46097. No public comments or requests for a hearing or meeting were received, and the comment period closed on January 4, 1988. The Hopi Tribe submitted revisions to the draft plan in March and May, 1988, in accordance with OSMRE's September 1987 review suggestions.

All of the events described above are documented in the Title IV Administrative Record of the Hopi Tribe. The Administrative Record is available for public review at the Albuquerque, New Mexico address of OSMRE listed above.

The proposed AMLR Plan would provide authority for the Hopi Tribe to conduct a reclamation program on Hopi (Indian) lands as the term "Indian lands" is defined in section 701(9) of SMCRA [see reference to "Indian lands" in 30 CFR 872.11(b)(3)]. Indian lands occur within and outside traditional reservation boundaries. Although there may be certain jurisdictional limitations to the Tribe's authority to undertake certain reclamation activities outside the Reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake its

reclamation program without violating the jurisdictional rights of other parties.

III. Assistant Secretary's Findings

The Assistant Secretary for Land and Minerals Management finds that the Hopi Tribe submitted a Plan for the reclamation of abandoned mine lands pursuant to the provisions of Pub. L. 100-71 and SMCRA. Based on a review of that submission, the Assistant Secretary also finds that:

1. Adequate provisions were made for public comment in the development of the Plan;
2. Views of other Federal agencies having an interest in the Plan were solicited and considered;
3. The Tribe has the legal authority, policies, and administrative structure necessary to carry out the AMLR Plan;
4. The AMLR Plan meets all the requirements of Subchapter R of 30 CFR Chapter VII regulations and of SMCRA;
5. The AMLR Plan meets all the requirements of all applicable Tribal and Federal laws and regulations;
6. The Hopi AMLR Plan has not requested authority to assume emergency response authority as set forth in Section 410 of SMCRA;
7. The Hopi Tribe's AMLR plan, including amendments thereto, addresses all Plan requirements specified in 30 CFR 884.13.

IV. Public Comment

No comments were received by OSMRE concerning the Hopi AMLR Plan during the period between December 4, 1987 and January 4, 1988 when comments and requests for a meeting or hearing were solicited. No requests for a hearing or a meeting were received during that period either.

V. Assistant Secretary's Decision

Based on the above findings and review, the Assistant Secretary for Land and Minerals Management is approving the Hopi Tribe's AMLR Plan under the provisions of 30 CFR 884.14, as the Plan was submitted in July 1983 and revised in March and April 1988. A new § 756.15 of Part 756 is being added to 30 CFR Chapter VII, Subchapter E—Indian Lands Program—to implement this decision. This approval does not encompass the emergency response authority set forth in Section 410 of SMCRA.

VI. Procedural Matters

1. Executive Order 12291 and the Regulatory Flexibility Act

OSMRE has examined this final rulemaking under Executive Order 12291 and has determined that on November 23, 1987, the Office of Management and Budget granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State reclamation plans or amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Department of the Interior determined that the rule will not have significant economic effect on a substantial number of small entities. No burden will be imposed on entities operating in compliance with the Act.

2. Compliance with the National Environmental Policy Act

Furthermore, OSMRE determined that the approval of State and Tribal AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

3. Paperwork Reduction

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

4. Effective Date

Good cause exists under 5 U.S.C. 553(d) to make this rule effective upon publication. This will expedite the granting of abandoned mine land reclamation funds to the Hopi Tribe so that it can implement its AMLR program immediately and undertake Tribal reclamation projects to protect the public health and safety.

List of Subjects in 30 CFR Part 756

Indian lands, Abandoned Mine Land Reclamation Program.

Accordingly, Part 756 is amended as set forth below.

Dated: June 22, 1988.

J.S. Griles,

Assistant Secretary, Land and Minerals Management.

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

1. The authority citation for Part 756 continues to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*) and Pub. L. 100-71.

2. Section 756.15 is added to read as follows:

§ 756.15 Approval of the Hopi Tribe's abandoned mine land reclamation plan.

The Hopi Tribe's Abandoned Mine Land Reclamation Plan as submitted in July 1983, and amended in March and May 1988, is approved. Copies of the approved Plan are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102

Hopi Abandoned Mine Land Program, The Hopi Tribe, Hopi Tribal Complex, Honahni Building, Kykotsmovi, AZ 86039.

[FR Doc. 88-14501 Filed 6-27-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-88-23]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of the United States Marine Corps, the Coast Guard is issuing a temporary rule to govern the operation of the drawbridge across the Atlantic Intracoastal Waterway, mile 240.7, at Camp Lejeune, North Carolina. This rule is being issued to limit the number of bridge openings during daylight hours in order to allow the contractor for the Marine Corps, owner of the bridge, to complete mechanical repairs, sand blast, and paint the bridge. This section still provides for the reasonable needs of navigation.

Because of the length of time this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be changed based on comments received.

DATES: This temporary rule is effective from July 11, 1988, until September 16, 1988, unless amended or terminated before that date.

Comments on the temporary rule must be received on or before July 10, 1988.

ADDRESS: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at Room 507 at the above address between 8:00 a.m.

and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reason for any recommended changes to the temporary rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine whether the temporary rule should be amended in light of comments received.

Drafting Information

The drafters of this notice are Ann B. Deaton, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Temporary Rule

At the request of the United States Marine Corps, owner of the drawbridge at Camp Lejeune, North Carolina, the Coast Guard is issuing a temporary rule governing the operation of the drawridge across the Atlantic Intracoastal Waterway, mile 240.7, at Camp Lejeune. The contractor for the work has indicated that closed periods will be necessary during daylight hours in order to complete on-going mechanical repairs, and to sand blast and paint the bridge. They have requested three three-hour closures daily, Monday through Friday, with one-half hour openings for boats in between each closed period to allow for the passage of approaching and accumulated vessels. The mechanical repairs can only be accomplished with the bridge in the closed position. The closed periods for the sand blasting and painting are required to allow for the collection of sandblast/paint debris, and to prevent the accidental spillage of paint onto boats. The work is scheduled to begin on July 11, 1988, and to be completed by September 16, 1988.

The two major commercial waterway users known to transit this portion of the AICWW have been contacted, and the closures have been coordinated with them. They have indicated they can schedule their transits around the closed periods.

The other waterway users that require openings of this drawbridge are mainly recreational boaters. While the operators of these boats may be inconvenienced by the closed periods, they will still have opportunity to pass through the bridge between closed periods, and their use of the AICWW will not be unreasonably restricted by these temporary regulations.

Since these repairs are necessary to the maintenance of the bridge, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days. Publishing a notice of proposed rulemaking and delaying the effective date is impractical, since the summer months are the opportune time to do most of this work.

Economic Assessment and Certification

This temporary rule is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979)

While the temporary rule may have some economic impact on commercial navigation, the impact is expected to be minimal. Therefore, a full regulatory evaluation is considered unnecessary. This conclusion is based on the fact that the closed periods have been coordinated with the major commercial waterway users who have indicated they will schedule their transits around the closed periods.

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation in Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1 (g).

2. Section 117.821 is amended by adding a new paragraph (d) to read as follows:

117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach, North Carolina.

* * * * *

(d) The Camp Lejeune bridge, mile 240.7, near Jacksonville, NC, shall open on signal, except the draw need not open from 8:00 a.m. to 11:00 a.m., 11:30 a.m. to 2:30 p.m. and 3:00 p.m. to 6:00 p.m., on Mondays through Fridays, other than Federal holidays.

3. This temporary rule is effective from July 11, 1988, until September 16, 1988, or until the scheduled repairs, sandblasting, and painting are completed ahead of schedule, whichever is earlier.

Dated: June 20, 1988.

Alan D. Breed,

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

[FR Doc. 88–14569 Filed 6–27–88; 8:45 am]

BILLING CODE 4910–14–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1154

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Technical amendment.

SUMMARY: This technical amendment corrects an error in the Architectural and Transportation Barriers Compliance Board's regulations prohibiting discrimination on the basis of handicap which were published on May 5, 1987 (52 FR 16374).

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mark W. Smith, ATBCB, 1111 18th Street NW., Suite 500, Washington, DC 20036, (202) 653–7834 (v/TDD). This is not a toll-free number. This notice is available on cassette at the above address for persons with visual impairments.

SUPPLEMENTARY INFORMATION: In approving the regulations published on May 5, 1987, the ATBCB decided to delete from the draft under consideration the provision which was erroneously published as paragraph (d) of § 1154.160. The erroneously published provision related to captioning in training films and videotapes. This technical amendment corrects the error by removing the provision from the regulations.

List of Subjects in 36 CFR Part 1154

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped,

Nondiscrimination, Physically handicapped.

William J. Tangye,

Chair, Architectural and Transportation Barriers Compliance Board.

Accordingly, 36 CFR Part 1154 is amended as set forth below.

PART 1154—ENFORCEMTNT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

The authority citation for part 1154 continues to read as follows.

Authority: Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

§ 1154.160 [Amended]

2. In § 1154.160, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d).

[FR Doc. 88-14576 Filed 6-27-88; 8:45 am]

BILLING CODE 6820-BP-M

POSTAL SERVICE

39 CFR Part 601

Establishment of the Procurement Manual to Replace the Postal Contracting Manual; Incorporation by Reference

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service has determined to simplify and modernize its procurement procedures, with greater emphasis on business objectives. For that purpose it has prepared a complete replacement of the Postal Contracting Manual (which is incorporated in the Federal Register by reference) in the form of a revised, renumbered, and renamed Procurement Manual. The new Manual emphasizes significant policies and processes, rather than detailed procedures, and is intended to be less complex and easier to use. It follows established commercial procedures wherever possible, to the extent consistent with the Postal Service's mission and statutory requirements. It provides greater discretion to contracting officers and Postal Service officials to exercise business judgment in the many decisions that must be made in the course of a procurement.

EFFECTIVE DATE: June 1, 1988.

Implementation dates: Headquarters Office of Procurement, and Office of Design and Construction Management—June 1, 1988. Mail Processing Department—July 1, 1988.

Procurement and Materiel Management Service Centers and Service Offices; U.S. Postal Service Field Divisions; Facilities Service Centers and Facilities Service Offices—August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Jean J. Provost (202) 268-6935.

SUPPLEMENTARY INFORMATION: On September 30, 1987, the Postal Service published for comment in the Federal Register (52 FR 36590) notices of the establishment of the Procurement Manual to replace the Postal Contracting Manual. Copies of the proposed Procurement Manual were made available upon request, and interested persons were invited to submit comments on the Manual by November 30, 1987.

Two commenters responded to our invitation. One commenter favored the establishment of the new Procurement Manual, its adoption of broad guidelines and more flexible approach to procurement, the greater discretion it grants to contracting officers, and its reduced emphasis on detailed procedures.

The other commenter argued that the traditional open competitive bid system, represented by the procedures in the Postal Contracting Manual, is sound and should not be abandoned. The commenter believes that the system adopted by the Postal Service in the new Procurement Manual, in which certain "prequalified contractors" will be allowed to compete for construction contracts, which would be awarded on a negotiated basis, is appropriate for the private sector, which is strongly influenced by market forces, but not fitting for routine Government contracting, since Government functions as a monopoly.

The Postal Service does not agree that the second commenter's argument applies to Postal Service procurement. Although the Postal Service is part of the executive branch of the Government, it was established to operate the postal system in a businesslike manner, to adopt the business practices of a well-run private corporation, rather than the procedures of a typical government agency. For this reason and others, what is appropriate for private sector companies both in the procurement area and other areas is often the preferred option for the Postal Service. Thus, market forces, which act to discipline the private sector, also discipline the Postal Service, since the Postal Service is essentially a communications business with many competitors. The Postal Service is required to meet its expenses out of income; it does not receive Government subsidies. Accordingly, it has strong incentives to negotiate contracts that return the most for the money and are fair to both sides. The new Procurement Manual was designed with this legislative framework in mind, to adopt procurement policies and procedures more in keeping with the powers, duties, and responsibilities envisioned for the Postal Service in the Postal Reorganization Act.

In its September 30, 1987, publication, the Postal Service listed the specific differences between the Postal Contracting Manual and the proposed Procurement Manual, and also described the contents of the proposed Procurement Manual (52 FR 36590). The information on the specific differences is not being repeated here, but the contents of the new Procurement Manual are described in new 39 CFR 601.103, printed *infra*. The proposed Procurement Manual was labeled transmittal letter 1 and dated October 1987.

The Postal Service has now issued transmittal letter 2, dated June 1, 1988, as a complete revision of transmittal letter 1, which did not become effective, since it was recognized to be incomplete and needed various additions and improvements. The implementation schedule that was published in the September 30, 1987 Federal Register, which showed certain earlier implementation dates and a final implementation date of July 1, 1988, could not be adhered to and has been changed, as shown in the **EFFECTIVE DATE** provision above. The following is an excerpt from the explanation of the changes made by transmittal letter 2:

EXPLANATION

This Transmittal Letter makes corrections, additions, and other changes to the *USPS Procurement Manual*. Included are:

1. The addition of value engineering incentive coverage at 2.2.10, and a new Clause 2-22, *Value Engineering Incentive*.

2. A new section 5.1.10, describing the types of multiyear contracts suitable for most multiyear procurements.

3. A new Chapter 12, Mail Transportation.

4. A general elimination of prescribed procurement forms in favor of computer-generated formats tailored to the requirements of a particular solicitation, contract, or order, and produced by the Postal Service's new automated procurement document generation system. Basic formats are in the *Procurement Handbook*.

5. Revision of Provision A-20, *Type of Business Organization*, to include representations regarding small and minority-owned business status.

6. New Clauses 1–2, *Advance Payments*; 11–27, *Accident Prevention*; and 11–28, Samples.

7. A new Appendix C, Forms and Formats.

8. Numerous corrections, clarifications, and changes resulting from review of the *Procurement Manual* since its October 1987 issuance.

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service.

In view of the considerations discussed above, the Postal Service hereby adopts transmittal letter 2 of the Procurement Manual, Publication 41, in replacement of the Postal Contracting Manual, and therefore revises 39 CFR part 601 to read as follows:

PART 601—PROCUREMENT OF PROPERTY AND SERVICES

Sec.

601.100 Procurement Manual; incorporation by reference.
601.101 Effective date.
601.102 Applicability and coverage.
601.103 Content of Procurement Manual.
601.104 Availability of Procurement Manual.
601.105 Amendments to the Procurement Manual.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

§ 601.100 Procurement Manual; incorporation by reference.

Section 552(a) of Title 5, U.S.C., relating to public information requirements of the Administrative Procedure Act, provides in pertinent part that "* * * matter reasonably published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register." In conformity with that provision, with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference its Procurement Manual (PM), Publication 41, a loseleaf publication.

§ 601.101 Effective date.

The provisions of the Procurement Manual are applicable, effective June 1, 1988, with respect to all covered procurement activities of the Postal Service. However, the Procurement Manual is being implemented on the following phased basis: Headquarters Office of Procurement and Office of Design and Construction Management—June 1, 1988; Mail Processing Department—July 1, 1988; Procurement and Material Management Service Centers and Service Offices, U.S. Postal Service Field Divisions, Facilities Service Centers and Facilities Service Offices—August 1, 1988. During the implementation phase procurement actions will be accomplished in accordance with policies prescribed either in the Postal Contracting Manual or the Procurement Manual, depending upon the implementation schedule established for an individual procurement entity.

§ 601.102 Applicability and coverage.

(a) The Procurement Manual applies to all Postal Service procurements of property and services.

(b) When fully effective, the Procurement Manual supersedes the Postal Contracting Manual.

§ 601.103 Content of Procurement Manual.

The Procurement Manual consists of 12 chapters and 6 appendices, as follows:

(a) Chapter 1—Authority, Responsibility, and Policy—covers general procurement policies, including the delegation of procurement authority and responsibility.

(b) Chapter 2—Procurement Planning—establishes requirements and procedures for advance procurement planning including source selection plans, and policies regarding specifications and statements of work.

(c) Chapter 3—Sources—covers sources of supplies and services and their priority, including Postal Service sources, other Government agencies, and commercial sources. It establishes requirements for publicizing procurements and covers matters regarding contractor qualifications.

(d) Chapter 4—Purchasing Methods—covers competitive purchasing procedures, including solicitation, evaluation of proposals, price negotiation, and contractor selection. It includes simplified procedures for purchases below certain dollar ceilings and establishes limitations on noncompetitive purchasing. It sets forth rules for filing and considering protests against Postal Service contracting procedures and awards.

(e) Chapter 5—Contract Pricing—describes the types of contracts authorized for Postal Service use and the circumstances for their use. It establishes policies and procedures for price evaluation, including price analysis, cost analysis, and principles for determining the allowability of costs.

(f) Chapter 6—Contract Administration—Describes responsibilities and procedures for the administration of Postal Service contracts, and for their modification and termination.

(g) Chapter 7—Bonds, Insurance, and Taxes—sets forth policies and procedures governing bonds and insurance under contracts, and discusses the applicability of Federal, State, and local taxes.

(h) Chapter 8—Special Categories of Contracts—covers various types of contracts subject to special procedures and describes the authorities of officials authorized to issue policy and procedural directives supplementing the Procurement Manual.

(i) Chapter 9—Patents and Data Rights—covers the acquisition of patents, copyrights, and other rights in data.

(j) Chapter 10—Socioeconomic policies—contains procedures for contracting with minority-owned businesses, and policies carrying out the requirements of certain statutes, including the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act, and the Service Contract Act. It establishes Postal Service policy and preference regarding purchase of domestic-source products and services.

(k) Chapter 11—Facilities and Related Services—covers the specialized procedures involved in the procurement of construction, the acquisition of real property, and leases.

(l) Chapter 12—Mail Transportation—prescribes policies and procedures for the procurement of mail transportation and directly related ancillary services by contract.

(m) Appendix A—Solicitations—prescribes the forms, format, and provisions to be used in preparing solicitations, and the establishment and maintenance of solicitation mailing lists. It contains all solicitation provisions prescribed in the Manual.

(n) Appendix B—Contract Clauses—prescribes certain clauses not prescribed elsewhere in the Manual and contains all clauses prescribed in the Manual.

(o) Appendix C—Forms and formats—states that the forms and computer generated formats necessary to implement and supplement the manual are in the Procurement Handbook, the Facilities Design and Construction Handbook, the Mail Transportation Procurement Handbook, and other publications and directives referenced in the Manual or in these handbooks.

(p) Appendix D—Rules of Practice in Proceedings Relative to Debarment and Suspension from Contracting—contains a reprint of the rules of practice issued by the Judicial Officer as 39 CFR 957.

(q) Appendix E—Rules of Practice Before the Postal Service Board of Contract Appeals—contains a reprint of the rules of practice issued as 39 CFR 955.

(r) Appendix F—Procurement Manual Index—is an alphabetical index of

important words and terms used in the Manual.

§ 601.104 Availability of Procurement Manual.

(a) Copies of the Procurement Manual, Publication 41, may be purchased, and changes to the Manual may be obtained, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325. The Manual may be examined during normal business hours at the U.S. Postal Service Library, 475 L'Enfant Plaza West SW., Washington, DC 20260–1641, and at the following Postal Service Procurement and Materiel Management Service Centers:

Central Region, 433 West Van Buren St., Chicago, IL 60699–6260.

Eastern Region, 1845 Walnut St., Philadelphia, PA 19197–6260.

Northeast Region, 8 Griffin Road North, Windsor, CT 06006–6260.

Southern Region, 1407 Union Ave., Memphis, TN 38166–6260.

Western Region, 850 Cherry Ave., San Bruno, CA 94099–6260.

(b) A copy of the Procurement Manual is on file with the Director, Office of the Federal Register, National Archives and Records Administration, 1100 "L" Street NW., Room 8401, Washington, DC 20408–0001.

§ 601.105 Amendments to the Procurement Manual.

Notice of changes made in the Procurement Manual will be periodically published in the **Federal Register.** The text of such changes will be filed with the Director, Office of the Federal Register. Subscribers to the Basic Manual will receive from time to time the amendments from the Postal Service in the form of Procurement Manual Circulars or in Postal Bulletin notices. These amendments will be cumulated in a periodic Transmittal Letter which subscribers will receive from the Government Printing Office.

AMENDMENTS TO PROCUREMENT MANUAL

Transmittal letter	Dated	FEDERAL REGISTER publication
2	June 1, 1988	53 FR

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88–14527 Filed 6–27–88; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 201

Grants to States for Public Assistance Programs; Treatment of Replacement Checks

AGENCY: Family Support Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends regulations relating to the Aid to Families with Dependent Children (AFDC) program under title IV–A and the Adult Assistance programs under titles I, X, XIV, and XVI (AABD) of the Social Security Act to specify when States administering these programs may claim Federal financial participation (FFP) for a replacement check that is issued to replace an earlier check. They are intended to ensure that FFP is not claimed, for a replacement check unless the FFP for the earlier check has been refunded to the Federal government. These final regulations amend 45 CFR 201.5(a)(3) and establish a new section § 201.70.

EFFECTIVE DATE: These final regulations are effective June 28, 1988.

FOR FURTHER INFORMATION CONTACT: John B. McDonald, Office of Grants Management, Office of Financial Management, Family Support Administration, Room 2222, Switzer Building, 330 C Street SW., Washington, DC 20201, telephone (202) 245–0935.

SUPPLEMENTARY INFORMATION: The Family Support Administration (FSA) published a Notice of Proposed Rulemaking on July 24, 1987 (52 FR 27827–27828) proposing regulatory changes which provided that a State is entitled to claim FFP for a replacement check if it has not claimed FFP for the earlier check or if the FFP for the earlier check has been returned to the Federal Government. This requirement is inherent in the following sections of the Social Security Act: 3(a), 403(a), 1003(a), 1403(a), and 1603(a). These regulations are therefore applicable to both the AFDC and the Adult Assistance programs.

These final regulations add a new § 201.70. Section 201.70(c)(1) allows a State to claim FFP for a replacement check when it makes no claim for FFP on the earlier check. Section 201.70(c)(2) permits a State to claim FFP for a replacement check after the State cancels (voids) the earlier check and refunds the Federal share as required by § 201.67(d). Section 201.70(c)(3) permits a State to claim FFP for a replacement check when the earlier check has been cashed and the State has refunded the FFP claimed for the earlier check.

These final regulations also provide that a State must report the refund of the Federal share of the earlier check on its Quarterly Statement of Expenditures (FSA–41). When the earlier check was issued in a prior quarter, the refund is reported as the Federal share of a decreasing adjustment necessary to correct an amount claimed in a prior quarter. When the earlier check was issued in the current quarter, the refund is reported as a decreasing adjustment to total expenditures computable for Federal funding and to the Federal share of that amount for the current quarter. Because the requirements of these final regulations are part of the grants process to the States, § 201.5(a)(3) is amended to add a cross-reference to § 201.70. In addition, we have restored to § 201.5(a)(3) a cross-reference to § 201.67 (Treatment of uncashed or cancelled checks). This reference was inadvertently omitted when § 201.5(a)(3) was amended to require that a State report on its Quarterly Statement of Expenditures Report the Federal share of child support collections that it makes (51 FR 13511, April 21, 1986).

Regulatory Procedures

Executive Order

These final regulations have been reviewed under Executive Order (EO) 12291 and do not meet the criteria for a major regulation. These regulatory changes will result in a reduction of approximately $2.5 million per year in claims against the Federal Government. Since these changes will not have a $100 million effect on the national economy, they are not a major rule within the definition of EO 12291.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because it affects only the transfer of Federal funds to the States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

States use the Quarterly Statement of Expenditures (FSA–41, formerly the SSA–41) to refund the Federal share of original checks or replacement checks, depending upon the circumstances. OMB approved the revised format of this report (OMB Number 0970–0029). This form contains the appropriate lines

for reporting the Federal share of decreasing adjustments necessary to correct amounts claimed in prior or current quarters. Accordingly, these regulations impose no additional reporting requirements on the States. Nevertheless, although these regulations impose no specific record keeping requirements, the practical result of these regulations is to impose on the States a general requirement that they have adequate records to assure that they do not claim Federal matching for a replacement check unless Federal matching was not claimed for the earlier check or unless Federal matching for the earlier check has been returned. Therefore, while these regulations are technically exempt from the Paperwork Reduction Act of 1980, we have, nevertheless, submitted a copy of this final rule to the Office of Management and Budget for its review.

Discussion of comments

We received comments from two States. One State asserted that currently it is not necessary to complete the check cancellation process prior to issuing the replacement check and that these regulations would require the completion of this process before a replacement check was issued and that such action would impose substantial hardship on public assistance recipients. These regulations do not constitute a change to existing policy and thus do not require that the check cancellation process be completed before a replacement check is issued. These regulations simply address the conditions under which FFP is available for a replacement check. They provide that a State may not claim FFP for a replacement check unless it makes no claim for FFP for the earlier check, the earlier check has been cancelled and FFP returned, as appropriate, or the earlier check has been cashed and the FFP has been refunded. They do not require that an earlier check be cancelled prior to the issuance of a replacement check. Cancellation of the earlier check is a State internal administrative process.

The same State also maintained that these regulations constituted a change in existing policy because they would require that States absorb entirely the costs of forged warrants. These regulations constitute no change to existing policy. While States may have misunderstood the Agency's policy with respect to this issue, the Agency (and its predecessor organizations) has maintained that whenever an assistance check is cashed by someone other than the authorized payee, it is not an amount expended under the approved State plan, and is therefore not eligible for FFP. Thus sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act have never provided that Federal matching is available for forged checks. These regulations provide States some flexibility in permitting States to either receive Federal matching for the earlier check or the replacement check but reinforce what the statute at these sections provides, i.e., Federal matching is available for only the amount of assistance actually provided to eligible recipients under the provisions of the State plan.

One State, noting that its incidence of lost or stolen welfare checks was minimal because of its system of direct delivery of welfare assistance through banking institutions, maintained that the degree of effort required to reprogram its check processing system to assure that FFP was not received for both the earlier and replacement checks would be substantial and unnecessary. It noted that the additional administrative effort that would be required to change its check processing system to recode the original check issuance as non-FFP as a prerequisite to claiming FFP for the replacement check or to automatically code all replacement checks as non-FFP would not be justified by the benefits received, i.e., to assure that FFP is not received more than once for one payment, especially as its number of replacement checks is inconsequential.

Later in its comments, this same State also requested, as an alternative to these regulations, that we recognize the present system it has in place that credits to the Federal Government FFP in duplicate check situations within a 180-day timeframe, a requirement that the State says is consistent with the requirements of the regulations at 45 CFR 201.67, "Treatment of uncashed or cancelled checks." We will discuss this alternative again later in the preamble; however, the point to be made here is that the State currently has a system in place which ensures that Federal matching is returned to the Federal Government within approximately 180 days when an earlier check and a replacement check have been issued. Since the State already has such a system in place, it would seem that this system could be modified to return the Federal matching in such cases of duplicate claims on a quarterly basis instead, thus assuring that the State meets the requirements of these final regulations.

The State further notes that it would be a serious disservice to the client population should it delay issuance of the replacement check pending an analysis of the FFP status of the earlier check. These regulations do not require that a State determine the FFP status of an earlier check before it issues a replacement. They require that FFP be returned to the Federal Government for an earlier check when the State claims FFP for a replacement check, if appropriate. Therefore these regulations should in no way delay issuance of the replacement check.

Moreover, for the AFDC program, as provided in 45 CFR 205.32, "Procedures for issuance of replacement checks", replacement checks can be issued once the State has issued "a stop payment order on the original AFDC check through appropriate banking procedures" and once a recipient executes "a signed statement attesting to the nonreceipt, loss, or theft of the original AFDC check * * *" However, these regulations at § 205.32(a) specifically provide that States establish procedures to "ensure that no undue delays occur in issuing a replacement check."

The State suggests two alternatives to the conditions required by the regulations. First, it suggests that FSA establish a waiver provision for States meeting an FSA-established performance base line. As mentioned, these regulations only clarify what is provided in the statute, i.e., that Federal matching is available only for the actual assistance provided to recipients. We see no reason based on the recommendation of one State for establishing a waiver provision. Secondly, the State suggests that we recognize the present system it has in place that credits to the Federal Government FFP in duplicate check situations within a 180-day timeframe, a timeframe that the State says is consistent with the time requirements of the regulations at 45 CFR 201.67, "Treatment of uncashed or cancelled checks". The 180-day timeframe, as established in § 201.67(c), applies only to checks which have remained uncashed for more than 180 days. That regulation provides that FFP for such checks must be refunded to the Federal Government. We believe that sections 3(a), 403(a), 1003(a), and 1603(a) of the Social Security Act inherently forbid States from receiving FFP for more than one check for the same payment. Therefore, since under the State's current system, the State retains FFP for an earlier check and a replacement check, though for a limited time, the system is still in conflict with statutory

requirements and cannot be excepted from the regulatory requirements established in § 201.70. Moreover, as mentioned previously, we believe that since the State already has a system in place that returns the FFP to the Federal Government when a check has been issued twice for the same payment, the State should instead modify this system to accommodate the requirements of the statute and these regulations.

Finally, we are making two minor changes to the regulations as previsouly proposed. For the regulation at § 201.70(c)(2), where that regulation cites § 201.67, we are identifying the particular paragraph "d" of § 201.67, regarding the refund of FFP for cancelled (voided) checks, i.e., the correct cite is § 201.67(d).

The regulation as proposed at § 201.70(c)(3) provided that a State could not claim FFP for a replacement check unless "The earlier check has been cashed by someone other than the authorized payee and FFP has been refunded." This regulation was originally proposed to deal with situations where an earlier check, alleged to be not received, or lost or stolen, was subsequently cashed by an unauthorized third party. While this is still a concern of the Agency, it has come to our attention that this particular regulation fails to address the situation where an earlier check and the replacement check have been cashed by the recipient in whose name the checks were authorized. In such a situation Federal matching is also not available for both checks because, as we have repeatedly maintained, it is inherent in the statute at sections 3(a), 403(a), 1003(a), and 1603(a), that Federal matching is available for only one check per payment to families eligible for the assistance programs under these titles.

Therefore, we are simply deleting the phrase "by someone other than the authorized payee" from the § 201.70(c)(3). By deleting this phrase, we state our intent that FPP for the replacement check of any earlier check that has been cashed is not available unless the FFP for the earlier check has been refunded. Of course, this only applies if the FFP for the earlier check has been claimed and received.

List of Subjects in 45 CFR Part 201

Aid to Families with Dependent Children, Family assistance office, Grant programs—social programs, Guam, Public assistance programs, Puerto Rico, Virgin Islands.

Dated: March 10, 1988.

Wayne A. Stanton,

Administrator for the Family Support Administration.

Approved: May 10, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Part 201 of Chapter II, Title 45 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sections 3, 403, 1003, 1102, 1403, 1603 of the Social Security Act, as amended; 49 Stat. 621, as amended; 49 Stat. 628, as amended; 49 Stat. 646, as amended; 49 Stat. 647, as amended; 64 Stat. 556, as amended; 76 Stat. 200, as amended; 42 U.S.C. 303, 603, 1203, 1302, 1353, and 1383 (note).

(Catalog of Federal Domestic Assistance" Program No. 13.808 Public Assistance—Maintenance Assistance (State Aid))

2. Section 201.5 is amended by revising paragraph (a)(3) to read as follows:

§ 201.5 Grants.

* * * * *

(a) *Form and manner of submittal.*

* * * * *

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, including for title IV–A the appropriate share of child support collections made by the State, of expenditures claimed in a prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency, including the share of the Federal Government for uncashed and cancelled checks as described at 45 CFR 201.67 and replacement checks as described at 45 CFR 201.70 in this part, or which have been revealed in the course of an audit.

* * * * *

3. A new § 201.70 is added to read as follows:

§ 201.70 Treatment of replacement checks.

(a) *Purpose.* This section provides the rules to ensure State do not claim Federal financial participation (FFP) for replacement checks under titles I, VI–A, X, XIV XVI (AABD) except under the circumstances specified in paragraph (c) of this section.

(b) *Definitions.* As used in this section—

"Check" means a check or warrant that the State or local agency uses to make a payment.

"Replacement check" means a check issued by the State or local agency to replace an earlier check.

(c) *Claiming of FFP for replacement checks.* The State agency may not claim FFP for the amount of a replacement check unless:

(1) It makes no claim for FFP for the earlier check;

(2) The earlier check has been cancelled (voided) and FFP refunded, where claimed, pursuant to 45 CFR 201.67(d); or

(3) The earlier check has been cashed and FFP has been refunded.

The State agency shall report the amount of the refund of FFP for the earlier check on the Quarterly Statement of Expenditures for the quarter no later than the quarter in which the replacement check is issued.

[FR Doc. 88–14544 Filed 6–27–88; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 62

[CGD–81–030]

Vital System Automation; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting errors in the self propelled commercial vessel vital system automation rules which appeared in the **Federal Register** on Wednesday, May 18, 1988 (53 FR 17820).

FOR FURTHER INFORMATION CONTACT: LT William R. Marhoffer, Office of Marine Safety, Security, and Environmental Protection, (202) 267–2206.

SUPPLEMENTARY INFORMATION: The Coast Guard published regulations for vital system automation on self propelled commercial vessels in the **Federal Register** of May 18, 1988 (53 FR 17820). A correction of editorial errors was published on May 26, 1988 (53 FR

19090). In preparing the final regulations, two inadvertent errors of omission were made regarding flooding safety requirements for minimally attended machinery plants. These errors are corrected by this notice. Without these corrections, the rules can be misinterpreted to require centralized control of sea inlet and discharge valves, emergency bilge suctions, and bilge manifolds, which was not intended.

Correction

In rule document 88–10622, on page 17845, in the issue of Wednesday, May 18, 1988, make the following corrections:

§ 62.50–20 [Corrected]

1. Paragraph (a)(3)(iv) is correctly revised to read as follows:

(a)* * *

(3)* * *

(iv) Machinery space flooding safety systems, except the valves described in paragraph (e)(4) of this section.

2. Paragraph (e)(2) is correctly revised to read as follows:

* * * * *

(e)* * *

(2) The ECC must include the controls necessary to bring at least one independent bilge pump and independent bilge suction required by § 56.50–50(e) of this chapter into operation to counter flooding.

Dated: June 22, 1988.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88–14570 Filed 6–27–88; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

46 CFR Part 381

[Docket No. R–105]

Cargo Preference; U.S.-Flag Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule which amends the procedures governing the evaluation by U.S. departments or agencies (agencies) of bids from subsidized U.S.-flag vessel operators for the carriage of dry bulk preference cargoes. The amendment expands coverage of the procedures to subsidized liner vessel carriage of dry bulk preference cargoes in less than full shiploads. The procedures require that operating-differential subsidies (ODS) received by operators of all liner vessels carrying less than full shiploads of dry bulk preference cargoes be considered a cost to the government for the carriage of such cargoes and therefore be included in the evaluation of the bids for such cargoes. MARAD's intent is to ensure equitable competition between subsidized and unsubsidized operators carrying dry bulk preference cargoes and the carriage of these cargoes at the lowest direct cost to the government.

EFFECTIVE DATE: This rule is effective on July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590, Telephone No. 366–2323.

SUPPLEMENTARY INFORMATION

Background

On February 10, 1986 (51 FR 5015), MARAD issued a notice of proposed rulemaking (NPRM), which requested comments on amending procedures governing the evaluation by shipper agencies of bids from subsidized U.S.-flag vessel operators for the carriage of dry bulk preference cargoes, 46 CFR 381.8 (Docket R–105). The amended procedures would require that ODS received by subsidized operators for the carriage of dry bulk preference cargoes be considered a cost to the government and be included in the evaluation of bids for such cargoes. The procedures were initially applied to subsidized U.S.-flag bulk vessel operators for the carriage of dry bulk preference cargoes on October 11, 1984 (49 FR 39847). The amendment would expand coverage of the procedures to subsidized liner vessel carriage of dry bulk preference cargoes in less than full shiploads.

Application of Rulemaking to Liner Operators

On October 9, 1987 MARAD published a final rulemaking (46 CFR Part 383), which established new administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry bulk preference cargoes in less than full shiploads on U.S.-flag commercial liner vessels. The final rulemaking requires operators to submit data on the operating and capital costs of their vessels. Based on this data, MARAD will calculate fair and reasonable guideline rates for voyages commencing on or after July 1, 1988.

Since MARAD has issued final fair and reasonable rate procedures applicable to liner vessels, it is appropriate to establish final criteria for the evaluation of bids when subsidized liner vessels compete to carry dry bulk preference cargoes.

The NPRM provided a period for public comment that initially expired on April 11, 1986, but was subsequently extended to May 12, 1986, at the request of interested parties.

Discussion of Comments

Timely comments with respect to Docket R–105 were received from the Department of Agriculture (USDA), the Agency for International Development (AID), Falcon Shipping Group (Falcon), the Council of American-Flag Ship Operators (CASO), Sea-Land Service, Inc. (Sea-Land), Coordinated Caribbean Transport (CCT), OMI Corp. (OMI), and Waterman Steamship Corporation (Waterman). The comments received are presented and evaluated below.

USDA stated that, unless and until it amends Title I regulations, it is unable to implement that portion of the regulation dealing with negotiations, since the agency does not negotiate vessel offers in the Title I program. Negotiations are conducted by the importing country or its agent, with fixtures or bookings subject to USDA approval. Subsequently, USDA published proposed regulations governing the Pub. L. 480, Title I program on September 16, 1986 (51 FR 32791). In part, USDA's proposed regulations set parameters on bidding and negotiating procedures. In view of the foregoing, MARAD will not include procedures on bidding and negotiation in this final rule until USDA has had the opportunity to resolve these procedures.

USDA further stated that the requirement to award freight to the lowest bidder would, at times, conflict directly with the regulatory provisions which permit countries to purchase commodities on the basis of lowest landed cost. According to USDA, MARAD has not considered that USDA is required to take into account the cost of the commodity, but proposes the award of freight to the lowest bidder.

MARAD believes the point raised by USDA concerning lowest landed cost is taken into account by use of the phrase "lowest responsive bidder." Lowest responsive bidder is defined as "that operator which has submitted the lowest bid after all other qualifications for carriage have been met." One of the qualifications for carriage by a subsidized operator is that its bid is augmented by the amount of ODS it

receives for the carriage of the preference cargo. The only responsive bid for subsidized operators is the augmented bid. While USDA asserts that lowest landed cost should be the determining factor, MARAD's concern in this regulation is only with the waterborne portion of the transportation. MARAD's determination is that, for the waterborne portion of the transportation, priority must be given to the lowest bidder in an augmented bid arrangement because of the lower overall cost to the Government. This is clarified in the final rulemaking.

In addition, USDA suggested that a means be found to permit it to make reasonable adjustments to MARAD's original ODS determinations when last minute tonnage changes of small magnitude take place. AID concurred on this. USDA stated it could not force importing countries to risk losing vessel offers while waiting for MARAD redeterminations of ODS.

MARAD believes that the process for recalculating subsidy would be similar to the existing system for recalculating fair and reasonable rates. When there is a change in the tonnage in a preference cargo voyage, the contracting agency requests and receives from MARAD a revised fair and reasonable rate. A revised ODS calculation could be handled at the same time.

Finally, USDA suggested that the regulation be clarified to state that the prohibition of combined bids is meant to apply only to offers for the combined use of two or more vessels at a single freight rate, and not to offers where lower rates are available if two or more vessels offered are taken (but separate rates for each vessel are stated). MARAD accepts USDA's suggestion on combined bids and that provision is clarified appropriately.

AID asked if an agency can reject a bid on the basis of inland transport cost. MARAD does not propose to set guideline rates for inland transportation and believes that the agency sponsoring the cargo should be responsible for evaluating inland transportation costs. However, in the event that the shipper agency does not approve the charges beyond the ocean transportation, a U.S.-flag vessel must nevertheless be utilized to comply with the cargo preference requirement, if the vessel will accept the ocean transportation at a rate not exceeding the guideline rate. The shipper agency would then arrange for alternate inland transportation, if necessary.

Falcon stated that it believes full and open competitions are best served by using sealed bidding procedures coupled with the evaluation of the total cost to the Government by including ODS payments. Falcon believes that the determination as to whether to use sealed bidding or negotiation procedures, and the manner in which either procurement is conducted, should be governed strictly by the Federal Acquisition Regulations (48 CFR, Chap. 1, et seq.) to eliminate: (1) Technical leveling; (2) technical transfusion; and (3) action techniques if negotiation is used.

Falcon's basic argument is that a sealed bidding procedure is sufficient—negotiation is not necessary.

OMI objected to allowing a foreign mission to negotiate with bidders other than the low bidder. Falcon stated that involvement of foreign elements may present problems of disclosure in the negotiation process. CCT commented that negotiations with bidders should be strictly regulated with a uniform, written procedure with severe repercussions to the agencies for possible violations of confidentiality and/or possible conflicts of interest.

As noted previously, procedures on bidding and negotiation will not be included in this final rule.

CASO, on behalf of its member lines (American President Lines, Farrell Lines, Lykes Bros. Steamship, Prudential Lines, and Waterman) objected to the implementation of an augmented bid formula on six grounds. These objections were: (1) The effect of the augmented bid procedures is to discriminate unfairly against ODS operators; (2) Docket R–105 is not the lawful mechanism to protect the unsubsidized operators; (3) MARAD's desire to obtain the lowest cost to the Government is contrary to the ODS program objectives of phasing out premium rates; (4) operating subsidy attributable to the carriage of dry bulk cargoes in parcel lots by liners is not fairly calculable; (5) the proposition that would allow agency negotiations with other than the low bidder is flawed both conceptually and procedurally; and (6) the requisite "proper hearing requirement" of section 606 of the Merchant Marine Act, 1936, as amended (the Act) has not been met.

Docket R–105 does not discriminate unfairly against either subsidized or unsubsidized operators, nor does it seek to favor either subsidized or unsubsidized operators. The sole function of Docket R–105 is to put subsidized and unsubsidized operators on an equal basis with respect to the bidding procedure for bulk preference cargoes. The ODS paid to subsidized operators is not affected by the procedure and ODS contracts are not being amended. Consequently, there is no requirement for a section 606 hearing. What is being changed are requirements for a program that is operated independently of the ODS program. The only change in that program is that the bids of subsidized operators are being augmented by the amount of ODS applicable to that voyage.

MARAD does not believe that R–105 will necessarily lead to a trend to premium rates and away from world rates. However, the agency does believe that a tendency toward world rates, by a subsidized operator buttressed with ODS, is misleading. The true cost to the Government for the voyage includes both the rate and the amount of subsidy paid to the operator. Further, while procedures on bidding and negotiation are not included in this final rule, MARAD believes that not allowing the contracting agency to attempt to negotiate lower rates with bidders would certainly establish higher rates.

MARAD does believe that it will be able to fairly calculate that portion of an operator's ODS which is attributable to the carriage of preference dry bulk cargoes in parcel lots.

Waterman complained about the adverse effect this regulation will have upon its viability as a subsidized operator. Most of the complaints are based upon the misconception that ODS will be abated. Subsidy abatement is not contemplated by this regulation. Instead, ODS received by subsidized operators for the carriage of dry bulk cargoes is to be considered a cost to the government and is to be included in the calculation of fair and reasonable rates for such carriage.

In its comments, Sea-Land argued that the final rules regarding augmentation should apply to all types of preference cargo, specifically including civilian packaged preference cargo and military cargo. The Department of Agriculture also favored extension of rulemaking to civilian packaged preference cargo.

MARAD believes that the commenters raise significant points concerning the application of the augmentation procedures to the evaluation of bids on civilian packaged preference cargoes and military cargoes. While such comments are outside the scope of this rulemaking, MARAD plans to issue an advance notice of proposed rulemaking in the **Federal Register** to solicit comments on the application of the augmentation procedures to those cargoes.

E.O. 12291, Statutory and DOT Requirements

This final rule is considered to be non-major under Executive Order 12291 and

significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). The final rule is significant because it is of substantial interest to certain other governmental agencies and to the maritime industry since the shipment of preference cargoes represents a major source of business for that industry.

To conduct a detailed economic analysis, MARAD would need information on the economic impact of such variables as the number of subsidized and unsubsidized vessels that would actually compete, the particular preference trade involved, the number of voyages made, the efficiencies of the vessels, and the amount of cargo. Despite our request for such information, no comments were received from the public with regard to the impact of these variables. The information needed is not historical in nature, and it is not possible for MARAD to predict which operators and agencies would benefit since the rule is dependent on competition through the bidding process. However, although MARAD does not have complete information on the economic impact of the rule, it believes that the impact will be minimal and that a full regulatory evaluation is not necessary.

Finally, MARAD sees no evidence that this rule affects a substantial number of small entities pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), since the rule will affect only large ship operators which do not meet the criteria for small business in the Small Business Administration regulations (13 CFR Part 121). The Maritime Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule has no federalism implication that warrants the preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 381

Freight, Maritime carriers, Reporting requirements.

Accordingly, 46 CFR Part 381 is amended as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read:

Authority: Secs. 204(b), 212(d), and 901(b), Merchant Marine Act, 1936, as amended; 46 U.S.C. 1114(b), 1122(d), and 1241(b) unless otherwise noted.

2. Section 381.8 is revised to read as follows:

§ 381.8 Subsidized vessel participation.

(a) For the purpose of approving subsidized U.S.-flag liner and bulk vessels competing for the carriage of dry bulk preference cargoes, each department or agency having responsibility under the Cargo Preference Act of 1954 [46 U.S.C. 1214(b)], shall evaluate bids received from the operators of such vessels in the manner described in this section.

(b) When a subsidized vessel operator is the apparent low U.S.-flag responsive bidder for a dry bulk preference cargo, the responsible department or agency shall evaluate the subsidized operator's bid by:

(1) Requesting from MARAD an amount for the operating-differential subsidy (ODS) likely to be paid for the carriage of such cargo expressed as a cost per ton for performing the voyage by the apparent low responsive subsidized bidders;

(2) Deriving "augmented bids" for the subsidized operators by adding the ODS amount to each subsidized operator's bid;

(3) Comparing the augmented bids of the subsidized operators and the bids of unsubsidized operators to determine the apparent low responsive bidder;

(4) Requesting from MARAD a fair and reasonable guideline rate for the apparent low responsive bidder which shall be based on MARAD's calculation of anticipated costs (less ODS in the case of a subsidized vessel) for the voyage plus a reasonable amount for profit for the voyage; and

(5) Determining whether the subsidized operator's unaugmented bid or the unsubsidized operator's bid, whichever was determined to be the lowest responsive bid pursuant to paragraph (b)(3) of this section, is at or below the fair and reasonable guideline rate.

(c) If the amount of dry bulk cargo to be shipped is changed at any time prior to award, the department or agency shall request that MARAD provide new ODS amounts applicable to the carriage. The department or agency shall redetermine the augmented bids before determining the lowest responsive bid and requesting from MARAD a revised fair and reasonable guideline rate in accordance with the provisions of paragraph (b) of this section.

(d) Whenever a bid is submitted for a U.S.-flag vessel for the transportation of dry bulk preference cargo, the responsible department or agency shall only approve bids that apply to an individual vessel, and may not accept combined bids submitted for more than one vessel. If two or more vessels are offered, separate bids shall be submitted for each vessel. A bidder may submit a conditional lower bid for each vessel to be effective only if more than one vessel is contracted to carry the cargo.

(e) The requirements of this section shall apply only to those departments or agencies that directly pay or finance all or part of U.S.-flag ocean freight transportation costs for the carriage of dry bulk preference cargoes, in accordance with this part.

(f) The requirements of this section shall not apply to foreign aid consisting of direct cash transfer payments under specific agreements between departments or agencies and the recipient country with respect to the utilization of U.S.-flag vessels for transportation of commodities purchased with such funds.

By Order of the Maritime Administrator.

Dated: June 22, 1988.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 88-14491 Filed 6-27-88; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-07; Notice 3; RIN 2127-AC26]

Federal Motor Vehicle Safety Standards; Motor Vehicle Brake Fluids

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule amends Standard No. 116, *Motor Vehicle Brake Fluids*, to permit the use of permanently-affixed labels (e.g., paper or plastic labels) on containers of brake fluid and hydraulic system mineral oil to satisfy the container information requirements of the standard. This rule also establishes procedures for testing the methods used to mark or label all such containers to ensure that the required information remains legible and present on the container after being soaked with the fluid or oil. This action was commenced in response to two related petitions for rulemaking submitted separately by the Chemical Specialties Manufacturers Association (CSMA) and the firm of Arent, Fox, Kintner, Plotkin & Kahn (Arent), on behalf of companies engaged in the manufacture and sale of motor vehicle brake fluid.

DATE: The effective date of this final rule is December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Office of Vehicle Safety Standards, NRM–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5277.

SUPPLEMENTARY INFORMATION: On April 3, 1987, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) relating to Standard No. 116's information requirements for containers of brake fluid and hydraulic system mineral oil (52 FR 10775). That notice proposed to revise those requirements to permit the use of permanently-affixed labels (e.g., paper or plastic labels) on such containers and set conditions and procedures for testing the labeling or marking of all containers with the information required by the standard. This action was commenced in response to two related petitions for rulemaking submitted separately by the Chemical Specialties Manufacturers Association (CSMA) and the firm of Arent, Fox, Kintner, Plotkin & Kahn (Arent), on behalf of companies engaged in the manufacture and sale of motor vehicle brake fluid.

This rule amends FMVSS No. 116 as proposed in the NPRM. A new paragraph S6.14 is added to the standard setting forth the test conditions and procedures under which the permanency and legibility of the information is evaluated. Paragraphs S5.2.2.2 and S5.2.2.3 of the standard are amended to permit packagers the option of affixing a label to their containers which would be legible and incapable of being removed without its destruction after exposure to the test conditions of S6.14.

Background

Standard No. 116 currently requires certain information to be clearly and indelibly marked on all containers of brake fluid and hydraulic system mineral oil. Under paragraph S5.2.2.2 of the standard, persons who fill containers with brake fluid that are subsequently distributed for retail sale (whom the standard refers to as "packagers" (S4)) must furnish the information "clearly and indelibly marked" on each container. The required information includes a certification that the fluid conforms to Standard No. 116, the name of the packager and name and complete mailing address of the distributor, information (a serial number) identifying the packaged lot and date of packaging and the type of brake fluid contained in the package, the minimum wet boiling point of the fluid, and a series of safety warnings. The safety warnings concern use and proper storage of the fluid and the safety consequences of using contaminated fluid. Comparable information requirements are set forth in S5.2.2.3 for packagers of hydraulic system mineral oil.

The safety warnings required on brake fluid and hydraulic system mineral oil containers warn against certain practices in using hydraulic fluid for braking systems that might result in the use of improper or contaminated fluids. The warnings also help to prevent improper storage of the brake fluid which could contaminate the fluid or cause it to absorb moisture. Avoiding the absorption of moisture is extremely important since moisture in a brake system degrades braking performance and safety by lowering the brake fluid's boiling point, increasing the fluid's viscosity at low atmospheric temperatures and increasing the risk of brake system component corrosion. Lower boiling points increase the risk of brake system failure and increase the possibilities of vapor lock. The safety warnings also alert users of brake fluid containers with capacities less than five gallons that the containers should not be refilled.

In April 1984, the agency issued an interpretation of Standard No. 116 which stated that the standard prohibits the use of labels, whether paper or of some other material, to meet the "marked on each * * * container" requirements of S5.2.2.2. NHTSA interpreted S5.2.2.2. as requiring the relevant information to be marked *directly on* the brake fluid container and as not permitting the information to be placed on a label and affixed to the container. This interpretation was received with concern by some members of the brake fluid marketing industry who apparently were unaware that their use of permanently-affixed labels on their products did not meet the requirements of S5.2.2.2. The industry's concern gave rise to the petitions for rulemaking from the CSMA and Arent requesting that NHTSA amend Standard No. 116 to permit the affixing of labels as an alternative to direct marking, to comply with the information requirements for brake fluid containers.

The two petitioners submitted virtually identical arguments in their rulemaking petitions. Arent, petitioning the agency on behalf of client companies engaged in the marketing of brake fluid products, believed that an amendment permitting the attachment of separate labels on containers would be "pro-competitive, pro-consumer and achieve the intended purpose (label permanency) of NHTSA," without an adverse effect on safety. According to Arent, the requested amendment would result in consumer benefits by avoiding the costs associated with directly marking brake fluid containers. (The petitioners also raised various legal arguments regarding the use of labeling under the Vehicle Safety Act. The agency affirms its response to those arguments in the NPRM preceding this rule and will not further discuss them here. *See*, 52 FR at 10777.)

The CSMA believed that Standard No. 116 should permit brake fluid packagers to use permanently-affixed labels because that would reduce costs with no negative effect on safety. According to CSMA, permitting the use of permanently-affixed labels would permit a private brand name brake fluid packager to attach preprinted, low cost labels on readily available containers and avoid the expense of readjusting packaging lines each time a different brake fluid brand is packaged. CSMA stated that it is not economically feasible for independent packagers, typically small businesses, to directly mark the containers for each brand of brake fluid and store them in advance of packaging. It believed that the requirement for directly marking brake fluid containers entails the purchase of expensive machinery and increases other production costs, and "will serve only to eliminate from the marketplace those companies which contract-package brake fluid under private labels."

CSMA believed that the labeling requirements should refer neither to an "indelibly marked" requirement nor focus on the method of application of the required labeling. The petitioner suggested instead that the requirements address the performance of the label, i.e., its ability to adhere to the container during the life of the product and convey its information. The CSMA stated that the state-of-the-art printing and labeling technologies are such that adhesive labels can be made not to smear, run or become unattached from the container when exposed to brake fluid. In support of its argument to permit permanently-affixed labels, the CSMA suggested a test method for determining the durability and indelibility of labels on brake fluid containers. That method included procedures for immersing a container in brake fluid and then determining whether an affixed label is destroyed or defaced when the attempt is made to remove it.

Since the agency tentatively concluded that an amendment permitting the use of *permanently* affixed labels would enhance manufacturer flexibility in the packaging of brake fluid while ensuring that safety needs are met, it issued an NPRM to amend Standard No. 116 to provide for the use of such labels on brake fluid containers. The NPRM went beyond the petition in making the same proposal for hydraulic system mineral oil containers, as NHTSA tentatively saw no reason not to allow packagers of hydraulic system mineral oil the same flexibility in packaging their product as proposed for brake fluid packagers. More specifically, the agency proposed to amend S5.2.2.2 and S5.2.2.3 of the standard to permit packagers of brake fluid and hydraulic system mineral oil the option of affixing a label to their containers which would be legible and incapable of being removed without its destruction after exposure to specified test conditions set forth in a new paragraph S6.14. The agency proposed that these new requirements for labeling indelibility and permanency apply to all containers of brake fluid and hydraulic system mineral oil containers, whether their information was marked directly on them or printed on an affixed label.

Comments on NPRM

The agency received six comments on its proposal. All but one of these commenters supported an amendment permitting the use of permanently affixed labels to satisfy the labeling requirements of Standard No. 116.

The Delco Moraine Division of General Motors (GM) supported each of the proposed amendments to the standard. The commenter believed the proposed amendment to S5.2.2.2 and S5.2.2.3 would, as the agency had stated in its proposal, "afford the manufacturers flexibility in the packaging of brake fluid and hydraulic system mineral oil while ensuring that safety needs are met." GM said that it manufactures, distributes and packages brake fluids and currently directly marks its containers as required by Standard No. 116. According to the commenter, GM has determined that the methods it uses for placing the required information on brake fluid containers will meet the performance requirements for legibility, permanency and indelibility proposed in the NPRM. GM agreed with petitioner CSMA's statement regarding the feasibility of producing adhesive labels which would not smear, run or separate from the container when exposed to brake fluid.

Penray Company and Gold Eagle, two companies represented by petitioner Arent and engaged in the manufacture and packaging of motor vehicle brake fluid, supported the proposed amendments as promoting competition between packagers without negatively affecting safety. The CSMA also supported each of the proposed amendments to Standard No. 116, including those for hydraulic system mineral oil containers. In its comment, CSMA reiterated the point made earlier in its petition for rulemaking that current printing and labeling technologies are able to produce adhesive labels that are capable of remaining legible and affixed to containers after exposure to brake fluid. CSMA also said packagers' efforts to meet the current requirements for directly marking their containers would unnecessarily increase consumer costs for brake fluid products by 26 to 32 cents per container.

American Motors Corporation (AMC) supported generally the agency's proposal permitting affixed labels to meet the marking requirements of Standard No. 116. The commenter said that labeling technology has progressed tremendously since the issuance of the current marking requirements and that there should be no technological impediments to creating "appropriate and durable labels." However, AMC emphasized that manufacturers should have the option of satisfying Standard No. 116's labeling requirements by either using permanently affixed labels or continuing current practices for directly marking containers. AMC questioned the need for and recommended NHTSA not adopt the legibility and permanency performance requirements proposed in the NPRM since other NHTSA regulations that call for permanently affixed labels (e.g., Part 567) have no such requirements.

As explained in the NPRM, the agency believes that the test procedures and performance criteria for container information are necessary to ensure that the safety warnings and other information required by Standard No. 116 will be present on brake fluid and hydraulic system mineral oil containers throughout the time the fluid container will be used. The NPRM explained the importance of the additional test requirements in the following manner:

> The agency has tentatively concluded that test procedures for label indelibility and durability, such as those suggested by [petitioner] CSMA, are needed to make labeling requirements more objective and to meet the need for motor vehicle safety. NHTSA is therefore proposing that labels meet the "destroyed or defaced" requirement after having been exposed to the test conditions of S6.14. * * *
>
> While both Part 567 and Standard No. 116 are intended to ensure that the required labeling remains in place and legible, there are several specific, identifiable problems, like brake fluid spills, against which the brake fluid labels should be protected. Thus, the agency believes that the general "destroyed or defaced" criterion in Part 567 is not sufficient for ensuring that the brake fluid label will be permanent. To ensure the permanency of brake fluid container labeling, additional criteria are appropriate in Standard No. 116 to address the specific hazards likely to interfere with the permanency of the labeling. The requirements must be directed at ensuring that the required labeling remains permanent notwithstanding contact with the elements and conditions of a garage-type environment. NHTSA believes it is appropriate to pattern test conditions for the labeling after real-world conditions likely to affect the adhesiveness and legibility of the labeling and set performance requirements ensuring that the information is present throughout the time the fluid will be used.
>
> (52 FR at 10778, 10779)

The agency continues to believe that the permanence and legibility of the labeling is of utmost importance to ensuring that consumers will be provided the information necessary for the proper storage and use of the brake fluids. Fluids that are improperly stored or used can adversely affect the proper operation of brake systems in motor vehicles. Moreover, commenters on the NPRM indicated that the performance criteria proposed by the agency can be met by current methods of container marking and labeling. The agency does not know of any reason for excluding the performance criteria from the standard that outweighs the safety benefits resulting from requirements ensuring the legibility and availability of the requisite safety information. Accordingly, the agency declines to adopt AMC's suggestion and includes the performance requirements in this final rule.

The Wagner Division of Cooper Industries (Wagner), a manufacturer and packager of DOT 3 brake fluid, objected to the agency's proposed amendment of Standard No. 116. Wagner's objections were based on three arguments, all of which were safety-related, with the third relating indirectly to equitable considerations.

Wagner believed that amending the standard as proposed would permit the use of "inferior labeling methods" that would adversely affect safety in two respects. First, Wagner believed the use of paper labels could result in increased brake system failures due to the use of mislabeled products. Second, Wagner felt that Standard No. 116 should require the "same level of [label] permanency"

as that required by Standard No. 105 [(49 CFR 571.105)] for the marking of hydraulic system brake fluid reservoirs. Standard No. 105 requires a warning statement on the reservoir that is "permanently affixed, engraved, or embossed." (S5.4.3) Wagner stated that it directly marks its brake fluid containers in accordance with the current requirements of Standard No. 116.

Wagner cautioned that one of the dangers involved with the misuse of brake fluids is that a brake system's elastomeric seals can develop excessive swelling when contaminated with non-DOT fluids, which could result in catastrophic brake system failure. The commenter indicated that a direct marking requirement is the only way to avoid the risk of possible consumer misuse of unidentified fluids found in containers whose labels have become detached. Wagner argued that since more motor vehicle brake fluid is sold for replacement purposes than is sold as original equipment, "It is incumbent on the National Highway Traffic Safety Administration to encourage every brake system repair person, professionals or private individuals, to use a safe product in rebuilding the brake system."

NHTSA concurs with Wagner's assertions that proper storage and use of brake fluid are very important to motor vehicle safety and that consumer awareness of the information provided on brake fluid containers significantly reduces the likelihood of brake system failure due to improper or contaminated fluids. However, the agency does not agree that a direct marking requirement is the only way of ensuring that the information on a brake fluid container will be present and legible to the consumer until its contents are used. The agency has determined that the test conditions proposed for container labeling—*viz.*, that the container is soaked in brake fluid or hydraulic system mineral oil for 15 minutes—are representative of the real-world conditions to which the container is likely to be exposed. A label that remains affixed and legible in the laboratory test will therefore remain legible and affixed to the container in satisfaction of the need to have the information conveyed by its markings available to the consumer until the container's contents are used.

As stated above, commenters have indicated that the performance criteria proposed by the agency can be met by current methods of container labeling. Given the technological advances made in the printing and labeling fields that now make it possible to affix a smear-resistant label that is capable of remaining attached to a container after exposure to conditions encountered in a garage-type environment, NHTSA believes it is appropriate to amend Standard No. 116 to permit the use of the new technology. In regard to Wagner's concern that the new labeling requirements will result in mislabeled products and an attendant reduction in safety, NHTSA does not agree that these amendments will increase the risk that packagers of brake fluid will inadvertently produce and market containers that misidentify their contents. Such misidentification can occur regardless of whether the identification is directly marked or on an affixed label. The agency believes current safeguards adopted by packagers preventing product misidentification will continue to ensure that brake fluid containers are properly identified.

In any event, the agency will carefully monitor compliance with the standard. If it becomes apparent that safety needs are not met by labeling practices, the agency will take appropriate action which may include further amendment to Standard No. 116.

Wagner argued that it is inconsistent for NHTSA to require " 'permanently affixed, engraved or embossed' labeling on vehicle brake fluid reservoirs and not demand the same level of permanency for the labeling on replacement brake fluid containers." The agency does not believe that the labeling requirements for the two standards are inconsistent. The requirements made final in this notice are intended to ensure the permanency of the information on brake fluid and hydraulic system mineral oil containers—i.e., that it remain present and legible until the container's contents are used. A packager may meet those requirements by affixing a permanent label on the container or by marking the container directly. In any case, the standard's requirement that the information be permanently and indelibly marked or labeled on the container is essentially the same as Standard No. 105's option for compliance by means of permanently affixing the required information.

Wagner's third objection to the proposed amendment involved equitable considerations. Wagner argued that an amendment that would compromise safety "for the convenience of companies not willing to invest in safety is an unfair and inconsistent action by NHTSA" to the detriment of brake fluid manufacturers who have invested resources to comply with Standard No. 116. Wagner expressed disappointment that the NPRM seemed to develop "a rationale intended to legitimize an inferior method of labeling."

The agency has carefully considered Wagner's concerns that this amendment to Standard No. 116 in effect penalizes parties who have complied with the standard by legitimizing an "inferior method of labeling." As NHTSA understands Wagner's equity argument, it is premised on that commenter's view that compliance by means of a permanently-affixed label is inferior from the standpoint of vehicle safety to compliance by means of direct marking on the containers. The agency's response to Wagner's safety concerns has been discussed above and will not be repeated here. Because the agency has determined that safety will not be negatively affected by the proposed amendments to Standard No. 116 and that the rule will provide packagers increased flexibility in labeling brake fluid and hydraulic system mineral oil containers, the amendments are hereby adopted by this final rule.

As described in the NPRM, the first step in the procedures for testing container information involves labels only. It requires that labels be cut vertically from top to bottom. Cutting the label is intended to preclude the use of various "slip-on" labels, which typically consist of a sleeve of paper or plastic which wraps around the container. They do not use any type of adhesive material to hold them in place on the container. NHTSA has determined that this type of labeling should be prohibited due to the ease with which it can be removed from the container and to the likelihood that containers will become completely unmarked before their fluid is used. Since no adhesive is used with these labels, the cutting of the label will allow the removal of the label, without defacing or destroying the label, even before the label is soaked with brake fluid or hydraulic system mineral oil. The use of that type of label would therefore constitute a noncompliance.

In its comment to the NPRM, Gold Eagle asked whether a paper or "poly" sleeve label that has been affixed to the container with adhesive will be deemed to comply with the new requirements of Standard No. 116 if it remains affixed to the container after the vertical cut has been made. Compliance of such a label could be determined only after it and its container have been soaked in the container's contents and then an attempt is made to remove the label.

During the next stage of determining compliance, the container of brake fluid

or hydraulic system mineral oil (i.e., the test specimen) is soaked for 15 minutes at room temperature in the type of fluid found in the container. NHTSA believes that the 15 minute period is adequate to determine the effect of the fluid on the container markings. Because it is foreseeable that fluid labels moistened by excess fluid dripping down the container will be wiped by consumers, the next step in the compliance procedure is to wipe the labeling by hand with a clean dry cloth. A container would be determined to be in compliance if, after the wiping, the required markings are legible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of one foot and, in the case of a container with an affixed label, the label cannot be removed without destroying or defacing it.

Effective date

No commenter objected to the proposal that compliance with the proposed amendments be required within 180 days after issuance of a final rule. Accordingly, the effective date of this final rule is December 27, 1988, i.e., 180 days from its publication.

Impacts

NHTSA has examined the effects of this rulemaking action and determined that the action is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. Some cost saving might result from this amendment since petitioners CSMA and Arent estimate that the use of permanently-affixed labels in place of direct marking on brake fluid and hydraulic system mineral oil containers would result in savings for packagers and consumers. However, the agency does not believe that use of permanently-affixed labels and adoption of compliance tests for container labeling will significantly affect the costs of brake fluid or hydraulic system mineral oil, or the cost of packaging these products.

NHTSA believes that the adoption of this rule will not increase the burdens for any party. On the contrary, the use of permanently affixed labels in packaging brake fluid and hydraulic system mineral oil will allow greater flexibility in product packaging. The agency believes that the compliance test suggested by petitioner CSMA and adopted in this notice is not burdensome and that compliance will not be a problem for most, if not all, manufacturers and packagers. The agency is aware of no party subject to these requirements that would have to significantly alter its practices to comply with this rule. Because NHTSA believes the impacts of this rule will be minimal, a full regulatory evaluation has not been prepared.

NHTSA has also considered the impacts of this rule on small entities, as required by the Regulatory Flexibility Act. Based on this consideration, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Any fluid manufacturer or packager qualifying as a small business under the Regulatory Flexibility Act might benefit to a small extent by the amendments to Standard No. 116, since more flexibility is afforded to packagers in labeling their fluid containers and there might be a reduction in the costs associated with current packaging requirements. However, NHTSA believes that the amendments made by this notice should not result in significant cost impacts for any party.

Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new motor vehicles and motor vehicle equipment. The agency believes these entities will not be significantly affected by these amendments since the changes will not significantly affect the price of motor vehicle brake fluids.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Finally, NHTSA has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that this rule will not significantly affect the human environment.

Paperwork Reduction Act

The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB), pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through February 28, 1990 (OMB #2127–0521).

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571.116, *Motor Vehicle Brake Fluids*, is amended to read as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.116 [Amended]

2. S5.2.2.2 of § 571.116 is revised to read as follows:

S5.2.2.2 Each packager of brake fluid shall furnish the information specified in paragraphs (a) through (g) of this section by clearly marking it on each brake fluid container or on a label (labels) permanently affixed to the container, in any location except a removable part such as a lid. After being subjected to the operations and conditions specified in S6.14, the information required by this section shall be legible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of one foot, and any label affixed to the container in compliance with this section shall not be removable without its being destroyed or defaced.

* * * * *

3. S5.2.2.3 of § 571.116, is revised to read as follows:

S5.2.2.3 Each packager of hydraulic system mineral oil shall furnish the information specified in paragraphs (a) through (e) of this section by clearly marking it on each brake fluid container or on a label (labels) permanently affixed to the container, in any location except a removable part such as a lid. After being subjected to the operations and conditions specified in S6.14, the information required by this section shall be legible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of one foot, and any label affixed to the container in compliance with this section shall not be removable without its being destroyed or defaced.

* * * * *

4. In § 571.116, a new S6.14 is added after the formula set forth in S6.13.6(d) and before S7, *Auxiliary test methods and reagent standards*, to read as follows:

S6.14 *Container information.* Each container with information marked directly on the container surface or on a label (labels) affixed to the container pursuant to S5.2.2.2 or S5.2.2.3 is subjected to the following procedure:

(a) If the container has a label affixed to it, make a single vertical cut all the way through the label with the container in the vertical position.

(b) Immerse the container in the same brake fluid or hydraulic system mineral oil contained therein for 15 minutes at room temperature (23±5 °C; 73.4±9 °F).

(c) Within 5 minutes after removing the container from the fluid or oil, remove excess liquid from the surface of the container by wiping with a clean dry cloth.

Issued on June 23, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-14515 Filed 6-27-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Regulations Governing the Marking, Tagging, and Reporting of Marine Mammals for Alaskan Natives

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby amends 50 CFR Part 18 to establish marking, tagging, and reporting regulations as authorized under section 109(i) of the Marine Mammal Protection Act of 1972 (Act), as amended. Under section 101(b) of the Act, Indians, Aleuts, and Eskimos residing in Alaska and dwelling along the coast of the North Pacific or Arctic Oceans may take marine mammals for subsistence or handicraft purposes. This action implements a 1981 amendment to the Act and will assist the Service in monitoring the subsistence and handicraft harvest of polar bear, walrus, and sea otter, and in obtaining essential biological data needed to manage these marine mammal species or stocks. The action should also help control the illegal take, trade, and transport of specified raw marine mammal parts.

EFFECTIVE DATE: October 26, 1988. Comments will be accepted on the final rule until August 12, 1988.

ADDRESS: Comments on the final rule may be mailed to the Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Jon R. Nickles, Supervisor, Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3492.

SUPPLEMENTARY INFORMATION: The Act (16 U.S.C. 1361-1407), as amended, was enacted for the purpose of ensuring the long-term survival of marine mammals by establishing a Federal responsibility for their management and conservation. The Act imposed a general moratorium on the taking of marine mammals. However, under section 101(b), it did allow the non-wasteful taking of marine mammals by Alaskan Natives (i.e., Indians, Aleuts, and Eskimos residing in Alaska and dwelling on the coast of the Arctic or North Pacific Oceans) for subsistence purposes or for purposes of creating and selling authentic Native articles of handicrafts and clothing. The Act also assigned management responsibility to the Secretary of the Interior (Secretary), for the protection and conservation in Alaska of polar bear (*Ursus maritimus*). Pacific walrus (*Odobenus rosmarus divergens*), and northern sea otter (*Enhydra lutris lutris*) in addition to certain other marine mammals not found in Alaska and, therefore, not considered or included in this final rulemaking.

The Act specifically provided that: (1) Alaskan Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans could take marine mammals for subsistence purposes or for purposes of creating and selling authentic Native articles of handicrafts and clothing if such taking was non-wasteful and the species was not depleted; and (2) the Secretary could, upon the determination that any species or stock of marine mammal subject to taking by Alaskan Natives was depleted, prescribe regulations upon such taking by Alaskan Natives.

The Congress, on October 9, 1981, amended the Act with the passage of Pub. L. 97-58 that, among other things, added section 109(i). This Section authorized the Secretary, "* * * (after providing notice thereof in the **Federal Register** and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such area) [to] prescribe regulations requiring the marking, tagging, and reporting of animals taken pursuant to section 1371(b) [the Alaska Native exemption for subsistence and handicraft takings]."

Section 109(i) was enacted to enable the Secretary to gather sufficient data on the harvest and biology of marine mammals taken by Alaskan Natives to determine what effect such taking was having on these populations. It was also designed to provide the Secretary with a means of monitoring the disposition of this harvest to ensure that any commercial use of marine mammal products met the criteria set forth in section 101(b)(2) of the Act.

The Service recognizes that certain other taking of polar bear, walrus and sea otter is authorized by the Act (e.g., unintentional take of small numbers incidental to specified activities and take by permit for scientific research or public display). This final action deals only with the provision in the Act that exempts legal taking of polar bear, walrus, and sea otter by Alaskan Natives under conditions already described. It implements section 109(i) of the Act, as amended in 1981, by amending 50 CFR Part 18—Marine Mammals, Subpart C—General Exceptions, Section 18.23—Native Exceptions, through the addition of Paragraph (f)—Marking, tagging, and reporting.

On December 3, 1985, the Service published a proposed rule in the **Federal Register** (50 FR 49577) to implement section 109(i) of the Act. It solicited comments on the proposed regulations for marking, tagging, and reporting of marine mammals taken by Alaskan Natives. The original public comment period occurred from December 3, 1985, through March 3, 1986, but was extended through March 31, 1986, (51 FR 10243) to accommodate requests made by some Native villages.

To assist the public in hearing about, and understanding, the proposed rule, the following groups were contacted:

1. Eskimo Walrus Commission.
2. North Slope Borough Fish and Game Management Committee.
3. Mayors of the North and Northwest Alaska Conference.
4. All coastal Alaska village corporations.
5. All coastal Alaska village mayors.
6. Known walrus boat captains in Gambell, Savoonga, Little Diomede, Nome, Wales, and King Island.
7. Polar bear hunters that had taken a bear between 1979 through 1985 for whom addresses were known.
8. Natives known to be interested in taking sea otters in Alaska.
9. Environmental groups.
10. Individuals dwelling along the coast of Alaska.
11. Federal and State agencies.

In recognition of the unique logistical and communication problems in rural Alaska, over 1,500 copies of the proposed rule were mailed to the above

groups and individuals. Likewise, about 1,000 copies of a brochure explaining the proposed rule, and providing a postage free response, were mailed to village corporations and mayors for distribution to constituents. A news release was mailed to all newspapers, radio and television stations, and other media outlets in Alaska. Interviews for radio broadcast were held in Barrow, Nome, and Kotzebue. Public meetings were held in 32 locations in Alaska. A public teleconference was also held for the villages of Kaktovik, Barrow, Wainwright, Point Hope, and Kivalina.

Summary of Public Comments and Service Responses

The 575 people who attended the Service's 32 public meetings made a recorded 560 comments. Fifty-three written or telephone responses were also received. The most prevalent questions or comments concerned: Who must mark, tag, and report an animal or specified parts; who will mark or tag an item; how an item will be marked or tagged; penalties for not marking, tagging, and reporting; the 30-day time period for marking, tagging, and reporting beach-found walrus ivory; the 180-day time period for marking and tagging specified parts taken or possessed between December 21, 1972, (the effective date of the Act) and the effective date of the final rule; marking, tagging, and reporting requirements of registered agents; and general opposition to the proposed rule.

As a result of the review process, the Service has made several changes to the final rulemaking; these are discussed in detail elsewhere in this preamble. The Service has deleted the list of villages that appeared in the proposed rule, added sea otter skulls as an unhandicrafted specified part to be marked and tagged, added a requirement that items of research be returned to the Service at the time when an animal is reported, and clarified that criminal and seizure of parts provisions, in addition to a civil penalty, were applicable for violating this regulation. Registered agents/tanneries are also being required to mark and tag the specified parts in their possession. The Service is also requiring that sex identifiers remain attached or accompany the skins of marine mammals when presenting animals for marking, tagging, and reporting purposes. A clarification was made in the final rule that the specified parts that are required to be marked and tagged must be raw or unhandicrafted at the time they are presented for marking and tagging purposes. The marking, tagging, and reporting of beach-found and floating dead animals, and their specified parts, was clarified in the final rule. The title of the final rule was also changed from "reporting and sealing" to "marking, tagging, and reporting" so that it was consistent with the terminology used in the Act. To be consistent with the stated purposes and intent of the regulation it was clarified in the final rule that the specified parts must be taken and presented for marking and tagging to make legal the possession of any other parts from that mammal.

A commenter inquired why an Environmental Impact Statement was not completed for the regulations. The Service, after preparation of an environmental assessment, determined that the final rulemaking implementing a specific 1981 amendment to the Act concerning marking, tagging, and reporting is not a major Federal action significantly affecting the quality of the human environment in the context of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the completion of an Environmental Impact Statement on this rule is not required.

Many reviewers were concerned about an undue burden the rule may impose on Natives that have to travel long distances to reach Service personnel or an authorized local representative for marking, tagging, and reporting. The Service's intent is not to put an unreasonable economic or logistic burden on Natives taking marine mammals and having to present them, or specified parts thereof, for marking, tagging, and reporting. As such, there will either be a Service person that visits villages, periodically, or upon request, or an authorized local representative will be available full-time in villages for the purposes of marking, tagging, and reporting of marine mammals. Under this arrangement, Natives should not have to leave their villages for the purposes of marking, tagging, and reporting of walruses, polar bears, and sea otters.

Several commenters suggested the Service delete the list of 57 villages identified in the proposed rule. These villages were to have had a Service employee or an authorized representative to implement the marking, tagging, and reporting process. The concern was expressed that any change to the list would result in further and lengthy rulemaking procedures. The Service accepts this suggestion and has deleted the list of villages in which Service personnel or an authorized local representative will be located. Additionally, the Service, in response to a further suggestion, will provide annual notice regarding which villages will either be assisted full-time or periodically by Service personnel or which will be serviced by an authorized local representative. Notice of the designated locations will be provided through news media of general circulation and other appropriate means. This action to delete the list of villages will allow the Service to be responsive to local needs in a more timely fashion.

Many commenters questioned how marking, tagging, and reporting would be accomplished and who would be responsible for that task. The Service or the Service's authorized local representative will be responsible for attaching the mark, tag, or other marking devices on the specified parts and for receiving the harvest information and completing the report. Since several marking and tagging techniques will be field tested during the initial implementation period, the devices and techniques may change over time. Generally, plastic or metal tags and other marking devices or techniques will be used to mark and tag the specified parts. If tags or marks come off the specified parts, they must be replaced with a new tag or mark and the broken tag or other marking devices must be returned to the Service.

Many reviewers expressed concern that the proposed 30-day time requirement was insufficient for having their marine mammal, or specified unhandicrafted parts thereof, marked, tagged, and reported. Again, the Service intends to assist some locations full-time, periodically or upon request visit villages that harvest few marine mammals, or maintain an authorized local representative in villages to mark, tag, and receive reports. As such, the Service believes the 30-day reporting requirement will not be an unreasonable burden on Natives taking marine mammals. The Service is concerned that the data gathered be as factual and accurate as possible. Lengthening the reporting period may diminish the accuracy of the data and, therefore, is not consistent with the purposes of this rule.

Many reviewers inquired about penalties that could be imposed on those who do not comply with this regulation. Likewise, other commenters inquired as to how the Service was going to get Natives to participate in the program. The Service understands that there needs to be a great deal of cooperation and information exchange between Natives and itself to effectively implement the regulations. The Service also recognizes that, during the initial implementation of these regulations, a

prudent law enforcement policy must consider extenuating circumstances when determining the appropriateness of a penalty assessment. Penalties for not adhering to the regulatory requirements of the Act can be severe and the Service, therefore, encourages hunters to fully participate. Further, and in a more positive sense, the better the harvest information derived from the marking, tagging, and reporting program becomes, the better the Service will be able to fine-tune any necessary management programs should stocks become depleted. Civil penalties for violation of the provisions of this regulation are provided for in section 105(a)(1) of the Act. Any person violating any regulation issued under the auspices of the Act may be assessed a civil penalty of not more than $10,000 for each violation. Although section 105(b) of the Act provides that criminal convictions can result from violations of regulations issued under the Act, it is not the Service's intention to refer violations of these marking, tagging, and reporting regulations to the Justice Department for criminal prosecution. Nor do these regulations provide for the forfeiture penalty under section 107 of the Act for marine mammal parts that are retained in violation of this final rule. The Service believes that the potential sanction of civil penalty assessments will be adequate to assure compliance with the marking, tagging, and reporting regulations. If future experience under this rule indicates that the civil penalty provision is not adequate to stimulate compliance, then the Service may have to consider proposing the use of the criminal penalty and forfeiture provisions of the Act as remedies to enforce adherence to these rules. It should be well understood that the preceding discussion applies only to the imposition of penalties for violations of these rules. If an individual is engaged in the unlawful taking or sale of a marine mammal, or commits any other violation of the Act or the current regulations in 50 CFR Part 18, the Service may seek the imposition of criminal penalties and forfeiture.

One commenter suggested that the subparagraph on "definitions" be moved to the beginning of the rule because the terms defined were used prior to the definition section in the proposed rule. The Service accepts this suggestion and has moved the definitions to the beginning of the final rule. In addition, the term "marking and tagging" was clarified to indicate that it was the raw and unhandicrafted (including tanned skins in the context of the 180-day reporting requirement) specified parts that were to be presented for marking and tagging purposes.

One commenter took exception to the Service's statement that the Act exempts from taking prohibitions Alaskan Natives that dwell along the coast of Alaska because it did not include the Act's provision that Natives must also reside in Alaska. The text of the rule has been changed to indicate the Act's Alaska residency requirement.

A commenter requested that the data generated by this rule be made available annually to the public and set forth in the Service's annual report to Congress as required by section 103(f) of the Act. The Service accepts this recommendation and will put the data in its annual report and will, to the maximum extent practical, make the data publicly available.

Several commenters were concerned that beach-found ivory collected by Natives was not required to be marked, tagged, or reported, while others wondered if the Service was going to distinguish between beach-found and hunter-killed animals and ivory. The proposed regulations did not, in fact, require Natives to report or distinguish beach-found animals and ivory. Also, the need to report animals that are found floating dead in the water was not clear. Consequently, two components of the walrus mortality would not be marked, tagged, and reported and the accuracy of the known mortality and harvest data would be diminished. Likewise, a component of the ivory entering the marketplace would be unmarked and it would be difficult to determine if such ivory was obtained illegally. Requiring all ivory that has been taken or collected pursuant to the Alaskan Native exemption to be marked will simplify enforcement efforts of the Service. The Service understands these concerns and has modified this final rule to require that Natives must present and distinguish between beach-found, hunter-taken, and floating dead animals and ivory for marking, tagging, and reporting purposes. Current regulations concerning beach-found ivory collected by non-Natives are found in 50 CFR 18.26, "Collection of certain dead marine mammal parts." These regulations allow non-Natives to collect and retain beach-found ivory if that ivory is registered within 30 days with an agent of either the Service or the National Marine Fisheries Service. Registration includes the name of the owner, a description of the item, and the date and location of collection. Additionally, title to parts collected and registered under 50 CFR 18.26 is not transferable unless consented to in writing by the agent. The Service believes the regulations at 50 CFR 18.26 provide adequate controls for non-Native beach-found ivory and this is not included in this final rulemaking.

Several commenters inquired if registered agents, i.e., people authorized to procure marine mammal parts from Natives and transfer or resell them to other Natives or registered agents, were required to mark and tag their ivory. The proposed rule did not require registered agents/tanneries to mark and tag specified parts. However, the Service now recognizes that, without covering current inventories of raw marine mammal parts possessed by registered agents/tanneries, a component of the ivory trade would go unmarked, making it difficult for the Service to determine if ivory was entering the marketplace illegally. Consequently, the Service has revised the final rule to reflect that registered agents/tanneries are required to present the ivory, skulls, and skins of sea otters, walruses, and polar bears in their possession for marking and tagging purposes within 180 days from the effective date of this rulemaking. Therefore, all ivory taken or collected by Alaskan Natives is required to be marked. There will be no reporting requirement for these skulls, ivory, or skins.

A few commenters requested that the skulls of sea otters, in addition to the hide, and the skulls of walrus be marked or tagged so information on the age structure of the harvest can be gathered. The age structure of harvested polar bears, sea otters, and walrus is important management information and can be estimated as a result of tooth analysis. The Service accepts the suggestion to require the skulls of sea otters to be presented for tagging. A rudimentary pre-molar may also be extracted and retained by the Service for the purpose of age analysis, but sea otter skulls will not be retained by the Service. The Service, however, will not require walrus skulls to be marked because of the unreasonable imposition it would place on Native hunters to do so. As it has done in the past, the Service may continue to acquire walrus teeth from hunters for age analysis.

Several commenters questioned the need to mark and tag fossilized ivory. The Service is not requiring that fossilized ivory be marked or tagged. Accurate estimates of the harvest of walrus would not be enhanced by marking or tagging fossilized ivory and it is questionable if such ivory is subject to provisions of the Act. However, fossilized ivory is regulated under either the Archeological Resources Protection

Act of 1979 and Antiquities Act of 1906 if located on Federal lands, the Alaska Historic Preservation Statute if located on State lands, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora if exported. Fossilized ivory found on private lands is presently unregulated.

Several commenters expressed concern about which individual is responsible for presenting for marking, tagging, and reporting purposes walrus and the ivory taken by a group of hunters operating from one boat. Depending on the village, animals and the ivory may not be divided until the end of the spring or other hunting season, which may last longer than 30 days. For animals, and specified parts thereof, that are periodically divided within the 30-day reporting period, the Service will require the person taking or participating in the taking of the animal and who possesses the specified parts to be responsible for presenting to the Service or authorized local representative for marking, tagging, and reporting purposes the animals, or specified parts thereof, within the 30-day period. For example, if a crew of hunters in one boat takes several walrus and divides the animals, or parts thereof, at the end of a one-day or multi-day hunt (but within the 30-day period), each individual hunter who participated in the taking must report those animals attributed to him/her and present for marking, tagging, and reporting purposes those parts in his/her possession. However, if the animals, or specified parts thereof, are not divided until the end of a hunting season lasting longer than 30 days, then the boat captain would be considered as the person taking or who participated in the taking and who possesses the animals and parts thereof, and therefore the boat captain must report the taking and present the parts for marking, tagging, and reporting purposes within the 30-day period.

Several commenters questioned if an Alaskan Native who harvests a sea otter, polar bear, or walrus must be the one who presents the animal, or specified parts thereof, for marking, tagging, and reporting purposes. The concern was for Natives or registered agents/tanneries who had not actually participated in the taking of the animals but had acquired the animal or specified parts from the one who did. Although the proposed rule was not clear, this final rule requires that the specific person taking or who participated in the taking of a sea otter, polar bear, or walrus and who possesses the animal and specified parts thereof, is required to report the taking as well as present the specified parts for marking, tagging, and reporting purposes. The Service believes that the accuracy of the biological and harvest data would be significantly diminished if a proxy is allowed to report the taking and present the specified parts for marking and tagging. Once the animal has been reported and the specified parts marked and tagged, the parts can then be traded, bartered, sold to, or otherwise possessed by, other Alaskan Natives or registered agents/tanneries.

Several commenters asked if an ivory tusk could be carved into handicraft items before it was marked or tagged. The final rule requires that all specified parts (skull, ivory, and skins) be marked or tagged prior to modifying them into handicrafts. Because of the intended availability of Service employees and authorized local representatives, Natives should not encounter a delay in handicrafting parts due to the marking and tagging requirements.

A commenter indicated that submitting paired tusks of an individual walrus is unrealistic because the tusks are sometimes taken without the nose plate, i.e., extracted separately, and may become separated. As such, it may be difficult to ensure tusks are accurately paired. The Service understands such difficulties and requires that tusks are paired to the maximum extent practical. The Service believes that submitting the tusks in pairs will help reduce the likelihood of double counting harvested walrus; such double counting would diminish the accuracy of the harvest data.

A few commenters were concerned about adequate funding for implementing the new rule. The Service considers this rule to be an important management tool and intends to ensure an appropriate level of funding

Several commenters asked if marine mammal teeth, bones (including bacula), and other unspecified parts must be marked and tagged under the rule. The Service only requires polar bear and sea otter hides and skulls, and walrus tusks to be marked and tagged because animals are not normally taken specifically for other parts, and the other parts are not entering the market place to a significant extent.

One individual commented that walrus hunters should forget the ivory and only bring home the meat. While it is unlikely to happen very often, the Service recognizes that the possibility exists that specified parts of harvested polar bear, walrus, and sea otter might not be collected and provided for purposes of marking, tagging, and reporting because said animals were killed only for their meat or other nonspecified parts. Any such instances would weaken the intent of, and purpose behind, this implementing regulation. Therefore, the final rule has been clarified to indicate that no marine mammal, or any parts thereof, taken pursuant to section 101(b) of the Act, can be lawfully transported (except for reporting purposes) or exported unless and until the specified parts thereof have been presented for marking, tagging, and reporting. Possession of such parts is unlawful if the marine mammal or specified parts are not presented for marking, tagging, and reporting within 30 days of the date of taking. Using the commenter's statement, therefore, an Alaskan Native who harvests a walrus for its meat may retain the meat lawfully so long as the tusks are presented for marking, tagging, and reporting purposes under this rule. Once this rule is complied with, the Native need not retain the marked ivory in order to validate his/her continued possession of the meat. The Service recognizes that walrus calves are taken for meat and, depending on age, may not have tusks to mark. In such cases the hunter would be required to report the harvest of the animal.

A commenter wanted to know who had the burden of proof for establishing the date of take in the context of compliance with the 30- and 180-day reporting periods. If an issue arises as to whether the regulations have been followed, the Native that took or participated in the taking of the animal and who possesses the animal, or specified parts thereof, or the registered agent/tannery in the case of parts in their possession, has the burden of establishing the date of taking or possession in the context of the 30- and 180-day reporting periods.

Several commenters questioned the Service's need for reporting information on caliber of rifle and mode of transportation used during the take. The Service believes such information is not at this time important to achieving the specified purposes of the rule which is to collect information on the level of harvest, the biology (sex and age) of animals taken, and the effect of the harvest on the populations. Although the requirement for reporting information on rifle caliber and transportation has been deleted in the final rule, the collection of such information has been authorized by the Office of Management and Budget and may be collected on a voluntary basis.

Some commenters asked when the regulation would go into effect. Another

commenter recommended that a public education program be developed regarding the Native take provisions of the Act and this regulation. This final regulation will be effective 120 days after its publication in the **Federal Register**. This will give the Service adequate time to coordinate the final regulations with, and develop educational materials for, Native organizations, people in villages, and other interested persons. It will also give the Service time to complete an implementation plan, hire personnel, obtain tags, and complete/print reporting forms.

Several commenters requested that the Service hire local residents to be the Service's authorized local representatives for the purposes of marking, tagging, and reporting of animals, or specified unhandicrafted parts thereof. The Service intends to implement this rule by hiring local residents, to the maximum extent practical, to act as the Service's authorized local representatives.

A commenter requested that the regulations be translated into Inupiat. The Service does not routinely translate its materials into Native languages; however, they do when there is a real or perceived need. Alaskan Natives include many races, about 20 languages, and numerous dialects. The languages and dialects are so different that conversation is at least difficult if not impossible between races and villages. Natives in many villages are bilingual, although elders in the more remote villages speak English with difficulty. Because Native languages were spoken languages and only recently have some written versions been created, elders may have more difficulty in reading their language than understanding English. Consequently, the Service sees little usefulness in translating the regulations but will make every effort to use translators during spoken educational programs concerning these regulations.

A few commenters were concerned about how the harvest information would be used and that this regulation would either inhibit or increase the take of marine mammals. Again, the purposes of the regulation are to monitor the harvest, collect biological information, and determine the effects of taking on sea otter, polar bear, and walrus populations. The regulation will also be used to help control the illegal take and trade of specified parts. There is no intent or purpose in these regulations to either inhibit or increase the level of harvest of animals, or to use the information to allow sport hunting, setting of quotas, or for non-wildlife conservation purposes.

A commenter indicated that there was no need to implement this rule because the harvest information could be collected on a voluntary basis. The Service has operated a small-scale and voluntary harvest monitoring program for walrus and polar bear since 1980. The voluntary program worked well in some locations and poorly in others. Although the Service marked and tagged polar bear hides and skulls, walrus ivory and sea otters and their parts have never been marked, tagged, or monitored by the Service. The goal of the Service concerning these regulations is threefold: to collect harvest information systematically; to get an accurate account year-round of the total harvest of animals; and to mark and tag the parts of marine mammals entering the marketplace to assist in reducing illegal trade of such parts. Although the Service's voluntary monitoring program has met with some success in the past, we believe that mandatory reporting and a more systematic data collection effort as required by these regulations will produce a more accurate account of the year-round harvest of walrus, polar bear, and sea otter and of the parts entering the marketplace.

A few commenters asked if the Service was going to require evidence, when parts are presented for marking, tagging, and reporting purposes, that the individual is a Native. The Service, as a matter of routine, does not require such evidence. When the Service investigates possible violations of the Act and its implementing regulations, the burden is on the person being investigated to prove he/she is an Alaskan Native eligible to participate in taking of marine mammals under section 101(b) of the Act.

A commenter asked if State-tagged or partially handicrafted ivory needed to be marked, tagged, and reported. ("State-tagged" ivory refers to walrus ivory taken or collected during the period in which marine mammal management authority was transferred to the State of Alaska for walrus, *i.e.*, April 1976 through July 1979). Since the parts are already altered or have been tagged and accounted for by the State, the Service will not require either to be marked, tagged, or reported.

An individual asked if the Service would allow Natives to vote for or against the regulations. Another commenter thought that the Service was exceeding its authority in implementing the regulations. First, Congress specifically authorized the program of reporting harvest information and, as such, the Service has not exceeded its authority. Secondly, regulations are not voted on but rather are implemented at the discretion of the Secretary of Interior as guided by the Act. As previously documented, the Service went through a lengthy and involved process to obtain the opinions of many persons concerning the proposed regulations. Additionally, the Service does not believe it is necessary to produce a second set of proposed regulations as there were no significant or substantial changes between the proposed and final regulations.

A few commenters were concerned that the regulations only covered "legally" taken animals. The Service acknowledges this shortcoming in the proposed regulations and has revised the final rule to cover any polar bear, walrus, and sea otter taken or collected for subsistence or handicraft purposes. This clarification is consistent with the Service's goal of getting the best possible information on the total level of subsistence and handicraft harvest of marine mammals. It is emphasized the act of marking and tagging the specified parts of a marine mammal under the provisions of this rule does not legalize the continued possession of such parts if the mammal had been unlawfully taken.

A commenter was confused by the proposed provisions requiring a person either to report within 30 days or to "tender immediately" an animal or specified parts thereof. The Service agrees and has deleted the requirement to "tender immediately" an animal or part for reporting, or marking and tagging purposes. The 30- and 180-day requirements remain unchanged from the 1985 Proposed Rule.

One commenter asked about monetary rewards for providing the information required by this regulation. Although the Service has paid, at times, for the acquisition of walrus teeth, reproductive tracts, stomachs, and other items used in research projects, the Service will not be paying for harvest information required by these regulations.

A few commenters inquired if this new regulation would provide economic opportunities to Natives and villages. The purpose of the regulation is to gather information concerning the harvest, biology and the effects of taking on marine mammal populations. There was no Congressional intent to provide economic opportunities to the villages. However, because the Service will be hiring authorized local representatives to the maximum extent practical, the implementation of this regulation may

have a small positive impact on local village economies.

Some commenters asked if the proposed rule would have any bearing on the State's resumption of management. This regulation has no bearing on the transfer of management to the State because the State has no obligation to continue this marking, tagging, and reporting program should they resume management in the future; however, the State did have a similar program when they managed marine mammals.

A new paragraph (8) in the final regulation calls for the return to the Service of equipment and other items used for research purposes and attached to animals taken by Natives. The Service expects Natives to return such federally-owned research equipment when reporting animals and presenting specified parts for marking and tagging purposes. This new provision is inserted to provide notice of the Service's continued ownership interest in this research equipment. The Service does not intend to assess penalties under the authority of the Act if violations of this paragraph occur. However, penalties may be pursued under other applicable Federal laws.

Description of the Final Rule

The regulations contained in 50 CFR Part 18 implement the Act (16 U.S.C. 1361–1407), as amended. Under the terms of this Act, the Secretary of the Interior is authorized to prescribe regulations requiring the marking, tagging, and reporting of polar bear, walrus, and sea otter taken by Indians, Aleuts, and Eskimos residing in Alaska and dwelling along the coast of the North Pacific or Arctic Oceans for subsistence purposes or for purposes of creating and selling authentic Native articles of handicrafts and clothing. This final rule implements this marking, tagging, and reporting provision.

The Service believes that mandatory polar bear, walrus, and sea otter marking, tagging, and reporting regulations must be established, as described herein, to provide harvest and biological data on marine mammals taken by Alaskan Natives to assist the Service in assessing the population dynamics of these species or stocks and to help in controlling the illegal take, trade, and transport of specified raw marine mammal parts.

The need for this rule relates to the Act itself that exempted the non-wasteful taking, generally without restriction, of polar bear, walrus and sea otter by any Indian, Aleut, or Eskimo residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans. The Act limits the Department of the Interior, through the Service, in its authority to regulate this harvest until after a species or stock is found to be depleted. Current attempts to measure the harvest of polar bear and walrus are inadequate. There is little information on the take of sea otters. Mandatory marking, tagging, and reporting is considered essential to improve the Service's management decisionmaking and the quality and quantity of harvest and biological data upon which future management decisions will be based.

When implemented, this rule will require, no later than 30 days from the date of taking, mandatory marking, tagging, and reporting of polar bear, walrus, and sea otter, or specified unhandicrafted parts thereof, taken by Alaskan Natives. Reporting will require that the date of take, sex of animal, and location of take or location of the animal if beach-found or found floating, be provided to, or collected by, a Service employee or an authorized Service representative on approved forms provided by the Service. Marking and tagging will require the attachment of an approved tag or the use of some other marking devices or materials to the specified unhandicrafted parts.

An exception to the 30-day reporting period is provided for the marking and tagging of polar bear, walrus, and sea otter, or specified unhandicrafted parts thereof, if taken between December 21, 1972 (the effective date of the Act), and the effective date of this regulation. The maximum 180-day period for marking and tagging provided by this exception is intended to allow those Natives and registered agents/tanneries in possession of specified raw and unhandicrafted marine mammal parts (including tanned skins) legally taken since enactment of the Act reasonable time to present the unhandicrafted parts for marking and tagging purposes. The retroactive effect of this provision is considered essential to reduce and control the illegal take, trade, and transport of specified raw and unhandicrafted marine mammal parts. While this provision requires that all specified unhandicrafted parts of polar bear, sea otter, and walrus (harvested between December 21, 1972, and the effective date of this regulation) be presented for marking and tagging purposes within 180 days upon implementation of this regulation, the Service will not require that: (1) Specified unhandicrafted parts from a given animal be presented together for marking and tagging purposes; and (2) Alaska Natives and registered agents/tanneries report information on sex, location of take, and date of take of such animal(s). Any data gathered about animals taken that long ago would likely not be accurate and have little value for statistical and management purposes.

Required Determinations

Based on a review and evaluation of the information contained in an Environmental Assessment completed by the Service, it has been determined that this final rule implementing a specific 1981 amendment to the Act concerning the marking, tagging, and reporting of certain marine mammals taken by Alaskan Natives is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on this rule is not required.

Based on the information contained in the Determination of Effects of Rule completed by the Service, the Department of the Interior (Department) has determined that this is not a major rule and does not require preparation of a regulatory impact analysis under Executive Order 12291.

The Department has also determined and certified that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The only foreseeable economic impact resulting from this rule is travel expenses incurred by hunters to comply with the rule. Since the Service expects to have its personnel or authorized local representatives stationed in, or available to all villages in which marine mammals are harvested, such costs to the public are expected to be minimal.

The Environmental Assessment and the Determination of Effects of Rule are on file and available for public inspection during regular business hours of 8:00 a.m. to 4:30 p.m. in the Office of Public Affairs, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. Copies may also be requested in writing from this address.

Information Collection Requirements

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0066. The information to be collected is needed to assist the Service in monitoring the harvest of polar bear, walrus, and sea otter, and in obtaining essential biological data needed to improve the

management of these marine mammal species or stocks. The information should also assist in controlling the illegal take, trade, and transport of specified marine mammal parts. The marking, tagging, and reporting is mandatory to legally possess, transport or export marine mammals or specified parts thereof.

This final rule was prepared by Kenton D. Wohl, Chief, Marine and Coastal Resources, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, and 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 amends 50 CFR Part 18 as shown below.

PART 18—[AMENDED]

1. The authority citation for 50 CFR Part 18 is amended to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Amend 50 CFR Part 18—Marine Mammals, Subpart C—General Exceptions, § 18.23 by adding paragraph (f)—Marking, tagging, and reporting, as follows:

§ 18.23 Native exemptions.

* * * * *

(f) *Marking, tagging, and reporting.* (1) In addition to definitions contained in the Act, 50 CFR 18.3, and 50 CFR 18.27, in this paragraph (f):

(i) The term "marking and tagging" of marine mammals as specified in section 109(i) of the Act refers to the actual physical attachment of an approved band or other such marking device or technique to the raw or unhandicrafted (including unmarked tanned skins) skin and skull of polar bears, the tusks of walruses, and the skin and skull of sea otters; and

(ii) The term "reporting" means the collection by Service personnel or the Service's authorized local representatives of biological data, harvest data, and other information regarding the effect of taking of marine mammals on populations, the collection of which the Service determines to be necessary for management purposes. Reporting will be done on forms provided by the Service upon presentation for marking, tagging, and reporting purposes of the marine mammal(s) or specified raw or unhandicrafted parts thereof.

(2) Notwithstanding the preceding provisions of this section, but subject to the provisions and conditions contained in this paragraph, no polar bear, walrus, or sea otter, or any parts thereof, taken or collected by an Alaskan Native for subsistence purposes or for purposes of creating and selling authentic Native articles of handicrafts and clothing may be possessed, transported within, or exported from Alaska unless the animal(s), or specified parts thereof, have been reported to, and properly marked and tagged by, Service personnel or the Service's authorized local representative; except:

(i) An Alaskan Native that harvested or participated in the harvest of a polar bear, sea otter, or walrus and who possesses the animal, or any parts thereof, may possess the unmarked, untagged, and unreported animal(s), or parts thereof, for a period of time not to exceed 30 days from the time of taking for the purpose of transporting the specified parts to Service personnel or the Service's local authorized representative for marking, tagging, and reporting;

(ii) Alaskan Natives and registered agents/tanneries may possess the specified unmarked or untagged raw, unhandicrafted, or tanned parts thereof for a period of time not to exceed 180 days from the effective date of this rulemaking for the purpose of transporting to Service personnel or the Service's local authorized representative for marking and tagging if the specified parts thereof were taken or possessed between December 21, 1972, and the effective date of this regulation. There is no reporting requirement for marine mammals, or specified parts thereof, covered by this paragraph.

(3) Those unmarked, untagged, and unreported specified parts of polar bear, walrus, and sea otter, that must be presented to Service personnel or an authorized Service representative for marking, tagging, and reporting are as follows:

(i) Polar bear—skin and skull.

(ii) Walrus—tusks.

(iii) Sea otter—skin and skull.

(4) The locations where Service personnel or the Service's authorized local representative will be available for marking, tagging, and reporting purposes will be announced annually by the Alaska Regional Director. Local persons authorized to act as representatives for marking, tagging, and reporting purposes in the absence of Service personnel will also be announced annually by the Alaska Regional Director.

(5) Marks and tags will be attached or applied to the skins, skulls, and tusks of the marine mammal(s) in such a manner as to maximize their longevity and minimize their adverse effects to the appearance of the specified parts that might result due to hindering the tanning or handicrafting of skins, or the handicrafting of tusks or skulls. If the tag or mark comes off of the specified part the person in possession of the part shall have 30 days to present the part and broken tag or other marking device to the Service or the Service's authorized local representative for remarking or retagging purposes.

(6) Marks and tags for skins, skulls, and tusks will be provided by the Service. They will be numbered for accountability and of such design, construction, and material so as to maximize their durability and longevity on the specified parts.

(7) Data collected pursuant to this paragraph will be reported on forms provided by the Service and maintained in the Service's Regional Office, Anchorage, Alaska. The Service will summarize the data annually and make it publicly available. The data will also be included in the Service's annual report to Congress as set forth in section 103(f) of the Act.

(8) All items of research (e.g., radio collars, satellite transmitters, tags, etc.) that were attached to animals taken by Alaskan Natives must be returned to Service personnel or an authorized Service representative at the time the animal, or specified unhandicrafted parts thereof, are presented for marking, tagging, and reporting. No penalty will be imposed under the Act for a violation of this paragraph. However, penalties may be sought by the Service under other applicable Federal laws governing the possession and use of Federal property.

(9) Pursuant to this paragraph (f), the following specific conditions and provisions apply:

(i) Marking, tagging, and reporting of polar bears or specified parts thereof.

(A) The skin and skull of an animal must accompany each other when presented for marking, tagging, and reporting except that the skin and skull of an animal need not be presented together for marking and tagging purposes if taken between December 21, 1972, and the effective date of this regulation.

(B) Except as provided in paragraph (f)(2)(ii) of this section, the following information must be reported by Alaskan Natives when presenting polar bears, or specified parts thereof, for marking and tagging: sex of animal, date of kill, and location of kill.

(C) Both the skin and the skull will be marked and tagged and a rudimentary

pre-molar tooth may be removed from the skull and retained by the Service. The skin must have the sex identifiers, such as vaginal orifice, teats, or penal sheath or baculum, either attached to, or accompanying the skin.

(D) The skull must be skinned out and the skin may be frozen or unfrozen when presented for marking, tagging, and reporting. If the skin is frozen, the sex identifiers, such as vaginal orifice, teats, penal sheath or baculum, must be visible.

(E) Marks and tags must remain affixed to the skin through the tanning process and until the skin has been severed into parts for crafting into handicrafts or for as long as is practical during the handicrafting process.

(ii) Marking, tagging, and reporting of walrus or specified parts thereof.

(A) The paired tusks of the animal(s) must, to the maximum extent practical, accompany each other when presented for marking, tagging, and reporting purposes, except that paired tusks need not be presented together for marking and tagging purposes if taken between December 21, 1972, and the effective date of this regulation.

(B) Except as provided in paragraph (f)(2)(ii) of this section, the following information must be reported by Alaskan Natives when presenting walrus, or specified parts thereof, for marking and tagging: date of take, sex of animal, whether live-killed, floating-dead, or beach-found, and location of the take or location of animal if found floating and dead or beach-found.

(C) Marks and/or tags must remain affixed to the tusks until they have been crafted into a handicraft or for as long as is practical during the handicrafting process.

(iii) Marking, tagging, and reporting of sea otter or specified parts thereof.

(A) The skin and skull of an animal must accompany each other when presented for marking, tagging, and reporting, except that the skin and skull of an animal need not be presented together if taken between December 21, 1972, and the effective date of this regulation.

(B) Except as provided in paragraph (f)(2)(ii) of this section, the following information must be reported by Alaskan Natives when presenting sea otters, or specified parts thereof, for marking and tagging: date of kill, sex of animal, and location of kill.

(C) Both the skin and skull will be marked and tagged and a rudimentary pre-molar tooth may be removed from the skull and retained by the Service. The skin must have the sex identifiers, such as vaginal orifice, teats, or penal sheath or baculum, either attached to, or accompanying the skin.

(D) The skull must be skinned out and the skin may be frozen or unfrozen when presented for marking, tagging, and reporting. If the skin is frozen, the sex identifiers, such as vaginal orifice, teats, or penal sheath or baculum, must be visible.

(E) Marks and tags must remain affixed to the skin through the tanning process and until the skin has been severed into parts for crafting into handicrafts or for as long as is practical during the handicrafting process.

(10) No person may falsify any information required to be set forth on the reporting form when the marine mammal(s), or specified parts thereof, are presented as required by these regulations.

(11) Possession by any person of marine mammal(s), or any parts thereof, in violation of the provisions and conditions of this § 18.23(f) is subject to punishment under the penalties provided for in section 105(a)(1) of the Act.

(12) The information collection requirements contained in this § 18.23(f) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0066. The information is mandatory in order to have the marine mammal parts "marked and tagged," and thereby made eligible for continued lawful possession. Non-response may result in the Service determining the wildlife to be illegally possessed and subject the individual to penalties under this title.

Date: June 8, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–14495 Filed 6–27–88; 8:45 am]

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50 CFR Part 20

Migratory Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots, and Certain Other Species in the 1988–89 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The use of lead shot in waterfowl hunting poses an unnecessary risk to certain migratory birds because when the spent shot is consumed it often produces lead poisoning and death. Accordingly, this proposed rule describes the zones in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1988–89 season. The zones described consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of Title 50 of the Code of Federal Regulations (50 CFR) for the 1987–88 hunting season, (2) the added counties identified for 1988–89 in Appendix N of the Final Supplemental Environmental Impact Statement (SEIS) on the Use of Lead Shot for Hunting Migratory Birds in the United States (see Table 1 in Supplementary Information) and (3) those additional areas identified by the States where acceleration of the nontoxic shot phase-in schedule is considered appropriate because of potential administrative, enforcement and/or lead poisoning problems. States that have declared a statewide ban on the use of lead shot for waterfowl and coot hunting are so noted. Additionally, this rule amends existing regulations to include: (a) The United States territorial waters beyond State boundaries, the State of Alaska, and the Commonwealths of Puerto Rico and the Virgin Islands in the nationwide ban on the use of lead shot for waterfowling and (b) redefinition of terms to incorporate the concept of multiple species in the 50 CFR aggregate bag definition. The proposed requirement regarding the use of nontoxic shot for taking captive-reared mallards in nontoxic shot zones will be addressed in a separate final rulemaking.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240 (202/254–3207).

SUPPLEMENTARY INFORMATION: This rule implements the second year (1988–89) of the 5-year component of the strategy to phase-in a nontoxic shot requirement for waterfowl hunting nationwide by 1991–92, as set out by the preferred alternative of the Final SEIS on the Use of Lead Shot for Hunting Migratory Birds in the United States published in June 1986 (FES 86–16). The SEIS and consequent rulemakings imposing nontoxic shot requirements result from the Secretary of the Interior's responsibilities under the Migratory Bird Treaty Act (MBTA), as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755), and the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), to decide whether, where and how migratory bird hunting will be allowed. A critical element in the

Department of the Interior's deliberations and decision to implement and enforce regulations establishing nontoxic shot zones nationwide has been the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds.

Information detailing the scientific basis for concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot, appears in the SEIS and the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987–88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for that proposed rule was published, as noted above, in the **Federal Register** on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII_3), the June 27, 1986, proposed rule and in the Record of Decision confirming the preferred alternative and published in the **Federal Register** on August 20, 1986 (51 FR 29673). Additional information relating to the imposing of nontoxic shot zones nationwide, according to the 5-year schedule, is contained in the final rule for the 1987–88 waterfowl hunting season published in the **Federal Register** on Tuesday, July 21, 1987 (52 FR 27352).

Counties scheduled to convert in their entireties to nontoxic shot in the 1988–89 waterfowl season are those counties having had an average annual waterfowl harvest of 15 or more per square mile over the 10-year period 1971–80 (see reference, Table 1). As scheduled, approximately 73 percent of the waterfowl harvest nationwide will occur in nontoxic shot zones in the 1988–89 waterfowl hunting season. However, the conversion of many entire States ahead of the schedule is estimated to increase the percentage of the total waterfowl harvest occurring in nontoxic shot zones to be between 80 and 90 percent in this 1988–89 waterfowl hunting season.

In addition to the scheduled zones from Appendix N of the SEIS and the unscheduled zones added by the States, the Fish and Wildlife Service (FWS) is, in this rule, adding other areas that have the potential for contributing to lead poisoning in waterfowl and raptors and/or the potential for creating administrative or enforcement problems.

In the December 14, 1987, rule (52 FR 47428), comments were solicited on proposed changes for the following sections of 50 CFR, Parts 20 and 21: § 20.11, Meaning of terms; § 20.21, Hunting methods; § 20.101, Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands; § 20.102, Seasons, limits and shooting hours for Alaska; § 20.105, Seasons, limits and shooting hours for waterfowl, coots and gallinules; § 20.107, Seasons, limits and shooting hours for whistling swans; § 20.108, Nontoxic shot zones; and § 21.13, Permit exceptions for captive-reared mallards. A brief explanation of these proposed changes, relevant to this final rule, is as follows:

"Aggregate bag" was proposed to be added and the existing definitions in § 20.11 of 50 CFR were proposed to be expanded to include a species aspect to eliminate an ambiguity, this section has also been restructed and codified; § 20.21(j) was proposed to be amended to include the word "swans," that was inadvertently omitted when previously amended; in § 20.101, the FWS proposed to require nontoxic shot for the hunting of waterfowl, coots and certain other species in the Commonwealth of Puerto Rico and the Virgin Islands beginning in the 1991–92 hunting season; the proposed rule change for § 20.102 would require Alaska to convert statewide to nontoxic shot for waterfowling in the 1991–92 hunting season; the regulation change proposed for § 20.105 is to expand the nontoxic shot requirement to include all areas within the United States offshore territorial limits; the FWS proposed to update § 20.107 by adding the other States that make provisions for swan hunting and to change the hunted species' English name from whistling to tundra swan; and in § 20.108 areas were proposed to be added to the existing nontoxic shot zones.

The FWS also proposed a rule change for § 21.13, Permit exceptions for captive reared mallards, that would make the section subject to § 20.108 nontoxic shot restrictions. Because of the known interest and paucity of comment, the FWS reopened the comment period only for the permit exceptions for captive-reared mallards part of the proposed rule on March 25, 1988 (53 FR 9781). The comment period on § 21.13 closed on April 25, 1988, the § 21.13 proposal will be the subject of a separate rulemaking.

Summary of General Public Comments on the Proposed Rule

Not considering State responses, two letters of comment were received on the proposed rule (52 FR 47428) for this final rule during the 30-day comment period that ended on January 13, 1988.

In one of these two letters, the Waterfowl Habitat Owners Alliance (Alliance) objected to: (a) The converted-to-nontoxic-shot status of Imperial County, California, on the basis of conflicting local waterfowl take information and (b) further implementation of the nontoxic shot phase-in nationwide on the basis of a perceived lack of documentation for the extent and magnitude of the lead poisoning problem among waterfowl and other migratory birds. The Alliance also cited receipt of "numerous descriptions" of increased crippling through the use of nontoxic shot. The FWS has corresponded directly with the Alliance on these matters.

The FWS response to (a) is that harvest data may vary widely according to how it is gathered, when it is gathered, who gathers it, for what reasons, etc. The 1971–80 Federal waterfowl harvest data base was adopted for use with the SEIS, and the lead shot phaseout schedule, because it is the most current, long-term, scientifically collected information of that sort available. There is no reason to believe this data base is not currently reliable as an index of waterfowl take.

The comments of the Alliance with regard to (b), crippling and the appropriateness of continuing to implement nationwide a requirement to use nontoxic shot for hunting waterfowl and coots, are within the scope of earlier rulemakings. These comments will not be responded to in this final rule as they are similar, if not identical, to comments received from the general public on the proposed rule titled "Zones in which lead shot will be prohibited for waterfowl and coot hunting in the 1986–87 hunting season" of January 6, 1986 (51 FR 409), and were responded to as a preliminary final rule in Appendix O of the Final SEIS on the use of lead shot for hunting migratory birds in the United States completed in June of 1986 and announced in the **Federal Register** on June 27, 1986 (51 FR 23444), and July 11, 1986 (51 FR 25249).

The preliminary final rule referenced above (Appendix O), with comments and responses, was published as a final rule on September 3, 1986 (51 FR 31429).

Discussions pertinent to the comments of the Alliance and presented in the Final SEIS (referenced accordingly) and/or presented in the Issues section of the September 3, 1986, nontoxic shot zone rule for the 1986–87 waterfowl hunting season (51 FR 31429) are as follows:

• Arguments against the lead shot-lead poisoning connection in waterfowl and bald eagles, including situations involving shooting over fields and over deep water, observers noting absence of carcasses, perceived documentation deficiencies, etc. (see, for example, Issues 1, 2, 7 and 8 and Chapter III of the SEIS);

• Relative merits of the "hotspots" approach vs. the current phase-in strategy (see, for example, Issue 5 and Chapter II and IV of the SEIS);

• Crippling and shooting performance of lead vs. steel shot (see, for example, Issue 12 and Chapter III, page 86, of the SEIS); and

• General allegations of arbitrariness in FWS' actions to eliminate lead poisoning as a mortality factor in waterfowl and coots (see, for example, Issue 3).

In the other of the two general public letters, the National Wildlife Federation (Federation) applauded the "* * * steadfast administration of the compromise phasout plan * * *" by the FWS and gave support to the proposals to add Puerto Rico and the Virgin Islands (§ 20.101) and Federal territorial waters (§ 20.105) to the lead shot ban beginning in the 1991–92 waterfowl hunting season. However, the Federation brought to the attention of the FWS two other items. The Federation noted that: (a) The FWS is no longer constrained by Stevens amendment language to obtain the consent of States before imposing nontoxic shot zone restrictions and (b) the FWS should obtain a biological opinion on the effects of lead shot on Aleutian Canada geese, and convert Del Norte County, California, to nontoxic shot status this current hunting year.

In response to (a) above, the FWS concurs that the necessity for the Stevens amendment statement in the final rule has been obviated by the elimination of the required State consent to implement and enforce language in the current year Interior Department appropriations act. A brief statement of this is made later in this final rule.

With regard to the second comment, (b) above, the Federation's concerns are prompted by the lead poisoning of three Aleutian Canada geese in California in 1987. These three birds were found, one each, in Del Norte, Merced and Stanislaus Counties. Confirmation of lead poisoning was carried out at the FWS' National Wildlife Health Research Center in Madison, Wisconsin. Merced County is currently a nontoxic shot zone and Stanislaus County will convert in this coming season. Del Norte is scheduled to convert in the 1991–92 hunting season. The FWS has completed a formal biological opinion with regard to the necessity of converting/not converting Del Norte County to nontoxic shot, as it relates to the likelihood of jeopardizing the existence of the Aleutian Canada goose. A select portion of the text of the brief opinion is as follows:

Two of the three birds diagnosed as dying from lead poisoning in 1987 were found in the San Joaquin Valley in Merced and Stanislaus Counties. Both deaths occurred in mid-February, just prior to northward migration. The third case occurred along the Northern California Coast on March 14, 1987, in Del Norte County. Aleutian Canada Geese begin using this spring staging area in early March and peak in mid-March through April. Birds usually roost on Castle Rock NWR (an offshore island) and feed on nearby pastures on the mainland. Neither areas are hunted. [sic] Studies have shown (SEIS page III–4) that for mallards, death caused by chronic form of lead poisoning normally occurs in about a 20-day period. Because of the timing involved in the lead poisoning cases and the unlikelihood of available lead shot in the Del Norte County recovery area, it is likely that the bird found in Del Norte County actually picked up lead in the San Joaquin Valley.

It is my opinion, based on the above, that the existing planned nontoxic shot phase-in schedule will not have any adverse affects on the Aleutian Canada goose."

In consideration of the above, the FWS does not intend to convert Del Norte County, California, to a nontoxic shot zone ahead of the Appendix N schedule.

There were no general public comments submitted to the FWS on: § 20.11, Meaning of terms (aggregate bag, etc.); § 20.21(j), Hunting methods (add "swans"); § 20.102, Seasons, limits and shooting hours for Alaska (nontoxic shot); or § 20.107, Seasons, limits and shooting hours for whistling swans (add States, swan name change).

During the comment period for 52 FR 47428, that ended on January 13, 1988, the FWS received a number of general public comments and one from a State fish and game agency that expressed the belief that the steel shot and muzzleloaders issue should have been addressed in this proposed rulemaking. This issue was a subject of a previous rulemaking (52 FR 1636; 52 FR 27352). This rulemaking, "Zones in which lead shot will be prohibited for the taking of waterfowl, coots and certain other species in the 1987–88 hunting season," discussed the available information and concluded that there was no valid reason not to proceed with expanding the nontoxic shot requirement to include those hunters using weapons with loose shot. The effective date of this requirement has been set for September 1, 1988. The Cooperative Lead Poisoning Control Information Program has completed a study to determine the feasibility of using steel shot in muzzleloaders of modern manufacture. The report on this work was provided early in May 1988, and is being made available to the public. If, as a result of the findings of this report, it is necessary to delay the effective date of this requirement there is time to take the required **Federal Register**-related actions before the 1988–89 waterfowl seasons begin.

State-by-State Comments and Responses for the Proposed Rule

In summary, 18 of the affected 46 States directly responded to or in anticipation of the proposed rule published on December 14, 1987 (52 FR 47428), regarding "Zones in which lead shot will be prohibited for hunting waterfowl, coots and certain other species in the 1988–89 hunting season." All of the States not providing written comment within the comment period were contacted either by the FWS' Regional Offices or the Office of Migratory Bird Management to determine if notification of the proposed rulemaking had been made. It appears that many States accept the necessity of the lead ban action and/or recognize that the absence of the Stevens amendment language removes the burden of a special response.

Of the changes contained in the proposed rulemaking, 2 States endorsed expanding the nontoxic shot requirement to U.S. territorial waters and none opposed (§ 20.105) and 17 approved implementation and enforcement of nontoxic shot zones and 1 protested the imposition of current and added zones (§ 20.108). Three States acknowledged and/or agreed with all the other regulatory changes proposed, however, that was the extent of the comment offered for: § 20.11, Meaning of terms; § 20.21, Hunting Methods; § 20.101, Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands; § 20.102, Seasons, limits and shooting hours for whistling swans.

Five States are noted to have major zones change differences when comparing the proposed and final rules; these States are Indiana, Massachusetts, Michigan, New Mexico and South Dakota. Fourteen, instead of 15, States will have a statewide nontoxic shot requirement this current hunting season.

Two States have declared a statewide conversion to nontoxic shot for the 1989–90 waterfowl hunting season.

Individual comments of the 18 States responding to the proposed rule during the comment period are as follows:

California

The California Fish and Game Commission (Commission) stated its opposition to the proposed zones as they apply to California on the basis that lead poisoning is believed not to be a significant problem statewide, and that the need to completely eliminate lead shot as a source has no biological support.

The FWS accepts the Commission's right to protest nontoxic shot zoning. However, justifying the need for this program, i.e., eliminating lead poisoning nationwide through requiring nontoxic shot for waterfowling, is not the subject of the proposed rule. Program justification has been dealt with at length in the Final SEIS published in June 1986 (51 FR 23444), and the final rulemakings for the 1986–87 and 1987–88 nontoxic shot zones published in the Federal Register on September 3, 1986 (51 FR 31429) and Tuesday, July 21, 1987 (52 FR 27352), respectively. The action taken to impose nontoxic shot zones has been determined to be essential to eliminate lead poisoning in waterfowl and certain other species, and results from the Secretary's authority under the MBTA, the ESA and the Bald and Golden Eagle Protection Act (BGEPA), as amended (16 U.S.C. 668–668d; 54 Stat. 250). This authority to impose nontoxic shot zones to eliminate lead poisoning in waterfowl and certain other species has been affirmed by the Court (Cal. Fish Game Comm. vs. Hodel, Eastern District of California, Civil No. S–816–RAR [November 16, 1987]).

The FWS seeks to work cooperatively with the State of California to fully implement this nontoxic shot program.

Florida

The Florida Game and Fresh Water Fish Commission (Commission) concurred with adding Glades County in its entirety and all of the Guana River Wildlife Management Area (WMA) in St. Johns County to existing nontoxic shot zones. The Commission pointed out that, previously, only Lake Ponte Vedra within the Guana River WMA has been closed to the use of lead shot. The Commission also added Hickory Mound Impoundment, within the Aucilla WMA, Taylor County, as a nontoxic shot zone. In addition, at the request of the Commission, the following two changes have been made to the existing list of Florida nontoxic shot zones to provide clarification: add Merritt Island National Wildlife Refuge (NWR) and to the Chassahowitzka WMA description add "* * * and the State waters of the Gulf of Mexico in Hernando County north of Raccoon Point designated by posted signs."

Although the M–K Ranch area, known previously as the M–K Ranch Public Waterfowl Area, is no longer leased or operated by the Commission for public hunting, the Commission has been advised by letter dated February 9, 1988, that the area must remain a nontoxic shot zone according to the implementation rules (51 FR 42103).

The Commission endorsed as written the proposed amendments that included nontoxic shot requirements for U.S. territorial waters, for Alaska and for Puerto Rico and the Virgin Islands. The Commission also gave its unqualified support for the proposed rule change regarding the use of nontoxic shot for taking captive-reared mallards.

Idaho

The Idaho Department of Fish and Game (Department) agreed to implementation and enforcement of nontoxic shot requirements in the zones described in the proposed rule for the 1988–89 waterfowl hunting season. The only change from the 1987–88 descriptions for Idaho is the addition of the remainder of Payette County to the southwestern zone.

Illinois

The Illinois Department of Conservation (Department) requested that a new format be utilized by the FWS in the final rule to describe Illinois nontoxic shot zones for the 1988–89 and subsequent seasons. This new format simplifies the descriptions of the zones and, thus, makes for easier identification of those areas in which waterfowl hunters must use nontoxic shot. This new format also facilitates adding counties that are converted in future seasons according to the SEIS Appendix N schedule. Also, in accordance with the FWS policy not to redundantly list national wildlife refuges that are found in established zones, and in response to the Department's suggestion not to do so, the Upper Mississippi Wild Life and Fish Refuge has been left out of the nontoxic shot area descriptions. This refuge is located in Carroll, Rock Island and Whiteside Counties, all or a portion of which are already included in the Mississippi River nontoxic shot zone.

Indiana

The Indiana Department of Natural Resources (Department) advised that, in recognition of the belief that it had not adequately prepared vendors and hunters for a statewide conversion this current year, the State of Indiana would go to nontoxic shot statewide for waterfowl and coot hunting in the 1989–90 season. As a result, the only area that will be converted this current season is the remainder of Monroe County—as shown in the SEIS Appendix N schedule.

Kansas

The former Kansas Fish and Game Commission has been retitled the Kansas Department of Wildlife and Parks (Department); the appropriate change has been made in the description of Kansas nontoxic shot zones in the codified portion of this final rule. The Department approves and supports the implementation and enforcement of nontoxic shot restrictions in the Kansas zones described herein for the 1988–89 waterfowl season.

The Department also declared support for all aspects of the proposed rule, and expressed approval with the FWS' "* * * commitment to halt the deposition of lead into our waterfowl and wetland habitats."

Kentucky

The Kentucky Department of Fish and Wildlife Resources responded that the Commonwealth of Kentucky is in concurrence with the 1988–89 nontoxic shot zones, as described for Kentucky in the proposed rule. The Kentucky 1988–89 nontoxic shot zone description remains the same as that contained in the final rule for the 1987–88 season.

Louisiana

In 1987, the Louisiana Department of Wildlife and Fisheries provided the FWS with a resolution adopted by the Louisiana Wildlife and Fisheries Commission (Commission) that agrees, with certain provisos, to the phase-in plan for nontoxic shot set out in the Federal Register notice of November 21, 1986 (51 FR 42103); this resolution stipulates that it covers the 1987–88 hunting season and following years. The Commission's provisos are accommodated in the California Eastern District Court decision of November 16, 1987 (ref. p. 11), and the zoning for Louisiana is proceeding as scheduled.

Massachusetts

The FWS was advised by letter of December 8, 1987, prior to publication of the proposed rule, that the Massachusetts Fish and Wildlife Board had formally decided to require nontoxic shot statewide for the taking of

all waterfowl beginning with the 1988–89 season.

Maryland

The Maryland Department of Natural Resources (Department) approved the implementation and enforcement of nontoxic shot for the 1988–89 waterfowl hunting season for those counties listed in the proposed rule. In this response, the Department also supported requiring nontoxic shot for hunting waterfowl in U.S. territorial waters seaward of State boundaries.

Michigan

The Michigan Department of Natural Resources expanded the nontoxic shot zones proposed for the State in the proposed rule. For the current season, 1988–89, the two eastern Upper Peninsula zones will continue, as described in the proposed rule, to have nontoxic shot requirements. In addition, the entire Lower Peninsula will comprise a single nontoxic shot zone. In the 1989–90 waterfowl hunting season, the State of Michigan will go to a nontoxic shot requirement statewide. Michigan has also extended the nontoxic shot requirement, beginning this current 1988–89 season, to the taking of gallinules, rails and snipe.

Minnesota

The Minnesota Department of Natural Resources (Department) acknowledged the proposed rule showing that the nontoxic shot requirement remains in effect statewide.

Montana

The Montana Department of Fish, Wildlife and Parks concurred with the nontoxic shot zone requirement statewide as given in the proposed rule, and acknowledged the other proposed rule changes for Part 50.

New Jersey

The New Jersey Department of Environmental Protection (Department) approved the FWS' implementation and enforcement of the nontoxic shot zones identified for the State of New Jersey for the 1988–89 waterfowl hunting season. The Department stated an additional request to have added to the New Jersey zone descriptions the phrase "and adjacent State-owned tidal waters," in order to eliminate law enforcement and public information problems in regard to county boundaries. The Department suggested that an alternative would be to make effective for the 1988–89 season, instead of the 1991–92 season, the requirement to use nontoxic shot for waterfowl hunting in U.S. territorial waters seaward of State boundaries. Although this latter proposal is not without merit, the FWS believes that the logical sequence of conversions is all counties and then the territorial waters. Too, the New Jersey suggestion is a new proposal and, as such, would have to be published in the Federal Register for comment. The New Jersey remedy, i.e., adding the previous reference to State-owned tidal waters in the zone descriptions, should be an adequate interim resolution of the obscure boundary problem.

Additionally, the Department commented that the proposed rule does not address shot requirements for muzzleloading shotguns. (Response to this comment has been addressed in the general public section of this final rule.)

New York

The New York State Department of Environmental Conservation advised the FWS in a letter dated October 14, 1987, prior to proposed rule publication, that the State of New York would adopt a steel shot requirement for waterfowl hunting statewide in the 1988–89 season.

South Dakota

The South Dakota Department of Game, Fish and Parks advised the FWS that the Commission had elected to require nontoxic shot statewide for the 1988–89 waterfowl hunting season. This requirement applies to all hunters hunting waterfowl, coot, crane and snipe—without exception—a change from the description published for South Dakota in the proposed rule. Previously, certain-age hunters and snipe were not included in the nontoxic shot requirement.

Texas

The Texas Parks and Wildlife Department (Department) is in general agreement with the Texas zone descriptions and all of the changes contained in the December 14, 1987, proposed rule that are addressed in this final rule.

Washington

The Washington Department of Wildlife advised the FWS that it intends to proceed with the nontoxic shot implementation schedule through 1991, as outlined in 51 FR 42103. The Washington Wildlife Commission will approve the currently proposed zones in an August 10, 1988, meeting.

In summary, this rule amends 50 CFR, Part 20, as follows:

—Section 20.11. Adds a definition of "aggregate bag" and revises four other related terms, to be effective for the 1988–89 season.

—Section 20.21(j). Adds the word "swans" to the parenthetical listing of Anatidae that are covered by the nontoxic shot requirement, to be effective for the 1988–89 season.

—Section 20.101. Adds language that requires conversion of nontoxic shot for hunting waterfowl, coots and certain other species in Puerto Rico and the Virgin Islands in the 1991–92 season.

—Section 20.102. Adds language that requires conversion to nontoxic shot for hunting waterfowl in Alaska in the 1991–92 season.

—Section 20.105. Revises existing language to require conversion to nontoxic shot for hunting waterfowl, coots and certain other species in United States territorial waters seaward of State boundaries, to be effective for the 1991–92 season.

—Section 20.107. Revises existing language to include the States of North Carolina, North Dakota and South Dakota with those having frameworks for swan seasons, and changes the English name of the swan species from "whistling" to "tundra," to be effective for the 1988–89 season.

—Section 20.108. Adds SEIS Appendix N and other areas to expand existing nontoxic shot zones for the 1988–89 waterfowl hunting season.

—Based on the October 9, 1987, Ninth Circuit Court of Appeals ruling in *Alaska Fish and Wildlife Federation and Outdoor Council, Inc.* v. *Frank L. Dunkle, et al.*, No. 86–3657, the authority citation for Part 20, Subchapter B, Chapter I of Title 50 is revised to remove the Alaska Game Act of 1925 reference.

Previously, the FWS was not able to utilize appropriated funds to implement or enforce nontoxic shot zone restrictions in States without approval by the appropriate State authority. This restriction on use of funds by the FWS was contained in the appropriations act for the Department of the Interior over the period 1978–1987. Since publication of the proposed rule for this final rule, this constraint has been removed. Thus, the FWS may now impose such nontoxic shot zones as are appropriate under the authorities of the MBTS and, in the case of zones established for bald eagle protection, the ESA and the BGEPA of 1940, without State approval. However, it is the policy of the FWS that States will continue to be consulted annually with regard to the descriptions of converting zones through the 1991–92 waterfowl season nationwide phase-in of nontoxic shot.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The FWS believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, for this current rulemaking, a section 7 opinion concludes that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

TABLE 1.—COUNTIES PROPOSED (AT 52 FR 47428) TO BE ADDED IN 1988–89 TO THE EXISTING ZONES WHERE THE HUNTING OF WATERFOWL, COOT AND CERTAIN OTHER SPECIES IS LIMITED TO THE USE OF NONTOXIC SHOT. (1)

State and county	State and county
ALABAMA	LOUISIANA
Limestone	Assumption
	Avoyelles
ARKANSAS	Caldwell
Conway	Iberia
Crittenden	Rapides
LaFayette	
Lincoln	MASSACHUSETTS
Phillips	Dukes
Pulaski	
	MICHIGAN
CALIFORNIA	Allegany
Alameda	Barry
Marin	Monroe
Stanislaus	Roscommon
	Wayne
COLORADO	
Alamosa (2)	MISSOURI
Boulder	All lands and waters of all counties of the State
Conejos (2)	
Costilla (2)	
Hinsdale (2)	NEW JERSEY
Mineral (2)	Hudson
Rio Grande (2)	
Saguache (2)	NEW YORK
	All lands and waters of all counties of the State
CONNECTICUT	
All lands and waters of all counties of the State	NORTH CAROLINA
	Beaufort
	Washington
FLORIDA	
Glades	NORTH DAKOTA
	Bottineau
IDAHO	Griggs
Payette	McIntosh
	Sargent
ILLINOIS	
Bond	OHIO
Fayette	Erie
Jersey	
Kane	OREGON
Marshall	Marion
McHenry	Washington
Woodford	
	PENNSYLVANIA
INDIANA	All lands and waters of all counties of the State
All lands and waters of all counties of the State	
KANSAS	
Linn	

TABLE 1.—COUNTIES PROPOSED (AT 52 FR 47428) TO BE ADDED IN 1988–89 TO THE EXISTING ZONES WHERE THE HUNTING OF WATERFOWL, COOT AND CERTAIN OTHER SPECIES IS LIMITED TO THE USE OF NONTOXIC SHOT. (1)—Continued

State and county	State and county
RHODE ISLAND	SOUTH DAKOTA
All lands and waters of all counties of the State	Aurora
	Bon Homme
SOUTH CAROLINA	Hamlin
Allendale	Marshall
Bamberg	Roberts
Barnwell	
Calhoun	TENNESSEE
Clarendon	Jefferson
Darlington	Tipton
Dillon	
Dorchester	TEXAS
Florence	Liberty
Hampton	
Horry	VERMONT
Jasper	Franklin
Lee	VIRGINIA
Marion	Accomack
Marlboro	
Orangeburg	WASHINGTON
Sumter	Clallam
Williamsburg	Pacific
	Thurston
	Walla Walla

(1) Counties listed are taken from the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States, Appendix N. Counties listed are those that have 15 or more waterfowl harvested per square mile, as referenced by Carney et al. 1983 (Distribution of waterfowl species harvested in states and counties during 1971–80 hunting seasons. U.S. Fish and Wildlife Service, Spec. Sci. Rpt.—Wildl. No. 254, Washington, DC). "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bag limits and concurrent seasons. Differences between this Table and the Appendix N schedule reflect changes initiated by the States to accelerate county nontoxic shot conversions.

(2) The San Luis, Colorado, Counties so noted in Table 1 were inadvertently omitted from the list of those proposed for the 1988–89 waterfowl hunting season in 52 FR 47428. However, these counties were identified by the Colorado Division of Wildlife's 1987 Colorado Hunting Information Bulletin (for ducks, geese, coots, crows, cranes and falconry seasons) as intended nontoxic shot zones for the 1988–89 waterfowl hunting season. The San Luis Valley conversion (to steel shot) area includes all of

Alamosa, Conejos, Costilla and Rio Grande Counties, and those portions of Hinsdale, Mineral and Saguache Counties east of the Continental Divide.

Authorship

The primary author of this proposed rule is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the *Code of Federal Regulations* is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 is revised to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Section 20.11 is revised to read as follows:

§ 20.11 Meaning of terms.

For the purpose of this part, the following terms shall be construed, respectively, to mean and to include:

(a) "*Migratory game birds*" means those migratory birds included in the terms of conventions between the United States and any foreign country for the protection of migratory birds, for which open seasons are prescribed in this part and belong to the following families:

(1) Anatidae (ducks, geese [including brant] and swans);

(2) Columbidae (doves and pigeons);

(3) Gruidae (cranes);

(4) Rallidae (rails, coots and gallinules); and

(5) Scolopacidae (woodcock and snipe).

A list of migratory birds protected by the international conventions and the Migratory Bird Treaty Act appears in § 10.13 of this subchapter.

(b) "*Seasons*"—(1) "*Open season*" means the days on which migratory game birds may lawfully be taken. Each period precribed as an open season shall be construed to include the first and last days thereof.

(2) "*Closed season*" means the days on which migratory game birds shall not be taken.

(c) "*Bag limits*"—(1) "*Aggregate bag limit*" means a condition of taking in which two or more usually similar species may be bagged (reduced to possession) by the hunter in predetermined or unpredetermined quantities to satisfy a maximum take limit.

(2) "*Daily bag limit*" means the maximum number of migratory game birds of single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(3) "*Aggregate daily bag limit*" means the maximum number of migratoy game birds permitted to be taken by one person in any one day during the open season when such person hunts in more than one specified geographic area and/or for more than one species for which a combined daily bag limit is prescribed. The aggregate daily bag limit is equal to, but shall not exceed, the largest daily bag limit prescribed for any one species or for any one specified geographic area in which taking occurs.

(4) "*Possession limit*" means the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(5) "*Aggregate possession limit*" means the maximum number of migratory game birds of a single species or combination of species taken in the United States permitted to be possessed by any one person when taking and possession occurs in more than one specified geographic area for which a possession limit is prescribed. The aggegate possession limit is equal to, but shall not exceed, the largest possession limit prescribed for any one of the species or specified geographic areas in which taking and possession occurs.

(d) "*Personal abode*" means one's principal or ordinary home or dwelling place, as distinguished from one's temporary or transient place of abode or dwelling such as a hunting club, or any club house, cabin, tent or trailer house used as a hunting club, or any hotel, motel or rooming house used during a hunting, pleasure or business trip.

(e) "*Migratory bird preservation facility*" means:

(1) Any person who, at their residence or place of business and for hire or other consideration; or

(2) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or

(3) Any hunting club which, in the normal course of operations; receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment.

(f) "*Paraplegic*" means an individual afflicted with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

3. Section 20.21(j)(1) is revised to read as follows (the introductory paragraph for § 20.21 is republished):

§ 20.21 Hunting methods.

Migratory birds on which open seasons are prescribed in this part may be taken by any method except those prohibited in this section. No persons shall take migratory game birds:

* * * * *

(j) * * * (1) This restriction applies only to the taking of Anatidae (ducks, geese [including brant] and swans), coots (Fulica americana) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones, and

4. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

This section provides for the annual hunting of certain doves, pigeons, ducks, coots, gallinules and snipe in Puerto Rico; and for certain doves, pigeons and ducks in the Virgin Islands. In these Commonwealths, the hunting of waterfowl and coots (and other certain species, as applicable) must be with the use of nontoxic shot beginning in the 1991–92 waterfowl season.

5. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits and shooting hours for Alaska.

This section provides for the annual hunting of certain waterfowl (ducks and geese [including brant]), snipe and sandhill cranes in Alaska. In Alaska, the hunting of waterfowl must be with the use of nontoxic shot beginning in the 1991–92 waterfowl season.

6. Section 20.105 is revised to read as follows:

§ 20.105 Seasons, limits and shooting hours for waterfowl, coots and gallinules.

This section provides for the annual hunting of certain waterfowl (ducks, geese [including brant]), coots and gallinules in the 48 contiguous United States. The regulations are arranged by the Atlantic, Mississippi, Central and Pacific Flyways. These regulations often vary within Flyways or States, and by time periods. Those areas of the United States outside of State boundaries, i.e.,

the United States' territorial waters seaward of county boundaries, and including coastal waters claimed by the separate States, if not already included under the zones contained in § 20.108, are designated for the purposes of § 20.2(j) as nontoxic shot zones for waterfowl hunting beginning in the 1991–92 season.

7. Section 20.107 is revised to read as follows:

§ 20.107 Seasons, limits and shooting hours for tundra swans.

This section provides for the annual hunting of tundra swans in North Carolina, North Dakota, South Dakota and Utah, and in designated areas of Montana and Nevada.

8. Section 20.108 is revised to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

Atlantic Flyway

Connecticut

All lands and waters within the State of Connecticut have been designated for nontoxic shot use.

Delaware

1. Kent and New Castle Counties.

2. All State and/or Federally owned property within the following areas of Sussex County:

A. Assawoman, Gordon's Pond and Prime Hook State Wildlife Areas.

B. Cape Henlopen and Delaware Seashores State Parks.

C. Prime Hook National Wildlife Refuge.

Florida

1. Brevard, Broward, Citrus, Collier, Dade, Leon, Osceola, Polk and Volusia Counties.

2. Those portions of Gadsden and Liberty Counties, adjacent to Leon County, that include the floodplains of Lake Talquin and the Ochlockonee River.

3. That portion of Lake Miccosukee in Jefferson County.

4. Orange Lake and Lochloosa Lake in Alachua County.

5. The area lying lakeward of and bounded by the Lake Okeechobee levee, by the State Road 78, Kissimmee River bridge, and by State Road 78 from its intersection with the Lake Okeechobee levee at points near Lakeport and the Old Sportsman's Village site.

6. That portion of Glades County outside of the area described in No. 5 above.

7. Occidental Wildlife Management Area, as well as all of the Occidental Chemical Company phosphate pits east of US Highway 41, south of State Road 6, west of State Road 135 and north of White Springs, all in Township 1 north, Ranges 15 and 16 east in Hamilton County comprising approximately 35,000 acres.

8. Guana River Wildlife Management Area in St. Johns County.

9. That area formerly known as the M–K Ranch public waterfowl area in Gulf County.

10. Hickory Mound Impoundment within the Aucilla Wildlife Management Area in Taylor County.

11. That portion of Everglades Conservation Area 2 in Palm Beach County.

12. That portion of Lake George lying in Putnam County.

13. That portion of the St. Johns River floodplain lying in Lake, Seminole and Orange counties.

14. That portion of Lake Rousseau lying in Levy and Marion Counties.

15. Lake Harbor public waterfowl hunting area in Palm Beach County.

16. Chassahowitzka Wildlife Management Area in Hernando County, and the State waters of the Gulf of Mexico in Hernando County north of Raccoon Point designated by posted signs.

17. Chassahowitzka, Lower Suwannee, Merritt Island and Loxahatchee National Wildlife Refuges.

Georgia

1. Eufaula and Savannah National Wildlife Refuges.

Maine

All lands and waters within the State of Maine have been designated for nontoxic shot use.

Maryland

1. Cecil, Dorchester, Kent, Queen Annes, Somerset, Talbot and Worcester Counties.

Massachusetts

All lands and waters within the State of Massachusetts have been designated for nontoxic shot use.

New Jersey

1. Atlantic, Cape May, Cumberland, Hudson, Middlesex, Monmouth, Ocean and Salem Counties, and adjacent State-owned tidal waters.

2. Burlington County, that portion lying to the south and east of the New Jersey Transit Railroad tracks that run from Atsion to Woodmansie, and adjacent State-owned tidal waters.

New York

All lands and waters within the State of New York have been designated for nontoxic shot use.

North Carolina

1. Beaufort, Currituck, Pamlico and Washington Counties.

2. Cape Hatteras National Seashore Recreation Area.

3. Cedar Island, Mattamuskeet and Swanquarter National Wildlife Refuges.

Pennsylvania

All lands and waters within the State of Pennsylvania have been designated for nontoxic shot use.

Rhode Island

All lands and waters within the State of Rhode Island have been designated for nontoxic shot use.

South Carolina

1. Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Lee, Marion, Marlboro, Orangeburg, Sumter and Williamsburg Counties.

Vermont

1. Franklin and Grand Isle Counties.

2. Missisquoi National Wildlife Refuge.

Virginia

1. Counties of Accomack, Charles City, Gloucester, James City, New Kent and York.

2. Cities of Chesapeake, Hampton, Newport News, Norfolk, Suffolk and Virginia Beach.

Mississippi Flyway

Alabama

1. Limestone County.

2. Eufaula National Wildlife Refuge.

Arkansas

1. Arkansas, Ashley, Clay, Conway, Craighead, Crittenden, Cross, Desha, Jefferson, LaFayette, Lawrence, Lincoln, Little River, Lonoke, Monroe, Phillips, Poinsett, Prairie, Pulaski and Woodruff Counties.

2. Lake Dardanelle and Millwood Lake Wildlife Management Areas.

3. Felsenthal National Wildlife Refuge.

Illinois

1. Mississippi River and adjacent areas in the following counties BORDERED BY the roads and/or lines indicated as follows: All of Alexander, Calhoun, Carroll, Henderson, Jackson, Jersey and Union Counties; Adams County—IL–96 (Lima), County Hwy–41, County Hwy–7, County Hwy–8 and Lock and Dam 20. (The Mark Twain NWR, Bear Creek Unit is also a nontoxic shot zone); Hancock County—(Dallas City), IL–9/96, IL–96/US–136 and IL–96; Henry County—I–80 and I–74/280; Jo Daviess County—IL–35 (East Dubuque), US–20, IL–84/US–20 and IL–84; Mercer County—Railroad bridge (Keithsburg), County Hwy–16 and County HWY–25; Pike County—US–36 (Shepherd), IL–96/US–36 and IL–96. (Also, see Illinois River section below.); Rock Island County—IL–5, IL–5/92 and I–80; I–74/280, I–280 and IL–92 to Iowa State line; and Whiteside County—IL–84 (north), IL–136/Fulton Road, County Hwy–21/Frog Pond Road, Garden Plain Road, County Hwy–21/Sand Road and IL–5.

2. Illinois River and adjacent areas in the following countries BORDERED BY the roads and/or lines indicated as follows: All of Calhoun, Cass, Fulton, Jersey, Marshall, Mason, Putnam and Woodford Counties; Brown County—County Hwy–3/FAS–582, FAS–582, County Hwy–12 and IL–99; Bureau County—IL–89 (Spring Valley), IL–6/89, IL–29, and IL–26/29 and IL–29; Greene County—Kampsville Ferry route, IL–108 and FAP–155 (south); Morgan County—IL–104 (Meredosia) and IL–100/US–67; Peoria County—IL–29, IL–29/US–24 and IL–9/US–24; Pike County—IL–104 (Meredosia) and IL–99. (Also, see Mississippi River section above.); Schuyler County—IL–100 (Bluff City), IL–103 and County Hwy–9; and Tazewell County—IL–26,

IL-116, IL-116/US-150, IL-8/116, IL-29, IL-9/29, IL-29, FAS-461 and County Hwy-16.

3. Southern Goose Quota Zone: All of Alexander, Jackson, Union and Williamson Counties.

4. Rend Lake Goose Quota Zone: All of Jefferson County and all of Rend Lake plus all adjacent areas managed by U.S. Army Corps of Engineers or Illinois Department of Conservation.

5. Other Areas: All of Bond, Clinton, Fayette, Kane, Lake and McHenry Counties.

Indiana

1. Monroe, Newton and Starke Counties.

2. On all waters of Lake, Porter (except that area south of U.S. 30 and north of S.R. 8), LaPorte, Jasper (north of S.R. 114), Elkhart, Kosciusko, LaGrange and Steuben Counties, and within a 150-yard zone of land in these counties adjacent to the margins of these waters. This includes lakes, ponds, marshes, swamps, rivers, streams and seasonally flooded areas of all types. Excluded from the provision for these Counties are the waters of Lake Michigan and drainage ditches and temporary sheet waters that are more than 150 yards from the waters described above.

3. All waters and within a 150-yard zone of land adjacent to the margins of these waters on the Jasper-Pulaski, Tri-County and Glendale Fish and Wildlife Areas.

4. Within the boundaries of the following State-owned or State-operated properties: Hovey Lake Fish and Wildlife Area in Posey County, Mallard Roost Wetland Conservation Area in Noble County, Monroe Reservoir in Brown County, Patoka Reservoir in Dubois, Crawford and Orange Counties, Turtle Creek State Fish and Wildlife Area in Sullivan County and Minnehaha Fish and Wildlife Area in Sullivan County.

5. Within the proposed boundaries of the Menominee Wetlands Conservation Area in Marshall County.

Iowa

All lands and waters within the State of Iowa have been designated for nontoxic shot use.

Kentucky

1. Western Zone—That area west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, and running northeast along the Purchase Parkway to Interstate 24, east to U.S. Highway 641, north to U.S. Highway 60, north to U.S. Highway 41, then north to the Kentucky-Indiana border near Henderson, Kentucky.

Louisiana

1. Acadia, Assumption, Avoyelles, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Evangeline, Iberia, Jefferson, Jefferson Davis, LaFourche, LaSalle, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Rapides, Red River, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Terrebonne and Vermilion Parishes.

2. Bogue Chitto, D'Arbonne and Upper Ouachita National Wildlife Refuges.

Michigan

1. Eastern Upper Penninsula.

A. The water and land areas of Chippewa County within the following described boundary: Starting at the SW corner of Sec. 33, T44N, R1E on a line extending north 4 miles along the west side of Secs. 33, 29, 21, and 16 to the NW corner of Sec. 16, T44N, R1E; then east 1½ miles to the S quarter corner of Sec. 10, T44N, R1E; then north 1 mile to the N quarter corner of Sec. 10, T44N, R1E; then east ½ mile to the SW corner of Sec. 2, T44N, R1E; then north 1 mile to the NW corner to Sec. 2, T44N, R1E; then east along the north section lines of Secs. 1 and 2, T44N, R1E and Secs. 4, 5, and 6, T44N, R2E, to the NE meander corner of Sec. 4, T44N, R2E; then on a line southerly across Munuscong Lake to the NE meander corner of Sec. 28, T44N, R2E; then south on the E section lines of Secs. 28 and 33, T44N, R2E to the SE corner of Sec. 33, T44N, R2E; then west 7 miles along the south section line of Sec. 33, 32, and 31, T44N, R2E, and Secs. 36, 35, 34, and 33, T44N, R1E, to the point of beginning.

B. The waters of Potagannissing Wildlife Flooding on Drummond Island.

2. All lands and waters of the Lower Penninsula under the jurisdiction of the State of Michigan, including those Great Lakes boundary waters and interconnecting waterways with Ontario, Ohio, Indiana and Wisconsin.

Minnesota

All lands and waters within the State of Minnesota have been designated for nontoxic shot use.

Mississippi

All lands and waters within the State of Mississippi have been designated for nontoxic shot use.

Missouri

All lands and waters within the State of Missouri have been designated for nontoxic shot use.

Ohio

1. Ashtabula, Cuyahoga, Erie, Holmes, Lake, Lorain, Lucas, Ottawa, Sandusky, Trumbull, Wayne and Wood Counties.

Tennessee

1. Benton, Dyer, Jefferson, Lake, Obion, Shelby and Tipton Counties.

2. Cross Creeks, Hatchie and Lower Hatchie National Wildlife Refuges.

Wisconsin

All lands and waters within the State of Wisconsin have been designated for nontoxic shot use.

Central Flyway

Colorado

1. Alamosa, Boulder, Conejos, Costilla, Morgan, Rio Grande and Weld Counties.

2. Hinsdale, Mineral and Saguache Counties east of the Continental Divide.

3. Turk's Pond portion of Baca County.

Kansas

1. Barton, Coffey, Cowley, Doniphan, Ellsworth, Jefferson, Linn, Mitchell, Montgomery, Neosho and Stafford Counties.

2. All areas administered by the Kansas Department of Wildlife and Parks, U.S. Army Corps of Engineers and U.S. Bureau of Reclamation, including those within the boundaries of the above Counties.

3. Kirwin Reservoir.

4. Flint Hills, Kirwin and Quivira National Wildlife Refuges.

Montana

All lands and waters within the State of Montana have been designated for nontoxic shot use.

Nebraska

All lands and waters within the State of Nebraska have been designated for nontoxic shot use.

New Mexico

All lands and waters within the State of New Mexico have been designated for nontoxic shot use.

North Dakota

1. Bottineau, Griggs, McIntosh, Nelson, Ramsey, Sargent and Towner Counties.

Oklahoma

1. Nowata County.

2. US Highway 77 from the Kansas border south to US Highway 177, US Highway 177 south to State Highway 15, State Highway 15 east to State Highway 18, State Highway 18 south to US Highway 64, US Highway 64 east to State Highway 99, State Highway 99 south to State Highway 51, State Highway 51 east to State Highway 97, State Highway 97 north to its junction with unnamed county roadway, northwestwardly on the county roadway to its junction with State Highway 20, State Highway 20 west to State Highway 18, State Highway 18 north to Kansas border.

3. Interstate 40 from the Arkansas border west to State Highway 82, State Highway 82 north to State Highway 100, State Highway 100 west to State Highway 10A, State Highway 10A west to State Highway 10, State Highway 10 north to State Highway 80, State Highway 80 north to State Highway 251A, State Highway 251A southwest to Muskogee Turnpike, Muskogee Turnpike south to Interstate 40, Interstate 40 west to US Highway 69, US Highway 69 north to US Highway 266, US Highway 266 west to US Highway 62, US Highway 62 south to Indian Nation Turnpike, Indian Nation Turnpike south to US Highway 270, US Highway 270 east to State Highway 2, State Highway 2 north to State Highway 31, State Highway 31 west to State Highway 71, State Highway 71 north to State Highway 9, State Highway 9 to State Highway 9A, and State Highway 9A north and east to the Arkansas border.

4. State Highway 78 from the Texas border north and west to US Highway 75, US Highway 75 north to State Highway 78, State Highway 78 west to State Highway 22, State Highway 22 north and west to its junction with State Highway 12 at Ravia, south and west on State Highway 12 to State Highway 199 to State Highway 99C near Oakland, south and west on State Highway 99C and State Highway 32 to the junction of Interstate Highway 35 near Marietta, south down Interstate Highway 35 to the Texas border.

5. That portion of Oologah Reservoir and all adjoining lands in Rogers County.

6. Fort Cobb Reservoir and all adjoining public lands.

7. Hajek Marsh.

8. Those areas of land and water encompassing the controlled water level impoundments (WATERFOWL STAMP HUNTING AREAS) within the following State Wildlife Management Areas:

A. Waurika
B. Texoma-Washita Arm
C. Hulah
D. Wister
E. Okmulgee
F. Chouteau
G. Copan
H. Hugo
I. Mt. Park

9. Washita National Wildlife Refuge.

South Dakota

All lands and waters within the State of South Dakota have been designated for nontoxic shot use.

Texas

1. Those portions of Colorado, Harris, Jefferson, Liberty and Waller Counties north of IH-10.

2. Neuces County, that portion west of US Highway 77.

3. That area lying within boundaries beginning at the Louisiana State line, thence westward along IH 10 to the junction of US Highway 90 and IH 10 in Beaumont, thence westward along US 90 to its junction with IH 610 in Houston, thence north and west along IH 610 to its junction with US Highway 290 in Houston, thence westward along US Highway 290 to its junction with State Highway 159 in Hempstead, thence southwestward along State Highway 159 to its junction with State Highway 36 in Bellville, thence eastward along State Highway 36 to its junction with Farm-to-Market (FM) 2429, thence southward along FM 2429 to its junction with FM 949, thence southwestward along FM 949 to its junction with IH 10, thence westward along IH 10 to its junction with US Highway 77 at Schulenburg, thence southward along US Highway 77 to its junction with the US-Mexico international boundary at Brownsville, thence eastward along the US-Mexico international boundary to the Gulf of Mexico, thence east and seaward to the three marine league limit, thence northeastward along the three marine league limit to the Louisiana State line, thence northward along the Texas-Louisiana State line to its junction with IH 10.

4. The portions of Grayson, Fannin and Cooke Counties lying within boundaries beginning at the Oaklahoma State line, thence southward along I-35 to its junction with US Highway 82 at Gainesville, thence eastward along US Highway 82 to its junction with US Highway 78 at Bonham, thence northward along State Highway 78 to its junction with the Oklahoma State line, thence westward along the Oklahoma-Texas State line to its junction with I-35.

5. The portions of Upshur, Cass, Harrison, Morris and Marion Counties lying within boundaries beginning at the Louisiana State line, thence westward along State Highway 49 to its junction with US Highway 259 at Daingerfield, thence southward along US Highway 259 to its junction with State Highway 450 at Ore City, thence eastward on State Highway 450 to its junction with State Highway 154 at Harleton, thence southeastward along State Highway 154 to its junction with US Highway 80 at Marshall, thence eastward along US Highway 80 to its junction with State Highway 43, thence northeastward along State Highway 43 to its junction with FM 2682 at Karnack, thence eastward along FM 2682 to its junction with FM 134, thence southward along FM 134 to its junction with FM 1999 at Leigh, thence eastward along FM 1999 to its junction with the Louisiana State line, thence northward along the Louisiana-Texas border to its junction with State Highway 49.

6. The portions of Henderson, Kaufman and Anderson Counties lying within boundaries beginning at the junction of State Highway 31 and FM 2661, thence westwardly along State Highway 31 to its junction with US Highway 175 at Athens, thence northwestward along US Highway 175 to its junction with FM 90, thence northward along FM 90 to its junction with FM 1391, thence westward along FM 1391 to its junction with US Highway 175 at Kemp, thence southward along US Highway 175 to its junction with State Highway 274, thence south along State Highway 274 to its junction with State Highway 31 at Trinidad, thence eastward along State Highway 31 to its junction with FM 3441 at Malakoff, thence southward along FM 3441 to its junction with FM 59 at Cross Roads, thence southward along FM 59 to its junction with US Highway 287 at Cayuga, thence southward along US Highway 287 to its junction with FM 860, thence northward along FM 860 to its junction with FM 837, thence northeastward along FM 837 to its junction with US Highway 175 at Frankston, then eastward along US Highway 175 to its junction with FM 855, thence northward along FM 855 to its junction with FM 346, thence northward along FM 346 to its junction with FM 344, thence northward along FM 344 to its junction with FM 2661, thence northward along FM 2661 to its junction with State Highway 31.

Wyoming

1. Big Horn County: Along and within one mile either side of the water line of the Big Horn River, Yellowtail Reservoir, Shoshone River, Nowood River and portions of Medicine Lodge Creek and Paintrock Creek when they flow into the Nowood River, beginning from their confluence to where they flow from the mountains.

2. Goshen County:

A. North Platte River/Laramie River—Beginning where US Highway 25 crosses the Wyoming-Nebraska State line; south along said State line to Goshen County Road No. 7-108; west along said road to Wyoming Highway 92, west, then northerly along said highway to US Highway 85; northerly along said highway to Wyoming Highway 156; westerly and monthly along said highway to Goshen County Road No. 7-62; westerly along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7-48; southwesterly along said road to the Goshen-Platte County line; north along said line to US Highway 26; southeast along said highway to the point of beginning.

B. Table Mountain—Beginning where Wyoming Highway 92 intersects Wyoming Highway 158; south along said highway to Goshen County Road No. 7-171; west along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7-160; east along said road to Goshen County Road No. 7-166; North along said road to Goshen County Road No. 7-114; east along said road to Wyoming Highway 92; east along said highway to the point of beginning.

Pacific Flyway

Arizona

1. Game Management Unit 5B, Upper Lake Mary, Lower Lake Mary and Mormon Lake.

2. Hopi Indian Reservation lands in Coconino and Navajo Counties.

3. Navajo Indian Reservation lands in Apache, Coconino and Navajo Counties.

4. Cibola National Wildlife Refuge.

California

1. Alameda, Butte, Colusa, Contra Costa, Glenn, Imperial, Marin, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter, Yolo and Yuba Counties.

2. Northeastern Zone. Those portions of Plumas, Shasta, Sierra, Siskiyou and Tehama Counties, and all of Lassen and Modoc Counties, bounded by the following line: Beginning at I-5 at the Oregon border, southerly on I-5 to State Highway 89, thence southeasterly on State Highway 89 to State Highway 70, thence easterly on State Highway 70 to US 395, thence southerly on US 395 to the Nevada border.

Colorado

1. Montrose County.

Idaho

1. Panhandle Zone. All of Benewah, Bonner, Boundary and Kootenai Counties.

2. Southwestern Zone. Canyon and Payette Counties north and east of I-84, and those portions of Ada, Canyon, Elmore, Owyhee and Payette Counties within the following boundary: Beginning at the intersection of I-84 Business Highway junction at Cold Springs Creek east of Hammett, then northwest on I-84 to the Idaho-Oregon State line, then south along the Idaho-Oregon State line to State Highway 19, then east on State Highway 19 to US-95 near Homedale, then south and east on US-95 to State Highway 55 west of Marsing, then east on State Highway 55 to State Highway 78 at Marsing, then southeast on State Highway 78 to I-84 Business Highway at Hammett, then east on I-84 Business Highway to I-84 at Cold Springs Creek, the point of beginning.

3. South Central Zone. All of Gooding County, and that portion of Twin Falls County that is west of the Gooding County-Jerome County-Twin Falls County junction and within 600 feet of the high water line of the Snake River.

4. Southeastern Zone. All lands within the Fort Hall Indian Reservation boundary; all of Jefferson County; and those portions of

Bannock, Bingham, Bonneville, Caribou, Cassia, Madison and Power Counties within the following boundary: Beginning at the Interstate 15-Jefferson County intersection (north of Idaho Falls), then south and southwest on I–15 to State Highway 39 near Blackfoot, then southwest on State Highway 39 to the road to the Idaho Department of Fish and Game's American Falls Fish Hatchery (approximately one-quarter mile west of American Falls Dam), then south on the hatchery road to the Union Pacific Railroad tracks, then southwest on the Union Pacific Railroad tracks to the Blaine County line, then south on the Blaine County line to its junction with the Cassia County line, then west on the Cassia County line to the Snake River-Raft River confluence, then upstream on the Raft River to I–86, then northeast on I–86 to I–15, then north on I–15 to US–91 (Old Yellowstone Highway) near Blackfoot, then northeast on US–91 to its junction with State Highway 26 approximately five miles northeast of Shelly, the northeast on US–26 to the spot directly above the Heise measuring cable (about 1.5 miles upstream from Heise Hot Springs), then north across the South Fork of the Snake River to the Heise-Archer-Lyman Road (Snake River Road), then northwest on the Heise-Archer-Lyman Road to US 191/20, then north on US 191/20 to the US 191/20-Jefferson County line, and then west on the southern boundary of Jefferson County to the point of beginning.

Montana

All lands and waters within the State of Montana have been designated for nontoxic shot use.

Nevada

1. Canvasback Gun Club in Churchill County.
2. Carson Lake (Greenhead Hunting Club) in Churchill County.
3. Humboldt Wildlife Management Area in Churchill and Pershing Counties.
4. Key Pittman Wildlife Management Area in Lincoln County.
5. Mason Valley Wildlife Management Area in Lyon County.
6. Overton Wildlife Management Area in Clark County.
7. Stillwater Wildlife Management Area in Churchill County.
8. Ruby Lake National Wildlife Refuge in White Pine and Elko Counties and Pahranagat National Wildlife Refuge in Lincoln County.

New Mexico

All lands and waters within the State of New Mexico have been designated for nontoxic shot use.

Oregon

1. Marion, Polk, Washington and Yamhill Counties.
2. Columbia County, that portion south and west of US 30.
3. Multnomah County, that portion south of I–84.
4. Southcentral Zone—All of Klamath County, excluding Davis Lake, and that portion of Lake County lying west of Highway 395.
5. Lower Columbia River Zone—Those portions of Multnomah, Columbia and Clatsop Counties bounded by the following line: Beginning at the Bonneville Dam, westerly on Highway I–84 to Portland, thence northwesterly on US 30 to the Astoria bridge, thence partially across Astoria bridge to the Oregon-Washington State line, thence upriver on the Washington-Oregon State line to point of origin.
6. Malheur County Zone—That portion of Malheur County bounded by a line beginning at I–84 at the Oregon-Idaho State line, thence northwesterly on I–84 to State Highway 201, thence southerly on State Highway 201 to State Highway 19, thence easterly on State Highway 19 to the Oregon-Idaho State line and back to the point of origin.
7. Columbia Basin Zone—Those portions of Gilliam, Morrow and Umatilla Counties bounded by the following line: Beginning at the town of Arlington on I–84, thence easterly on I–84 to US–730, thence northeasterly on US–730 to the Oregon-Washington State border, thence westerly along the Columbia River, Oregon-Washington border to point of origin.

Utah

1. Cache, Davis, Salt Lake, Utah and Weber Counties.
2. That portion of Box Elder County lying east of a line extending from 80N at the Utah-Idaho border, thence southeast on 80N to the junction of the Snowville-Locomotive Springs Road, thence southwest on the Snowville-Locomotive Springs Road to the junction of the Kelton Road, thence west on Kelton Road to the town of Kelton, thence south to the north shore of the Great Salt Lake, thence south along the west shore of the Great Salt Lake to the Box Elder County line.
3. Navajo Indian Reservation lands in San Juan County.

Washington

1. All of Walla Walla County; that portion of Clallam and Thurston Counties not included in the Puget Sound Zone; and that portion of Pacific County not included in the Southwestern Zone.
2. Clark County, that portion north and/or east of State Highway 14 and I–5.
3. Franklin County, that portion east of State Highway 17.
4. Grant County, that portion east and/or south of State Highway 17 and US–2.
5. Skagit County, that portion east of I–5.
6. Southwestern Zone—Those portions of Skamania, Clark, Cowlitz, Wahkiakum, Grays Harbor and Pacific Counties south and west of the following line: Beginning at the Bonneville Dam, westerly on State Highway 14 to Vancouver, thence northerly on I–5 to Kelso, thence westerly on State Highway 4 to US 101, thence northerly on US 101 to Aberdeen, thence westerly on State Highway 109 to Ocean City, thence due west to the Pacific Ocean.
7. Puget Sound Zone—Those portions of Whatcom, Skagit, San Juan, Island, Clallam, Jefferson, Kitsap, Mason, Thurston, Pierce, King and Snohomish Counties bounded by the following line: Beginning at I–5 on the Washington-British Columbia, Canada border, thence west, southerly and westerly along said border to a point due north of Neah Bay, thence due south to Neah Bay, thence easterly on State Highway 112 to US–101, thence easterly and southerly on US–101 to I–5, thence northerly on I–5 to State Highway 538 near Mt. Vernon, thence easterly on State Highway 538 to State Highway 9, thence northerly on State Highway 9 to State Highway 20, thence westerly on State Highway 20 to I–5, thence northernly on I–5 to point of origin.
8. Columbia Basin Zone—Those portions of Benton, Klickitat, Franklin, Adams, Grant, Yakima, Chelan, Kittitas, Douglas, Lincoln, Okanogan and Walla Walla Counties bounded by the following line: Beginning at the Washington-Oregon State border on the Celilo 1 ridge on US–97, thence northerly on US–97 to State Highway 14, thence easterly on State Highway 14 to US–395/I–82, thence northerly on US–395/I–82 (formerly a continuation of State Highway 14) to Kennewick, thence westerly on State Highway 240, thence northerly on State Highway 240 to State Highway 24, thence westerly on State Highway 24 to US–97, thence northerly on US–97 to State Highway 155 at Omak, thence easterly and southerly on State Highway 155 to State Highway 174 at Grand Coulee, thence southeasterly on State Highway 174 to US–2, thence westerly on US–2 to State Highway 17, thence southerly on State Highway 17 to US–395, thence southerly on US–395 to US–12, thence southerly on US–12 and US–730 to the Oregon border (including the entire McNary National Wildlife Refuge), thence westerly along the Columbia River and the Washington-Oregon border to the point of origin.

Date: June 9, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–14536 Filed 6–27–88; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482–8082]

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

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

ACTION: Emergency interm rule; correction.

SUMMARY: This document corrects a geographic landmark and coordinate that was published incorrectly in the emergency rule for the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California, which appeared in the **Federal Register** on May 4, 1988 (53 FR 16002).

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150; E. Charles Fullerton, 213–514–6196; or the Pacific Fishery Management Council, 503–221–6352.

SUPPLEMENTARY INFORMATION: In rule docment 88–9883 beginning on page 16002, in the issue of May 4, 1988, the following correction is made. On page 16011, column 3, below the table, line 12, "Cape Arago Light, 43°20'50" N. lat." is corrected to read "Cape Arago, 43°18'20" N. lat.".

Dated: June 22, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88–14558 Filed 6–27–88; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 71146–8001]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) amount for Other Rockfish in the Eastern Regulatory Area of the Gulf of Alaska will be taken by June 23, 1988. Directed fishing for and retention of Other Rockfish is prohibited in the Eastern Regulatory area from June 23, 1988, through December 31, 1988. This action is necessary to limit the harvest of Other Rockfish to the amount permissible under Federal regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: This notice is effective at noon, June 23, 1988, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time (AST), December 31, 1988. Comments on this notice are invited until July 8, 1988.

ADDRESSES: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett or Janet Smoker (Resource Management Specialists, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone (EEZ) in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.2 of the regulations defines the Western, Central, and Eastern Regulatory Areas in the Gulf of Alaska. Under the procedure set forth at § 672.20(a), 1988 total allowable catches (TACs) were established for each groundfish target species or species group and apportioned among the regulatory areas or districts (53 FR 890 January 14, 1988). One of the groups of groundfish species for which TAC's were established is Other Rockfish, which in the West Yakutat and East Yakutat Districts of the Eastern Regulatory Area consists of the following members of the genus *Sebastes:* northern rockfish, Pacific ocean perch, rougheye, sharpchin, shortraker, aurora, blackgill, chilipepper, darkblotch, greenstripped, harlequin, pygmy, red-banded, shortbelly, splitnose, stripetail, vermilion, yellowmouth, boccacio, canary, china, copper, quillback, redstripe, rosethorn, silvergrey, tiger, and yelloweye rockfish; and in the Southeast Outside District of the Eastern Regulatory Area consists of the following members of the genus *Sebastes:* northern rockfish, Pacific ocean perch, rougheye, sharpchin, shortraker, aurora, blackgill, chilipepper, darkblotch, greenstriped, harlequin, pygmy, red-banded, shortbelly, splitnose, stripetail, vermilion, and yellowmouth rockfish. The 1988 TAC for Other Rockfish in the Eastern Regulatory Area is 4,850 mt, and was apportioned entirely to domestic annual processing (DAP).

Several factory trawlers are currently targeting in Other Rockfish. The estimated catch through June 11 in the Eastern Regulatory Area is 4,085 mt. At current harvest rates, the TAC will be reached by June 23, 1988. Under § 672.20(c)(2)(i), if the Regional Director determines that the TAC for any target species or the "other species" category in any regulatory area or district has been or will be reached, directed fishing for that species will be prohibited and that species will be declared a prohibited species. Therefore, after 12:00 noon on June 23, further fishing for and retention of Other Rockfish in the Eastern Regulatory Area is prohibited. Fishing for other groundfish species for which a quota is available in the Eastern Regulatory Area is permitted, but any catches of Other Rockfish must be treated as a prohibited species and discarded at sea in accordance with § 672.20(e).

In making this decision, the Regional Director considered: (1) The risk of biological harm to Other Rockfish stocks; (2) the risk of socioeconomic harm to authorized users of Other Rockfish; and (3) the impact that a continued closure might have on the socioeconomic well-being of other domestic fisheries. The Regional Director made these findings: (1) There will be no threat of overfishing Other Rockfish stocks because bycatches of Other Rockfish in other groundfish fisheries are expected to be negligible; (2) the long-term economic interests of authorized users of the Other Rockfish fishery are protected because the stocks are protected from additional decline; and (3) a continued closure will have no significant impact on the socioeconomic well-being of other domestic fisheries since other species of fish and shellfish will not be significantly affected.

Classification

At current harvest rates, the Other Rockfish TAC will be fully harvested by June 23, 1988. Therefore, the health of stocks of Other Rockfish could be jeopardized unless the closure takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed. This action is taken under § 672.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 23, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–14557 Filed 6–23–88; 4:58 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 124
Tuesday, June 28, 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

7 CFR Part 301

[Docket No. 88-101]

Citrus Canker, Advance Notice of Proposed Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting public comment on our regulations to prevent the interstate spread of citrus canker. At our request, a blue-ribbon panel of plant pathologists met in March in Gainesvile, Florida, to review the results of recent research on the nursery strains of *Xanthomonas campestris* pv. *citri*, the bacterium that causes citrus canker. The panel, which considered specific questions concerning the taxonomy and biology of the nursery strains, has released its report. We are considering whether, based on this report, our regulations on citrus canker should be changed. The panel's report is included in the "Supplementary Information" section of this document.

DATES: Consideration will be given only to written comments postmarked or received on or before July 28, 1988.

ADDRESSES: Send an original and three copies of your comments to APHIS, USDA, P.O. Box 96464, Room 1143, South Building, Washington, DC 20090–6464. Please state that your comments refer to Docket No. 88–101. 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: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The disease is known to affect plants and plant parts, including fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of diseased plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. Some strains are aggressive and can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

We established regulations to help prevent the interstate spread of citrus canker after the disease was discovered in Florida in August of 1984. These regulations, contained in 7 CFR 301.75 and referred to below as the regulations, prohibit or restrict the interstate movement of certain plants, plant parts, and other articles from areas of the United States quarantined because of citrus canker (the State of Florida).

Initially, the regulations did not differentiate between the "Asiatic," or "A," strains of *Xanthomonas campestris* and other strains associated with citrus canker in Florida. Although the Asiatic strains appeared to be more aggressive than the other strains found in Florida, we did not have sufficient information to separate strains for regulatory purposes. Gradually, however, both research and field experience produced data that suggested there are important differences between the Asiatic strains of *X. campestris* and what we have called the "nursery strains."

These differences were summarized as follows in a final rule, published in the **Federal Register** on February 11, 1988 (53 FR 3999–4006, Docket No. 88–001), that, for the first time in the citrus canker regulations, established rules for the interstate movement of regulated articles based on strain identity:

> The Florida nursery strains of the bacterium *Xanthomonas campestris* pv. *citri* are associated primarily with outbreaks of citrus canker in plant nurseries. They have been found only in Florida. Current information suggests that this form of citrus canker is pathogenetically and genetically different from the disease caused by Asiatic strains of citrus canker, and never has been found on fruit in a commercial grove.

Until this final rule, regulated fruit could be moved interstate from Florida: (1) With a permit for scientific or experimental purposes; or (2) with a limited permit to areas of the United States that were not commercial citrus-producing areas. The final rule retained these restrictions for regulated fruit from areas of Florida where primary infestations of citrus canker caused by Asiatic strains has occurred. However, we now allow regulated fruit from all other areas of Florida, including areas where nursery strains have been detected, to be moved interstate to any destination in the United States, if certain conditions are met.

Among other things, the fruit must be harvested from a grove that has not contained any infested or exposed plants or plant parts within the past 2 years; the grove must have been found free of citrus canker based on two surveys conducted under stringent guidelines; the grove must be at least 5 miles from any infested plants and exposed plants at high risk for developing citrus canker; shipments of regulated plants to the grove during the past 2 years must have come only from nurseries found free of citrus canker on three surveys conducted approximately 30 days apart and within 90 days of each shipment; all personnel, vehicles, and equipment entering the grove must be treated with a disinfectant upon entry; the identity of the fruit must be maintained during picking, hauling to the packinghouse, and packing; and the fruit must be treated and waxed.

These conditions are consistent with the recommendations made by the Special Task Force on Citrus Canker in Florida, after the Task Force heard extensive testimony by experts on the Florida nursery strains of citrus canker.

Nevertheless, our rulemaking generated considerable controversy: some have argued that the disease caused by the nursery strains is not citrus canker, presents no threat to commercial groves, and therefore our regulations are unnecessary; others have protested that we do not know enough about the nursery strains to be certain that our regulations adequately protect commercial citrus-producing states against the introduction of citrus canker.

While we are confident that our regulations provide adequate protection against the interstate spread of citrus canker, we acknowledged at the time of rulemaking that many questions about the nursery strains had not been answered. That is why, at our request, a blue-ribbon panel of plant pathologists met in Gainesville, Florida, in March to review current research on the nursery strains, and to consider specific questions we presented concerning the taxonomy and biology of the nursery strains.

The panel's report is reproduced below. It is followed by a discussion of regulatory options we are considering.

Report of the Scientific Review Panel on Citrus Canker Nursery Strains

Introduction

At the behest of APHIS, a panel of plant pathologists assembled on 28–29 March, 1988 in Gainsville, FL, for the purpose of reviewing the status of current research on the nursery strains of citrus canker. The panel members were: Steve Pueppke, Chair (Missouri), Anne Alvarez (Hawaii), Chris Clark (Louisiana State), Carlos Gonzalez (Texas A & M), Iraj Misaghi (Arizona), Norm Schaad (Idaho), Milt Schroth (UC Berkeley), Bob Stall (Florida), and Anne Vidaver (Nebraska).

The Agency requested answers to a series of questions encompasing the taxonomy and biology of the nursery strains. Following oral and written research presentations, the Panel discussed the issues, and subgroups drafted portions of this report. We reconvened during the evening of 29 March and discussed the drafts. The Chair subsequently compiled the report, mailed it to the other Panel members, and incorporated their final comments into the completed document. There was remarkable unanimity in our judgments, and hence this report constitutes a consensus.

I. What is the taxonomic placement of the pathogen? What is the significance of the strain diversity of the Florida nursery strains?

Answers to these questions require a short preface on the status of bacterial taxonomy at the infraspecific level, i.e. pathovars. This must be addressed first to ensure an adequate understanding of the Panel's opinion on the classification of nursery strains. Accordingly, the Panel recognizes that although the term "pathovar" is not an officially sanctioned taxon according to the Bacterial Code of Nomenclature, it is an accepted intrasubspecific term. It was adopted by plant pathologists in 1930 as a means to conserve historic names of bacterial plant pathogens until additional data to support more appropriate designations of taxa could be collected. The term is used because it was not possible to conserve appropriate designations for many of the bacterial plant pathogens by any other method.

We avoided using the phrase "pathovar *citri*" during our taxonomic deliberations, because of its debatable validity. Moreover, it is inadequate for describing the clear differences observed among the nursery strains and in comparing them to other groups of strains (A, B, and C) heretofore referred to collectively as *X. campestries* pv. *citri*. These differences are pathological, serological, and genetic. We were not even satisfied with the inclusion of the B and C strain groups in pv. *citri*, because of their distinctness from the A strains. It seemed inconsistent to designate the nursery strains as a separate pathovar of *X. campestris* unless the B and C strains are likewise considered as separate.

In short, the nomenclature of these organisms requires further clarification, and more data are needed. We believe that categorization of the bacterial pathogens of citrus should be done in accordance with procedures that adhere to the standards of the International Committee on Systematic Bacteriology. In this respect, we encourage plant pathologists currently examining the citrus pathogens to compare them with other xanthomonads and formulate the necessary taxonomic divisions, i.e., species, subspecies, and relevant infraspecific categories. It would be appropriate for agencies such as APHIS to fund such research, because of its paramount importance for regulatory matters and its current state of relative neglect.

For the present, we consider the nursery strains to be comprised of at least two and possibly three relatively distinct groups. The moderate and weakly virulent strains (also referred to as moderate and weakly aggressive strains) appear to have little potential for causing significant damage to citrus. There is insufficient evidence to support the contention that even the most virulent strains (also referred to as aggressive strains), are a serious threat to citrus production in Florida. Nevertheless, there are sufficient differences between the A strains of the citrus canker pathogen and the nursery strains to warrant separate taxonomic designations. We recommend that the so-called nursery strains of the bacteria causing citrus disease in Florida simply be called *Xanthomonas nursery strains* until their taxonomic status is determined in accordance with international standards.

We recommend that plant pathologists currently working on the *Xanthomonas* nursery strains take the lead in assembling and publishing data on these organisms in the *International Journal of Systematic Bacteriology*, or other appropriate journals. The variant strain groups (B, C, Mexican, and the *Xanthomonas* nursery strains) should be placed into the appropriate taxa on the basis of genotypic and phenotypic relationships.

II. Is the pathogen endemic? What is the range of hosts? Does it have week hosts?

Designation of the *Xanthomonas* nursery strains as endemic implies that the bacteria are widespread and have been present for a relatively long period of time. By these criteria, the organisms do not appear to be endemic.The geographic distribution of the strains seems to be quite limited, and field data indicate that there are at least two subgroups of strains. The most virulent strains have been confirmed in only three locations. The data presented are insufficient to determine whether or not the strains originated in Florida, althought this possibility cannot be ruled out.

By conventional plant pathological criteria, i.e. the appearance of disease symptoms, the host range of the *Xanthomonas* nursery strains is limited to members of the Rutaceae. We were presented with no evidence for the existence of epiphytic populations of the organisms on any of the rutaceous plants that have been tested. This being the case, we do not recommend further searches for possible hosts. If such testing must be done, however, it should be based on standardized protocols and reflect natural population levels and routes of infection. In this regard, we had some reservations about the use of detached leaf assays for pathogenicity tests. These methods tend to overestimate the severity of disease reaction. Thus, it is necessary to validate the equivalence of this test with more natural tests that use intact plants. We recommend such comparisons to demonstrate that *in vitro* methods correlate well with more natural methods and to confirm that these methods are reproducible by different researchers.

III. Does the pathogen produce a large amount of inoculum? How is it dispersed? What mechanisms are most likely to transmit the organism?

Many bacterial plant pathogens characteristically produce large amounts of inoculum under favorable environmental conditions. Examples include fire blight of apple caused by *Erwinia amylovora* and black rot of crucifers caused by *X. campestris* pv. *campestris*. The *Xanthomonas* nursery strains appear to produce amounts of inoculum roughly equivalent to the amounts produced by these other bacteria.

Bacteria that cause diseases of plants most often are dispersed for short distances by wind-blown rain and insects. In addition, they can be moved on infected or infested plant parts and on contaminated equipment. Although the mechanisms by which the *Xanthomonas* nursery strains are dispersed in nature is not clear, it is likely that these organisms can move in the same way that other plant pathogenic bacteria move. Reliable data on the movement of the *Xanthomonas* nursery strains can be obtained only if scientists are permitted to perform field and greenhouse studies of the sort traditionally done with other bacterial pathogens.

IV. Which parts of the host plant may carry the organism? Can it move easily?

As is the case with other plant pathogenic bacteria, any infected or infested plant part is theoretically capable of carrying the organism. This assumes, of course, that such plant parts have not been disinfected or disinfested. Observations of the *Xanthomonas* nursery strains over a three and one-half year period suggest that they do not move "easily".

V. Does the disease inflict significant loss or reduction in the quality of the host?

No positive evidence exists to suggest that the *Xanthomonas* nursery strains pose a threat of significant losses or reduction in quality to bearing citrus in groves. Thus, it is not clear to us that any control will be required. This matter nevertheless warrants additional studies of the sort that have not yet been possible because of regulatory policies. Research initiated at Hastings and aimed at quantifying the effects of the organism on citrus under natural conditions should be continued. Strains from the Ward Nursery should be included in these tests, which should be designed to allow the disease to progress sufficiently to assess whether or not fruit can be affected.

VI. How is the disease controlled? Is control easy, expensive, or harmful to the environment?

Experience with the Asiatic strains of *X. campestris* pv. *citri* (i.e. the A strains) suggests that the disease can probably be controlled by use of copper-containing bactericidal sprays, cultural practices, and sanitation. Copper is a broad spectrum bactericide, and *in vitro* tests indicate that it is effective against the *Xanthomonas* nursery strains. Should sufficient disease appear in the field, control procedures developed for the Asiatic strains should be evaluated with the *Xanthomonas* nursery strains to confirm effectiveness and to allow for "fine-tuning" of formulations and spray schedules.

Cultural practices that are likely to be effective include use of windbreaks, careful timing of fertilization to reduce summer growth, and application of herbicides to reduce the need for cultivation that produces wind-blown sand. Sanitation procedures would include stringent disinfestation of tools and materials used in nurseries.

Experience with control of the Asiatic strains suggests that spraying would be cost-effective, both in nurseries and groves. Control in nurseries should be straightforward and inexpensive. It will involve sprays on an optimum schedule and application of standard sanitation methods. Control of the disease on susceptible cultivars in groves may be more difficult and expensive, because sprays must be applied on a strict schedule that corresponds to tree growth. This may require grove owners to acquire more spray equipment for rapid spraying on tight schedules. The volume of sprays needed in groves will add to the expense of control and potentially produce copper residues in soil. Copper toxicity should nonetheless not be a problem, provided that soil pH is properly managed.

End of report

Regulatory Options

APHIS is considering whether, based on this report, our regulations on citrus canker should be changed. Following are options we are considering:

1. Reduce the quarantined area in Florida to include only that area where, within the past 2 years, there have been infestations of citrus canker caused by the Asiatic strains.

Some people believe that the disease caused by the nursery strains is not a threat to commercial citrus production and, therefore, should not be regulated. This option would remove administrative burdens and expenses associated with the movement of regulated articles from all areas of Florida, except those affected by the Asiatic strains. Federal resources could be concentrated on control and eradication of the Asiatic strains in the Tampa Bay area of Florida.

2. Reduce the restrictions on the interstate movement of regulated articles from all areas of Florida except that area where, within the past 2 years, there have been infestations of citrus canker caused by the Asiatic strains.

Some people believe that the nursery strains cause a disease that is considerably less serious than citrus canker, has a limited potential to spread through fruit movement, and, therefore, warrants less stringent regulations. This option could involve restructuring the regulations to cover two distinct pathogens: (1) The bacterium that causes citrus canker and (2) the nursery strains of *Xanthomonas campestris*. The name Xanthomonas leaf spot has been suggested for the disease caused by the latter. This option would reduce, but not remove, the administrative burdens and expenses associated with the movement of regulated articles from all areas of Florida, except those affected by the Asiatic strains.

3. Maintain the current regulations.

Some people believe that we should keep the current regulations in place until more information about the nursery strains becomes available.

We would like comments on whether any of these options, or others, should be considered; the possible effects of these options; and, if a revision to the regulations is recommended, what specific requirements should be included.

Done in Washington, DC, this 23rd day of June, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-14566 Filed 6-27-88; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A25; DA-88-101]

Milk in the Chicago Regional Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts minimal supply plant shipping requirements of three percent for the months of August and January, and five percent for each month of September through December. Such provisions would replace those of the Chicago order which authorize the market administrator to require reserve supply plants to ship milk to bottling plants, when called upon to do so. If the new requirements are met, the supply plants generally would be pool plants during February through July without making any shipments. Handlers would be permitted to form units of their own plants, or to form units with other handlers, in order to meet the shipping requirements by shipping milk from the plant or plants best situated to make the shipments. However, units would have to ship twice the percentage of milk required to be shipped from individual plants. Both the market administrator and the Director of the Dairy Division would have limited authority to temporarily change the shipping requirements, if necessary. Other changes would reduce the touch-base requirements, eliminate percentage limits on diversions, and eliminate storage requirements for supply plants.

Although recommended earlier, this decision does not adopt a proposal to change the location adjustment zones.

The decision is based on a record developed at a public hearing held in Madison, Wisconsin, on June 2–4, 1987, at the request of 11 dairy farmer cooperatives and by four proprietary handlers. The changes herein reflect current marketing conditions and will tend to facilitate stable and orderly marketing of milk supplies associated with the Chicago Regional market.

Cooperative associations supplying milk for the market will be polled to determine whether producers favor the issuance of the amended order. It must be approved by at least two-thirds of the order's producers in January 1988 to become effective.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued May 15, 1987; published May 19, 1987 (52 FR 18894).

Extension of Time for Filing Briefs: Issued July 31, 1987; published August 6, 1987 (52 FR 29196).

Emergency Partial Decision: Issued October 8, 1987; published October 15, 1987 (52 FR 38235).

Order Amending Order: Issued October 20, 1987; published October 23, 1987 (52 FR 39611).

Recommended Decision: Issued March 8, 1988; published March 14, 1988 (53 FR 8205).

Extension of Time for Filing Exceptions: Issued March 29, 1988; published April 4, 1988 (53 FR 10894).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Chicago Regional marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), at Madison, Wisconsin on June 2–4, 1987. Notice of such hearing was issued on May 15, 1987 and published May 19, 1987 (52 FR 18894).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on March 8, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "2. Performance standards for pool plants.", part "a. Minimum shipping requirements for supply plants.":

a. Five new paragraphs are added after paragraph 44.

b. Paragraph 46 is revised.

c. Two new paragraphs are added after paragraph 46.

d. One new paragraph is added after paragraph 55.

2. Under the heading "2. Performance standards for pool plants.", part "b. Formation of supply plant units.":

a. Three new paragraphs are added after paragraph 3.

b. Ten new paragraphs are added after paragraph 5.

c. Four new paragraphs are added after paragraph 6.

d. Paragraph 9 is revised.

e. Three new paragraphs are added after paragraph 9.

3. Under the heading "4. Definition of producer milk (a) Producer delivery requirement.", six new paragraphs are added after paragraph 6.

4. Under the heading "5. Location adjustments.":

a. Paragraph 1 is revised.

b. Paragraph 14 is inserted after paragraph 6.

c. Paragraph 13 is revised.

d. Three new paragraphs are added after paragraph 13.

e. Paragraphs 15 through 23 are removed.

The material issues on the record of the hearing relate to:

1. Marketwide service payments.

2. Performance standards for pool plants.

3. Definition of supply plant and reserve supply plant.

4. Definition of producer milk.

5. Location adjustments.

6. Omission of a recommended decision and opportunity to file written exceptions thereto with respect to issue number 1.

This decision considers issues 2 through 5. A prior decision dealt with issues 1 and 6.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

2. *Performance standards for pool plants.* The order should be amended to require that supply plants must ship 3 percent of their receipts of milk in August and January, and 5 percent in each month of September through December, subject to temporary revision by the Director of the Dairy Division. Also, the market administrator should have limited authority to increase or decrease the shipping requirements for up to three months, and to require minimal shipments in other months. Handlers could form shipping "units" to make shipments at twice the level required for individual plants, once a monthly minimum shipping requirement from each plant has been satisfied.

However, each plant in a unit would have to ship at least 47,000 pounds of milk, or 3 percent of its receipts of milk from producers, whichever is less, to a distributing plant(s) in each of five months during the six-month period of August through January.

a. *Minimum shipping requirements for supply plants.* The order currently defines two types of milk-supplying plants. One is a supply plant, from which must be shipped each month to distributing plants a percentage of milk receipts at least equal to the marketwide Class I utilization percentage for the same month the previous year. In December 1986 only five out of 107 supply-type plants fit into this category. The other 102 plants were reserve supply plants. Such plants are required to ship only one 47,000-pound load of milk each year, unless included in a call for shipments issued by the market administrator.

The current performance provisions for supply plants and reserve supply plants were adopted in 1984 in order to provide a mechanism to assure adequate shipments for the market's fluid (Class I) needs, while at the same time not requiring unneeded (and therefore inefficient and costly) shipments. Under this system about 40 percent of the market's supply-type plants have been associated with the market without shipping any more than a fraction of their milk supplies during the last two years. At the same time, some handlers complain that they are unable to get all the milk they want for fluid milk uses, while cooperatives maintain that the present system for pooling supply plants results in inequities.

Four proprietary handlers; namely, Dean Foods Company, Cedarburg Dairy, Inc., Certified Grocers Midwest, Inc., and Hawthorn-Mellody, Inc. (Dean et al.), proposed monthly shipping percentages for all supply plants during the months of August through January. The required minimum shipment during August and January would be five percent of Grade A milk received at the plants from producers, and during September through December it would be 10 percent. Qualifying shipments would not include those made to distributing plants fully regulated under other Federal orders.

In addition, the proposal would provide the Director of the Dairy Division the authority to increase or decrease the shipping percentages by up to the full shipping percentage applicable that month. Also, the proposal would eliminate the reserve supply plant and call provisions.

Central Milk Producers Cooperative (CMPC), a federation of 11 dairy-farmer cooperatives, also offered a proposal to establish shipping requirements for all supply plants during the August-January period. CMPC's proposal, however, is basically a modification of Dean et al.'s proposal for supply plant shipping requirements. As such, CMPC proposed that two or more cooperatives may form a unit of their plants for the purpose of meeting the shipping percentages of the order and that these plants must be located within the State of Wisconsin or within the portion of the State of Illinois which lies in the marketing area. CMPC further proposed that the shipping percentages for units of cooperatives be double that for single plants in all months. However, the Director of the Dairy Division should be given the authority only to increase or decrease shipping percentages up to the maximum percentage for a single plant during a certain month. For example, during the month of August, the director would be able to increase the shipping percentage for a single plant or a unit a maximum of 5 percentage points, making the effective shipping obligation 10 percent for single plants and 15 percent for units; the maximum decrease allowable would yield effective shipping percentages for single plants and units of zero percent and 5 percent, respectively.

Under CMPC's proposal, the director's authority would be effective during the months of August through January. For the remaining months of February through July, the call provision, already in the order, would apply. However, CMPC's proposal would eliminate the reserve supply plant provision, leaving each supply plant subject to a call. Any plant that fails to meet a call would lose its eligibility to pool for one year.

CMPC would include as qualifying shipments those made to other order plants for Class I use. If a plant does not earn the "free-ride" for the months of February through July or if a plant is new on the market, then CMPC proposed that it should ship a minimum of 5 percent during those months.

At the hearing, Kraft, Inc. (Kraft); the Trade Association of Proprietary Plants (TAPP); Wisconsin Cheesemakers Association (WCMA); and two farmer organizations, namely, National Farmers Organization (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC) opposed proposals to restore minimum shipping requirements. However, should the shipping requirements be adopted, then Kraft, NFO, and FUMMC would support the unit pooling concept.

Dean et al. collectively operate six distributing plants, three supply plants, and three reserve supply plants regulated under the Chicago Regional order. In support of the proposal for reinsertion of specific supply plant shipping percentages for certain months of the year, the spokesman for Dean et al. claimed that presently only more money moves milk for fluid uses when supplies become tight. The Chicago order, he said, has not been effective in moving milk to bottlers since the "call" and reserve supply plant provisions, which virtually eliminated shipping requirements, became effective. His belief is that without the CMPC over-order pricing program, the bottlers could not have received enough milk without going out into the open market for it, causing disruptive action.

Proponent introduced exhibits into the record to show the increase in over-order charges administered by CMPC starting in the fall of 1984. He attributed the 79 cents per hundredweight increase between August and December 1984 to a combination of short supplies and high demand for manufacturing milk. He further pointed out that similar circumstances in the fall of 1986 contributed to over-order charges ranging from $1.20 to $2.50 per hundredweight. Although they did not relish the idea of high over-order premiums, Dean et al. were glad to be assured of a steady supply of milk. However, the spokesman aided that there were times when even the high over-order charges could not guarantee a full supply of milk. As a result, he said, plant schedules were disrupted and in extreme cases bottling lines were temporarily shut down. He claimed that milk could not be pried loose from cheese plants; therefore, CMPC had to go to other markets such as Upper Midwest, Southern Michigan, and Eastern Ohio-Western Pennsylvania, for milk supplies. His belief is that such circumstances should not arise in a market that has an average Class I utilization of 20 percent.

It is Dean et al.'s belief that the manufacturers should share the milk with the fluid handlers who under the order share the Class I differential with them. Because manufacturers will not voluntarily ship milk even when high over-order charges are paid, he said, then the order, for equity's sake, should stipulate that for any supply plant to share in the market's pooled funds, such plant must perform. He contends that although in 1984 it may have been thought that efficiency would be served if shipping standards were eliminated, it is apparent now (1987) that equity

among handlers has suffered and the market cannot function in an orderly fashion. The spokesman added that the shipping requirements of 5 percent in August and January and 10 percent in September through December, which amounts to 17 percent of the monthly Class I needs, is a step in the right direction towards equity.

Proponent claimed that the "call" provision cannot be effectively used in the Chicago Regional market because most distributing plants use significant amounts of milk in Class II and Class III uses and thus do not qualify to petition the market administrator to implement a call for shipments from reserve supply plants to distributing plants for Class I use. He added that other markets have shipping requirements which simply state that supply plants must ship a specified percentage of their supplies to distributing plants. Such provisions do not specify how the distributing plants must use the milk but simply require supply plants to perform in order to participate in the pool.

Although proponent did not espouse the idea of allowing "units" to meet the requirements of the order, Dean et al. implied it would not object to units if they were legitimate ones. He further explained that each plant in a unit would have to be operated by the owner. He firmly stated that he did not want a return to the days of "sham" leasing whereby a plant became part of a unit by virtue of a lessee paying one dollar to the lessor who in turn would pay the lessee a qualifying fee in order for the plant to be part of the lessee's unit. Under such a scheme, the lessor's plant would not have to ship any milk, but would have the benefit of the uniform price to help pay producers a competitive price for their milk.

A spokesman for Hawthorn-Mellody, Inc., testified in support of the positions taken by the Dean et al. witness at the hearing.

CMPC is composed of the following 11 dairy cooperatives: Alto-Golden Guernsey Cooperative, Associated Milk Producers Incorporated-Morning Glory Farms Region, Independent Milk Producers Cooperative, Lake-to-Lake Division of Land O'Lakes Dairy Cooperative, Manitowoc Milk Producers Cooperative, Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers, Outagamie Milk Producers Cooperative, Southern Milk Sales, Wisconsin Dairies Cooperative, and Woodstock Progressive Milk Producers Association. CMPC members account, in the aggregate, for approximately 80 percent of the milk delivered monthly to Order 30 pool plants. CMPC menber plants (29 reserve supply plants and two supply plants) receive approximately 46 percent of Order 30 producer milk and ship approximately 36 percent of such receipts to Order 30 distributing plants.

CMPC's spokesman claimed that shipping standards are needed because the CMPC membership alone cannot supply all the needs of the fluid plants and still operate their own plants in a stable and economic manner. Although CMPC originally stated that they would make sure that the fluid needs of the market were satisfied when the call and reserve supply plant provisions were first made part of the order, CMPC now, after a few years' experience, states that they cannot guarantee a full supply by themselves. The spokesman pointed out that the CMPC program of over-order charges, in general, assures that fluid orders are filled with CMPC and other handler milk. However, when milk supplies are tight, such as was the case in the fall of 1986 and early 1987, no matter what the over-order charges are, the requested milk cannot be obtained from pool plants outside of CMPC. Furthermore, he stated that when such circumstances occurred in the past, CMPC was forced to look outside the order to get the necessary milk supplies. The spokesman concluded that if a handler is willing to draw from the pool the proceeds generated by Class I, then such handler should also be willing to assist in supplying the needs of the Class I handlers.

CMPC proposed adoption of unit pooling because the market as well as CMPC would not benefit if each plant were forced to ship. In fact, CMPC's spokesman stated that they would not be interested in shipping standards if unit pooling for cooperatives is not permitted.

CMPC's spokesman claimed that the formation of units would prevent uneconomic movements of milk from distant supply plants and would promote the supply of close-in milk. However, CMPC would only permit plants of cooperatives to form such units. CMPC's spokesman did point out that one handler with two or more plants should be permitted to form a unit of such plants for shipping purposes.

CMPC supported giving the director discretionary authority to increase or decrease the shipping standards, stating that it lends flexibility to the shipping requirements which in turn leads to a stability of supply for Class I handlers. The spokesman cited how useful such a provision was in the past under the Chicago Regional order, being utilized 39 months (37 decreases and two increases) from 1968 to September 1984. For similar reasons, CMPC wishes to keep the call provision in place for the months when the shipping requirements and director's authority would not apply. Furthermore, the spokesman pointed out that all supply plants or units of such would be subject to a call since the reserve supply plant provisions would be eliminated.

Kraft, a proprietary handler, operates five reserve supply plants regulated under Order 30. Kraft's witness revealed that during the fall-winter period of 1986, Kraft pooled approximately 45 million pounds of milk per month and shipped between 8 and 10 percent of this to Order 30 distributing plants.

Kraft's witness put forth several arguments against monthly minimum shipping requirements for supply plants. One was that marketing conditions have not changed to a degree necessary to warrant a change in the pool plant requirements since 1984, when a prior hearing was held to consider shipping requirements. To bolster his argument, he referred to an exhibit which could be used to compare statistics for the first four months of 1985 with corresponding months of 1987 to show that Class I producer milk increased to a lesser extent than the total amount of milk in the pool increased (i.e., increases of 2.3 percent and 3.7 percent, respectively).

Kraft's witness also claimed that since a call has not been invoked since its inception, one can assume that the Class I needs of the market have been satisfied. Furthermore, he said the real issue does not concern the fluid needs of the market, but rather it concerns the Class II needs of the distributing plants.

Kraft's witness also pointed out that the disruptive situation which proponents fear would come about if fluid handlers should have to go out into the marketplace and bid up the price of milk is anything but disruptive to the producers themselves who would be the beneficiaries of the increased competition. Rather, it is Kraft's belief that mandatory shipping requirements could have a negative impact on producers' returns because the increase in the amount of milk searching for a fluid recipient would most likely weaken the over-order pricing system.

Kraft's witness stated that should the Secretary adopt shipping standards, then these must include unit pooling provisions which would be extended to both proprietaries and cooperatives. Kraft suggested that such a provision should be modeled after that of the Southern Michigan order. The witness said that the Southern Michigan unit provision allows for two or more proprietary handlers to join into a marketing agreement, which is certified

by the market administrator, for the purpose of meeting pool plant shipping requirements. Kraft believes that because these agreements have the market administrator's approval there should be no concern about so-called "sham" lease arrangements.

Kraft's witness further stipulated that a unit's shipping requirement should be the same as an individual plant's shipping requirement. He also suggested that plants in a unit should be located within the marketing area or in the State of Wisconsin.

In addition, the witness suggested that qualifying shipments include those made to other order distributing plants. Kraft believes that such inclusion maintains the efficiency of the order, as demonstrated by an incident whereby Associated Milk Producers Incorporated (AMPI), asked Kraft to ship milk to distributing plants regulated under the Central Illinois order because of Kraft's closer location to those plants, in order to free-up AMPI milk for a Chicago customer.

A spokesman for WCMA voiced the association's opposition to mandatory monthly shipping requirements saying that the present order's call and reserve supply plant provisions are sufficient for assuring that the fluid needs of the market are satisfied. He pointed out that since the call provision was made part of the Chicago order, only on two occasions did the market administrator have reason to investigate whether conditions warranted its use. He added that, in both cases, the initial investigation was all that was needed to cause some plants to make milk available to distributing plants.

He further stated that proponents are only interested in fulfilling their Class II needs at favorable prices. However, he said, there are several reasons why manufacturers should not have to ship for Class II uses, one being that it is not the Federal order's responsibility to make milk available for Class II uses. This opinion, he said, is backed by a 1985 decision in which the Secretary turned down a similar request for shipping requirements. That decision stated that the Department would not force shipments for Class II uses. Furthermore, the spokesman said that Class II milk use add virtually nothing to the blend price.

The spokesman noted that the levels of proposed shipping percentage are not sufficient to bring enough milk to cover the market's Class I needs. He expressed WCMA's view that if those who presently ship greater amounts of silk than that which would be required of them, adjust such shipments down to the required levels, then the market's Class I needs would be short. Nonetheless, WCMA's major concern involves unnecessary and uneconomic shipments that could ensue because of the shipping requirements.

TAPP held a view similar to that of WCMA, stating that the present order's call and reserve supply plant provisions assure the availability of adequate supplies of milk for fluid uses. TAPP's representative further stated that the real problem is that fluid handlers may not have enough milk available, at a favorable price, to fill their Class II needs. TAPP's witness claimed that unfavorable prices, or high over-order charges, are the result of heavy out-of state shipments to the Southeast due to the "whole-herd-buyout" program. However, it is TAPP's belief that shortly after the supply-reduction program ends, then the excessive out-of-state shipments will also end, and the Chicago market will once again have abundant supplies of milk.

TAPP's witness presented the group's belief that it is not the responsibility of the Federal order to assure a full supply of milk for Class II uses. In addition, he stated TAPP's view that shipping requirements would depress handling charges which, he claimed, would be better set by the cooperatives outside of the Federal order program, following the dictates of supply and demand, and other competitive factors. It is adequate over-order charges, he said, that ensure sufficient milk supplies and solve equity problems that exist between supply plants that ship to distributing plants and those that do not ship.

Both NFO and FUMMC opposed the reinstitution of shipping requirements in Order 30 because, their spokesmen claimed, to do so would have a negative impact on producer returns. FUMMC's representative added that comparative marketing facts for March-April 1983 and 1987 show that in 1987 there was more producer milk available, but less of it used in Class I. Thus, the FUMMC representative stated that if the market changes reveal anything, they show that the market needs the call and reserve supply plant provisions more today than it did back in 1983. However, both agree that should the Department put in shipping requirements, then, for reasons of efficient milk movement, handlers should be able to form units to meet such requirements.

The issue of shipping standards for supply plants involves two key questions: (1) Are fluid milk plants receiving adequate supplies of milk for Class I use?; and (2) Would shipping requirements improve equity among market participants?

The question of adequate supplies of milk for Class I use has different answers, depending on who answers the question. The proponents of shipping standards (Dean et al.) did not claim that in the last three years they were unable at any time to supply the packaged fluid milk products that their customers wanted. On the other hand, representatives for two handlers, Hawthorn-Mellody and Dean Foods both testified that they experienced some problems with specific plant operations because they were unable to get all the milk they wanted when they wanted it. Accordingly, bottling schedules sometimes had to be changed, and, in some cases, specific plant operations or even the entire plant was shut down for a few hours. However, both handler spokesmen knew of no cases in the fall of 1986 when consumers were unable to obtain Class I or Class II products when and where they wanted them. These handlers maintain, nevertheless, that supplies were not adequate for their needs and that the order is not serving fully the purpose of assuring adequate Class I milk for bottling plants.

Another point of testimony was that in rather isolated instances in the fall of 1986 milk was obtained from sources outside the usual Chicago milkshed. Two examples noted were milk obtained from a plant in Pennsylvania and from plants in the Wisconsin portion of the Upper Midwest order. Milk also was obtained from other non-Order 30 sources. The total non-Order 30 milk obtained by CMPC for its customers during August 1986 through January 1987 was about 4.3 million pounds. However, it must be noted that, according to one CMPC witness, this represented a very unusual situation and involved the largest amount of milk so obtained since 1968.

Opponents of the proposals to increase shipping requirements for supply plants maintained that the order does not need to be changed, pointing to the fact that the market administrator had not issued any calls for milk shipments since the call provisions were adopted in 1984.

The evidence leads to the conclusion that in the August 1986 through January 1987 period, the market's Class I milk needs were met, but just barely; and, that if more milk is needed from supply plants, it would represent only a small increase.

The question of equity is more difficult to quantify. Nevertheless, the fact is that since 1984 many reserve supply plants have maintained pool status and thus the benefit of the blend

price, but have shipped very little milk to distributing plants. This is not surprising because the order has not required any more than this. Moreover, the location adjustment provisions have not facilitated movements of milk from more distant supply plants.

The decision to adopt the call provisions pointed out that it is difficult to achieve a balance between efficiency and equity. Based on the record of that proceeding, widespread support was indicated for the efficiencies of allowing milk supplies to be held in reserve, and thus pooled, with shipments to be required only if the market administrator found it necessary to issue a call. Now, CMPC has concluded that such provisions lead to inequities in the marketplace. We find that the record supports this conclusion.

One of the exhibits introduced at the hearing shows that from September 1986 through January 1987 there were 102 plants that qualified as reserve supply plants. Fifty-six of those plants, which pooled milk equal to 41 percent of all milk pooled by reserve supply plants, shipped to distributing plants an average of only 1.1 percent of their producer milk receipts during the same months in which bulk milk was being imported from other order plants. At the same time, CMPC member cooperatives that operated supply plants shipped 38 percent of their milk supplies to distributing plants, and even then could not supply all the milk requested by their customers.

It is recognized that CMPC's definition of "distributing plants" includes some cottage cheese operations. However, it was estimated that about 85 percent of the CMPC shipments were Class I milk. Thus it is clear that CMPC members have shipped to bottling plants about one-third of their supply plant milk while more than 50 percent of reserve supply plants shipped an average of slightly more than one percent. In fact, 40 of those plants averaged shipments of only 0.2 percent of their receipts.

The proponent cooperatives now take the view, based on experience, that the reserve supply plant and call provisions have resulted in an inequitable situation for CMPC members. This occurs because the cooperatives cannot provide the level of supplies needed by the fluid market and at the same time operate their own facilities in a stable, economic manner. On the other hand, some manufacturing plant operators have been able to keep virtually all of their milk, as demonstrated by the low level of shipments for the group of 40 plants. Clearly, there is a lack of equity in performance between CMPC members and many other supply plant operators. Accordingly, equity among the market's supplying handlers will be improved if increased shipments are required. The next question, then, is how much should shipping requirements be increased?

Both proponents of shipping requirements proposed 5 percent in August and January, and 10 percent in September–December. Based on an exhibit prepared by the market administrator, adoption of this proposal would have brought forth additional shipments of milk averaging about 35 million pounds per month during the August–January periods beginning in August 1985 and ending in January 1987. This estimate assumes that other handlers would have maintained their same level of shipments. There is no way to evaluate the correctness of such an assumption based on information contained in the record. On the other hand, since the evidence indicates adequate supplies for Class I use during those periods, there is no justification for requiring supply plants to ship an additional 35 million pounds per month. Instead, the order should specify shipping requirements at 3 percent of receipts for August and January, and 5 percent for September through December.

It is not possible, given the data contained in the record, to estimate how much additional milk will be shipped as a result of adopting the lower requirements. All that can be said is that the lower requirements would be expected to bring forth less milk than the proposed requirements. This will improve somewhat the equity among supply plant operators, yet minimize any shipments above the level needed to assure adequate supplies for Class I use. Moreover, if the supply plant operators in CMPC were to cut back on their shipments to bottling plants, it is possible that there would not be adequate supplies for Class I use, absent a mechanism to require additional shipments.

Arpin Dairy, Inc., WCMA and Edelweiss Cheese Co., Inc., took exception to the recommended decision to again require supply plants to ship milk to qualify as pool plants.

Arpin Dairy's and WCMA's exceptions protested that the Act does not address shipping equity among market participants. The Edelweiss exception stated that shipping requirements will cause Edelweiss an economic hardship because payments to producers for their milk is based on the protein content of the milk. However, milk that must be shipped to fluid milk plants will be sold on a butterfat basis, implying that the handler would not recover the full cost of the milk.

It is true that the Agricultural Marketing Agreement Act of 1937, as amended, does not specifically state that there shall be shipping equity among market participants. However, the entire thrust of the enabling legislation tends to achieve a measure of equity in that the goal is to maintain or provide stable and orderly conditions under which milk can be marketed. Orderliness and stability could not long survive in the absence of some degree of equity among market participants in the marketplace. Arpin's and WCMA's exceptions, which sought a reversal of the recommended decision to require supply plant shipments are, therefore, denied.

The Edelweiss exception also is denied. There is no basis in the record to afford special consideration to Edelweiss because the handler recognizes protein content in its payments to producers for their milk. Moreover, since the milk that moves to distributing pool plants must be Class I to be eligible for transportation and assembly credits, we presume that such transfers will be billed at the Class I price, or higher. While the record does not indicate the prices that Edelweiss pays its producers, we would expect that such prices would be less than the Class I price. Thus, we question, especially in view of the small level of shipments required, whether the economic hardship that Edelweiss foresees will actually come about.

A few parties in their exceptions to the recommended decision regarding instituting shipping requirements stated that the record did not prove that Class I needs were not met. These exceptions, however, reiterate points these parties made in their testimony and briefs, which were fully considered in making a recommended decision. Thus, the exceptions provide no basis for reaching a different conclusion in this decision. Accordingly, the exceptions are denied.

Both Dean et al. and CMPC proposed eliminating the call provision in the fall months, and Dean et al. proposed eliminating the call provision entirely. Both proponents argued that the call provision would not function as they had expected it would when adopted. In its place, both proponents advocated providing the Director of the Dairy Division the authority to increase or decrease shipments in the fall months as a corollary provision to requiring all supply plants to ship more milk. The Director could increase or decrease the shipping requirements as necessary to either obtain additional supplies for

Class I use or to prevent unneeded and therefore uneconomic shipments. A similar provision was in the order prior to adoption of the reserve supply plant and call provisions.

The proposal should be adopted in order to provide continued flexibility in attempting to balance shipments with Class I needs. However, the authority to temporarily increase or decrease shipping requirements should reside with both the market administrator and the Director. Thus, the market administrator could revise the shipping percentages by up to two percentage points for a maximum of three months. This provision will allow fine-tuning the shipping requirements on a timely basis. If a greater adjustment appeared to be necessary, the Director could, either on his own initiative or at the request of industry, temporarily increase the shipping requirements from those specified in the order by up to 5 percentage points, or decrease the shipping requirements by up to ten percentage points, for as long as the entire August–January performance period. In another discussion, it is concluded that handlers should be allowed to form units so that the shipping requirements might be met in the most economic fashion. Any increase or decrease specified under authority of either the market administrator or the Director of the Dairy Division would be applicable also to units in the same manner as for individual supply plants. Moreover, the authorities to increase or decrease shipping requirements should remain in effect throughout the year. Thus, even in months when there are no shipping requirements, if an analysis of market conditions convinced either the market administrator or the Director of the Dairy Division that shipments were needed, requirements could be imposed up to the limits authorized. This dual authority to make temporary adjustments should help the market operate in an orderly fashion.

In their exceptions, WCMA and Arpin Dairy stated that the Director of the Dairy Division should be able to suspend all shipping requirements as they apply to supply plants, units of supply plants and individual supply plants in units. These parties contend that the recommended decision did not give the Director the authority to prevent unneeded and uneconomic shipments.

The recommended decision provided the Director the authority to increase or decrease the shipping requirements by up to a maximun of five percentage points. This would have enabled the Director to reduce to zero the required shipments from individual supply plants and reduce to one or to five percent the required shipments from units, depending on which month is involved. However, the amount of milk required from each supply plant in a unit could not have been adjusted. Thus, if the Director had found that no milk was needed from supply plants, there would not have been the ability to suspend all shipping requirements to zero to match the supply conditions of the market. Therefore, we concur with WCMA and Arpin that the Director's authority should be expanded, on the downside only, in order to prevent unneeded shipments of milk, including eliminating shipments from each plant in a unit, when supplies at distributing plants are found to be plentiful. The order language that accompanies this decision has been changed accordingly.

Any supply plant that meets the shipping standards specified (or as otherwise temporarily revised) in each month of August through January should have automatic pool plant status in each of the following months of February through July, unless shipping requirements are imposed by either the market administrator or the Director of the Dairy Division. Any supply plant that fails to meet the August–January performance standards would be required to ship each month of February through July at least 3 percent of its receipts, unless otherwise increased by either the market administrator or the Director. The same requirement would apply to a new plant or a plant that had closed and later was reopened. The provisions just described will essentially replace the call provisions adopted in 1984, and will remove the need for defining a "reserve supply plant."

Opponents of shipping requirements argued that the call provision had functioned properly as demonstrated by the fact that no call has been implemented. They were also concerned that the imposition of shipping requirements would reduce producer returns, lower the level of over-order charges, and cause milk to move inefficiently and unnecessarily.

The lower level of shipments adopted in conjunction with the provisions for forming shipping units will tend to minimize the impact of providing greater equity through increased performance standards. The critical need, however, is to achieve better equity. Thus, manufacturing plant operators who use the pool monies contributed by bottling plant operators to help attract and maintain Grade A milk supplies will be required, in turn, to make available to bottling plants a small portion of those supplies.

CMPC's proposal to leave the call provisions in place during February through July, and to make all supply plants subject to a call for shipments should not be adopted. Rather, the provisions for temporary revisions by the market administrator and the Director of the Dairy Division should function to serve essentially the same purpose without the added complexity of order language necessary to leave the call provisions in the order, but applicable to only half of the year.

Similarly, if a plant that qualified for automatic pool status during February through July should fail to meet any shipping requirement imposed during that period by either party having authority to do so, such plant would then lose its "free ride" status for the remainder of the six-month period. Again, this differs from CMPC's proposal to deny pool status for one year to any supply plant that failed to make shipment's required under a call. However, since all supply plants will be pooled on the basis of performance, and not merely a promise to perform if a call is issued, such a provision would be inconsistent with the other provisions adopted in this decision. If a pool supply plant failed to meet a temporarily imposed shipping requirement in only one month, but had shipped throughout the fall months, producers regularly associated with the market would be denied pool status for their milk for one year. Such a provision would not be acceptable.

Currently, supply plant and reserve supply plant shipments (other than agreed Class II or Class III) to distributing plants regulated under other Federal orders are considered to be qualifying shipments up to an amount equal to shipments to pool distributing plants during the month. Dean et al. proposed that this provision not apply under new shipping standards, while CMPC and others urged its continuance.

We conclude that this provision should continue, but with one modification, as follows: If a temporary revision is imposed (by either the market administrator or the Director of the Dairy Division), the additional shipments required under the temporary revision should go only to pool distributing plants. Put another way, if a determination is made that additional supplies are needed for Class I use at Order 30 distributing plants, then the additional shipments resulting from increased shipping requirements should be addressed to those needs.

Also, it should be noted that determination of the need for temporarily revising shipping standards will be based only on the Class I needs of the market. To reiterate what has been said in previous decisions, given the level of difference between Class II and Class III prices, the order will not force milk to be delivered to the market for a Class II use. However, it also should be pointed out that none of the proposals submitted for this hearing involved any exploration of how much milk must be received at a distributing plant in order to be able to package and distribute 100 pounds of fluid milk products. Although it was intimated throughout testimony that the 10 percent long provided in the order to cover such things as shrinkage, aud cream separation is inadequate, this record cannot evaluate that number.

In any event, and contrary to the contention of opponents of adopting revised shipping percentages, it can be presumed that supplemental milk supplies needed by distributing plants in the low production months are for Class I use rather than Class II use. The volume of Class II use in the Chicago Regional market tends to vary seasonally in the same direction and essentially the same magnitude as the seasonal variation in the producer receipts. For example, during August 1986 through January 1987 the volume of Class II use was 6.9 percent lower than in the prior six-month period of February through July 1986, compared to a decline of 8.7 percent for receipts. By comparison, Class I use was up 9.6 percent. Similarly, for the six-month period August 1985 through January 1986 compared to the prior February through July 1985 period, Class II use was down 3.1 percent and producer receipts were down 3.6 percent, while Class I use was up 6.2 percent.

In their exceptions, Arpin Dairy and the WCMA urged that if shipping requirements for supply plants are adopted, then distributing plants should be required to receive milk from supply plants. This suggestion must be rejected. There simply is no basis in this record for imposing such a requirement upon distributing plants. The exceptions are denied.

b. *Formation of supply plant units.* Handlers should be allowed to make required supply plant shipments from any plant or plants that they operate, and which are located in the State of Wisconsin or in the portion of the State of Illinois that is included in the Chicago Regional order marketing area. Also, handlers should be allowed to jointly form shipping units. Such a provision will complement the shipping requirements being adopted so that the required shipments may be made in an efficient manner. However, each supply plant in a unit should be required to ship to distributing plants at least 3 percent of its receipts of milk from producers or 47,000 pounds of milk, whichever is less, in each of five months during the period of August through January. The shipping requirement for units should be double the requirement for individual plants; i.e., 6 percent in August and January, and 10 percent in September through December.

CMPC stated that units were an essential component of shipping requirements for supply plants. In fact, CMPC (a proponent of shipping requirements for supply plants) also stated that shipping requirements should not be adopted unless a unit provision also is adopted. Others, including several who opposed shipping requirements, said that if shipping requirements nevertheless were adopted, then provisions for units should also be adopted. CMPC urged that only cooperatives be allowed to jointly form units. The spokesman did indicate that a proprietary handler with a multi-plant operation should be allowed to form a unit of its own plants.

CMPC's basis for allowing only two or more cooperatives to jointly form a unit is the reblending privilege granted cooperatives by the Agricultural Marketing Agreement Act of 1937. CMPC also believes that the abuses of selling pool qualification will return if multi-handler units are allowed. This latter concern was often expressed at the hearing by others as well, including, Dean et al., who would support units only if they are legitimate units.

In its exceptions to the recommended decision, CMPC expressed concerns that an arrangement for joint marketing between a cooperative and a proprietary entity might be a violation of Section 1 of the Sherman Act and not within the antitrust exemption accorded to cooperatives by the Capper-Volstead Act. The latter concern is based on a 1939 Supreme Court ruling in *United States* vs. *Borden*, 308 U.S. 188 (1939), which held that Capper-Volstead did not provide an absolute exemption from anti-trust law. Accordingly, CMPC requested that if joint unit provisions are retained this decision should specifically state that such order provisions fall within the exemption from antitrust laws provided by § 608b of the Agricultural Marketing Agreement Act, as amended.

The exemption referred to in 7 U.S.C. 608b is not applicable to the issue of units jointly formed by a cooperative and a proprietary entity. Rather, 608b provides that a marketing agreement entered into by the Secretary of Agriculture and handlers " * * * shall not be held to be in violation of any of the antitrust laws of the United States, * * * ." It does not cover marketing agreements or joint marketing arrangements between handlers. Therefore, the request to state a specific exemption could not be granted under that authority in the Act.

It should be noted that the order will not require the formation of a shipping unit by one or more cooperatives and one or more proprietary plant operators. Any such arrangements will be voluntary. Thus, if any cooperative association is concerned that forming a unit with a proprietary supply plant operator places the cooperative in legal jeopardy, it can choose not to join such a shipping unit.

The basic reason for requiring shipments by supply plants, as stated earlier, is to achieve an improvement in equity by pool handlers through increased responsibility for supplying milk to meet the market's Class I needs. Equity is achieved at the handler level; it is not primarily a matter of equity among plants. Thus, beyond establishing basic criteria for plants to be pool plants, there is no clear cut need to require that a handler make the required shipments from each supply plant that the handler operates. The Class I needs of the market would appear to be as well served if the required amount of milk is shipped without regard to which particular plant or plants make the shipments.

Nevertheless, it is feasible to require each plant in a unit to ship at least 3 percent of its receipts of milk from producers or 47,000 pounds of milk, whichever is less, in each of five months during the period of August through January. This will demonstrate that the plant actually can make shipments. However, in order to allow smaller operations maximum flexibility, the monthly standard is not expresssd as one load. Also, to avoid requiring a small plant to ship a disproportionately large percentage of its supplies in meeting the 47,000 pound requirement, a 3 percent of receipts alternative shipping requirement is provided.

In their exceptions to the recommended decision, TAPP and NFO and FUMMC argued that it was not necessary to require each plant in a unit to make a token shipment in five months of the six-month supply plant qualifying period. TAPP suggested that a three-month shipping requirement would be

more reasonable, while NFO and FUMMC said one shipment in the period would be adequate. Also, the exception of NFO and FUMMC claimed that with transportation and assembly credits from the pool producers will bear the expense of delivering these loads of milk from all the distant plants in the 250 mile plus zone, which would reduce producer incomes in a wholly unjustified way.

As indicated earlier, it is necessary that each plant accorded status as a pool supply plant be capable of shipping milk to a distributing plant, especially in light of the fact that supply plants, as a result of this proceeding, must no longer maintain storage capacity. Now performance by a supply plant will demonstrate that it is fulfilling its supply function. For this reason, it is appropriate to require that each supply plant, whose operator will be able to draw pooled monies to help pay competitive prices to producers, demonstrate beyond any question that it is capable of performing as a supply plant in the market. The requirements adopted in this decision, which are very minimal, will do that.

Moreover, the arguments about costs to producers because of the transportation credits are not persuasive. This can be demonstrated by an extreme scenario example, where it is assumed that 100 supply plants, each ship 47,000 pounds of Class I milk to a distributing plant 200 miles away, and disregard any location adjustment over that distance. Under these assumptions, the cost to an average producer would be less than $2.00 per month.

Throughout this proceeding, the Department has endeavored to find a reasonable, and practical approach to the issues. We have adopted minimal shipping requirements and even a mechanism whereby if less supply plant milk is needed, the requirements can be temporarily revised to avoid unnecessary shipments. The shipping requirements are intended to provide at least minimal performance equity, and to demonstrate that supply plants are capable of shipping milk. Flexibility has been provided through allowing handlers to form units. These minimal requirements should not be further diluted. Accordingly, the exceptions are denied.

Several exceptions took issue with applying the net shipments provision to the token shipments required by individual plants in a supply plant unit. Kraft said that the net shipments provision could cause inefficiencies, and at most should be applied to the unit as a whole. Arpin Dairy and the WCMA proposed that net shipments be determined for plants and units on a cumulative basis. TAPP said that the net shipments provision should not apply to individual plants in a supply plant unit. On the other hand, CMPC commented that the net shipments provision should apply to all qualifying transfers made to pool distributing plants.

Following a full review of the exceptions and the record, we affirm the recommended decision that the net shipments provision should apply to all qualifying shipments to distributing plants by supply plants, whether or not the supply plants are in a unit. The net shipments provision assures that transfers moved to the fluid market will be for fluid demand and not merely for qualification. This is all the more important in view of the fact that shipping requirements are intended to satisfy the Class I needs of the market.

Kraft's exception noted that the continued (or renewed) need for the net shipments provision was not explored at the hearing. We agree, and note further that there was no proposal to eliminate the net shipments provision, which is now in the order. Moreover, this provision now applies to all qualifying shipments to pool distributing plants by supply plants (as now defined under the order) and by reserve supply plants subject to a call issued by the market administrator. The recommended decision in this regard was consistent in its treatment of qualifying shipments.

In addition, application of the net shipments provision to all qualifying shipments to pool distributing plants from supply plants is especially appropriate in view of the provisions adopted earlier in this proceeding whereby the pool will pay part of the costs for assembling milk at supply plants and transferring it to other pool distributing plants for Class I use.

In the exceptions on this matter, concern was expressed that where only token shipments are required for individual plants in a unit, such supply plants may have shipments disqualified because a distributing plant operator moves milk in a way to disqualify the shipments from supply plants. We recognize that this could happen. Therefore, it is important that both the shipping and receiving handlers understand the order's requirements and communicate with each other to avoid such a result. We also note that the order will require shipments by each plant in a unit in only five of the six months that the unit must qualify. Thus, during the August through January qualifying period, each plant in a unit has an extra month in which to qualify for automatic pool status in the following February through July. Since only limited shipments are required of such plants, this should somewhat lessen the concern about losing pool status.

For the foregoing reasons, the exceptions concerning the net shipments provision are denied.

The order will require, as CMPC proposed, that the shipping requirement for any unit, whether operated by a cooperative or proprietary organization(s), be double that required for the operator of an individual supply plant. Temporary revisions to increase shipping requirements would apply to units at the same rate specified for individual supply plants, not at twice the rate. The double-shipping requirement for units is one way to discourage abuse of the unit pooling privilege through leased plants or other arrangements that tend to accommodate the selling of pool qualification standards. Since the shipping requirements adopted are at low levels (3–5 percent), a unit would still be required to give up a relatively small portion of its milk supply in return for the privilege of pool participation.

Several parties took exception to the requirement that units ship double the percentage of receipts required to be shipped by individual plants, and argued that units and individual supply plants should have the same shipping requirements. TAPP claimed that the double shipping requirements will encourage the selling of pool qualification standards and will not result in the movement of more fluid milk from proprietary manufacturing plants. TAPP added that with increased production in the market, there is no need for six to ten percent shipments from units. Kraft held the view that proponent proposed the double shipments because it would not be a burden to them, as it would be to smaller handlers on the market, to meet the standard since they already ship in excess of such amount.

Contrary to views expressed in the exceptions, the double shipments requirement for units should discourage the selling of pool qualification. As a handler adds plants to a unit the unit must ship larger volumes of milk. If units are established where the arrangement is that money moves instead of milk, the burden increases for the plants that do ship. Due to the double shipping requirements for units, a handler would be expected to reach a point where adding more plants strictly for a fee would not be as feasible as it would be if the requirement was the same as for individual plants. This is precisely the

reason cited by CMPC for proposing the higher performance standard for units. Also, the record does not provide a basis for concluding that the cooperatives (CMPC) will be any less burdened by the unit shipping requirement than will other handlers.

In regards to the concern that the amount required from units is too high in view of the market's production figures, both the Director of the Dairy Division and the market administrator have the authority to adjust the percentage up or down in response to the market's needs. Therefore, this should pose no problem.

Finally, in response to Kraft's point, handlers are given several options concerning the pooling of their plants. Being part of a unit is but one option and was proposed to give handlers the flexibility and economies of combining operations. The double shipment requirement under such circumstances is necessary for reasons previously stated. For these reasons the exceptions to the shipping requirements for units are denied.

It is necessary, as proposed, to specify that all plants included in a unit must be located in the State of Wisconsin or in that portion of the State of Illinois that is within the marketing area of the Chicago Regional order. Absent this restriction, plants in distant areas could become pool supply plants under the Chicago order by shipping just one load per month. Such is not the intent of the unit pooling provision. The geographic restriction is appropriate.

A major concern expressed at the hearing centered around the practice of handlers leasing plants to be included in a unit. Strong sentiments were expressed that any leased plants included in a unit must be controlled and operated by the handler. Various lease criteria were suggested as necessary to prevent a "sham" lease, such as where the pooling handlers pay one dollar per year and then receive a fee from the plant operator for pooling the milk. It was suggested for example, that the pooling handler must be held responsible for paying producers who deliver milk to the leased plant. Another suggestion was that the pooling handler must control the leased operation in order for it to be considered a bona fide lease. Finally, there was a question about whether the operation of the leased plant should be accounted for in the books and records of the pool handler. The response was affirmative.

Because of the concern about sham leases and selling pool qualification, measures to prevent or at least minimize such practices should be adopted. Accordingly, it will be necessary to demonstrate that a leased plant meets the following conditions in order to be a pool plant in a unit:

1. The unit operator is responsible for paying producers who ship to the leased plant.

2. The unit operator controls and manages (either directly or indirectly) the leased plant;

3. The books and records of the unit operator reflect the ongoing activities of the leased plant by including the gross value of all producer milk pooled by the handler that operates the leased plant and employee payroll or independent contractor records reflecting the handler's financial responsibility for operation of the plant.

These requirements are modified from those listed in the recommended decision based on exceptions submitted by AMPI, CMPC, Dean, NFO and FUMMC. Although these parties agreed that "sham" leases should be prevented, they stated that there are many bona fide leasing arrangements that would not meet the strict requirements of the recommended decision. For instance, when the lessor provides, for a fee, many of the services and functions specified in the recommended decision. These services, spelled out in such leases, may include providing of properly qualified employees for record keeping, janitorial services, and cleaning and sanitizing both the trucks and the facilities. Therefore, the order language should be modified to recognize those situations where a handler contracts for services at a leased plant.

Also in its exceptions, CMPC expressed a concern that the inclusion of a specific, additional requirement that the handler of a leased plant be responsible for payments to producers is redundant and, unless modified, might permit the negative inference that there may be instances where a leased plant handler may not be responsible for payments to producers. On the contrary, what was recommended serves to highlight the responsibilities of a handler that leases a plant(s). There should be no mistake that these specific requirements are to be met by all such handlers if a lease is to be a bona fide one. Thus, the exception is denied.

CMPC also suggested more detailed criteria for eliminating "sham" leases. However, what was recommended (with the exception of adding contractual leeway) should be sufficient in preventing "sham" leases. Accordingly, this exception is denied.

These requirements should serve to prevent, or at least inhibit the pooling of sham leases, especially when coupled with the doubled shipping requirements for units, and should satisfy the market administrator that the handlers involved have established a bona fide lease. These measures are adopted in direct response to industry concerns over past abuses of a unit pooling provision.

Any handler, or any two or more handlers should be allowed to form a unit of plants. The unit could include, for example, supply plants of two cooperatives, a cooperative and a proprietary handler, or two proprietary handlers. An agreement certified to the market administrator by all parties to the agreement will notify the market administrator as to which plants will be in a unit and which handler is responsible under the agreement for meeting the performance requirements. The market administrator should receive such certification and list of plants to be included in each unit by July 15 for the following August–July period. Changes in unit makeup may be made after advance notice in writing to the market administrator. If a unit does not meet its shipping requirement, the handler responsible under the order for the unit shall inform the market administrator which plant or plants shall be depooled. If the handler fails to do so, the market administrator shall determine which plant(s) will lose pool status by first eliminating the last plant on the list, then the next, and so on until deliveries are adequate to qualify the remaining plants in the unit. Inclusion of this provision will remove any uncertainty as to how the order will apply in the event a unit fails to meet the performance requirements. Each plant included in a unit during the months of February through July must have been qualified as a pool plant, either individually or as a member of a unit, during the previous August through January.

The order also should recognize that a handler in a unit may sell the business or close down because of failure of the business. In such an event, language is provided in the order to allow the unit to reorganize to reflect the changed status of unit participants. Failure to include such a provision would leave the order unclear as to the status of a unit if such a change occurs.

Under a unit pooling provision, all supply plant handlers have an opportunity to fulfill their responsibilities to the fluid sector. At the same time, the order will allow flexibility so that efficiencies and economies may be realized in meeting those responsibilities.

If these provisions were not adopted, then it would be expected that milk would often move in an inefficient and costly manner, which would be contrary

to the intent of the Act to foster stable and orderly marketing conditions.

3. *Definition of supply plant and reserve supply plant.* The definition of a supply plant should no longer include a minimum storage capacity. Also, this order should no longer define a reserve supply plant.

CMPC proposed eliminating the storage capacity requirement for supply plants under the Chicago Regional order. In support of its proposal, the spokesman claimed that constant improvements in dairy technology have made it difficult for handlers to know the precise sizes of milk trucks and tankers that go in and out of their milk plants. He stated that without such knowledge, a handler's plant might not qualify as a supply plant simply because its storage capacity did not equal or exceed the largest shipment in or out.

Currently, a supply plant (other than a reload) regulated under Order 30 must maintain storage capacity sufficient to hold the largest single quantity of milk either received at or shipped from the plant as a single load. Such provision was found to be necessary to demonstrate that the supply function (i.e., assembling milk from farms at a location near such farms for efficient shipment to distant distributing plants) is performed with respect to milk received at or shipped from the plant. (Official Notice is taken of the Assistant Secretary's decision of August 6, 1971 (36 FR 14745).) The issue at that time concerned the pooling of milk that never was intended for Class I purposes. It was decided that if a supply plant at least had storage capacity equal to the largest shipment of milk in or out of the plant, then it would be able to hold reserve milk and thus give the appearance of Class I readiness.

Proponent pointed out that the order's reserve supply plant definition does not set specific requirements in regard to storage capacity. This double standard in storage capacity, he asserted, should not continue. The fact that the lack of storage capacity at ten reserve supply plants has not caused the market administrator any problem speaks in favor of its demise, he added.

At the hearing, only WCMA spoke out against the proposal. WCMA's witness questioned whether the order's supply plant definition should be so liberal.

Thirteen years after the storage capacity requirement became effective, reserve supply plant provisions were installed and most of the then supply plants chose to be regulated as reserve supply plants. Reserve supply plants were not required to maintain storage capacity because at the time of that hearing, the industry did not make a case for such a requirement.

Presently, there are 102 reserve supply plants and only five supply plants regulated under Order 30. However, as a result of this proceeding there will no longer be reserve supply plants; instead, the 107 plants will all be supply plants if they choose to meet the supply plant standards of the order which would include, if not changed herein, the minimum storage capacity requirement. However, as stated previously, the reload plants do not have to maintain storage capacity. Out of all 107 plants, 97 have some storage capacity, yet only 75 have storage capacity in excess of 55,000 pounds.

As stated, the 102 reserve supply plants have been exempt from any storage capacity requirement since September 1, 1984. Although these plants would now be supply plants, they should continue to be exempt from the storage capacity requirement, as should all supply plants. Otherwise, a plant which for three years has not had to consider such matters, could lose its pool status if a tanker load in or out of the plant turned out to be larger than the supply plant's storage capacity. The supply plant would not be a pool plant because its storage capacity was inadequate. However, as proponent pointed out, this inadequacy may be due to technological improvements in the size of tank trucks. Plants should not be depooled simply because they cannot keep pace with such improvements. Accordingly, the supply plant storage capacity requirement should be removed. Furthermore, in establishing a plant's association with the fluid market, the pool supply plant shipping requirement will have to be met. Such performance should be enough to demonstrate that a plant is fulfilling its supply function.

To accommodate the removal of storage requirements, conforming changes must be made in the definition of a "plant" under the Chicago order. Since the supply plant definition will no longer make any distinction between a supply plant with storage capacity and one without it, (i.e. reloads) then the plant definition should likewise make no distinction between such plants. Accordingly, the plant definition has been revised to broadly include milk plants that may qualify as pool plants. However, a reference to unloading milk into a tank truck in a plant is included to make it clear that producer milk so handled will be considered as physically received at a supply plant.

In light of other changes made herein concerning pool plant requirements, there is no longer a need to define reserve supply plants. Accordingly, such definition and any references to such throughout the order should be removed.

4. *Definition of producer milk.* (a) *Producer delivery requirement.* The producer delivery requirement (i.e. the "touch-base" requirement) of Order 30 should be relaxed. In this regard, only during the six months of August through January should one day's milk production of an individual producer be physically received at a pool plant to quality such producer's milk for diversion to nonpool plants. However, throughout the year, the milk of a dairy farmer who was not a producer during the previous month would not be eligible for diversion unless one day's production is received at the pool plant reporting the milk during the month. The order now provides that the touch-base requirement apply for each month and requires a dairy farmer who was not a producer during the previous month to touch-base before any of such producer's milk can be eligible for diversion.

CMPC proposed replacing the monthly touch-base requirement with a requirement whereby the milk of a dairy farmer who was not a producer during the previous month would not be eligible for diversion unless one day's production is received at the pool plant reporting the milk during the succeeding two calendar months. There was no opposition to this proposal at the hearing or in post-hearing briefs.

Proponent's witness claimed that requiring one day's milk production of each producer to be delivered to a pool plant each month causes undue pumping and hauling of milk. This, he said, is done solely to insure that the milk of these producers is eligible to be shipped directly to nonpool manufacturing outlets and remain pooled.

The purpose of requiring individual producers to touch-base is to insure that they are genuinely associated with the fluid market. Thus, it is known that the producers with milk pooled on this market are capable of delivering approved Grade A milk to pool plants. It is desirable that this practice be carried out without interfering with efficient marketing while maintaining the integrity of the order. It is unnecessary to require the milk of each producer to touch-base each month to achieve this goal.

Accordingly, the order should require that at least one day's production of a producer be physically received at e pool plant during each of the months of August through January in order for any of that producer's milk to be eligible to be diverted to nonpool plants and

remain pool milk. One day's production during each of the milk-short months is sufficiant to demonstrate an association between producers and the market.

Nonetheless, throughout the year, at least one day's production of a dairy farmer who was not a producer during the previous month should be physically delivered to a pool plant during the month in order for any of that milk to be eligible for diversion. Although this means that initial deliveries would be made during the flush as well as the milk-short months, an association of the milk of new producers with the Chicago market must be established, even if such shipments interfere with efficient marketing. However, the change made herein to the initial touch-base requirement should provide handlers a greater flexibility in making these deliveries.

CMPC in its comments and exceptions supported having each producer touch base each month during the August through January supply plant qualification period. On the other hand, AMPI urged in its exceptions that a touch-base shipment be required for each producer only one time each year. The exceptions filed on behalf of NFO and FUMMC argued that any touch-base requirement is nothing more than a "* * * useless, inefficient, nuisance * * *," that should be eliminated. Both CMPC and AMPI maintained that in any month in which a supply plant claims as a qualifying shipment milk moved from a producer's farm to a distributing plant, such producer should be required to touch base one time during the month by delivering milk to the supply plant. The purpose for such a requiremant would be to indicate to the market administrator which handler (the supply plant operator or the distributing plant operator) would be responsible under the order for the milk. One exception also expressed the view that it is confusing and administratively burdensome to have a touch-base requirement just six months of the year.

As previously indicated, a touch-base requirement is justified in order to establish producer association with the market. Moreover, it is administratively desirable to have such association tied to a specific plant (and thus a specific handler) where the order recognizes as qualifying shipments milk diverted from a supply plant to a pool distributing plant. Absent some such mechanism, the market administrator may have difficulty determining which handlers are responsible for certain producers.

A related reason for having a touch-base requirement in this order is that it will complement the criteria that the order will now specify for demonstrating a bona fide leased plant operation of a handler. The market administrator will be able to verify the list of producers associated with a leased plant, at least during the months when supply plants must ship milk to distributing plants to qualify as pool plants.

The arguments about causing inefficient movements of milk are not convincing because even with a one day per month touch-base provision in the fall months, the milk of each producer may still be diverted to another plant(s) on 359 days of the year. Likewise, we question whether handlers will be unduly confused by the touch-base requirement adopted herein, especially since it will operate concurrently with the supply plant shipping requirements. Certainly, such a requirement should be less confusing than requiring handlers to be sure that each producer whose milk is diverted from a supply plant to a distributing plant has touched base on a month-by-month basis, as suggested by CMPC and AMPI.

Finally, we do not think that it is necessary to have producers touch base if their milk is diverted from a supply plant to a distributing plant during the months of February through July. Only in unusual circumstances would such shipments be considered as qualifying shipments for a supply plant.

For the foregoing reasons the exceptions are denied.

(b) *Limitation on diversions to nonpool plants.* There should not be a limit on the amount of a handler's producer milk that may be delivered to nonpool plants and still be pool milk. Currently, the percentage limitation is equal to the market's combined Class II and III utilization percentage in the same month of the preceding year.

CMPC proposed eliminating the diversion limit. This proposal also was unopposed. Proponent said that the limit on the amount of milk that a pool plant can divert, like the touch-base requirement, causes unnecessary and uneconomic shipments of milk simply for pooling purposes. CMPC believes that handlers should not be subject to such costly obstacles when they are carrying out a basic precept of the order program in Chicago, that being to pool all the Grade A milk of producers. CMPC also believes that the elimination of both the touch-base requirement and the diversion limit provision, in conjunction with the implementation of unit pooling (i.e., per CMPC's proposal No. 6, issue No. 2 herein), should enable handlers to serve the market from the closest plants, thereby reducing hauling and associated costs.

In the Chicago market, the amount of milk that has been allowed to be delivered directly to nonpool manufacturing plants and still remain pool milk has been the reciprocal of the market's Class I use during that month of the previous year. This has been complementary to the order's supply plant shipping requirement. However, as adopted herein, pool supply plants will be required to deliver only 3 or 5 percent of their producer milk supplies, and this may be decreased to zero or increased to 10 percent. With such low shipping requirements, it is not reasonable to keep a diversion limitation that on the average in 1986 would have limited diversions to nonpool plants to 80 percent of a handler's milk supply. This limit coupled with the new shipping requirements would most likely result in unnecessary and costly movements of milk. In addition, the accompanying unnecessary pumping of milk would result in reduced milk quality.

Proponent did not suggest a limit that corresponds with the new shipping requirements. Rather, CMPC proposed the complete removal of diversion limits. Given the "smallness" of the shipping requirements adopted herein, and the fact that this requirement may be decreased all the way to zero if conditions warrant such, we concur with proponent that the diversion limit should be removed. Such a change promotes the efficient handling of milk and better milk quality.

It should be noted that the removal of the diversion limits should not cause milk to "loaded" onto the Chicago market. Virtually all of the Grade A milk supply in the Order 30 procurement areas is pooled under Federal orders. Accordingly, Grade A producers in the area are pesently sharing in the proceeds of the fluid market that generally affords them the most favorable returns. Therefore, there is little likelihood of reserve supplies of other markets being shifted to the Chicago market pool.

In light of the foregoing, corresponding provisions which deal with over-diverted milk should also be removed from the order.

5. *Location adjustments.* The plant location adjustments for handlers and for producers should not be changed. Zone 16 should remain the outermost zone with an adjustment of minus 36 cents per hundredweight, and no adjustment should result in a price less than the Class III price for the month.

As modified at the hearing, Dean et al. proposed expanding the minus location adjustment schedule for locations beyond 250 miles from the Chicago city

hall at a rate of 2.3 cents per 13 miles. However, the Minnesota-Wisconsin (M-W) price would be lower bound of any such adjustment. This change would apply to plant location adjustments for both handlers and producers. As originally published in the Notice of Hearing (52 FR 18894), Dean et al. proposed eliminating the "snubber" that prevents the Class I price from being reduced below the Class III price.

In support of its modified proposal, Dean et al.'s spokesman claimed that such change is needed in order to more nearly reflect the value of milk 250 miles beyond the city hall of Chicago. He stated that it is unrealistic to draw a line and assume a constant cost of hauling beyond such point.

Proponent utilized an exhibit already in the record to show that the average hauling cost to Chicago from plants in the present Zone 16 was $1.27 per hundredweight. This, he stated, far exceeds the order's 36-cent adjustment for that zone. Although the Dean et al. proposal would not fully cover the hauling cost, proponent believed that it would be a step in the right direction to aid in the transportation of milk from the distant locations.

Dean et al.'s spokesman also stated that the present order's treatment of zone pricing beyond 250 miles from the city hall in Chicago is inequitable. He pointed out that because the order draws a line beyond which all milk is subject to the same adjustment, a significant amount of producer milk is being priced differently than most of the producer milk on the market. Proponent holds that greater equity could be achieved if the order would price each handler's milk on an identical basis, which can only come about if the price is adjusted beyond Zone 15 at the constant rate of minus 2.3 cents per 15 miles.

CMPC supported the Dean et al. modified proposal for zone extension in spite of the fact that CMPC members operate five plants located in the present Zone 16 that would be affected by such a change. CMPC's spokeman stated that the order must recognize that it costs money to move milk. Establishing Zone 16 as an endless zone for the Chicago Regional order, he said, has caused an overvaluation of milk in that zone. He added that such a change in the order should cause present Zone 16 plant operators to re-evaluate their economic situations. He speculated that those plant handlers who would be able to receive more money for their producers from another order's pooled funds would choose to become regulated under that other order. However, he did not foresee milk being depooled as a result of zone extension.

Both WCMA and TAPP in their briefs opposed the modified zone extension proposal on the basis that such would send producers and plants into disarray, not knowing which market, if any, to be pooled under from month to month. They contended that stability in the marketplace is a higher priority item than equity. Furthermore, they stressed that the modified proposal, if adopted, would significantly cost the present Zone 16 producers while it would benefit the rest a mere penny a hundredweight.

Kraft, which operates two plants in present Zone 16, did not favor the proposed changes. Moreover, Kraft believes that the ruling of the Administrative Law Judge which allowed a revision or substitution of Dean et al.'s location adjustment proposal (proposal no. 10 in the Notice of Hearing) should be reversed. At the hearing and in its post-hearing brief, Kraft argued that proponent's modification of the original proposal went beyond the scope of the hearing. Because, in general, Dean et al.'s original proposal would not have affected Zone 16 producers due to the fact that the Zone 1 blend price usually exceeds the Class III price by more than 36 cents, Kraft holds the view that many producers and handlers who would be affected by the modified proposal (lost monies estimated to exceed one million dollars annually) did not attend the hearing and those that did attend were unable to adequately prepare their cases.

Notwithstanding the legality of the modification, Kraft believes that there should be no further adjustment to the Class I and producer prices at locations more than 250 miles beyond the Chicago city hall because within Zone 16 milk at various locations is of relatively uniform value. In fact, Kraft's spokesman revealed that identical premiums are paid at both of Kraft's plants even though the proposal would place one plant in Zone 18 while the other would remain in Zone 16. Therefore, it is Kraft's view that the order should not create distinctions in the price of Class I and producer milk where no differences can be justified by the marketplace.

A brief filed on behalf of both NFO and FUMMC also contended that the modification of proposal No. 10 was not within the scope of the Notice of Hearing. In the brief, it was pointed out that the present "snubber" only comes into play when the M–W price increases substantially, causing the difference between the Class III price and the Zone 1 blend price to be less than 36 cents; an infrequent occurrence. Consequently, very few persons in the industry would likely have considered the published proposal to have been of great and immediate concern. However, the modified proposal No. 10, it was asserted, would have a distinct and immediate impact on the 28 pool plants located in present Zone 16 and on certain Order 68 handlers as well. The brief added that several experienced witnesses who did attend the hearing were not able at that time to adequately prepare testimony on the modified proposal; most notable, the witnesses for Kraft and TAPP.

Nevertheless, should the Secretary decide this issue on its merits, both producer groups believe that the proposal should be denied because of the hardship such would cause on their membership and on the Zone 16 plants, many of whom would be at the Class III price most of the time. Furthermore, they questioned the purpose behind a provision which could cause handlers to become regulated under another order and added that such would lead to market disorder.

In this particlar situation, Dean et al.'s proposal as published was to remove the Class III snubber as the lower limit of the adjusted Class I price. Dean et al. modified its proposal by retaining the Class III snubber, and instead, eliminating the Zone 16 snubber on adjustments. In the first case, the minus zone adjustments on Class I milk, which extend out to a minus 36 cents in Zone 16, could have applied even if at some point the Class I price would have had a lesser value than the Class III price. In the second case, the minus zone adjustments on Class I and producer milk would continue on beyond the present Zone 16 snubber at a rate of minus 2.3 cents per 15 miles, but not to drop below the Class III price. As described, the original and modified proposals both involve amending the same order provision by removing one of the "snubbers".

Although Dean et al. did modify its proposal at the hearing, doing so is not unusual. Provided a provision is open for discussion, there is no reason why an interested party cannot modify a proposal by altering the particular order provision in some manner. Also, most interested parties were at the hearing to discuss the other major issues of the hearing regardless if they did or did not believe that a change in the location adjustment provision would have serious implications for them. In fact, the representative of over 80 percent of the market's producers, CMPC, was at

the hearing and gave testimony on the modified proposal. FUMMC, who represents another 14 percent of producers, also was there and had three days to prepare a response to the modification. Handlers were well represented by TAPP and WCMA. Kraft, one of the objectors, not only was at the hearing but presumably had some idea that proponent was going to modify its proposal because prior to the start of the hearing it was privy to two key exhibits which clearly showed the effects of zone expansion. Finally, all interested parties, whether or not they attended the hearing, could have filed post-hearing briefs. We note that the briefs received concerning the zone extension proposal came only from some of those present at the hearing.

For all the foregoing reasons, we concur with the ruling of the presiding Administrative Law Judge. However, in light of the strong exceptions to the recommended decision, indicating a general belief that the notice was inadequate, and for other reasons, the recommended decision should be reversed on this issue. Accordingly, the order should continue to apply zone location adjustments only out to the 16th zone.

Based on the evidence presented at the hearing the recommended decision found that the plant location adjustments for handlers and for producers should be computed by the market administrator based on a revised location adjustment schedule which extends out to the 18th zone. Zone extension involved adjusting the present Zone 16 adjustment and adding two new Zones 17 and 18. The rate of adjustment from Zone 16 to Zone 18 would have been minus 2.3 cents per hundredweight per 15 miles, the rate presently used in all adjustments from Zone 5 to Zone 15. Therefore, the revised Zone 16 location adjustment would have been minus 37.3 cents per hundredweight and the new Zone 17 and Zone 18 adjustments would have been minus 39.6 cents and minus 41.9 cents, respectively. The new Zone 18 would have been the outermost zone and would have included all plants located 281 miles or more from the city hall in Chicago. No adjustment would have resulted in a price less than the Class III price for the month.

However, the evidence which the recommended decision was based on was void of the testimony of numerous interested parties who did not appear at the hearing because they did not realize that the proposal as published in the **Federal Register** could lead to a general discussion of location adjustment rates. In their exceptions, these parties stated that had they known what was to be discussed, they would have made an appearance and would have presented testimony in opposition to that of proponents. It is their view that they are being penalized by a change that was not on the agenda. Moreover, CMPC, who supported the modified proposal at the hearing stated in exceptions filed on behalf of its member cooperatives that adoption of the transportation allowances (in a separate action in this proceeding) makes the proposed zone changes unnecessary. Thus, the record on this issue may not be complete.

In view of the concerns expressed about the adequacy of notice and CMPC's view that the proposed changes are now unnecessary, it is concluded that no action should be taken on this issue based on the record in this proceeding.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Chicago Regional marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

January 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Chicago Regional marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on June 23, 1988.

Robert Melland,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Chicago Regional Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the other regulating the handling of milk in the Chicago Regional marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Chicago Regional marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Programs, on March 8, 1988, and published in the **Federal Register** on March 14, 1988, (53 FR 8205), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein with the following modifications:

1. In § 1030.7, paragraphs (b)(5) (i), (ii), and (iii), and paragraphs (b)(6)(ii)(C) and (b)(6)(v) are revised.

2. Amendment 7 is removed.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for 7 CFR Part 1030 continues to read as follows:

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

2. Section 1030.4 is revised to read as follows:

§ 1030.4 Plant.

"Plant" means a building together with its facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment that has facilities adequate for cleaning tank trucks, is approved by an appropriate health authority, at which milk is received from dairy farmers or other plants, and at which milk is processed and/or shipped to another plant.

3. Section 1030.6 is revised to read as follows:

§ 1030.6 Supply plant.

"Supply plant" means a plant at which Grade A milk is physically unloaded into the plant or a tank truck in the plant and is either processed and/or shipped during the month to another milk processing plant, except that any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant unless it is located in a building that is entirely separate from the distributing plant.

4. Section 1030.7 is revised to read as follows:

§ 1030.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants pursuant to § 1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44(a)(8) (i)(*a*) and (ii) and the corresponding step of § 1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route disposition or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant or unit of supply plants described in paragraph (b)(6) of this section from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped and received and physically unloaded into

plants described in paragraph (b)(2) of this section as a percent of the Grade A milk received at the plant(s) from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, is not less than 3 percent for the months of January through August, and 5 percent for the months of September through December for individual plants and 6 percent and 10 percent, respectively, for any unit of plants, subject to the following conditions:

(1) A plant that was a pool plant pursuant to this paragraph during each of the months of August through January shall be a pool plant for each of the following months of February through July.

(2) Qualifying shipments pursuant to this paragraph may be made to the following plants, except as provided in paragraph (b)(2)(v) of this section:

(i) Pool plants described in paragraph (a) of this section;

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk which receives a Class I classification at the transferee plant;

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quality shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include many such shipments made on the basis of agreed-upon Class II or Class III utilization; and

(v) Whenever the authority provided in paragraph (b)(5) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.

(3) The operator of a supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(4) The quantity of condensed skim milk and fluid milk products moved (including milk diverted) from supply plants to each pool plant described in paragraph (a) or (c) of this section that shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro-rata to supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quality of fluid milk products and condensed skim milk received from supply plants the following:

(i) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(A) Transfer or diversions classified pursuant to § 1030.40(b)(3); and

(B) Transfers or diversions on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(ii) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(5) The shipping requiremnts of this paragraph may be increased or decreased if found necessary to obtain needed shipments or to prevent uneconomic shipments as follows, subject in either case to the condition specified in paragraph (b)(5)(iii) of this section.

(i) The market administrator may, for a period of up to three months, increase or decrease the shipping requirements of this paragraph by up to two percentage points;

(ii) The Director of the Dairy Division may increase the shipping requirements of this paragraph by up to five percentage points or decrease them by up to ten percentage points;

(iii) Before making a finding that a change is necessary for the purposes set forth in this section, the market administrator or the Director of the Dairy Division shall investigate the need for revision, either on such person's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that revision is being considered and inviting data, views, and arguments. If a plant that would not otherwise qualify as a pool plant during the month does qualify as a pool plant because of a reduction in shipping requirements pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool status with the market administrator on or before the first day of the following month. If an increase is required in any month of February through July, the increase shall also apply to any supply plant that has pool status for the month pursuant to paragraph (b)(1) of this section.

(6) Two or more plants shall be considered a unit for the purpose of meeting the requirements of this paragraph if the following conditions are met:

(i) The plants are located within the State of Wisconsin or within that portion of the State of Illinois within the marketing area;

(ii) The plants included in the unit are owned or fully leased and operated by the handler establishing the unit and such plants were pool plants during the month prior to being included in a unit. Two or more handlers may establish a unit of designated plants by certifying to the market administrator a marketing agreement specifying the plants to be considered as a unit, and specifying which handler will be responsible for qualification of the unit. With regard to any leased plants included in a unit, the handler that leases a plant(s) and is a party to a marketing agreement with respect to plants included in a unit, shall satisfy the market administrator that such handler:

(A) Is responsible pursuant to § 1030.73 for payments to producers whose milk is delivered to the leased plant or diverted therefrom by the handler;

(B) Controls and operates the leased plant; and

(C) Maintains in its books and records the accounts of the leased plant(s), including, but not limited to, records reflecting the receipt, sale, collection of proceeds, the gross value of the payrolls for all producer milk pooled by the handler operating the leased plant, and employee payroll or independent contractor records reflecting the handler's financial responsibility for operation of the plant.

(iii) The handler or handlers establishing the unit submits a written

request to the market administrator on or before July 15 requesting that such plants qualify as a unit for the period of August through July of the following year. In the months of February through July, a unit shall not include any plant that was not a pool plant each month of the preceding period of August through January. Each plant that qualifies as a pool plant within a unit shall continue each month as a plant in the unit through the following July unless the plant subsequently fails to qualify for pooling or the handler or handlers establishing the unit submits a written request to the market administrator that the plant be deleted from the unit or that the unit be discontinued. Any plant that has been so deleted from a unit, or that has failed to qualify in any month, will not be part of the unit for the remaining months through July. The handler or handlers that establish a unit may add a plant operated by such handler or handlers to a unit, if such plant has been a pool plant each prior month of the current unit-operating period (August through July) and would otherwise be eligible to be in a unit, upon submission of a written request to the market administrator. Such plant will remain in the unit through the following July. Written requests to the market administrator to either delete a plant from the unit or to add a plant to the unit shall be submitted to the market administrator on or before the 15th day of the month preceding the month that such change will be effective. In the event of an ownership change or business failure of a handler that is a participant in a unit, the unit may be reorganized to reflect such changes by submitting a written request to file a new marketing agreement with the market administrator;

(iv) If a unit fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the unit shall notify the market administrator which plant or plants will be deleted from the unit so that the remaining plants may be pooled as a unit. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the unit and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the unit; and

(v) Each plant in a unit shall ship to a plant or plants pursuant to paragraph (a) or (c) of this section not less than 3 percent of the plant's receipts of milk from producers or 47,000 pounds, whichever is less, of condensed skim milk or fluid milk products in each of five months during the period of August through January, subject to the provisions of paragraph (b)(4) of this section. If the unit shipping requirements are reduced to zero pursuant to paragraph (b)(5)(ii) of this section, shipments by each plant in a unit shall not be required.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order; and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

5. Section 1030.13 is amended by removing in paragraph (a) the words ", in the case of a reload facility,", by removing paragraphs (d)(3) and (d)(6), redesignating (d)(4), (d)(5), and (d)(7) as (d)(3), (d)(4), and (d)(5), and revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1030.13 Producer milk.

* * * * *

(d) * * *

(1) During each of the months of August through January, milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

* * * * *

6. Section 1030.30 is amended by removing in the introductory text of paragraph (a) the words "and/or reserve supply plants", and revising paragraph (a)(3) to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable), including a separate statement of the net receipts from each supply plant, computed pursuant to § 1030.7(b)(4);

* * * * *

United States Department of Agriculture
Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Milk in the Chicago Regional Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1030.1 to 1030.86, all inclusive, of the order regulating the handling of milk in the Chicago Regional marketing area 7 CFR PART 1030 which is annexed hereto; and

II. The following provisions:

§ 1030.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undesigned certifies that he handled during the month of January 1988. hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1030.88 Effective date. This marketing agreement shall become effective upon the executive of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the

limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

By _____ _____
(Name) (Title)

(Address)

Attest _____ _____

Date _____ _____

[FR Doc. 88-14500 Filed 6-27-88; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0640]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretations.

SUMMARY: The Board is publishing for comment proposed official Board interpretations concerning preemption determinations under its Regulation CC, Availability of Funds and Collection of Checks (12 CFR Part 229), with respect to the laws of Maine, New York, and Illinois.

DATES: Comments must be submitted on or before July 25, 1988.

ADDRESSES: Comments, which should refer to Docket No. R-0640, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel, Legal Division (202/452-3625) or Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3874); for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (12 U.S.C. 4001-4010). The regulation requires banks to make funds available to their customers within specified time frames, and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any state law in effect on or before September 1, 1989, that provides for a shorter hold for a category of checks than is provided under federal law will supersede the federal provision.

Provisions of state law governing funds availability that do not supersede federal law are considered inconsistent, and are thus preempted by Regulation CC. Thus, a state law that permits a bank to make funds available for withdrawal in the same or a longer period than permitted under Regulation CC is preempted by that regulation. In addition, state disclosure or notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law. These determinations would be provided upon the request of a state, bank, or other interested party.

Discussion

To date, the Board has received requests for preemption determinations under Regulation CC with respect to the laws of Maine, New York, and Illinois. The Board is publishing, for a 30-day comment period, its interpretations of Regulation CC concerning preemption determinations with respect to those laws.

Maine adopted a provision in its funds availability law that defers to federal law when Regulation CC becomes effective. Thus, Maine law generally is preempted by Regulation CC, to the extent that the state law applies to accounts subject to the federal schedules. The Maine schedules continue to apply to accounts, such as savings and time accounts, not subject to Regulation CC. State disclosure requirements are also preempted by the federal rules, to the extent that the requirements govern disclosure of a bank's funds availability policy relating to accounts subject to the federal rules.

Illinois law provides availability schedules for deposits of in-state items, out-of-state items, as well as certain low-risk items. The state law also contains a provision replacing these schedules with the federal schedules, when the federal rules become effective. Thus, Illinois banks are subject to the federal funds availability rules with respect to accounts subject to the Regulation CC schedules. As in the case of Maine, the Illinois schedules continue to apply to accounts, such as savings and time accounts, not subject to Regulation CC.

The New York regulation contains availability schedules for local (same city) checks, in-state checks, out-of-state checks, as well as certain low-risk checks. Different schedules are provided for "banks" (commercial banks, trust companies, and branches of foreign banks) and "savings institutions" (savings banks, savings and loan associations, and credit unions). Certain portions of the New York schedule may supersede the availability requirements of Regulation CC. The New York schedules continue to apply to accounts not subject to the Regulation CC availability requirements. The state disclosure requirements are preempted by the Regulation CC disclosure rules to the extent that the state rules pertain to accounts subject to Regulation CC.

The Maine and Illinois state laws govern the availability of "items" deposited in an account. The term "item" may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. Since Maine and Illinois have enacted provisions deferring to federal law concerning funds availability, the Board proposes that Regulation CC completely preempt these state laws as they pertain to the availability of deposits to "accounts" covered by Regulation CC. Under this approach, neither the Regulation CC nor the state schedules would apply to deposits of items not subject to Regulation CC's funds availability provisions.

The Board also requests comment on two alternative treatments of these deposits: (1) that the state schedules continue to apply to deposits that are not subject to the Regulation CC availability rules; or (2) that the Regulation CC schedules apply to the deposit of all "items" to "accounts" covered by that Regulation.

A second issue that arises in connection with the proposed preemption determinations relates to the treatment of state law provisions that allow banks to lengthen the state availability schedules by agreement. For example, New York law permits variation by agreement under "special circumstances", if the agreement "is not contained in a preprinted form and not a usual, regular business practice of the depositary bank." Illinois' funds availability statute was enacted as part of Article 4 of the state's Uniform Commercial Code. Article 4 contains a general variation by agreement

provision. Although Illinois law defers to federal law with respect to the availability of items, this deference does not extend to the state's provision related to availability of cash deposits. (This provision is contained in the Uniform Commercial Code as adopted by each of the 50 states.)

The Board proposes that provisions of state law subject to variation by agreement be preempted by Regulation CC, since under the state law a depositary bank could make funds available for withdrawal in a longer period of time than permitted under Regulation CC. Under this approach, the New York law and the Illinois provision related to availability of cash deposits would be preempted to the extent that they apply to "accounts" covered by Regulation CC. The Board also requests comment on an alternative approach, in which provisions of state law that provide for shorter holds than required under Regulation CC would supersede the federal schedules, even if state law permits variations by agreement. Under this alternative, however, a depositary bank would not be permitted to agree with its customer to extend availability beyond the times provided in Regulation CC.

Request for Comment—Preemption Determinations

The Board intends to publish preemption determinations in a new Appendix F to Regulation CC (12 CFR Part 229). These preemption determinations will be official Board interpretations within the meaning of section 611(e) of the Expedited Funds Availability Act (12 U.S.C. 4010(e)). The Board requests comment on the following proposed preemption determinations:

Illinois

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A of Regulation CC, preempt provisions of Illinois law relating to the availability of funds. Section 4–213(5) of the Uniform Commercial Code as adopted in Illinois (Illinois Revised Statutes Chapter 26, paragraph 4–213(5)) requires Illinois banks to make funds deposited in an account available for withdrawal within specified time periods. Generally, this paragraph provides that items deposited in any type of bank account are to be available for withdrawal on the second business day after deposit if drawn on the United States Treasury, the State of Illinois, or a unit of local government in Illinois; the fifth business day after deposit if drawn on a bank located in Illinois; and the eighth business day after deposit if drawn on a bank located outside Illinois. The schedules do not apply where the account is less than 90 days old, or where the bank in good faith believes that the item will be dishonored and so notifies its customer.

This paragraph also provides that these time periods do not apply:

> if otherwise provided by an Act of Congress or by a federal law authorizing the Board of Governors of the Federal Reserve System to establish such time period, that time period shall be controlling * * *.

Illinois law on funds availability, as provided in section 4–213(5), defers to the availability schedules in the Expedited Funds Availability Act and Regulation CC. To the extent that Illinois law defers to Regulation CC, it is preempted by Regulation CC, because the state law does not require that funds deposited in an account be available for withdrawal in a shorter time than provided in Subpart B of Regulation CC (§ 229.20(c)). However, Illinois law is not preempted to the extent that it does not defer to Regulation CC and provides for shorter availability.

Coverage

The Illinois statute governs the availability of funds to savings and time accounts, as well as to "accounts" as defined in § 229.2(a) of Regulation CC. The federal preemption of state funds availability laws applies only to "accounts" subject to Regulation CC, which generally include transaction accounts. Thus, the Illinois availability schedules continue to apply to deposits in time, savings, and other accounts (such as accounts in which the account holder is another bank) that are not "accounts" under Regulation CC.

The Illinois statute applies to "items" deposited to accounts. This term encompasses deposits, such as nonnegotiable instruments that are not defined as a "check" in Regulation CC (§ 229.2(k)), and therefore are not subject to Regulation CC's provisions governing funds availability. The Board believes that as the Illinois law appears to intend to defer to the Regulation CC schedules, and in order to simplify compliance for Illinois depository institutions, Regulation CC should preempt completely the Illinois statute as it pertains to deposits to "accounts" covered by Regulation CC. Thus, neither the Regulation CC nor the Illinois availability schedules would apply to deposits of items that are not checks and therefore are not subject to Regulation CC's funds availability provisions. The Board recognizes that this approach could result in certain deposits that are now subject to state availability schedules not being subject to any legally mandated availability schedule. Therefore, the Board requests comment on two additional approaches to the treatment of items that are not checks under Illinois law:

1. Regulation CC would not preempt state funds availability requirements with respect to deposits to "accounts" made by "items" other than "checks." The state regulatory schedules and exceptions would continue to apply to the deposit of "items" not subject to the availability rules of Regulation CC.

2. Regulation CC would preempt the time periods established in the state regulation with respect to the deposits of all "items" to "accounts." Deposits of "items" not covered by Regulation CC would become subject to the federal, rather than the state, funds availability rules.

Availability Schedules

Paragraph 4–213(6) of the Uniform Commercial Code as adopted in Illinois (I.R.S. Ch. 26, paragraph 4–213(6)) provides that money deposited in a bank is available for withdrawal as of right at the opening of business of the banking day after deposit. Although the language "deposited in a bank" is unclear, arguably it is broader than the language "made in person to an employee of the depositary bank," which conditions the next-day availability of cash under Regulation CC (§ 229.10(a)(1)). Under Regulation CC, deposits of cash that are not made in person to an employee of the depositary bank must be made available by the second business day after the banking day of deposit (§ 229.10(a)(2)). Therefore, this provision of Illinois law may call for the availability of certain cash deposits in a shorter time than provided in Regulation CC.

This provision of Illinois law, however, is subject to I.R.S. Ch. 26, paragraph 4–103(1), which provides, in part, that "the effect of the provisions of this Article may be varied by agreement * * *." (The Regulation CC funds availability requirements may not be varied by agreement.) The Board believes that the ability to vary this provision of Illinois law may allow depositary banks to impose agreements varying this availability requirement on their customers and to make the proceeds of cash deposits available at any time agreed to by the bank's customer. The Illinois law applicable to

cash deposits therefore could provide for availability in a longer time than permitted under Regulation CC and should be viewed as preempted by Regulation CC. The Board believes that this approach to the preemption of this provision of state law would facilitate compliance by depository institutions. Nevertheless, the Board is concerned that Congress may not have intended to completely preempt this provision of state law. Accordingly, the Board also requests comment on an alternative approach under which this provision of Illinois law would remain in effect and supersede the Regulation CC provision in § 229.10(a)(2), but a depositary bank could not agree with its customer under I.R.S. Ch. 26, paragraph 4–103(1) to extend availability beyond the time periods provided in § 229.10(a) of Regulation CC. (The Board notes that this provision governing the availability of cash deposits is included in the Uniform Commercial Code as adopted by each of the 50 states.)

Disclosures

Illinois law does not contain requirements regarding the disclosure of a bank's funds availability policy.

Maine

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A of Regulation CC, preempt provisions of Maine law relating to the availability of funds. In 1985, Maine adopted a statute governing funds availability (Title 9–B MRSA § 241(5)), which requires Maine financial institutions to make funds deposited in a transaction account, saving account, or time account available for withdrawal within a reasonable period.

The Maine statute gives the Superintendent of Banking for the State of Maine the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability. The Superintendent of Banking issued regulations implementing the Maine funds availability statute, effective July 1, 1987 (Regulation 18(4)). Section 4(B) of this regulation establishes the time periods within which various deposits to accounts must be made available for withdrawal. Section 4(C) of the regulation governs, among other things, the disclosure of a financial institution's funds availability policy.

Generally, the Maine regulation provides that items deposited in a transaction, savings, or time account at a financial institution are to be available for withdrawal on the next business day after deposit if drawn on the U.S. Treasury or the depositary bank; the second business day after deposit if drawn on a Maine institution; the third business day after deposit if drawn on a New England institution; and the fifth business day after deposit if drawn on another institution. Exceptions to the schedules are provided for large deposits, new accounts, frequent overdrafters, foreign items, and doubtful collectibility.

The Maine funds availability statute contains a provision that states:

> If a federal law or regulation governing availability of funds is in effect, rules promulgated under this subsection shall be no more restrictive with respect to time periods in which funds must be available for withdrawal than those federal laws or regulations.

Section 4(B)(4) of Regulation 18 implements the statutory provision deferring to federal funds availability law, and states:

> In the event that a federal law or regulation governing availability of funds is passed, and that law or regulation establishes time periods in which funds must be available for withdrawal that are less restrictive than those embodied in this regulation, then the time frames mandated under Section B of this regulation shall defer to those prescribed under federal law or regulation. In any event, financial institutions are governed by Section C of this regulation with respect to disclosure of funds availability policies.

This provision of Maine law clearly provides that Maine funds availability schedules defer to the Regulation CC rules governing the time periods within which "checks," as defined in Regulation CC (§ 229.2(k)), deposited in an "account," as defined in Regulation CC (§ 229.2(a)), must be made available for withdrawal. Because under this provision the Maine law does not provide for availability in a shorter time than Regulation CC, the Maine schedules are preempted with respect to checks deposited in "accounts." Similarly, all of the Maine exceptions to the schedules are preempted either because Maine law defers to less restrictive provisions of Regulation CC, or because the Maine law provides for availability in a longer time than Regulation CC.

Coverage

The Maine statute and regulation govern the availability of funds to savings and time accounts, as well as "accounts" as defined in § 229.2(a) of Regulation CC. The federal preemption of state funds availability requirements only applies to "accounts" subject to Regulation CC, which generally include transaction accounts. Thus, the Maine availability schedules continue to apply to deposits in time, savings, and other accounts (such as accounts in which the account holder is another bank) that are not "accounts" under Regulation CC.

The Maine statute and regulation also apply to "items" deposited to accounts. This term may encompass deposits, such as nonnegotiable instruments that are not defined as a "check" in Regulation CC (§ 229.2(k)), and therefore are not subject to Regulation CC's provisions governing funds availability. The Board believes that, as the Maine law appears to intend to defer to the Regulation CC schedules, and in order to simplify compliance for Maine depository institutions, Regulation CC should preempt completely the Maine statute and regulation as it pertains to the availability of deposits to "accounts" covered by Regulation CC. Thus, neither the Regulation CC nor the Maine availability schedules would apply to deposits of items that are not checks and therefore are not subject to Regulation CC's funds availability provisions. The Board recognizes that this approach could result in certain deposits that are now subject to state availability schedules not being subject to any legally mandated availability schedule. Therefore, the Board requests comment on two additional approaches to the treatment of items that are not checks under Maine law:

1. Regulation CC would not preempt state funds availability requirements with respect to deposits to "accounts" made by "items" other than "checks." The state regulatory schedules and exceptions would continue to apply to the deposit of "items" not subject to the availability rules of Regulation CC.

2. Regulation CC would preempt the time periods established in the Maine regulation with respect to the deposits of all "items" to "accounts." Deposits of "items" not covered by Regulation CC would become subject to the federal, rather than the state, funds availability rules.

Disclosures

Section 4(C)(1) of Maine Regulation 18 requires a 30-day prior notice by financial institutions of the implementation of or change in the institution's account charges and funds availability policy, either with the customer's periodic statement, or if the customer does not receive periodic statements, conspicuously posted in

branch lobbies, published in local newspapers, or by a direct mailing. Section 4(C)(2) requires a brief notice on customer deposit receipts that funds may not be available for immediate withdrawal. The purposes of the disclosures concerning funds availability appear to be met by the disclosure requirements in Regulation CC.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" (§ 229.20(c)(2)). Thus, section 4(C) (1) and (2) are preempted by Regulation CC, to the extent that these provisions apply to "accounts," as defined by Regulation CC, and to the extent that they apply to disclosure of an institution's funds availability policy. The Maine disclosure rules would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements, as well as to the disclosure of deposit account charges. Section 4(C)(3) of Maine Regulation 18, which requires notice of dispute resolution procedures, is not preempted, since it does not pertain to disclosure of an institution's funds availability policy.

New York

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A of Regulation CC, preempt the provisions of New York law concerning the availability of funds. The New York State Banking Department, pursuant to Section 14–d of the New York Banking Law, issued regulations requiring that funds deposited in an account be made available for withdrawal within specified time periods, and provided certain exceptions to those availability schedules.

Part 34 of the New York State Banking Department's General Regulations establishes time frames within which commercial banks, trust companies, branches of foreign banks (collectively referred to as "banks") and savings banks, savings and loan associations, and credit unions (collectively referred to as "savings institutions") must make funds deposited in customer accounts available for withdrawal. Different schedules apply to deposits in banks and savings institutions. Deposits must be made available for withdrawal not later than the following number of business days following the business day of deposit:

	Banks	Savings institutions
Local checks (same city)	3	4
In-state checks	4	5
Out-of-state checks	7	9
$100 or less checks; on us checks (in-state); Treasury checks; NY state/local gov't checks	2	2
Nonproprietary ATMs	+1	+1

NOTE.—Part 34 requires that funds be available at the start of the business day subsequent to the number of days specified in the regulation. To simplify comparisons of the New York and federal regulations, the Board has converted the time periods used in Part 34 to the method used in Regulation CC; i.e. the number of business days following the day of deposit.

Coverage

The New York law and regulation govern the availability of funds to savings and time accounts, as well as to "accounts" as defined in § 229.2(a) of Regulation CC. The federal preemption of state funds availability laws only applies to "accounts" subject to Regulation CC, which generally include transaction accounts. Thus, New York availability schedules continue to apply to deposits in time, savings, and other accounts (such as accounts in which the account holder is another bank) that are not "accounts" under Regulation CC.

The New York law and regulation apply to "items" deposited to accounts. Part 34.2(e) defines "item" as "a check, negotiable order of withdrawal or money order deposited into an account." The Board interprets the definition of "item" in New York law to be consistent with the definition of "check" in Regulation CC (§ 229.2(k)).

Availability Schedules

Variation by Agreement. Part 34.4(f) provides that the New York regulation does not prohibit a depositary bank from agreeing with its customer to make funds available for withdrawal in a longer period of time than prescribed in New York law because of special circumstances, "provided that such agreement is not contained in a preprinted form and is not a usual, regular business practice of the depositary bank." The Board believes that the ability to vary the New York schedules by agreement may allow depositary banks to impose agreements varying the availability requirements on their customers and to make the proceeds of any type of deposit available for withdrawal under New York law in a longer period of time than permitted under Regulation CC, and therefore that Regulation CC should be viewed as preempting the New York funds availability law to the extent that it applies to "accounts" covered by Regulation CC. The Board believes that this approach to preemption of the New York funds availability schedules would facilitate compliance by New York depository institutions. Nevertheless, the Board is concerned that Congress may not have intended to completely preempt the New York law. Accordingly, the Board also requests comment on an alternative approach under which the variation by agreement provision would remain in effect for those provisions of New York law that supersede Regulation CC; however, a depositary bank could not agree with its customer to extend availability beyond the times permitted under Regulation CC.

The following provisions of New York law provide for a shorter hold for certain categories of checks than is provided under Regulation CC, and, assuming that the New York law is not completely preempted to the extent that it applies to "accounts" covered by Regulation CC, supersede the federal availability requirements. All other provisions of the New York law relating to the availability of funds deposited in "accounts" would be preempted by Regulation CC, because they provide for longer availability than is provided for in Regulation CC.

Temporary Schedule. The New York regulation requires that items drawn on a local bank or savings institution (i.e., one that is located in the same city, town, or village, and which uses the same clearing facility as the depositary bank) be made available for withdrawal not later than the start of business on the third business day following deposit, if deposited in a bank (Part 34.2(a)(1)). The New York Superintendent of Banking has interpreted "clearing facility" to include both check clearinghouse associations and Federal Reserve check processing facilities. (See December 21, 1983 letter from Vincent Tese, New York State Superintendent of Banks, regarding adoption of Part 34.) Regulation CC (§ 229.11(b)) also requires that the proceeds of these check deposits be made available for withdrawal not later than the start of business on the third business day following deposit. However, Regulation CC includes a time period adjustment which permits a depositary bank to delay the time it must make funds available by cash or similar means, for deposits of local checks cleared outside a check clearinghouse arrangement (§ 229.11(b)(2)). New York law supersedes this time period adjustment for withdrawal by cash and similar means for local checks (as defined by

New York law) deposited in banks and cleared through the Federal Reserve.

The New York regulation requires items drawn on an in-state bank or savings institution to be available for withdrawal not later than the start of business on the fourth business day following deposit, if deposited in a bank (Part 34.3(a)(2)), or the fifth business day following deposit, if deposited in a savings institution (Part 34.3(b)(2)). These time periods are shorter than the seventh business day availability required for nonlocal checks under § 229.11(c) of Regulation CC, although they are not necessarily shorter than the schedules for nonlocal checks set forth in § 229.11(c)(2) and Appendix B–1 of Regulation CC. Thus, these state schedules supersede the federal schedule to the extent that they apply to an item drawn on a New York bank or savings institution that is defined as a nonlocal check under Regulation CC and the applicable state schedule is less than the applicable schedule specified in § 229.11(c) and Appendix B–1.

Part 34.3 (a)(8) and (b)(8) provide that for any item deposited at a shared or nonproprietary electronic facility, the depositary bank may, at its option, add one business day to the relevant state schedule for the item being deposited. In the following cases, the state schedules applicable to deposits at nonproprietary ATMs to accounts in banks supersede the federal schedule, which provides for seventh day availability:

Treasury checks, state and local government checks, on us in-state checks—Third business day
Local items—Fourth business day
In-state items—Fifth business day.

The state schedules applicable to deposits at nonproprietary ATMs to accounts in savings institutions supersede the federal schedule for the following items:

Treasury checks, state and local government checks, on us in-state checks—Third business day
Local items—Fifth business day
In-state items—Sixth business day.

Permanent Schedule. Under Part 34.3(a)(2), in-state checks must be made available for withdrawal by the start of business on the fourth business day following deposit, if deposited in a bank, and the fifth business day following deposit, if deposited in a savings institution. The New York schedule for banks supersedes the Regulation CC requirement in the permanent schedule, effective September 1, 1990, that nonlocal checks be made available for withdrawal by the start of the fifth business day following deposit, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under § 229.12(c)(2) and Appendix B–2 of Regulation CC. In addition, the New York schedule for savings institutions supersedes the Regulation CC time period adjustment in the permanent schedule for withdrawal by cash or similar means, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under § 229.12(c)(2) and Appendix B–2.

Exceptions to the Availability Schedules. New York law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions (Part 34.4). The exception for foreign items is consistent with Regulation CC, which excludes foreign checks from the definition of "check," and thus from the availability requirements. Holds placed under the other New York exceptions are governed only by the institution's policy Since Regulation CC requires deposits subject to its exceptions to the schedules to be made available for withdrawal within a reasonable period of time (generally within four business days after the expiration of the availability schedule for that deposit), the Regulation CC exceptions pertaining to these types of deposits preempt the state exceptions.

New York law supersedes Regulation CC with respect to the applicability of the redeposited check exception. Since the New York regulation does not provide an exception for checks that have been returned unpaid and redeposited, this exception is not available to New York institutions. However, New York banks generally could invoke the reasonable cause to doubt collectibility exception in Regulation CC in the case of the deposit of redeposited checks.

Business Day/Banking Day. New York law requires availability within a specified number of "business days" following the "business day" of deposit. "Business day" is defined as any day excluding Saturdays, Sundays, and legal holidays (Part 34.2(c)). Legal holiday is not further defined in the regulation. This definition is preempted by the Regulation CC definitions of "business day" and "banking day." Thus, for determining the permissible hold under the New York schedules that supersede the schedules provided in Regulation CC, deposits are considered made on the specified number of "business days' following the "banking day" of deposit.

Part 34.2(c) also provides that "for electronic branches, opening and closing times shall be the hours of the closest manned office of the depositary bank." The Commentary to the Regulation CC definition of "banking day" provides that "deposits at an ATM are considered made at the branch holding the account into which the deposit is made for purposes of determining the day of deposit." The Regulation CC rule to determine what constitutes a banking day for ATM deposits preempts the New York provision.

Payable Through Drafts. Under Part 34.3, an item is considered local, in-state, or out-of-state based on the location of the depositary bank and the bank or savings institution on which the check is drawn. Under Regulation CC, a check is considered local or nonlocal based on the location of the depositary bank and the paying bank. In the case of payable through and payable at drafts, the paying bank is generally the payable through or payable at bank. Since reliance on the location of the bank on which the check is drawn may result in longer availability than what is required under Regulation CC, the determination of what constitutes a local item, in-state item, or out-of-state item in those provisions of New York law that supersede Regulation CC will be based on the location of the depositary bank and the paying bank, as defined in Regulation CC.

Disclosures

Part 34.5 of New York law requires depositary banks to disclose their funds availability policy to their customers, and to post their availability schedule in each branch location. The purpose of these disclosure requirements appears to be met by the disclosure requirements in Regulation CC. Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts." Thus, Part 34.5 of New York law is preempted by Regulation CC, to the extent that it applies to "accounts," as defined by Regulation CC. The New York disclosure rules would continue to apply to savings, time, and other accounts not governed by Regulation CC disclosure requirements.

Proposed Amendment to New York Regulation

In May 1988, the New York State

Banking Department issued for comment proposed amendments to Part 34 regarding the relationship of the state regulation to federal law. The proposal states, in part, that "The only provisions of this Part that require faster availability of funds than Regulation CC are those governing items drawn on non-local banking institutions located in this state." The Board notes that the intent of this provision is unclear, because provisions of the New York regulation, other than those related to in-state checks, provide for faster availability of funds than Regulation CC, not taking into consideration the effect of the state variation by agreement provision. The Board requests comment on whether this proposed provision, if adopted, should be interpreted to, in effect, revise Part 34 to rescind any provisions other than Part 34.3 (a)(2) and (b)(2) that otherwise could be interpreted to provide faster availability of funds than Regulation CC in some cases.

The proposed amendment also provides that, with respect to time and savings accounts, New York institutions could continue to follow the New York availability schedule, or alternatively would be deemed to be in compliance with state law if they follow the same availability schedule as is required by Regulation CC. Further, the proposal would subject New York institutions to the Regulation CC disclosure rules with respect to all accounts, including savings and time accounts. If these amendments are adopted, New York institutions could comply with the Regulation CC availability rules, as superseded in part by the New York regulation, with respect to savings and time accounts, as well as accounts subject to Regulation CC. The Regulation CC disclosure rules would apply to all accounts subject to Part 34. The Board requests comment on whether under the proposed amendment New York institutions could follow the Regulation CC availability rules with respect to transaction accounts not subject to Regulation CC, such as accounts in which the account holder is another bank, a foreign bank, or the U.S. Treasury.

By order of the Board of Governors of the Federal Reserve System, June 22, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14478 Filed 6-27-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Extension of Deadline for the Arkansas Permanent State Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period on a request submitted by the State of Arkansas to extend the deadline for the State to submit amendments to the Arkansas Permanent Regulatory Program (hereinafter referred to as the Arkansas program) as required in the March 28, 1988, final rule published in the **Federal Register** (53 FR 9881). OSMRE is proposing to modify the deadline for Arkansas to submit the required amendments. This notice sets forth the dates and locations for submission of written comments.

DATES: Comments not received by 4:00 p.m. c.d.t. July 13, 1988 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma, 74135.

Copies of the extension request (Administrative Record No. 341), the Arkansas program, and the administrative record on the Arkansas program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the extension request by contacting the OSMRE Tulsa Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma, 74135; Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Arkansas program on November 21, 1980. Information pertinent to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning program amendments are identified at 30 CFR 904.10, 904.12, 904.15 adn 904.16.

II. Submission of Extension Request

On April 17, 1985, in accordance with the provisions of 30 CFR 732.17(d), (e), and (f), OSMRE notified Arkansas of the changes necessary to ensure that the approved regulatory program was in accordance with the Surface Mining Control Reclamation Act of 1977 (SMCRA) and no less effective than its implementing regulations, as revised since November 21, 1980, when the Arkansas program was originally approved. To apply with this letter, the State of Arkansas submitted an amendment package. OSMRE published a final rule on the amendments in the March 28, 1988, **Federal Register** (53 FR 9881). There are two required program amendments, § 904.16 (a) and (b) included in that final rule. By May 27, 1988, Arkansas was to amend its regulations at 816.116(b)(3)(ii) of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) to be consistent with OSMRE's actions, or resubmit the proposed regulation with sufficient documentation in the record to show the replanting of trees and shrubs is a normal husbandry practice in the State of Arkansas. In addition Arkansas was to revise its regulations at ASCMRC 1000(50) to remove the suspension of ASCMRC 823.11(c) by May 27, 1988.

By letter dated May 27, 1988, (Administrative Record No. AR-341) Arkansas requested an extension to submit the required amendments. The State is compiling documentation to justify the originally proposed regulation at ASCMRC 816.116(b)(3)(ii).

OSMRE is prepared to extend the deadline for submittal to December 30, 1988, and is now seeking comment on the State's request for additional time to submit the required amendments.

List of subjects in 30 CFR Part 904

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

Date: June 17, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-14540 Filed 6-27-88; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 936

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Oklahoma Permanent Regulatory Program

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

ACTION: Proposed Rule.

SUMMARY: OSMRE is announcing receipt of proposed amendments to the Oklahoma permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of several revised regulations that would partially replace those now implementing the Oklahoma program.

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

DATES: Written comments must be received on or before 4:00 p.m., c.d.t. July 28, 1988. If requested, a public hearing on the proposed amendments will be held on July 25, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., c.d.t. on July 13, 1988.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: Mr. James Moncrief, Director, Tusla Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581-6430.

Copies of the Oklahoma program, the proposed modifications to the program, and the administrative record of the Oklahoma program are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcenent, Tulsa Field Office, 5100 Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

Office of Surface Mining Reclamation and Enforcenent, 1100 "L" Street NW., Room 5131, Washington, DC 20240, Telepone: (202) 343-5492.

Oklahoma Department of Mines, 4040 No. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981 (46 FR 4910). Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4910), in the April 2, 1982, **Federal Register** (47 FR 17152), in the May 4, 1983, **Federal Register** (48 FR 20050) and the August 28, 1984, **Federal Register** (49 FR 34000). Subsequent actions on conditions of approval and program amendments are identified at 30 CFR 936.10 and 936.15.

II. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17(d) through (f), OSMRE notified Oklahoma by letter, (Administrative Record No. OK-681), of the changes necessary to ensure that the State's Act was no less stringent than SMCRA and that its regulations were no less effective than the Federal regulations, when the program was originally approved.

To comply with this notification, Oklahoma completed a partial rewrite of its regulations and submitted it to OSMRE for approval in three parts (Administrative Record No. OK-747, OK-749, OK-780). After several attempts to correct deficiencies in the amendment, Oklahoma sent a letter to OSMRE withdrawing the amendment package on May 5, 1988 (Administrative Record No. OK-841). OSMRE published a notice in the **Federal Register** on June 1, 1988 (53 FR 19934), announcing the withdrawal of the amendment package submitted by Oklahoma.

To comply with the original notification, Oklahoma submitted a complete set of proposed regulations for OSMRE review and approval on May 18, 1988 (Administrative Record No. OK-843).

The proposed regulations would replace those of the currently approved Program and consist of Parts 700, General Definitions; 701, Permanent Regulatory Program; 705, Restriction on Financial Interests of State Employees; 707, Exemption for Coal Extraction Incident to Government-Financed Highway or other Construction; 761, Acres Designated Unsuitable for Mining by the Act; 762, Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations; 764, Processes for Designating Areas Unsuitable for Surface Coal Mining Operations; 772, Requirements for Coal Exploration; 773, Requirements for Permits and Permit Processing; 774, Revision, Renewal, and Transfer Assignment or Sale of Permit Rights; 775, Administrative and Judicial Review; 777, General Content Requirements for Permit Applications; 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information; 779, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 784, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 785, Requirements for Permits for Special Categories of Mining; 795, Small Operator Assistance; 800, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; 810, Permanent Program Performance Standards—General Provisions; 815, Permanent Performance Standards—Coal Exploration; 816, Permanent Program Performance Standards—Surface Mining; 816, Permanent Program Performance Standards—Underground Mining Activities; 816, Special Permanent Program Performance Standards—Auger Mining; 823, Special Permanent Program Performance Standards—Operations on Prime Farmland; 824, Special Permanent Program Performance Standards—Mountaintop Removal; 827, Special Permanent Program Performance Standards—Coal Preparation Plants not Located Within the Permit Area of a Mine; 828, Special Permanent Program Performance Standards—In Situ Processing; 842, State Inspections; 843, State Enforcement; 845, Civil Penalties; and 850, Training, Examination, and Certification of Blasters.

III. Public Comment Procedures

In accordance with the provision of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendments proposed by Oklahoma satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. c.d.t. on July 13, 1988. Location and time of day the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 936

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

Date: June 17, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-14541 Filed 6-27-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Reg. 12-35]

Air Force Privacy Act Program

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule; exemption.

SUMMARY: The Department of the Air Force is publishing for public comment a proposed exemption rule that will exempt a newly created record system, subject to the Privacy Act, from access and therefore permitting denial of individual requests to gain access to certain categories of records maintained in the system pertaining to the individual. The purpose for claiming and invoking this exemption by rulemaking is to ensure and protect the integrity and frankness of the information received or solicited from third parties, under an expressed or implied promise of confidentiality, compiled solely for the purpose of determining suitability, eligibility, or qualifications for military service.

DATES: Comments must be received on or before July 28, 1988.

ADDRESS: Send any comments to Ms. Linda G. Adams, Information Management Division, Directorate of Information Management and Administration, Office of the Administrative Assistant, Secretary of the Air Force, The Pentagon, Washington, D.C. 20330-1000.

FOR FURTHER INFORMATION CONTACT: Ms. Adams at the above address or telephone: 202-694-3488, Autovon: 224-3488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force proposes to amend 32 CFR Part 806b by publishing a specific exemption rule to exempt a new system of records identified as F053 AFA D, entitled: "Registrar Records" from the access provisions of the Privacy Act of 1974, 5 U.S.C. 552a(d). This exemption rule is needed to protect the integrity of records by ensuring confidentiality of information provided by individuals on the record subject and precluding the record subject from accessing any information in the record system containing investigatory and appraisal information on the suitability, eligibility or qualifications of USAF Academy applicants and enrolled cadets. In order to exempt a system of records from access, the Air Force must invoke and publish a specific exemption rule for the particular system of records under the provisions of 5 U.S.C. 552a(k) of the Privacy Act. The exemption provision applies only to the extent that information in the system is subject to the exemption. That is, any information in the system which cannot be defined as (k)(5) information will not be withheld pursuant thereto simply because the system is an "exempted system." For practical reasons, non-exempt information in the system cannot be segregated and maintained apart from that information which is exempt. Therefore, the exemption is claimed to protect the (k)(5) information in the system of records. The exemption rule is promulgated in accordance with 5 U.S.C. 553 (b)(1), (2) and (3), (c), and (e) as required by the subsection (k) of the Privacy Act. The exemption will not prevent proper access to the vast majority of information contained in the system.

List of Subjects in 32 CFR Part 806b, Subpart E

Privacy Act exemptions.

For the reasons set out in the preamble, Title 32, Chapter VII, Subchapter A, Part 806b, Subpart E of the Code of Federal Regulations is proposed to be amended as follows:

PART 806b—[AMENDED]

1. The authority citation for Part 806b is revised to read as follows:

Authority: Pub. L. 93-579, 5 U.S.C. 552a, 32 CFR Part 286a.

2. Section 806b.13 is amended by adding new paragraph (b)(19) as follows:

Subpart E—Privacy Act Exemptions

§ 806b.13 General and specific exemptions.

* * * * *

(b) *Specific exemptions.* * * *

* * * * *

(19) *Registrar Records (F053 AFA D).*

(i) *Exemption.* Parts of this system of records may be exempt from 5 U.S.C. 552a(d), but only to the extent that the

disclosure of such material would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To encourage candor and maintain the integrity of investigatory material, evaluations, or any comments or personal information received or solicited, as required, from third parties under an expressed or implied promise of confidentiality and compiled solely for the purpose and use of determining suitability, eligibility, or qualifications for military service of USAF Academy applicants and those enrolled.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 22, 1988.

[FR Doc. 88-14504 Filed 6-27-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-88-25]

Drawbridge Operation Regulations; Roanoke Sound, NC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the North Carolina Department of Transportation, the Coast Guard is considering amending the regulations for the U.S. 64/264 drawbridge across the Roanoke Sound at mile 2.8, in Manteo, North Carolina, by adding a new section for the bridge. The new section restricts the number of bridge openings during the boating season. The bridge is currently required to open on signal. This proposal is being made to reduce vehicular traffic congestion caused by drawbridge openings during the summer season. This action should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 12, 1988.

ADDRESSES: Comments should be mailed to Commander(ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 507, between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ms. Ann B. Deaton, Bridge Administrator, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and CDR Robert J. Reining, Projects Attorney.

Discussion of Proposed Regulations

The North Carolina Department of Transportation has requested that the U.S. 64/264 drawbridge across the Roanoke Sound at Manteo, NC, only be required to open on the hour, between 7:00 a.m. and 7:00 p.m., from May 1 to October 31. The current regulations require the draw to open on signal for the passage of vessels.

This request is the result of the steady increase of boat traffic on the Roanoke Sound since 1972. The frequent draw openings cause vehicular traffic congestion problems during the summer season. The draw openings during these months have increased from 950 in 1972 to 3,895 in 1987, while the vehicular traffic has increased from 4,200 vehicles per day in 1972 to 12,200 per day in 1987.

The North Carolina Department of Transportation has stated that there is a substantial increase in the number of vessels that require drawbridge openings. Most of the openings are caused by commercial vessels rather than recreational vessels.

The North Carolina Department of Transportation held a public hearing in Manteo, North Carolina, on November 30, 1987, to gather public input on the problem. Interested local citizens and owners of Salty Dawg Marina and the Pirates Cove Marina attended the hearing. The North Carolina Department of Transportation reports that all were in agreement that the drawbridge needed to be regulated in order to reduce traffic congestion. However, a commercial fisherman at the public hearing expressed concern that small craft would encounter some difficulty in the shallow waters around the bridge while waiting for an opening. He also felt that boaters rushing to meet the scheduled bridge opening could be affected by strong tides and adverse weather conditions, and that boaters waiting for a bridge opening would have no where to tie their vessels while waiting for their turn to pass through the bridge.

This proposed change to the regulations would only be in effect until the completion of the new fixed highway bridge that will be replacing the existing drawbridge. The new bridge is slated for completion by December 1, 1990.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

While the proposal may have some economic impact on commercial waterway users, the impact is expected to be minimal Therefore, a full regulatory evaluation is considered unnecessary at this time. However, before any final regulations are issued, the economic impact will be re-evaluated based upon comments received. Anyone who believes their business will suffer as a result of this proposal is requested to document the problem in their comments.

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

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46, 33 CFR 1.05(g).

2. Section 117.838 is added to read as follows:

§ 117.838 Roanoke Sound.

(a) The draw of the U.S. 64/264 bridge, mile 2.8, at Manteo, NC, shall open on signal, except between May 1 through October 31, 7:00 a.m. to 7:00 p.m. the draw must open only on the hour for the passage of vessels.

(b) To accommodate approaching vessels, the hourly opening may be delayed up to 10 minutes past the hour.

(c) Public vessels of the United States and any vessel in an emergency involving danger to life or property shall be passed at any time.

Dated: June 13, 1988.

A.D. Breed,

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

[FR Doc. 88-14571 Filed 6-27-88; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

46 CFR Part 382

[R-107; RIN 2133-AA51]

Bulk Preference Cargoes

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This rule would establish new administrative procedures and methodology for determining fair and reasonable or guideline rates for the carriage of dry and liquid bulk preference cargoes on United States commercial bulk cargo vessels. This regulation would require operators to submit data on the operating and capital costs of their vessels. Based on this data, the Maritime Administration (MARAD) would calculate fair and reasonable guideline rates according to the methodology explained in the Supplementary Information Section of this regulation. MARAD has proposed other methodologies for calculating fair and reasonable rates in a prior notice of proposed rulemaking (NPRM) and a prior supplemental notice of proposed rulemaking (SNPRM).

DATES: Comments on or before August 12, 1988.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 7th St. SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590, Tel. (202) 366-2323.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act of 1936 (the Act), as amended (46 U.S.C. 1241(b)), requires that at least 50 percent of any equipment, materials or commodities purchased by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, should be transported on privately owned United States-flag commercial vessel to the extent that such vessels are available at fair and reasonable rates. The Comptroller General in 1955 stated that the term "fair and reasonable rate" did not necessarily mean the going market rate, but would appear to call for reasonable compensation, including a fair profit, for an efficient vessel (Opinion B-95823, Feb. 17, 1955). In 1985, section 901 was amended to exclude certain programs from the application of cargo preference and to raise the U.S.-flag share of certain other programs to 75 percent, phased in over three years. Upon request, the Maritime Administration provides guideline rates to agencies to assist in the determination of fair and reasonable rates. Section 901(b)(2) of the Act provides the authority for the Maritime Administration (by delegation from the Secretary of Transportation) to issue regulations governing the administration of section 901(b)(1).

Prior Rulemaking Actions

MARAD published an initial NPRM on August 6, 1985 (50FR31735) that contained data submission requirements and a methodology for determining fair and reasonable rates for full shiploads of dry and liquid bulk preference cargoes on U.S.-flag commercial bulk cargo vessels. MARAD received nine comments and concluded that the use of the "least squares regression analysis" methodology was generally unsatisfactory. Accordingly, MARAD issued a SNPRM on December 17, 1986 (51FR45136), that proposed and requested public comment on a cost based methodology for calculating fair and reasonable guideline rates that would be based on each vessel's actual or constructed costs. This methodology is significantly different from the "least squares regression" analysis, and the first SNPRM requested the submission of additional data by vessel operators.

Data Submission Requirements

The information that would have been required for each vessel under the SNPRM included statistical information on the vessel (e.g., normal operating speed, deadweight tonnage); operating expenses (e.g., wage costs of officers and crews, insurance costs); capital costs (e.g., capitalized costs, interest rates); and port and cargo handling costs (e.g., stevedore costs, canal fees). This second SNPRM contains essentially the same data submission requirements.

MARAD needs this data to calculate guideline rates accurately within the revised methodology. Up to now, MARAD has used two separate methods for determining these rates for bulk cargoes carried by U.S.-flag bulk cargo vessels. For vessels built before 1955, guideline rates were calculated for vesel categories arranged by deadweight tonnage; since there are only a few such vessels remaining in service no category rates ar now being calculated. For vessels built after 1955, rates are calculated separately for each vessel. However, MARAD has not previously required all operators participating in the bulk cargo preference trades to submit cost data on an annal basis. As a result, accurate cost data are not available for all participating vessels, and the calculation of a vessel category rate or an individual vessel rate can be difficult and in a number of cases unreliable under the procedures now used.

Pursuant to the Freedom of Information Act, the requested data submissions are considered confidential commercial or financial information not to be disclosed to the public (5 U.S.C. 552(b)(4)). A proivision is included in the regulation under which data would be held in confidence.

Revised Rate Methodology

The guideline or fair and reasonable rates to be established by MARAD would apply only to the waterborne portion of cargo transportation and would consist of four components: (1) Operating costs, including fuel; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead.

The operating cost component of the fair and reasonable rate for each participating bulk vessel would be derived from aggregate averages for all operating cost elements, except fuel, using historical data submitted in accordance with this rule and escalated by MARAD to the current year.

Self-propelled ships and fully integrated tug/barge units would be grouped in three categories by size: Group I—under 27,000 DWT; Group II—27,000–55,000 DWT; and Group III—over 55,000 DWT. Tug/barge combinations would be grouped in two categories by size: Group IV—under 12,000 DWT and Group V—over 12,000 DWT. The operating cost component would include two segments, operating costs and fuel. All eligible operating costs, except fuel, would be added together for all vessels in a categories group and divided by the total number of operating days for vessels in that group to yield an aggregate daily average cost. This cost would be escalated to the current year and multiplied by estimated total

voyage days to yield the non-fuel operating cost segment for the voyage.

Fuel would be figured separately on the basis of reported fuel consumption at sea and in port. The actual fuel consumption of each vessel would be multiplied by the corresponding projected number of voyage days at sea and in port to yield total fuel consumed. Current fuel prices would be applied to fuel consumed to produce the fuel segment of the operating cost component. The total of the fuel and non-fuel operating cost segments would be the operating cost component for the voyage.

The capital cost component would be calculated individually for each participating bulk vessel, and would consist of an allowance for depreciation and interest, and a reasonable return on investment. Depreciation would be straight-line for 25 years unless the owner purchased the vessel when it was more than 15 years old. In this case, the vessel would be depreciated on a straight-line basis over not fewer than 10 years. Capitalized improvements would be depreciated straight-line over the remainder of the 25-year old period, commencing with the capitalization date for those improvements. For the purpose of calculating interest expense, it is assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal installments over a 25-year period. To compute the interest cost, the owner's actual interest rate would be applied to the constructed outstanding debt on the vessel. Return on equity and return on working capital would be based upon an average of the most recent rates of return for a cross section of transportation industry companies including maritime companies. Equity is assumed to be the vessel's constructed net book value less constructed principal. Working capital is the dollar amount necessary to cover one-half operating and voyage expenses. The annual depreciation, interest, and return on equity would be divided by the operator's actual number of operating days on the average number of operating days experienced by the participating fleet in the previous year, whichever is higher. The total of those elements would be multiplied by estimated voyage days and added to the return on working capital to determine the capital cost component used in the fair and reasonable rate calculation.

The port of cargo handling cost component is determined for each voyage on the basis of carg tender terms for the commodity, load and discharge ports, and lot size. The costs would include applicable fees for wharfage and dockage of the vessel, canal tolls, cargo loading and discharging, and all other voyage costs associated with the transportation of preference cargo. Costs used to determine the port and cargo cost component shall be based on data submitted for completed cargo preference voyages in the previous year.

To determine the brokerage and overhead component of the fair and reasonable rate, the components for operating, capital and port and cargo handling would be totaled and multiplied by a 4.0 percent allowance for broker's commissions and overhead. The total of these four components is divided by cargo tons (but not less than 70 percent of the vessel's cargo capacity) to determine the fair and reasonable rate.

Since this approach is a significant departure from the methodologies contained in the SNPRM and first SNPRM, and affects an important program or great public interest, MARAD has decided that publication of a second SNPRM is appropriate.

Comments

The methodology proposed in the first SNPRM of December 17, 1986, required a cost based rate calcuated separately for each participating vessel. A comment date on March 17, 1987 was established and was later extended to April 17, 1987, at the request of several of the prospective respondents. Ultimately, four responses were received. American Trading Transportation Company, Inc. (ATT) and Chevron Shipping Company (Chevron) replied directly by letters dated February 12, 1987 and April 15, 1987, respectively. Kominers, Fourt Schlefer & Boyer (Kominers) and Dyer, Ellis, Joseph & Mills (Dyer) both replied on behalf of the Berger Group on April 17, 1987. Kominers' also responded on behalf of Moore-McCormack Bulk Transport, Inc.

Validity of Individual Cost Based Rates

The first comments were based on the premise that existing preference laws do not provide for individual cost based rates. Kominers cites the legislative history of the preference laws and points out that the intent indicated in the related committee hearings suggests the development of either a market rate or an average cost based rate rather than an individual vessel rate.

MARAD has reconsidered this issue and recognizes that an individual vessel rate may not be appropriate because such rates do not assure the shipment of preference cargoes at a fair and reasonable cost. MARAD also believes that, as noted in the Comptroller General's decision, previously cited, the going market rate does not necessarily meet the fair and reasonable standard. For these reasons and to promote efficiency, MARAD is proposing a different methodology that would provide cost based rates that are based in part on aggregate cost averages for vessel DWT categories, as later explained.

Dyer's comment, while related to the foregoing issues, emphasizes the burden of the data gathering required to support a cost-based system rather than the actual rate methodology.

MARAD notes that much of the data required is already provided to various Government agencies, including MARAD, in connection with other programs. There should be no substantial increase in the data burden imposed on the operators. MARAD estimates that approximately 16 hours per year will be required by each operator to comply with the date request.

Free Market

Chevron, Kominers and Dyer postulate that there is no need for a guideline rate system and that even if such a system is formalized, it should only function at times when there is no competition. Chevron asserts that competitive bidding would assure the most efficient use of government funds for preference cargo transportation. In a similar vein, Kominers notes that at present, competition between U.S.-flag vessels is keeping rates low, and that in these circumstances, no regulation is required. The underlying premise in these comments is that competition in the free market place should determine what is fair and reasonable, and that the actual costs of shipping preference cargoes is a secondary consideration.

MARAD agrees that in certain instances current market rates are below guideline rate levels. However, this does not negate MARAD's obligations under the law and to the shipper agencies to assure that the cost of shipping preference cargoes does not exceed fair and reasonable standards under all market conditions. In this regard, the systematic collection of actual shipping costs and the calculation of guideline rates are necessary to ensure that proffered rates are not above guideline levels.

MARAD is responsible for fostering a healthy U.S.-flag merchant marine. In doing so, however, the agency must also safeguard the public interest. Clearly, current law provides for a fair and reasonable limit on rates for preference

cargoes shipped on U.S.-flag vessels. MARAD believes that it has developed a method for establishing a limit that serves the interest of both the U.S.-flag merchant marine and the public. MARAD is obligated to apply the fair and reasonable rate methodology to provide guidance to agencies under all market conditions, and intends to do so.

Dyer further comments that a long-term and short-term consecutive voyage charters negotiated at arms length should be deemed fair and reasonable *per se*. It argues that consecutive voyage charters negotiated in good faith are the best way to ensure lower rates in the preference trade.

In cases where consecutive voyage charters are commercially negotiated in a good faith atmosphere at arms length, MARAD does not feel compelled to intercede in the process. MARAD believes that the use of consecutive and other long-term charters is a powerful instrument regulating preference rates. However, MARAD has the responsibility to provide rate guidance to shipper agencies as set forth in the regulations, 46 CFR 381.2(c), and will continue to do so in cases where the elements of a fair negotiation are not present or where shipper agencies request such guidance.

Capital Costs

Kominers and Dyer raised concerns over the length of the operating year that will be used to allocate capital costs. MARAD has proposed 335 days in the Supplementary NPRM. Kominers and Dyer point out that a vessel may not operate 335 days in a year, and as a result, the allocation of capital costs over the longer period would produce an inequitable result in that the capital component of the fair and reasonable rate would not fairly reflect actual operations.

MARAD believes that the central point raised is whether it is appropriate for the government to compensate operators for periods of idle status in the fair and reasonable rate. MARAD feels that a certain amount of idle and maintenance time is unavoidable and reflective of normal operations. MARAD recognizes, however, that in certain instances the number of operating days for an individual operator may be so low to permit the recapture of an inordinate amount of capital expenses in the fair and reasonable rate. Therefore in a effort to reward the efficient operator, MARAD continues to propose that a 335 day year, which factors in 30 days per year of idle and maintenance time, be utilized in developing the fair and reasonable guideline rate.

Comments were provided by Kominers and Dyer with regard to the rate of return proposed by MARAD. Dyer remarked that the Fortune 500 rate proposed or a rate pegged to a general industrial index is inadequate to provide a suitable return for a high risk shipping venture. Kominers concurs that a higher rate of return is necessary and further asserts that taxes at the maximum corporate rate should be factored into the rate methodology.

While MARAD believes that the Fortune 500 rate represents a reasonable cross section of commercial business risks, it is persuaded that the rate of return should more properly reflect the risks inherent in the transportation industry. However, MARAD does not feel it appropriate to assume that the full corporate tax rate should be explicitly factored into the rate methodology. Taxes are paid and accrued at varying rates depending on the individual operators tax structure. Accordingly, MARAD proposes that the rate of return be based on the most recent pretax rate of return on stockholders equity for a representative cross section of transportation industry companies, including maritime companies.

In other comments, Kominers and Dyer both contend that the proposed 25-year depreciation period does not realistically reflect present financing practices. Kominers cites the use of capital lease financing and that such financing practices yield a level capital employment over the life of a vessel asset, rather than a decreasing capital employment.

MARAD notes that a 25-year depreciation period is an accepted accounting practice and reasonably reflects the economic life of a shipping asset. A 25-year depreciation period has been consistently employed under MARAD's Title XI program for many years. In the past, MARAD has used depreciation periods reflecting the economic life of shipping assets in a number of program applications, most notably, the calculation of fair and reasonable guideline rates under the current system and the calculation of ODS for the carriage of grain to the Soviet Union. Lease arrangements have specifically been excluded from consideration. The method of principal reduction is a business decision made by the operator to suit its particular financial requirements. MARAD does not wish to influence this decision but to fairly spread capital employment over the economic life of the vessel. Accordingly, this SNPRM does not base depreciation schedules on the varying financing arrangements employed by the operators.

ATT also expressed the belief that the Title XI fees should be included in the calculation as an added cost of financing.

The Title XI program provides operators of U.S.-flag merchant vessels the opportunity to obtain low cost financing. The fees paid to MARAD by participants in the Title XI program are an expense of obtaining this benefit. The decision to use Title XI financing is a management prerogative, and the costs of the program must be weighed against the substantial financial benefits provided by this government aid. MARAD believes that the benefits received by the operators are such that the cost of obtaining those benefits should be solely for the account of the operator.

ATT further maintains that losses experienced by the operator be included as a component of equity, since these costs must be absorbed by the company.

MARAD firmly rejects this contention, as losses are a result of business decisions of the operator for which it is responsible. Additionally, the concept is contrary to the thrust of these regulations as it would reward the inefficient operator.

Operating and Cargo Costs

Concern was expressed by ATT, Kominers, and Dyer with regard to the various elements of operating and cargo costs. The companies represented by Dyer would like to include costs for moving vessels in and out of layup and positioning costs. ATT has similar concerns and further states that vessel cleanup costs are ignored.

It is MARAD's view that the decision to break a vessel out of layup or return it to layup in connection with a preference voyage is a management prerogative dictated by prevailing economic conditions. For this reason, MARAD will not recognize these costs in the guideline rate calculation. Similarly, ballast miles from the prior port to the port of loading are not considered under this regulation. As to vessel cleaning costs, MARAD intends to include normal cleaning costs for grain to grain voyages based on information submitted for the prior calendar year.

Kominers and Dyer also question the use of historical costs. Their objection is that the data is stale and does not reflect current costs. They are also concerned that higher than normal costs peculiar to the year for which rates are being calculated will not be captured in that year.

It was MARAD's intention to apply escalation factors to historical operating cost data. The regulation has been modified to include a specific provision in this regard. In the revised methodology, unusual costs such as drydocking expenses will be reflected in the aggregate average operating costs established for each vessel DWT category. Since these expenses are common among all operators within each category, the methodology proposed would normalize unusual expenses and provide over time a full return of such expenses to the efficient operator.

Brokerage and Overhead

Kominers argues that an allowance for overhead should be included. Since overhead and administrative expense is a cost of doing business, MARAD agrees. Accordingly, in this SNPRM the section entitled *Broker's Commission* is changed to *Brokerage and Overhead* and is increased to 4.0 percent to include a reasonable allowance for overhead.

Determination of Voyage Days

Comments were received from both ATT and Dyer concerning the use of the specific factor of 27.3 percent to account for lost days in loading and discharge. ATT believes that each voyage should have an individual factor applied based on anticipated lost days. Dyer contends that the factor should be considerably higher to account for additional lost time. Both cite additional sources of possible lost port time.

To a certain extent MARAD concurs with ATT that a specific factor may not be appropriate in all cases. MARAD looks to the type of cargo carried for its guidance in determining a factor for cargo delays. With respect to bulk grain cargoes, MARAD has found over the years that the 27.3 percent load and discharge factor has proven to be more than adequate. To the extent that bulk grain is booked, MARAD intends to use this factor when appropriate.

Miscellaneous Comments

Kominers broached the subject of including CDS repayment costs involved in the carriage of preference cargoes under the Snyder Amendment in the other costs category. However, since these comments were received, all affected operators terminated their Snyder Amendment elections, and pursuant to Docket No. S-764 most are operating under revised ODS contract terms governing the carriage of preference cargoes. Under the revised rules repayment of CDS is not required. Additionally, those operators who have not yet amended their ODS contracts are, in effect, carrying preference cargoes under the revised contract terms, i.e., without both ODS payments and CDS repayment obligations. Therefore, with respect to all affected operators, the point is now moot.

Confidentiality was also cited in the comments of both Dyer and ATT. Data is required to implement and administer this rule. To the extent confidentiality is requested, MARAD intends to take actions within its purview to protect the confidentiality of the financial and cost data provided. Defense of confidential material from discovery under the Freedom of Information Act is generally quite successful, and the incidence of leaks of proprietary information is extremely low. There is no greater risk of disclosure under this program than in any other transaction, either Government or private.

ATT made several general comments concerning the regulation. ATT states that MARAD has no authority to establish the guideline rate and to request the necessary data to determine the rate. ATT believes that MARAD is attempting to set a binding rate without statutory authority and that MARAD is requesting the submission of data it does not require and has no authority to request.

The authority of MARAD to establish rates has already been determined. As part of a series of court decisions concerning Docket A-132, it was established by the United States District Court for the District of Columbia in 1981 that MARAD has broad authority to set rates under section 901 of the Act. That opinion was upheld by the United States Court of Appeals for the District of Columbia in November of 1982. Accordingly, MARAD not only has the authority to set the rate, but where data are insufficient, as has been the case in the past, it has the right to request the data necessary to accurately determine a rate.

ATT also stated that the guideline rates will produce inconsistent results, i.e., low bidders for given cargoes being rejected because their rate bids exceed the guideline rates for their vessels, while higher bidders may have to be accepted because their bids are at or below the guideline rates for their respective vessels. ATT and Chevron pose three related questions: (1) Will the low bid be accepted regardless of the guideline rate, (2) how will ODS affect the guideline rate calculation, and (3) what happens if the market rate exceeds the guideline rate?

Generally, the purpose of this regulation is to provide a yardstick for shipper agencies to use in determining what constitutes a fair rate for the shipment of preference cargoes. The selection of the successful bidder is made by the sponsoring shipper agency. Their evaluation of one operator's bid against another is the prerogative of the shipper agency and is not a subject of this regulation.

With respect to vessels receiving ODS, the subsidy received will be considered as part of the overall cost to the government in evaluating bids in accordance with the regulations, 46 CFR 381.8.

If the market rate exceeds the guideline rate, MARAD would expect that the vessel operator would, in most instances receive the guideline rate. However, as noted previously, the ultimate responsibility for selection of a carrier lies with the shipper agency.

ATT and Chevron comment that the proposed guideline rate appears to be a singular rate and that a tolerance factor should be incorporated into the methodology. ATT feels that a range should be developed while Chevron believes that the low bid should only be rejected if it substantially exceeds the guideline rate.

MARAD points out that the purpose of the regulation is to provide a benchmark rate which can be used to ascertain the fairness of an operator's proffered bid for the carriage of preference cargo. For these purposes a single rate is appropriate, and a range of rates, or an undefined tolerance, would defeat the purpose of the fair and reasonable guideline rate.

Kominers has suggested that shortfalls in revenue resulting from bidding below the guideline rate be factored into subsequent guideline rate calculations. MARAD sees no merit in this suggestion. Further, the purpose of this SNPRM is to provide guideline rates and bids will continue to be evaluated on a case by case basis in accordance with shipper agency procedures.

Finally, Chevron suggested that MARAD seek a reassessment of the term "fair and reasonable" and that there is nothing to suggest that the Government should assure a vessel operator a fair profit.

MARAD sees no need for a reassessment of the term "fair and reasonable". The Comptroller General's opinion provides sufficient guidance for development of a guideline rate methodology. Additionally, MARAD points out that the proposed methodology does not guarantee a vessel operator a fair profit but allows it the opportunity to earn a fair return in the carriage of government impelled cargoes.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this regulation is not a major rule as defined in E.O. 12291, but is significant under DOT regulatory policies and procedures (46 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared on the rulemaking and placed in the public docket. Based on the data and comments received in response to the various NPRM's issued in conjunction with Docket R-107, MARAD has opted for a cost based system for calculating guideline rates utilizing average and actual operating costs and actual capital costs. It is estimated that under this system actual rate fixtures will be similar to current levels. With more accurate data, generated fair and reasonable rates are expected to be closer to actual rates.

Since this regulation would affect principally ship operators with substanital annual revenues, and government agencies, the Maritime Administration certifies that this rulemaking would not exert a significant economic impact on a substantial number of small entities under Pub. L. 96-354. It includes an information collection requirement. This item has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*) and has been approved by OMB. The section number and corresponding OMB approval number are as follows: 382.2, 2133-0514.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this SNPRM has no federalism implication that warrants the preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 382

Agricultural commodities, Cargo vessels, Government procurement, Grant programs-Foreign relations, Loan programs-Foreign relations, Water transportation.

Accordingly it is proposed that 46 CFR Chapter II be amended by adding a new Part 382, to read as follows:

PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK PREFERENCE CARGOES ON BULK CARGO VESSELS

Sec.
382.1 Scope.
382.2 Data submission.
382.3 Determination of fair and resonable rates.

Authority: Sec. 901 of the Merchant Marine Act, 1936, as amended (46 U.S.C. s1241; 49 U.S.C. 1.66).

§382.1 Scope.

Part 382 prescribes regulations applying to the transportation of nonmilitary dry and liquid bulk preference cargoes on U.S.-flag commerical vessels, other than liner vessels, pursuant to section 901 of the Merchant Marine Act, 1936, as amended. This regulation contains the method for calculating fair and reasonable rates and the type of information that must be submitted by operators interested in carrying bulk preference cargoes.

§382.2 Data submission.

(a) *General.* The operators are required to submit information listed in paragraphs (b) and (c) of this section to the Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. Such information shall be submitted, not later than April 30, for the previous calendar year and shall be updated not less often than once every 12 months. All submissions shall be certified by the operators and are subject to verification at MARAD's discretion by the Office of the Inspector General, Department of Transportation.

(b) *Required information for each vessel:*

(1) Vessel name;

(2) Vessel DWT;

(3) Date built, rebuilt and/or purchased;

(4) Normal operating speed;

(5) Fuel consumption at normal operating speed, in metric tons by type of fuel, per day;

(6) Fuel consumption in port while pumping and standing, in metric tons, by type of fuel, per day;

(7) Total vessel costs capitalized (list and date capitalized improvements separately), and applicable interest rates for indebtedness;

(8) Number of vessel operating days for the year ending December 31;

(9) Operating cost information. Such information shall be submitted, by vessel, in the format stipulated by 46 CFR Part 231.1, Form MA-172 Schedule 301. Information shall be applicable to the most recently completed calendar year.

(c) *Required port and cargo handling information.* The following port and cargo handling costs shall be provided for each cargo preference voyage terminated during the calendar year, identifying the vessel, cargo and tonnage, dates of voyage, and ports of loading and discharge.

(1) Port expenses. Total expenses or fees by port for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expense, and any other appropriate expense.

(2) Cargo expense. Total expenses or fees for stevedores, elevators, equipment and any other appropriate expenses.

(3) Extra cargo expenses. Separately list expenses or fees for vacuvators and/or cranes, lightening (indicate tons moved and cost per ton), bagging or stacking of cargo at discharge (if specified in charter party), cleaning of holds or tanks for bulk grain cargoes and any other appropriate expenses. Specify time lost for weather, strikes, or work stoppages.

(4) Canal expenses. Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other Requirements.* Unless otherwise provided, 46 CFR Part 232, Uniform Financial Reporting Requirements, and 46 CFR Part 272, Maintenance and Repair reporting instructions, are to be used for guidance in submitting cost data. Data requirements stipulated in paragraphs (b) and (c) of this section that are not included under those reporting instruction shall be submitted in a similar format. If any data required under paragraphs (b) and (c) are already submitted to MARAD for other purposes, its submission need not be duplicated to satisfy the requirements of this regulation.

(e) *Confidentiality.* If the data submitted under this part contains information that the submitter considers to be commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the submitter shall assert a claim of exemption at the time the data is submitted. The claim shall be made in a letter contained in a sealed envelope marked "Confidential Information," addressed to the Secretary, Maritime Administration. The submitter shall stamp or mark "confidential" on the top of each page containing information claimed to be confidential. In claiming an exemption under FOIA, the submitter must state the basis for such action, including supporting information showing:

(1) That the information claimed to be confidential is a trade secret or commercial or financial information in accordance with statutory and decisional authority, and

(2) That measures have been taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to the public, or, if the information has been disclosed or otherwise become available to the public, why such disclosure or availability does not compromise the confidential nature of the information. In the event of a subsequent request for any portion of the data under the FOIA, those submissions not so claimed by the submitter will be disclosed, and those so claimed will be subject to the initial determination by the Secretary, Maritime Administration. If the Secretary makes a determination unfavorable to the submitter, the submitter will be advised that MARAD will not honor the request for confidentiality at the time of any request for production of information under the FOIA by third parties.

§ 382.3 Determination of fair and reasonable rates.

(a) *Cost Components.* Fair and reasonable rates for the carriage of bulk preference cargoes on U.S.-flag bulk commercial vessels shall include an operating cost component, a capital cost component, a port cargo handling cost component, and a brokerage and overhead component.

(b) *Operating cost component (1) General.* An operating cost component based on the average operating costs, except fuel, of participating bulk vessels within a category of bulk vessels shall be determined on the basis of operating cost data for the calendar year immediately proceeding the current year submitted in accordance with 382.2. The cost component shall include two segments, operating costs and fuel.

(2) *Operating Cost Segment.* The operating cost segment shall include all costs relating to vessel operations except fuel and shall include non-fuel expense categories as defined by 46 CFR Part 232.1 (for purposes of this part charter hire expenses are not considered operating costs), Form MA–172, Schedule 301, Operating Expenses. Such data shall be escalated by MARAD to the current year.

(3) *Fuel Segment.* Fuel costs shall be determined individually based on the actual fuel consumptions, at sea and in port, of each vessel and current fuel prices.

(4) *Vessel Categories.* Vessels shall be categorized by type and size as follows: Group I—self-propelled ships and fully integrated tug/barge units under 27,000 DWT; Group II—self-propelled ships and fully integrated tug/barge units, 27,000-55,000 DWT; Group III—self-propelled ships and fully integrated tug/barge units of over 55,000 DWT; Group IV—tug/barge combinations under 12,000 DWT; and Group V—tug/barge combination of 12,000 DWT and over.

(c) *Capital Component. (1) General.* A capital cost component shall be constructed for each eligible vessel consisting of vessel depreciation, interest, return on working capital, and return on equity.

(2) *Items included.* The capital cost component shall include:

(i) *Depreciation.* The owner's actual construction cost, reconstruction cost or purchase cost shall be depreciated straight-line based on a 25 year economic life, unless the owner has purchased or reconstructed the vessel when its age was greater than 15 years old. When vessels more than 15 years old are purchased, a depreciation period of 10 years shall be used. When vessels more than 15 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal installments over a 25-year period. If an actual interest rate is not available, the prevailing rate of interest for Title XI financing at the time of capitalization shall be used.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover one-half the operating and voyage costs of the vessel for the voyage. The rate of return shall be based on an average of the most recent return on stockholders' equity for a cross section of transportation companies, including maritime companies.

(iv) *Return on equity.* The rate of return on equity shall be determined as in paragraph (c)(2)(iii) of this section. For the purpose of determining equity it shall be assumed that the vessel's constructed net book value, less constructed principal outstanding, is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(3) *Voyage component.* The annual depreciation, interest, and return on equity shall be divided by 335 vessel operating days to yield the daily cost factors. Total voyage days are applied to the daily depreciation, interest, and return on equity factors and totaled with the return on working capital for the voyage to determine the daily capital cost component.

(d) *Port and cargo handling cost component.* MARAD shall calculate an estimate of all port and cargo handling costs. The port and cargo handling cost component shall be based on information submitted in accordance with § 382.2(c) and shall be determined on the basis of cargo tender terms.

(e) *Brokerage and Overhead Component.* An allowance for broker's commission and overhead expense of 4.0 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.

(f) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(1) The voyage shall be round-trip with the return in ballast, unless it is known that the vessel will be scrapped or sold immediately after discharge of the preference cargo. In this event, only voyage days from the load port to the discharge port shall be included.

(2) Cargo is loaded and discharged as per cargo tender terms interpreted in accordance with the "International rules for the interpretation of trade terms (INCOTERMS)".

(3) Total loading and discharge time includes the addition of a factor to account for delays and Sundays and holidays not worked.

(4) One extra port day is included at each bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the vessel's normal operating speed, and shall include an additional five (5) percent to account for weather conditions.

(g) *Determination of cargo carried.* The amount of cargo tonnage used to calculate the rate shall be based on the charter party terms. However, in no case shall less than 70 percent of deadweight be used for rate calculation purposes.

(h) *Total rate.* The fair and reasonable rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component divided by the amount of cargo carried, expressed as cost per ton.

By order of the Maritime Administrator.

Date: June 22, 1988.

James E. Saari,

Secretary.

[FR Doc. 88–14490 Filed 6–27–88; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Small Take Exemption for Taking of Marine Mammals Incidental to Commercial Fishing Operations, and Taking by Federal, State, and Local Government Officials

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of 30-day extension of comment period.

SUMMARY: The Fish and Wildlife Service gives notice that it is extending the comment period for regulations proposed 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 in October 1981. Section 101(a)(4) of the Act 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 of the Act allows 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). By request, the comment period is being extended for 30 days.

DATE: Comments on the proposed rule will now be accepted through July 28, 1988.

ADDRESS: Comments should be submitted to the Chief, Division of Fish and Wildlife Management Assistance, 514 Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lynn B. Starnes, Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Washington, DC, (202) 632–2202, or Jon Nickles, Supervisor, Marine Mammal Management, U.S. Fish and Wildlife Services, Anchorage, Alaska, (907) 786–3492.

SUPPLEMENTARY INFORMATION: A proposed rule to amend existing regulations at 50 CFR 18.22 (Taking by Federal, State or local government officials) and to adopt new regulations at 50 CFR 18.24 (Taking incidental to commercial fishing operations; small take exemption) was published in the **Federal Register** on April 12, 1988 (53 FR 12043). The proposed rule included a 60-day period, ending June 13, 1988, for submitting comments. Since several interested parties have requested additional time for the proposal to be reviewed, the Fish and Wildlife Service has decided to extend the comment period for another 30 days to ensure that all affected entities have ample opportunity to provide comments.

Author

The author of this notice is Jeffrey L. Horwath, Wildlife Biologist, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Washington, DC 20240.

Authority

16 U.S.C. 1361 *et seq.*

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

Date: June 21, 1988.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 88–14496 Filed 6–27–88; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 53, No. 124
Tuesday, June 28, 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

Agency Nonacquiescence in Decisions of the Courts of Appeals

AGENCY: Administrative Conference of the United States.

ACTION: Committee on Judicial Review; request for public comments.

SUMMARY: The Administrative Conference's Committee on Judicial Review is continuing consideration of a draft recommendation on federal agency nonacquiescence in decisions of courts of appeals. Interested persons are invited to comment on specific questions related to the draft recommendation.

DATE: Please submit comments by July 27, 1988.

ADDRESS: Send comments to Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington DC 20037. Telephone: (202) 254–7065.

SUPPLEMENTARY INFORMATION: On April 14, 1988 (53 FR 12444), the Administrative Conference's Committee on Judicial Review published for comment a draft recommendation on Federal agency nonacquiescence in decisions of courts of appeals reviewing agency action, based on a report prepared by Professors Samuel Estreicher and Richard Revesz of New York University School of Law. (Copies of the report are available from the Office of the Chairman of the Administrative Conference.) The draft recommendation: (1) Recommended that agencies not engage in intracircuit nonacquiescence (refusal to follow the case of a particular court of appeals when the agency action will be reviewable in the same court of appeals) unless certain specified requirements are met; (2) suggested that agencies establish procedures for making intracircuit nonacquiescence decisions and for communicating those decisions within the agency and to the public; (3) urged courts not to enjoin an agency from pursuing a policy of intercircuit nonacquiescence or of nonacquiescence where venue is uncertain, and to enjoin an agency from engaging in intracircuit nonacquiescence only if the requirements set out in the recommendation have not been met; and (4) recommended that Congress eliminate venue uncertainty except where overriding considerations counsel otherwise.

After consideration of the comments submitted in response to that request, the committee has identified several questions about the draft recommendation on which it would like to receive further comment. Those questions are set out below, along with the full text of the original draft recommendation. Comments not addressed specifically to the questions will also be considered. However, extensive comments on the general merits of the draft recommendation were submitted in response to the earlier request, and these are still before the committee. As a result, comments addressed to the particular aspects of the draft recommendation identified in the questions are most likely to be helpful to the committee at this point.

The committee tentatively plans to meet in early August for further consideration of this subject in the light of all comments that have been received. At that time, the committee will decide whether to approve a proposed recommendation for consideration by the full Administrative Conference.

Questions for Comment

1. The draft recommendation is intended to countenance the practice of intracircuit nonacquiescence only as an interim measure, allowing an agency to maintain a uniform administration of its governing statute, following an adverse decision by a court of appeals, while it makes reasonable attempts to vindicate its position. Assuming that some amount of intracircuit nonacquiescence should be permissible, are the standards set forth in paragraph 1 of the draft recommendation sufficiently stringent and sufficiently precise in defining the category of permissible nonacquiescence? Specifically:

(a) Responsibility for securing a nationally uniform policy. Some commenters suggested this standard, which essentially includes every issue arising under an agency's governing statute(s), is too broad. Should it be limited, and if so, in what way? On the other hand, some agency commenters suggested that intracircuit nonacquiescence should be permitted as to government-wide statutes such as the Freedom of Information Act or the Privacy Act? Is there a need for intracircuit nonacquiescence on these questions?

(b) Reasonably seeking the vindication of [the agency's] position. Is "the active pursuit of legislative change" by an agency an adequately measurable or meaningful test for justifying continued nonacquiescence, or must the agency be pursuing the issue in the courts? The report identifies four factors to consider in determining whether an agency is "reasonably" seeking vindication of its position in the courts: (1) Agency candor about its disagreement with circuit presidents; (2) the acceptance or rejection of the agency's position by the various courts of appeals; (3) the extent to which the agency is actively pressing its views in the courts of appeals; (4) the extent of the agency's efforts to seek Supreme Court review of the issue. Should these (or other factors, if these are not considered adequate) be spelled out in the recommendation?

(c) Justifiable basis for belief that the agency's position falls within the scope of its delegated discretion. The draft recommendation states that a justifiable basis "is lacking only if no other court of appeals is likely to accept the agency's position." Is this an adequate standard? Is there a better way to giving meaning to the phrase "justifiable basis"?

2. If the standards of paragraph 1 are too lax in permitting intracircuit nonacquiescence by agencies, what (if any) standards should be added or substituted? Should intracircuit nonacquiescence be permissible only once an agency has received a subsquent favorable ruling in another circuit? Should agencies be permitted to nonacquiesce only in test cases, and if so, should the recommendation try to

define some standards governing the selection of those cases?

3. Many of the earlier comments addressed the legality and fairness of intracircuit nonacquiescence by the Social Security Administration, noting the special burdens faced by Social Security claimants who must undertake the expense and delay of a court appeal in order to get their benefits. Leaving aside for now the purely legal issues (as to which extensive comments have already been received), the committee would like further comment on the practical ramifications of different nonacquiescence policies on both the Social Security Administration and claimants. Assuming adoption by the agency of a policy of acquiescence in all adverse court of appeals decisions, what would be the costs and difficulties of implementing the policy (e.g., of keeping agency staff apprised of the relevant court decisions, of administering programs differently within different jurisdictions, etc.)? How would these compare with the costs to claimants under a policy of limited nonacquiescence like that proposed in the draft recommendation? Are there fairness issues raised by a system of differential administration under which, following applicable circuit precedent, the agency grants benefits to claimants in one jurisdiction but denies them to identically situated claimants in another jurisdiction? Should agency nonacquiescence be treated differently in situations involving individual benefit programs than in other contexts?

4. Earlier comments raised questions about the sanctions a court might impose on an agency engaging in unjustifiable intracircuit nonacquiescence (paragraph 2 of the draft recommendation). Should the draft recommendation refer to any such sanctions other than injunctive relief, and if so, should they be specified? Should the award of attorney's fees under the Equal Access to Justice Act be included among the sanctions covered by paragraph 2 of the recommendation, or should such fees be awardable (assuming other statutory requirements are met), in order to reduce the burden of nonacquiescence on litigants against the government, even when a court would not enjoin an agency's nonacquiescence policy?

5. Paragraph 4 of the draft recommendation proposes that Congress eliminate venue uncertainty where possible. Are there important benefits to venue uncertainty that outweight the benefits (in terms of reduced nonacquiescence) of eliminating it?

Draft Recommendation: Agency Nonacquiescence in Decisions of the Courts of Appeals

From time to time, federal administrative agencies such as the National Labor Relations Board, the Internal Revenue Service, and the Department of Health and Human Services have practiced "nonacquiescence"—the selective refusal to conduct their internal proceedings in conformity with adverse rulings of the courts of appeals. Believing that they are responsible for a nationally uniform, expert administration of the statutes committed by Congress to their charge, these agencies have, in varying degrees, insisted on the authority to pursue their policies despite contrary circuit court decisions, until the Supreme Court issues a nationally binding resolution. This practice has provoked increasing criticism in recent years, particularly from the courts of appeals.

The term "nonacquiescence" actually refers to three distinct types of agency behavior. First, an agency engages in *inter*circuit nonacquiescence when it refuses to follow, in its administrative proceedings, the case law of one court of appeals when, under applicable venue provisions, review of the agency's action will lie in a different court of appeals. Second, an agency engages in *intra*circuit nonacquiescence when the relevant venue provisions establish that review will be to a particular court of appeals and the agency refuses to follow the case law of that circuit. The third category involves cases in which the proper venue for review of agency action is uncertain. Here, the agency refuses to follow the case law of a court of appeals but is not certain whether its decision will be reviewed in that court or in one that has not rejected the agency's position. This category includes cases in which, as a practical matter, it is probable that the case will be heard in one particular circuit, as long as venue in another circuit that has not rejected the agency's position is possible under the applicable statutory provisions.

Intercircuit nonacquiescence is necessary to preserve dialogue among the courts of appeals; such dialogue is likely to produce a more careful and focused consideration of the relevant issues in those courts, as well as to aid the Supreme Court by presenting it with competing approaches to difficult questions. Similar reasons underlie the rejection of intercircuit *store decisis* and of nonmutual collateral estoppel against the government. This recommendation therefore does not seek to limit an agency's exercise of intercircuit nonacquiescence.

Intracircuit nonacquiescence, in contrast, can have negative effects by giving rise to conflicts between an agency and its reviewing court, by creating disuniformity because a more favorable rule is available to parties that seek judicial review, by disadvantaging parties with limited resources for litigation, and by increasing the workload of the federal courts. At the same time, however, a complete bar against intracircuit nonacquiescence would be inappropriate, as it would constrain intercircuit dialogue, undermine congressional policies in favor of national uniformity, and interfere with the efficient administration of federal law. This recommendation lists the factors that should govern the legitimacy of intracircuit nonacquiescence and sets procedural safeguards for the exercise of such nonacquiescence.

As to the third category, limits on nonacquiescence are undesirable for the same reasons as are limits on intercircuit nonacquiescence; this recommendation therefore does not seek to constrain an agency's ability to engage in nonacquiescence where venue is uncertain. But uncertainty over venue negatively affects an agency's relitigation policy by hampering the agency's ability to press its position in circuits that have not rejected it without having that position challenged in circuits that have rejected it. In addition, venue uncertainty is largely the product of historical happenstance rather than of reasoned choice and in many cases does not produce compelling benefits. For these reasons, this recommendation advocates limitations on venue choice except where overriding considerations (such as the desirability of preserving the specialized role of the United States Court of Appeals for the District of Columbia Circuit) counsel otherwise. *Cf.* ACUS Recommendation 82-3, *Federal Venue Provisions Applicable to Suits Against the Government*, 1 CFR 305.82-3. In order to reduce the agency-court friction caused by intracircuit nonacquiescence, Congress should make clear that by limiting venue choice it is not thereby prohibiting nonacquiescence conducted in accordance with this recommendation.

Recommendation

1. Agencies should not engage in intracircuit nonacquiescence unless: (A) The agency has responsibility for securing a nationally uniform policy with respect to the question that was the subject of the adverse judicial decision;

(b) the agency is reasonably seeking the vindication of its position both in the courts of appeals and before the Supreme Court, or through the active pursuit of legislative change; and (c) there is a justifiable basis for belief that the agency's position falls within the scope of its delegated discretion. An agency's position does not lack a justifiable basis simply because it was previously rejected by the court of appeals that issued the decision in which the agency does not acquiesce; such a basis is lacking only if no other court of appeals is likely to accept the agency's position.

2. Courts should not impose sanctions on an agency for, or enjoin an agency from, engaging in intracircuit nonacquiescence unless the requirements in paragraph 1 above have not been met. Such measures are inappropriate for intercircuit nonacquiescence and for nonacquiescence where venue is uncertain.

3. Agencies should establish procedures for identifying decisions of the courts of appeals that are contrary to their policies, for making determinations about when to engage in intracircuit nonacquiescence, and for communicating those determinations to responsible agency personnel such as administrative law judges and enforcement staff. Decisins to engage in intracircuit nonacquiescence should be widely disseminated to the public and to relevant governmental officials, and should be accoompanied by a brief statement of reasons. Among the factors that an agency should address in such a statement are the importance of the issue to its programmatic objective, the strength of the congressional interest in a nationally uniform approach on that issue, the difficulty of differential administration of agency policy, and the fairness of having a favorable outcome in the circuit avilable only to those parties wtih sufficient resources to pursue an appeal.

4. Congress should eliminate uncertainty over the proper venue for review of agency action by establishing predictable venue rules unless overriding considerations, such as the desirability of preserving the specialized role of the United States Court of Appeals for the District of Columbia Circuit, counsel otherwise. In limiting venue choice, Congress should make clear that it is not thereby prohibiting agencies from engaging in intracircuit nonacquiescence in accordance with this recommendation.

Dated: June 24, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88-14573 Filed 6-27-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-88-103]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: July 7, 1988.

Time: 1 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss the establishment of marketing areas, submarketing areas, selling schedules, opening dates, and related matters for the 1988 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street, SW., P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee prior to or at the meeting.

Dated: June 23, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-14502 Filed 6-27-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1987 Panel Wave 6.

Form Numbers: Agency—SIPP-7600, SIPP-8305/7605(L); OMB—0607-0425.

Type of Request: Revision of a currently approved collection.

Burden: 23,520 respondents; 11,760 reporting hours.

Average time per Response: 30 minutes.

Needs and uses: This collection will obtain information concerning the distribution of income received directly as money or indirectly as in-kind benefits. It will provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395-7340.

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1888 Panel Wave 3.

Form Numbers: Agency—SIPP-8300, SIPP-8305/7605(L); OMB—0607-0595.

Type of Request: Revision of a currently approved collection.

Burden: 24,360 respondents; 12,180 reporting hours.

Average time per Response: 30 mintues.

Needs and Uses: This collection will obtain information concerning the distribution of income received directly as money or indirectly as in-kind benefits. It will provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395-7340.

Agency: Bureau of the Census.

Title: 1990 Census of the United States.

Form Numbers: Agency—D-1, 1(s), 2, 2(s), 1A, 2A, 3, 3(s), 4, 4(s), 14, 20A, 20B, 20A(s), 20B(s), 21, 23, 25, 25(s), and 31; OMB—NA.

Type of Request: New collection.

Burden: 106,000,000 respondents; 27,432,032 reporting hours.

Average Time Per Response: 15.5 minutes.

Needs and Uses: Article 1, section 2 of the United States Constitution calls for a census to be conducted at least every 10 years. Census data are used to equitably apportion Congressional representatives among the states, to draw Congressional or state legislative district boundaries, to

allocate state and Federal funds, and in private sector decision making.
Affected Public. Individuals or households.
Frequency: One time.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer. Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management, and Organization.

[FR Doc. 88–14486 Filed 6–27–88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form 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: Bureau of Economic Analysis.
Title: Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons.
Form Numbers: Agency—BE–22; OMB—NA.
Type Of Request: New collection.
Burden: 1,000 respondents; 11,000 reporting hours.
Average time per Response: 11 hours.
Needs and Uses: This survey will be conducted to secure data for U.S. persons on their services transactions with unaffiliated foreign persons. The data will be used to fill major data gaps in the balance of payments and gross national product accounts, to develop U.S. international trade policy, and to support U.S. trade policy initiatives.
Affected Public: State or local governments, farms, businesses or other for-profit institutions, non-profit institutions, and small businesses or organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
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 H6622, 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 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–14487 Filed 6–27–88; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Case No. OEE–2–88]

Marli S.A., et al; Order Renewing Temporary Denial of Export Privileges

In the matter of: Marli S.A., 3 Chemin Tavernay, CH–1218 Geneva, Switzerland; Graphic Data Products S.A., 3 Chemin Tavernay, CH–1218 Geneva, Switzerland; Fincosid S.A., Galleria Benedettini, CH–6500 Bellinzona, Switzerland; Tuorimex S.A., Via Gordemo, CH–6596 Gordola, Switzerland; and Lilly Merchandising Co., Taborstrasse 39, 1020 Vienna, Austria; Respondents.

The Office of Export Enforcement, Bureau of Export Administration,[1] United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368–399 (1988) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985) (the Act), has asked the Assistant Secretary for Export Enforcement to renew an order issued on April 22, 1988, temporarily denying all United States export privileges to Marli S.A., Graphic Data Products S.A., Fincosid S.A., Tuorimex S.A.[2] and Lilly Merchandising Co. (hereinafter collectively referred to as respondents).[3] 53 FR 15587, May 2, 1988.

In its renewal request dated June 1, 1988, the Department states that, as a result of an ongoing investigation, it continues to have reason to believe that respondents have taken possession of controlled U.S.-origin commodities in Switzerland and then reexported them, oftentimes to proscribed destinations. The Department also has reason to believe that respondents have provided false and misleading statements of material fact concerning the intended end-users of U.S.-origin equipment respondents ordered from a company in Switzerland which was the foreign consignee under a U.S. distribution license. Based on the orders placed by the respondents, the foreign consignee in turn ordered the U.S.-origin goods from the distribution license holder, representing that the goods were intended for use by the Western European companies respondents had named in their orders as the end-users. In fact, it appears that the Western European companies identified by respondents as being the intended end-users had no involvement in the transactions. The Department has reason to believe that, once the U.S.-origin goods were received by the respondents in Switzerland, the respondents reexported the goods, which are controlled for reasons of national security, to end-users in the Soviet bloc.

The Department believes that respondents' past activities establish that the violations of the Act and the Regulations which they are suspected of having committed and which the Department is presently investigating were deliberate and covert and are likely to occur again unless appropriate action is taken to reduce the likelihood that respondents can continue to acquire U.S.-origin goods either inside or outside of the United States. The Department believes that respondents' activities show a clear pattern of disregard for the Act and the Regulations.

Furthermore, the Department believes that in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations, a renewal of the temporary denial order naming Marli S.A., Graphic Data Products S.A., Fincosid S.A., Tuorimex S.A. and Lilly Merchandising Co. is necessary to give

[1] On October 1, 1987, in accordance with the pertinent provisions of the Export Administration Act of 1979, as amended, and a Departmental directive from Bruce Smart, then-Acting Secretary of Commerce, implementing those provisions, the Office of Export Enforcement was moved within the Department from the International Trade Administration to the Bureau of Export Administration. The functions and scope of authority of the Bureau of Export Administration are set forth in Department Organization Order (DOO) 50–1, issued on March 23, 1988.

[2] Based on information obtained in the ongoing investigation, the spelling of this company's name has been corrected. Also, several corrections to the addresses of the companies temporarily denied export privileges have been made in this renewal order.

[3] As issued on April 22, 1988, the order also applied to Mario Brero and Samata S.A. By order dated June 15, 1988, I vacated the temporary denial order as it applied to Mario Brero and Samata S.A.

notice to companies in the United States and aboard that they should cease dealing with these parties in transactions involving U.S.-origin goods.

None of the respondents opposed the request for renewal submitted by the Department on June 1, 1988. Therefore, based on the showing made by the Department, I find that renewal of the order temporarily denying export privileges to the respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with the respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby ordered:

I. All outstanding individual validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Marli S.A. and Graphic Data Products S.A., both with an address at 3 Chemin Tavernay, CH-1218 Geneva, Switzerland; Fincosid S.A., Calleria Benedettini, CH-6500 Bellinzona, Switzerland; Tuorimex S.A., Via Gordemo, CH-6596 Gordola, Switzerland; and Lilly Merchandising Co., Taborstrasse 39, 1020 Vienna, Austria, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly, or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

V. In accordance with the provisions of Section 388.19(e) of the Regulations, any respondent may, at any time, appeal this order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order. The Regulations further provide that any respondent may request that a hearing be held on the renewal request.

A copy of this Order shall be served on each respondent and this Order shall be published in the **Federal Register**.

Effective date: June 22, 1988.

Philip Hughes,

Assistant Secretary for Export Enforcement.

[FR Doc. 88-14534 Filed 6-27-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-469-701]

Final Determination of Sales at Less Than Fair Value; Certain Granite Products From Spain

AGENCY: Import Administration/ International Trade Administration/ Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain granite products from Spain are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, (202) 377-5288 or James Riggs, (202) 377-1766, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that certain granite products from Spain are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff

Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the last **Federal Register** publication pertaining to this investigation (the Notice of Preliminary Determination of Sales at Less Than Fair Value (53 FR 6023, February 29, 1988)), the following events have occurred.

On March 1, 1988, petitioner alleged that respondents' sales of slabs, not cut-to-size, and tiles, were at prices below their cost of production (See DOC Position, Comment 4).

On March 10, 1988, respondents requested that we postpone the final determination until June 21, 1988. On April 18, 1988, in accordance with section 735(a)(2)(A) of the Act, we published notice of the postponement of the final determination until June 21, 1988 (53 FR 12713).

Verification of the responses was conducted from March 14 through March 30, 1988. A public hearing was requested. This request was subsequently withdrawn. Final comments were received from petitioner, respondents, and interested parties.

Scope of Investigation

The products covered by this investigation are certain granite products. Certain granite products are ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness and include the following: rough-sawed granite slabs; face finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are provided for under the *Tariff Schedules of the United States Annotated* (TSUSA) number 513.7400 and under the *Harmonized System* (HS) item numbers 2516.12.00, 6802.23.00, and 6802.93.00.

Period of Investigation

The period of investigation is March 1, 1987 through August 31, 1987, except for Ingemar, S.A. For this respondent, we requested data on a sale of cut-to-size granite slabs for a project which occurred in November 1986. We requested data concerning this sale in order to include an additional sale of a large project.

Fair Value Comparisons

To determine whether sales in the United States were made at less than fair value, we compared the United States price with foreign market value as specified below.

United States Price

We based United States price for all U.S. sales on purchase price in accordance with section 772(b) of the Act. These sales were made directly to unrelated customers in the United States prior to importation. Under these circumstances, section 772(b) requires that purchase price be used for determining the U.S. sales price.

We calculated purchase price based on the f.o.b. or c.i.f., packed prices to unrelated purchasers in the United States. We made deductions, as appropriate, for foreign inland freight and handling, ocean freight and marine insurance, and discounts.

Foreign Market Value

We calculated foreign market value based on home market packed prices to unrelated purchasers for all sales except for sales from Ingemar of cut-to-size slabs, in accordance with section 773(a) of the Act.

When basing foreign market value on home market prices, we made deductions, where appropriate, for inland freight and insurance, and discounts. In order to adjust for differences in packaging between the U.S. and home markets, we deducted the home market packing cost from the foreign market value and added U.S. packing costs. We made an adjustment for differences in circumstances of sale for credit expenses pursuant to § 353.15 of our regulations. We also adjusted for commissions on sales in the home market, where appropriate, using indirect selling expenses in the United States, as an offset to those commissions pursuant to § 353.15(c) of our regulations.

We established separate categories of "such of similar" merchandise pursuant to section 771(16) of the Act, on the basis of form of material (rough slabs, face finished slabs, and tiles), type of stone, dimensions, finishes, edgeworks, anchoring and assembly work. In accordance with section 773(a)(4)(C) of the Act, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise where there were no identical products in the home market with which to compare products sold in the United States. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

We calculated foreign market value based on constructed value in accordance with section 773(e) of the Act for cut-to-size slabs or projects of Ingemar sold in the United States because there were no comparable projects sold in the home market or third countries. We used the respondent's submissions for material and fabrication costs. Material costs were adjusted to reflect the actual prices reviewed during verification. For projects which incurred fabrication costs from finishing workshop process #408 (craftsman process performed on cut-to-size slabs), we adjusted the reported costs by the percentage of the difference between submitted and verified data.

We used U.S. selling expenses in accordance with the Department's usual methodology when there are no home market or third country sales which are comparable. General expenses for Ingemar were computed using the submission, adjusted for additional personnel expenses discovered during verification, income from fixed asset disposal, and deletion of bad debt items. Interest expense was offset for a proportion related to credit so as to avoid counting the selling expenses twice. Where the amount for general expenses was less than ten percent of the cost of materials and fabrication, we used the statutory minimum of ten percent.

Where the amount for profit was less than eight percent of the sum of the costs of materials, fabrication and general expenses, we used the statutory minimum of eight percent. Where appropriate for constructed value, adjustments were made under § 353.15 of the Commerce Regulations for differences in circumstances of sale between the two markets. This adjustment was for differences in credit expenses.

Currency Conversion

We made currency conversions as of the date of sale in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation.

Interested Party Comments

Comment 1: Petitioner asserts that all responses contained numerous errors,

inconsistencies and omissions, and that the information submitted has not been verified in its entirety. Petitioner urges the Department to use the best information otherwise available as supplied by petitioner for purposes of the final determination.

Those respondents whose information was verified argue that the Department conducted a thorough and comprehensive verification, and that the petitioner's request that best information otherwise available be used is, therefore, groundless.

DOC Position: The Department conducted verifications at Ingemar, Ingemarga, and Artemarmol. The Department considers the responses of these companies to be verified. We have reported all significant issues raised at verification, our verification methods, and major discrepancies found. We do not, however, consider the errors, inconsistencies, and omissions found to be of a frequency or magnitude which would warrant rejecting respondent's data and using petitioner's data as best information otherwise available.

We did not conduct a verification for Modulgranito Iberico, a voluntary respondent, because it failed to confirm that all costs contained in its submission were actual. Given that Modulgranito Iberico was not required to respond to our questionnaire, we did not calculate a separate margin based on best information otherwise available. This company will thus be subject to the margin calculated for all other manufacturers, producers and exporters.

We also did not conduct a verification for Granitos Ibericos because it failed to submit all of the requested information (see DOC Position, Comment 3). This respondent, however, had been presented with a questionnaire, unlike Modulgranito Iberico. Therefore, consistent with our preliminary determination, we used the highest margin of all the responding companies as the best information otherwise available rather than the information supplied by the petitioner for two reasons. First, the petition discusses only cut-to-size granite slabs or projects whereas we believe that Granitos Ibericos exports to the United States not only cut-to-size slabs, but also the other granite products contained in the scope of the investigation. Second, the margins set forth in the petition do not appear to be the best information otherwise available given the significant difference between these margins, which are based upon a constructed foreign market value, and the margins calculated through verification of Ingemar, Ingemarga, and Artemarmol.

Comment 2: The petitioner argues that the dumping margins calculated for two of the respondents, Ingemar and Ingemarga be "collapsed," or weight-averaged, and that the resulting rate be applied to both companies. The petitioner is concerned that because both companies are owned by a single family, the two companies could evade the dumping law by redirecting U.S. sales by the company with the higher margin through the company with the lower margin.

The respondents argue that the companies should be treated separately because they operate, for the most part, as separate entities, and that any attempt to evade the dumping law as alleged by the petitioner would be detected during an administrative review.

DOC Position: Although not expressly required by the Act, the Department has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. The issue, then, is whether Ingemar and Ingemarga constitute separate manufacturers or exporters for purposes of the dumping law. We believe that, under this set of facts, these companies are not separate, and that it is appropriate to calculate a single, weighted-average margin for Ingemar and Ingemarga.

The administrative record establishes a close, intertwined relationship between Ingemar and Ingemarga based upon their joint ownership. Both Ingemar and Ingemarga are owned almost exclusively by the same individuals and share the same board of directors. Though only one transaction took place between Ingemar and Ingemarga during the period of investigation, these companies at times operate closely together. For example, Ingemar and Ingemarga share information on possible sales opportunities. Ingemar and Ingemarga are also billed jointly by outlets in the home market. Finally, the joint owners of Ingemar and Ingemarga have directed the day-to-day manufacturing process for each company by specifying which entity would import granite and which would use local quarries. Indeed, the production facilities at both companies consist of the same type of equipment so it would not be necessary to retool either plant's facilities before implementing a decision to restructure either company's manufacturing priorities. The only difference between these commonly-owned companies is that one uses domestic granite and the other, foreign granite, as inputs. Given these facts, it would be incorrect to conclude that these entities constitute two separate manufacturers or exporters under the dumping law.

Comment 3: Respondent Granitos Ibericos argues that the best information available for determining whether its merchandise was being sold at less than fair value is the margin for "all others." Respondent claims that it consistently made good faith efforts to respond to the Department's questionnaires and should not be penalized by arbitrarily applying the higher margin, which was that of a company producing only tiles. Since Granitos Ibericos produces primarily cut-to-size granite slabs, the best information otherwise available would be that relating to companies similarly situated.

Petitioner urges the Department to use petitioner's data as best information otherwise available because Granitos Ibericos did not respond to the Department's questionnaires.

DOC Position: Granitos Ibericos did not provide the Department with sufficient data to ascertain definitively which granite products it sold to the United States. So deficient were the responses of this company that it was not possible to undertake verification. Therefore, we used the highest margin of all the responding companies as the best information otherwise available (see DOC Position, Comment 1).

Comment 4: Petitioner argues that the Department should have initiated a cost of production investigation based on petitioner's allegation that respondents' home market sales are being made below their cost of production. Petitioner argues that this allegation was submitted on a timely basis and that the basis for this assertion is reasonable. Respondents argue that the Department has already reviewed petitioner's allegation and that the petitioner has not supplied any new evidence. Respondents argue further that petitioner should not be allowed to wait until after the preliminary determination to allege sales at less than cost based on data obtained prior to the preliminary determination.

DOC Position: The Department agrees with respondents. Petitioner's request that the Department conduct a cost of production investigation was received after the preliminary determination in this investigation. Based on the facts in this investigation, we determined that we did not have sufficient time to conduct a full and proper investigation of this allegation. Furthermore, we believe that petitioner had sufficient information prior to the preliminary determination to allow the filing of a timely allegation. Therefore, we

determine that petitioner's cost of production allegation was not submitted in a timely manner.

Notwithstanding the fact that petitioner's allegation was untimely, we reviewed the allegations using the Department's cost of production figures and sample sales of each company. We found that less than one percent of the sample sales were made at less than cost.

Comment 5: Respondents Ingemar and Ingemarga argue that a level of trade adjustment was adequately justified at verification by the documented costs of the retail outlets in Spain. Petitioner argues that the costs documented are actually indirect selling expenses and are inadequate to document a level of trade adjustment. Petitioner further argues that respondents failed to provide information which substantiates that differences in price between the United States and home market are due to differences in costs.

DOC Position: We disallowed the level of trade adjustment because respondents failed to show that the selling expenses incurred on U.S. sales would have been incurred in the home market had there been sales at the same level of trade in that market.

Comment 6: Petitioner claims that "tolled" sales may not have been included in Ingemarga's response and that finishing work may not have been included in the total price. Respondent maintains that there were no "tolled" sales and no finishing work was done on U.S. sales.

DOC Position: The Department verified that there were no tolled sales and that finishing work was not done on U.S. sales.

Comment 7: Respondent Artemarmol claims that the proper comparison for sales to the U.S. of Blanco Castilla tile is the sales of Blanco Perla tile in the home market. Respondent argues that Blanco Castilla and Blanco Perla are virtually identical in appearance, technical characteristics, production costs, raw material costs, and price of the finished tile. Respondent argues that Azul Imperial tile, the comparison used in the preliminary determination, is different from Blanco Castilla tile in physical appearance, production experience, and raw material cost, and therefore should not be used as a basis for comparison.

Petitioner argues that the Department should continue to compare Blanco Castilla tile to Azul Imperial tile because the price list used by respondent to show that Blanco Perla and Blanco Castilla are sold at the same price is outside the period of investigation and thus cannot be used as impartial evidence.

DOC Position: The Department agrees with respondent. Verification substantiated that the characteristics of Blanco Perla are more similar to those of Blanco Castilla than those of Azul Imperial.

Comment 8: Petitioner argues that since four of Artemarmol's U.S. sales were found to be denominated in U.S. dollars, other sales may have been converted to pesetas or dollars using incorrect exchange rates. Petitioner urges the Department to use the exchange rate on the date the invoice was paid. Respondent maintains that all other sales were made in pesetas, and the Department used the correct exchange rates in the preliminary determination.

DOC Position: The Department agrees with respondent. The Department has converted all sales found to be denominated in pesetas at the Federal Reserve Bank rate in effect on the date of sale, in accordance with § 353.56(a)(1) of our regulations.

Comment 9: Petitioner urges the Department to adjust Artemarmol's U.S. sales to take into account the fact that inland freight on these sales is provided free of charge. Respondent argues that this issue is not relevant in an antidumping duty investigation.

DOC Position: The Department verified that Artemarmol incurred no inland freight costs on its U.S. sales. We, therefore, have made no deduction for this.

Comment 10: Petitioner urges the Department to assign a zero value to one of Artemarmol's U.S. sales which was invoiced at no charge because there was no written indication that the merchandise was replacement granite. Respondent claims that the transaction in question involved the replacement of tiles damaged in transit as evidenced by a letter from the customer to the Department provided in respondent's supplemental submission of May 31, 1988.

DOC Position: The Department agrees with respondent. Although there was no written proof on the invoice that this sale was for replacement granite, we can assume from Artemarmol's past experience and from the letter from the customer involved in this transaction that the sale was not simply given away free of charge, but was for replacement granite.

Comment 11: Petitioner argues that the Department must include the one slab sale made by the respondent Artemarmol to the United States. Respondent argues that this sale should not be included because it was merely a "pass-through" transaction to accommodate its customer, *i.e.*, respondent purchased the slabs from an unrelated supplier and shipped and sold the slabs to its U.S. customer.

DOC Position: The Department has not included the one slab sale for the following reasons. First, based on the November 1986 purchase order for granite tile, which was sold on the same invoice as the slab sale, we believe that the slab sale was outside the period of investigation. Second, the Department verified that the slabs sold were a product of another company. Artemarmol acted in this transaction as a middleman. It bought the slabs from another company and shipped them directly to its U.S. customer without further manufacturing. When a producer is unrelated to a middleman and the producer knows that its good is destined for the United States, it is our practice to use the price the producer charges the middleman as the U.S. price. Since the producer which utilized Artemarmol as a middleman was not presented a guestionnaire, we did not attempt to verify any information related to this sale.

Comment 12: Petitioner argues that Artemarmol's statement that it has no advertising or promotional expenses with respect to sales to "second-level customers or end-users in the U.S." implies that respondent does incur expenses for first-level customers. The Department should, therefore, apply an advertising expense using the best information available. Respondent claims that the language it used conforms to the language used in the Department's questionnaire.

DOC Position: The Department did not make the adjustment requested by petitioner because we verified that respondent does not incur any advertising directed at the customer's customer. We do not make an adjustment when the advertising is directed towards the party purchasing from the manufacturer or exporter.

Comment 13: Petitioner argues that the Department should use best information as provided by petitioner for waste loss and yield because respondent Ingemar was unable to provide actual waste loss and yield information on a per project basis for all granite types used.

Respondent notes that loss ratios were verified for the major project's primary color granite (which was the majority of all cut-to-size granite under investigation) and that the actual data verified indicated that the yields used in the submission were conservative.

DOC Position: The Department agrees that respondent's waste loss methodology, which was developed for

specific granite widths from available source documents, was an appropriate method to determine the waste loss for a project using a specific width of granite. Calculations related to the loss were tested extensively during verification. The tested population encompassed the majority of the cut-to-size granite under investigation and was reconciled to source documents. Therefore, no adjustments were made to waste loss in the submission.

Comment 14: Petitioner argues that Ingemar's lack of project-specific data concerning sawing, finishing, and dimensioning costs as reported in the submission constitute "unverifiable data." Petitioner also argues that labor and factory overhead costs reported by respondent cannot be considered verified because it utilized production ratios in its allocation to the projects. Petitioner thus concludes that the Department should use best information for sawing, finishing and dimensioning costs and production ratios for purposes of the final determination.

Respondent notes that its internal records are not normally kept on a project-specific basis, but that the production ratio methodology used for the submission is an integral part of its internal accounting system and was verified on a company-wide basis for the major granite types used in the projects under investigation.

DOC Position: Respondent's methodology and calculations for sawing, finishing and dimensioning costs were tested extensively during verification. The labor and factory overhead costs reported for these processes were traced to the appropriate cost conters and to source documents. Production ratios (the square meters of slabs produced from a cubic meter (commercial volume) of block) for different granite types and widths were compared with actual records. Since these reconciled, no adjustments were made to the production ratios used to prepare the submission or to the labor and factory overhead costs.

Comment 15: Petitioner contends that depreciation expense reported in the submission by Ingemar is incorrect because it is based on an allocation method using the prior year's depreciation expense.

Ingemar explains that depreciation is only computed at year end, after the submission had been prepared, and therefore an estimate for depreciation was computed using prior year financial statements to record depreciation expense. Repondent also notes that the reconciliation of the manual accounting system (from which the submission was prepared) to the electronic data processing general ledger system (which computes the year-end depreciation) verified that the use of the manual cost data did not result in a distortion of the costs of production used for constructed value.

DOC Response: The depreciation expense reported in the submission could be compared to the actual depreciation expense computed for the year-end financial statements reviewed during verification. Therefore, no adjustments were made to the amount included in the submission.

Comment 16: Petitioner argues that the Department should allocate all expenses incurred by respondent to perform finishing workshop process #408 (craftsman processes performed on cut-to-size granite) to U.S. sales, since respondent was unable at verification to recompute the amounts reported in the submission for this process.

Respondent notes that all special processes that have units of production were relatively easy to allocate to the projects on a basis of cost per unit of production. Process #408 had no units of production on which to base an allocation. Respondent also notes that it was a relatively small processing cost item in the projects.

DOC Position: In the allocation of Ingemar's costs to the cut-to-size projects under investigation, the Department noted that the allocation of labor and factory overhead costs to finishing process #408 reported in the submission did not reconcile to allocated amounts calculated during verification. Therefore, the Department has adjusted the labor and factory overhead allocation per project for this specific process by the percentage of difference between the reported and verified data.

Comment 17: Petitioner believes that no drafting expenses were reported by Ingemar in the constructed values reported for the cut-to-size projects in the submission.

Respondent states that the drafting cost to which the petitioner refers is not incurred by Ingemar, it is instead incurred by purchasers of cut-to-size granite from Ingemar. Respondent further states that all in-house expenses related to the costs of the cut-to-size drawings have been included in the reported SG&A expenses.

DOC Position: The Department reviewed blueprints during verification specifying dimensions of cut-to-size pieces of granite used in the projects under investigation and noted that the drawings had been prepared by the client, not Ingemar. All costs reported in the submission (including SG&A) were reconciled to Ingemar's accounting records for the period of investigation, and no adjustments were made for drafting expenses for the final determination.

Comment 18: Respondent Ingemar requests that the Department use the verified financial expenses as reported in the submission, citing the fact that certain financial expenses reported in the company financial statements have been identified and reported as adjustments to sales in the submission. Therefore, to include as SG&A the entire amount of financial expense per the financial statements, without adjusting the selling expenses, will result in counting financial expenses twice.

DOC Position: The Department reviewed during verification the SG&A expenses as reported in the submission and noted that certain adjustments were made by Ingemar to the financial expenses to avoid double counting those financial expenses which were reported as adjustments to sales, e.g., credit expenses.

For financial expenses incurred for bad debts, the Department determined that the provision for bad debts and collection on bad debts in excess of reserves, as reported in the SG&A, did not properly belong in the SG&A for the cut-to-size projects under investigation. Ingemar made a provision for future bad debts and recorded the collection of prior bad debts. These provisions, however, did not affect the specific costs of the projects under investigation. Therefore, the SG&A expense as calculated for Ingemar by the Department for the cut-to-size projects under investigation does not include provisions for, or collections of, non-project specific bad debt.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain granite products from Spain for all manufacturers/producers/exporters that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. The suspension will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Graneitos Ibericos, S.A.	2.19%
Ingemar, S.A./Ingemarga, S.A.	1.78%
Artemarmol, S.A.	2.19%
All Others	1.93%

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o . . . product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy, since there is no reason to require a cash deposit or bond for that amount. However, in the countervailing duty investigation, the suspension of liquidation on entries of the subject merchandise was terminated on April 22, 1988, in accordance with Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade. Since no bonds or deposits are currently being posted in the countervailing duty investigation, the level of export subsidies (as determined in the final affirmative countervailing duty determination on certain granite products from Spain) will not be subtracted from the dumping margin for cash deposit or bonding purposes. If the ITC makes an affirmative determination of injury, in both investigations, the level of export subsidies will be subtracted from the dumping margin for cash deposit purposes.

The cash deposit or bonding rate established in the preliminary antidumping duty determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order on certain granite products from Spain, entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

June 21, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-14548 Filed 6-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-702]

Final Affirmative Countervailing Duty Determination; Certain Granite Products From Spain

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervaliling duty law are being provided to manufacturers, producers or exporters in Spain of certain granite products as described in the "Scope of Investigation" section of this notice. The estimated net subsidy and duty deposit rates are specified in the "Suspension of Liquidation" section of this notice.

We have notified the U.S. International Trade Commission (ITC) of our determination. If the ITC determines that imports of certain granite products materially injure, or threaten material injury to, a U.S. industry, we will direct the U.S. material injury to, a U.S. industry, we will direct the U.S. Customs Service to resume suspension of liquidation of all entries of certain granite products from Spain that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of our countervailing duty order and to require a duty deposit on entries of the subject merchandise in an amount equal to the appropriate duty deposit rate as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0167 (Nguyen) or 377-2438 (Tillman).

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Spain of certain granite products. For purposes of this investigation, the following programs are found to confer subsidies:

- Certain types of short-term loans provided under the Privileged Circuit Export Credits Program.
- Regional Investment Incentives

—Grants under the Large Area of Industrial Expansion of Galicia Program (LAIEG)

—Preferential access to official credit under LAIEG

- Grants under Basque decree 153/1985.
- Rebates of interest on Long-term loans under Galician Decree 82/1984.

Case History

Since the publication of the preliminary determination (*Preliminary Affirmative Countervailing Duty Determination: Certain Granite Products from Spain* (52 FR 48737, December 24, 1987) (*Certain Granite*), the following events have occurred.

On December 30, 1987, petitioner requested an extension of the final determination to correspond with the antidumping final determination. On January 28, 1988, we published a notice agreeing to this extension (53 FR 2521, January 28, 1988). On March 10, 1988, respondents requested an extension of the antidumping determination from May 9, 1988, to June 21, 1988. On April 18, 1988, we published a notice agreeing to this extension (53 FR 12713, April 18, 1988).

Supplemental questionnaire responses were submitted by Ingemar, S.A. (Ingemar) and Ingemarga, S.A. (Ingemarga) on January 25, and February 10, 1988; Ingemarga also submitted a supplemental response on February 4, 1988. Artemarmol, S.A. (Artemarmol), Granitos Ibericos-Grayco, S.A. (GIG), and Santal, S.A. (Santal) submitted supplemental questionnaire responses on January 27, 1988. Ramilo, S.A. (Ramilo) submitted a supplemental questionnaire reponse of February 8, 1988. We conducted verification in Spain from February 8, to March 3, 1988, of the questionnaire responses of the government of Spain, Artemarmol, GIG, Ingemar, Ingemarga, Ramilo, and Santal.

Amended responses based on information reviewed at verification were submitted by Artemarmol, GIG,

Ramilo, and Santal, on March 30 and June 13, 1988. Ingemar submitted amended responses on April 5, April 12, April 19, May 27, 1988. Ingemarga submitted amended responses on April 6 and May 27, 1988.

Although no public hearing was held, initial briefs were filed by petitioner and by all respondents except the government of Spain on May 16, 1988. Rebuttal briefs were filed on May 23, 1988, by petitioner and all respondents.

Scope of Investigation

The products covered by this investigation are certain granite products from Spain. Certain granite products are ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness and include the following: Rough sawed grante slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are curently classified under *TSUSA*, item number 513.7400 and under HS item numbers 2516.12.00, 6802.23.00 and 6802.93.00.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1986, which corresponds to the fiscal year of all the respondent companies.

In our original questionnaire of August 27, 1987, we requested the government of Spain to identify all producers and exporters of the subject merchandise to the United States. On September 22, 1987, the government of Spain identified Artemarmol, GIG, Ingemar, Ingemarga, Santal, Granitos Espanoles, S.A. (GE), and Marmoles y Granitos de Espana, S.A. (M&G) as exporters of products under the Spanish basket tariff numbers which include the subject merchandise. Ramilo, along with several of the above-cited companies, was identified as an exporter under the basket tariff numbers in a September 18, 1987, telegram from our Embassy in Madrid. The Spanish government stated that it was very difficult to establish which companies actually export the subject merchandise to the United States, since the Spanish tariff classification includes all kinds of stone. Therefore, between September 22, 1987, and November 13, 1987, we had various discussions and correspondence with the Embassy of Spain attempting to identify actual exporters of the subject merchandise. On October 14, 1987, we received the government of Spain's response in which four companies, Artemarmol, GIG, Ingemar and Ingemarga, were identified as producers and exporters of the subject merchandise. On the same date, we also received responses from these four companies.

Upon reviewing the responses, the export statistics submitted by the government of Spain and the telegram from our Embassy in Madrid, we determined that there appeared to be four more companies exporting the subject merchandise: GE, M&G, Ramilo, and Santal, which had not responded. Thus, on November 13, 1987, we requested in our supplemental questionnaire that these four companies respond by November 27, 1987. On November 27 and December 1, 1987, respectively, we received responses from Ramilo and Santal. In our preliminary determination, we stated that, if GE and M&G had not responded by the date of the preliminary determination, we might have to use best information available to calculate a rate for them in accordance with section 776(b) of the Act. Since we received no responses from GE and M&G, we are using as best information available for these companies the sum of the highest individual company rates found under each program in this determination, which is 3.77 percent *ad valorem*.

In countervailing duty investigations, it is our practice to calculate a country-wide rate. In calculating the country-wide rate, we normally calculate an average rate for all companies based on the sum of the benefits under each program divided by the sum of relevant sales. In this case, however, we cannot include GE and M&G in the calculation of the country-wide rate because we have no information on the value of their exports of the subject merchandise to the United States. Therefore, these two companies are receiving a separate rate and have not been included in the calculation of the country-wide rate.

Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments from respondents and petitioner, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers or exporters in Spain of certain granite products under the following programs:

A. Certain Types of Short-Term Loans Under the Privileged Circuit Export Credits Program (PCECP)

We verified that exporters of certain granite products from Spain are benefitting from a system of short-term preferential loans mandated by the government of Spain for exporters. Under this system of "privileged-circuit export credits," at least four types of loans are alleged to be available to exporters of certain granite products: (1) Working capital loans, (2) pre-financing of exports, (3) short-term export credits or post-financing of exports, and (4) commercial service loans.

The government of Spain required all Spanish commercial banks to maintain a specific percentage of their lendable funds (the "investment coefficient") in privileged-circuit accounts. These funds were made available to exporters at below-market interest rates.

Under the terms of a Treasury Order dated April 14, 1982, the working-capital loan program for exporters was gradually phased out and terminated as of January 1, 1986. The other three types of export financing under the PCECP were terminated as of March 6, 1987, by Royal Decree 321/1987, issued on February 27, 1987.

While there was no direct outlay of government funds, the benefits conferred on the companies were the result of a government-mandated program to promote exports. We verified that the producers and exporters of certain granite products received three of the four types of PCECP loans: working-capital loans, pre-financing and post-financing export loans.

1. *Working Capital Loans.* Under the PCECP, firms were able to obtain working capital loans for one year, although we found at verification that some loans were paid off a few weeks late. The amount of loans for which a firm was eligible was based on a specified percentage of its previous year's exports. These loans were no longer available as of January 1, 1986, pursuant to a Treasury Order of April 14, 1982. We verified that GIG, Ingemar, and Ramilo had working capital loans outstanding during the review period.

As stated above, although no direct outlay of government funds was used to finance these loans, they were the result of a government-mandated program to promote exports. Because eligibility for this type of financing was contingent upon exports, we determine that it is countervailable to the extent that it was offered at preferential rates.

To determine whether these loans were made at preferential rates, we compared the interest rates charged on working-capital loans with the appropriate benchmark interest rate. Because the terms of these loans were a year, we determine that the most appropriate benchmark is the "one to three years" lending rate charged by

Spanish private banks as published in the *Boletin Estadistico* of the *Banco de Espana*. This comparison shows that the interest rates on these export loans are below the benchmark. Accordingly, we determine this program to be countervailable.

To calculate the benefit, we followed the short-term loan methodology which has been applied in virtually all final countervailing duty determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006, April 26, 1984)*. We compared the amount of interest actually paid during the review period to the amount the companies would have had to pay had the loans been at the benchmark commercial rate. We verified that working-capital export loans were not tied to specific export transactions. Therefore, for the country-wide rate, we allocated the 1986 benefits of Ingemar and Ramilo over the total value of exports of those respondent companies whose overall estimated net subsidy rates are above *de minimis* (0.50 percent or above). The country-wide rate for this program is 0.23 percent *ad valorem*. The rate is 0.32 percent *ad valorem* for GE and M&G. The rate is 0.02 percent *ad valorem* for GIG and zero for Santal.

We verified that this program was terminated by a Treasury Order of April 14, 1982, effective January 1, 1986, and that the respondent companies made the last interest and principal payments on this type of loan before our preliminary determination. Therefore, we determine that the duty deposit rate is zero for this program.

2. *Pre-financing of Exports.* We verified that the maximum term of pre-financing export loans was up to seven months and that Artemarmol, Ingemar and Ramilo had pre-financing export loans on which interest was paid during the review period. Although no direct outlay of government funds was used to finance these loans, they, like the working-capital loans, were the result of a government-mandated program to promote exports. Because eligibility for this type of financing was contingent upon exports, we determine that it was countervailable to the extent that it was offered at preferential rates.

To determine whether these loans were made at preferential rates, we compared the interest rates charged on pre-financing export loans to the appropriate benchmark, which we determine is the "three-month" lending rate charged by Spanish private banks as published in the *Boletin Estadistico* of the *Banco de Espana*. This comparison shows that the interest rates on these export loans were below the benchmark. Accordingly, we determine this program to be countervailable.

To calculate the benefit arising from these loans, we compared the amount of interest actually paid during the review period to the amount the companies would have had to pay had the loans been at the benchmark commercial rate, in accordance with our short-term loan methodology. We verified that pre-financing export loans were tied to specific export transactions. We also verified that the loans were provided on shipments to the United States that included products other than the subject merchandise. Therefore, we allocated the 1986 benefits for Artemarmol, Ingemar and Ramilo over the value of exports of all products to the United States of all non-*de minimis* respondent companies to calculate an estimated net subsidy of 0.32 percent *ad valorem*. The estimated net subsidy for GE and M&G is 0.47 percent *ad valorem*. The rate is zero for GIG and Santal.

Even though this program was terminated by government decree as of March 6, 1987, we verified that interest and principal on loans given under this program were still outstanding after the date of our preliminary determination. Since benefits were still being provided under this program after our preliminary determination, (*i.e.*, the date of our suspension of liquidation), we do not consider the termination a program-wide change for purposes of calculating a separate duty deposit rate in this investigation.

3. *Post-Financing of Exports.* We verified that Artemarmol received post-financing export loans of up to seven months during the review period. Because availability of this type of financing is contingent upon exports, we determine that it is countervailable to the extent that it is offered at preferential rates.

To determine whether these loans were made at preferential rates, we compared the interest rates charged on post-financing export loans during the review period to the appropriate benchmark, which we determine is the "three-month" lending rate charged by Spanish private banks as published in the *Boletin Estadistico* of the *Banco de Espana*. This comparison shows that the interest rates on these export loans are below the benchmark. Accordingly, we determine this program to be countervailable.

To calculate the benefit arising from these loans, we compared the amount of interest actually paid during the review period to the amount the companies would have had to pay had the loans been at the benchmark commercial rate, in accordance with our short-term loan methodology. We verified that the post-financing export loans reported by Artemarmol were tied to specific shipments of the subject merchandise to the United States.

Therefore, we allocated Artemarmol's 1986 benefit over the value of exports of the subject merchandise to the United States of all non-*de minimis* respondent companies to calculate on 0.03 percent *ad valorem*. The estimated net subsidy for GE and M&G is 0.50 percent *ad valorem*. The rate is zero for GIG and Santal.

Even though this program was terminated by government decree as of March 6, 1987, we verified that interest and principal on loans given under this program were still outstanding after the date of our preliminary determination. Since benefits were still being provided under this program after our preliminary determination, (*i.e.*, the date of our suspension of liquidation), we do not consider the termination a program-wide change for purposes of calculating a separate duty deposit rate in this investigation.

B. Regional Investment Incentives

Petitioner alleged that the granite industry in Spain may have benefitted from certain regional investment programs.

1. *Grants under the Large Area of Industrial Expansion of Galicia Program (LAIEG)—Royal Decree 1409/1981.* In 1981, the government of Spain established a program entitled "Large Area of Industrial Expansion" (LAIE) to award grants and loans to companies in certain areas of Spain. We verified that through Royal Decree 1409/1981 of June 19, 1981, the Government of Spain established the program entitled "Large Area of Industrial Expansion of Galicia" to award grants or loans for investment in new capital goods and/or for generation of employment to companies in the region of Galicia and to companies in other parts of Spain that plan to invest in Galicia.

Because this program is funded by the central government of Spain to benefit companies that do business in a specific region, we determine that this program confers a subsidy. GIG and Ingemarga received grants under this program.

In allocating subsidies, we prefer to use the weighted cost of capital as the discount rate; however, in this case, the government of Spain was unable to give us the national average rate of return on equity. Therefore, we were unable to

calculate the weighted cost of capital for GIG and Ingemarga. Instead, we are using as a surrogate discount rate the national average commercial interest rate for loans of "over three years" for the year in which the grant was authorized. This rate is published by the *Banco de Espana* in its *Boletin Estadistico*.

In accordance with past practice, we first determined if the amounts received by Ingemar and GIG were more than 0.50 percent of the value of each company's total sales for the year in which the grant was disbursed. Since each of the grants exceeded 0.50 percent of sales, we allocated the grants over the average useful life of equipment in the granite industry, which is 15 years, as stated in the 1977 IRS Asset Class Life Depreciation Range System, to arrive at the benefit received during the review period. Use of the IRS tables is in accordance with past practice and is described in detail in the *Subsidies Appendix*. Because the overall subsidy rate for GIG is *de minimis*, we calculated the country-wide rate for this program by dividing Ingemar's benefit over total sales of all non-*de minimis* respondent companies to arrive at an estimated net subsidy of 0.39 percent *ad valorem*. The estimated net subsidy for GE and M&G is 2.07 percent *ad valorem*. The rate is 0.43 percent *ad valorem* for GIG and zero for Santal.

2. *Preferential Access to Official Credit under LAIEG—Royal Decree 1409/1981.* Ingemarga received long-term financing from official lines of credit through the LAIEG program, which was outstanding during the review period.

Because this program is provided by the central government of Spain to a specific region of Spain, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. To determine whether these loans are given at rates that are inconsistent with commercial considerations, we compared the interest rates to the appropriate benchmark.

For fixed rate long-term loans to creditworthy companies, we prefer to use a company-specific commercial loan rate whenever possible. However, in this case, we verified that Ingemarga did not receive comparable commercial long-term credit in the year in which it received the LAIEG loan. Therefore, we used as our benchmark the national average commercial interest rate for loans of "over three years" applying to the year in which the terms of the loan were agreed upon. This rate is published by the *Banco de Espana* in its *Boletin Estadistico*. Because the interest rate charged to Ingemarga is lower than the benchmark, we determine that the loan is inconsistent with commercial considerations.

To calculate the benefit, we followed our loan methodology for fixed rate long-term loans, which has been described in numerous previous cases. For the discount rate, we used the benchmark interest rate because we were unable to obtain the national average rate of return on equity which would have allowed us to calculate a weighted cost of capital.

For the country-wide rate, we allocated Ingemarga's 1986 benefit over total sales of all non-*de minimis* respondent companies to calculate an estimated net subsidy of 0.05 percent *ad valorem*. The estimated net subsidy for GE and M&G is 0.28 percent *ad valorem*. The rate is zero for GIG and Santal.

C. Grants under Basque Decree 153/1985

Decree 153, issued by the Basque regional government in 1985, established grants for commercial promotion activities, such as market studies, market survey studies, and establishment or expansion of commercial entities or divisions specializing in promotional activities. The amount of the grants can be up to 20 percent of investment costs in capital goods with a cap of 5,000,000 pesetas and up to 25 percent of operating costs during the initial period, with a cap of two years and 4,000,000 pesetas. Funding for the program is provided by the Basque regional government from its general revenue.

The decree states that grants are to be used for commercial promotion activities that will contribute to "the exportation of the productive sectors of the Basque country." We verified that Ingemar received a grant under this program and that the grant was for the purpose of establishing a subsidiary company in the United States to promote commercial activities in this country. Since this grant was provided to promote exports to the United States, we determine that it constitutes an export subsidy.

Ingemar received the grant under this program during the review period and the amount received was less than 0.50 percent of the value of its exports to the United States during the review period; therefore, we allocated the entire amount of this grant to the review period. We used exports to the United States for the 0.50 percent test because the grant was given specifically to establish commercial activities in the United States.

For the country-wide rate, we allocated the amount of the grant over the value of exports to the United States of all non-*de minimis* respondent companies to calculate an estimated net subsidy of 0.04 percent *ad valorem*. The estimated net subsidy for GE and M&G is 0.05 percent *ad valorem*. The rate is zero for GIG and Santal.

D. Rebates of Interest on Long-Term Loans under Galician Decree 82/1984

On May 24, 1984, the Galician government passed Decree 82 to assist small and medium-sized companies registered in Galicia or making investments in Galicia. This assistance is given in the form of interest rebates. An agreement was signed in the same year between the Galician government and the commercial banks in Galicia to carry out this program. Funding for the program is entirely from monies collected by the Galician government from lotteries, bonds and patrimonial transactions. The rebates are awarded by the Chancery of Labor, Industry and Tourism and are paid out by the Chancery of Economy and Finance.

In 1984 and 1985, rebates were given on loans taken out for working capital as well as for new investment. By 1986, rebates were no longer given for working capital loans. We verified that all industries in Galicia are eligible for and have received the basic benefits of five percent for 1984 and 1985 and three percent for 1986 under this program. Therefore, we determine that the basic rebate level is not limited to a specific enterprise or industry, or group of enterprises or industries and is not countervailable.

However, we also verified that additional percentage points are given to companies for sector preference and special zone preference. Special zone preference percentage points are given to any company located in special industrial areas or industrial parks or structurally deprived zones. Sector preference, we were told at verification, refers to any company producing products whose inputs are found in Galicia. Respondents did not inform us of these additional percentage points until verification. Since the additional percentage points for special zone preference are given only to companies located in specific areas designated by the Galician government, we determine that they confer a subsidy. As for the percentage points given for sector preference, we were not provided with any information or documentation to show how many sectors or industries received this additional sector preference; therefore, we determine that this additional benefit also confers a subsidy.

We verified that Ingemarga and Ramilo received additional percentage points of rebates during the review period.

To calculate the benefit arising from these rebates, we divided the total amount of rebates received in Ingemarga and Ramilo during the review period by the total percentage points received, then multiplied the result by the additional percentage points received by these companies. For the country-wide rate, we divided the benefits due to the additional percentage points of rebate received in 1986 by Ingemarga and Ramilo by the total 1986 sales of all non-*de minimis* respondent companies to arrive at an estimated net subsidy of 0.02 percent *ad valorem*. The estimated net subsidy for GE and M&G is 0.08 percent *ad valorem*. The rate is zero for GIG and Santal.

II. Programs Determined Not To Confer A Subsidy

We determine that subsidies are not being provided to manufacturers, producers or exporters in Spain of certain granite products under the following programs:

A. Exemption of Import Duties on Imported Tools and Equipment—Law 1/1960 and Decrees 2386/85 and 932/1986

As part of its entry into the European Economic Community (EEC), Spain was required under Articles 31 and 37 of the Ascension Treaty to bring its tariff system into conformity with EEC rates by the end of 1992, *i.e.* it will levy no duty on products imported from the EEC and will levy applicable EEC rates on imports from third countries.

RD 2586, which went into effect on January 1, 1986, and which was clarified by RD 932 of May 9, 1986, is one of the first steps towards expediting the requirements of the Treaty. Based on the authority permitted under Law 1/1960, RD 2586 allows new equipment used in certain industries and sectors or in certain regions to be exempted automatically from duties if the products are not made in Spain and are imported from the EEC. These decrees specified that companies throughout Spain dealing in 22 sectors and industries, including aeronautics, electronics, computer science, mining, energy, pharmaceuticals, highway construction, farm products, vehicles and vehicle components, iron, steel, metal, textiles, chemicals, naval, and electrical household appliance industries received an automatic exemption of import duties in 1986 and 1987.

In addition, any company within the LAIE areas that does not deal in the 22 sectors specified in the decrees can also apply for duty exemption on new equipment, not made in Spain and imported from the EEC. However, since granite products subject to this investigation are classified in the mining sector, one of the 22 sectors that are automatically exempt from duties on imports not produced in Spain and imported from the EEC, the respondent companies do not receive import duty exemptions due to location in an LAIE.

We also verified that, under Law 1/, 1960, hundreds of other products in an appendix, first published in 1965 and occasionally updated, are exempted from import duties if the products are not manufactured in Spain and are imported from the EEC. The most recent version of the 1965 appendix, which specifically refers to Articles 31 and 37 of the Ascension Treaty, is 29 pages long and includes hundreds of products ranging from potatoes to medical equipment, hydraulic system pumps to typewriters, textile fibers to chrome, agricultural tractors to laser ray generators.

Since we verified that RD 2586/1985 and RD 932/1986 were established under the auspices of Law 1/1960 and did not set up a separate program and since the exemptions provided to producers of the subject merchandise under these decrees are not limited to a specific region or to a specific enterprise or industry, or group of enterprises or industries, we determine that this program is not countervailable.

B. Grants under Guipuzcoa Decree 41/1985

Decree 41/1985 of the provincial govenment of Guipuzcoa administers grants to small companies within the province of Guipuzcoa. The decree lists a wide range of sectors and industries that are eligible to receive assistance under this program including chemicals, agriculture, hotels, land transportation, technical investigations, services rendered to companies, and other manufacturing industries. We verified that 23 sectors and/or industries including fishing, smelting and iron works, mon-metal minerals, metallurgy, mechanical shops, electronics, machinery, food, textiles, paper, rubber and plastics, construction, repairs, transport, and services were approved for grants in 1985 and 1986. We verified that the funding for this program was authorized by the Province of Guipuzcoa and comes from the general budget of the province, which is made up to taxes collected by the province.

Since this program is available to companies throughout the province of Guipuzcoa and since funding for this program is authorized by the Guipuzcoa government and comes from the Guipuzcoa general revenues, we determine that ti is neither limited to a specific enterprise or industry, or group of enterprises or industries, nor is it limited to a specific region and, therefore, it is not countervailable.

C. Interest Rebates on Long-term Loans under Basque Government Program

Petitioner alleged that producers of the subject merchandise benefit from subsidies in the form of preferential loans, loan terms and loan guarantees. We verified that only one of the companies involved in this investigation received medium- or long-term loans on terms inconsistent with commercial considerations (See section I.B.2. above).

We found, however, that Ingemar received reimbursement of a part of the interest it paid on long-term loans under an agreement made between the Basque regional government and the banks in the Basque region. The agreement stated that the program is available to all industries in the Basque region. The Basque government also provided us with information indicating that over 2,000 companies in a broad range of industries, including food, chemicals, textiles, paper, electronics, construction, public works, transportation, wholesalers, retailers, and hotels have received interest rebates under this program.

Since that program is available to companies throughout the Basque region and since funding for this program is authorized by the Basque regional government and comes from the Basque general revenues, we determine that it is neither limited to a specific enterprise or industry, or group of enterprises or industries, nor is it limited to a specific region and, therefore, it is not countervailable.

D. Grants Under Galician Decree 107/1984

Decree 107/1984 is an umbrella decree that establishes an overall program of assistance. Under this decree, Galician ministries or chanceries issue ministerial orders creating assistance programs to sectors or industries under their authority. The funds for these programs come from the budgets of the relevant ministries. These ministerial budgets, in turn, are authorized by the Galician government and allocated from the Galician regional budget.

The mining sector budget comes under the auspices of the Chancery of Industry, Energy, and Commerce. On October 19, 1984, the Chancery issued an order providing assistance in the form of grants for fixed assets or

investigative studies to mining companies or associates of mining companies in Galicia. We verified that all types of mining in Galicia have received grants under this ministerial order. We also verified that other sectors, industries, and groups such as agriculture, fisheries, tourism, trade associations, labor unions, and over 20 others have received grants under Decree 107/1984.

Since this umbrella program provides benefits to companies throughout the region of Galicia and since funding for this program is authorized by the Galician government and comes from the Galician general revenues, we determine that it is neither limited to a specific enterprise or industry, or group of enterprises or industries, nor is it limited to a specific region and, therefore, it is not countervailable.

E. Grants under Basque Decree 146/1985

We verified that Ingemar received a grant from the Basque regional government under Decree 146/1985 for the generation of employment. The goal of this program is to facilitate the generation of employment in the Basque country in order to resolve social needs, provide access to the job market, provide job training, create jobs and reduce unemployment. Funding for this program is authorized by the Basque government and comes from the Basque government's general budget. According to the decree, any company within the Basque region is eligible to receive grants under this program as long as it has a net increase in the size of its staff. We verified that a variety of sectors, industries, and groups throughout the Basque region including agriculture, fisheries, metals, chemicals, textiles, leather, banks and insurance companies, hotels and restaurants, construction, transportation, retailers, and schools have received grants under this program.

Because Decree 146/1985 is not limited to a specific area of the Basque region or to a specific enterprise or industry, or group of enterprises or industries, we determine that it is not countervailable.

III. Programs Determined Not To Be Used

We determine, based on verified information, that manufacturers, producers or exporters in Spain of certain granite products did not apply for, claim, or receive benefits during the review period for exports of granite to the United States under the following programs. These programs were described in *Certain Granite*, supra, unless otherwise noted:

A. Commercial Service Export Loans under the Privileged Circuit Export Credits Program

B. Warehouse Construction Loans

C. Loans and Loan Guarantees from the Instituto Nacional de Industria (INI)

D. Free or Inexpensive Land

E. Grants from the Regional Board of the Province of Alava

F. Zones for Urgent Reindustrialization (ZURs)

Petitioner alleged that the granite industry in Spain receives grants from the government of Spain under the ZUR program. The ZUR is part of the LAIE program. We verified that none of the companies under investigation have facilities that are located in a ZUR.

G. Royal Decree 180/1985

In October 1984, the Government of Spain, the Spanish business confederations and the Spanish General Workers' Union (UGT) ratified an economic and social agreement to generate employment. Royal Decree 180 formalized this agreement. There were three types of grants given under this program: (1) "Technical assistance"; which gave grants for market or viability studies; (2) "interest grants", which gave grants as partial payments of principal amounts of commercial loans taken out by enterprises to finance a project; and (3) "grants for fixed investments" which gave grants to companies for payment of fixed assets.

We verified that none of the companies under investigation benefitted from any RD 180 grants during the review period.

H. Galician Decree 151/1984

At verification, we found that grants and low interest loans under Galician Decree 151/1984 were given to companies in Galicia to stimulate employment. This program was in effect only during the last quarter of 1984 and calendar year 1985. We verified that none of the companies under investigation received loans or grants under this program prior to or during the review period.

IV. Programs Determined Not To Exist

We determine, based on verified information, that the following programs do not exist. These programs were described in *Certain Granite:*

1. Reduction in Imports Duties on Imported Tools and Equipment

We verified that the only program for reduction and/or exemption of import duties in Spain is the one discussed in Section II.A. above.

2. Reduction in Taxes

We found no indication that there was any program dealing with regional reduction of taxes.

Interested Party Comments

Comment 1: Petitioner argues that the Basque programs should not be treated as autonomous, but rather as programs funded from general government of Spain revenues for purposes of a specific regional development scheme. Even though the Basque government has a unique arrangement in which it collects all taxes within the Basque region and then, after a negotiation with the government of Spain, pays a certain amount of these revenues to the government of Spain for national services such as defense, petitioner argues that the verification report does not indicate what the other services include (social security, roads, telephones and telegraphs, etc.) nor does it indicate what amounts are historically paid to the government of Spain. Without this type of information, it is impossible, in petitioner's view, to know whether the central government is merely transferring funds to the Basque government.

Respondents argue that the Basque government is independent of the government of Spain and that it has express and sole authority to levy, manage, inspect and collect *all* taxes, with the exception of those which apply to customs and those collected as fiscal monopolies. Furthermore, the sum turned over to the government of Spain is calculated using a predetermined formula and is not an arbitrary amount. Respondents state that the tax collecting agreement between the government of Spain and the Basque government dates back to the late nineteenth century.

DOC Position: Whether taxes are collected by the central government, the regional government or the provincial government, the decision as to whether a program is countervailable because it is a regional program and, therefore, limited to a specific enterprise or industry, or group of enterprises or industries is based on which government authorizes or earmarks the usage of the funds for the program. There is no evidence that the tax collecting arrangement of the Basque region constitutes a direction of funds from or by the national government to the region. In this case, the funds are taxes collected by the Basque government and, except for the portion remitted to the central government, constitute the general revenues of the

Basque region, expenditure of which are authorized by the Basque government.

In the case of the Basque region, taxes are collected by the three Basque provinces. Some of the funds are then paid by the provincial governments to the regional government, which, in turn, pays some of these funds to the central government of Spain. Each government authorizes and earmarks the use of its own budget or revenues.

For the other regions, the central government collects all taxes and gives each regional government a share. That share enters the regional government's general revenues. Whether the central government collects the tax revenue and passes some back to the regions or the regional government collects the taxes and passes a share of those revenues to the central government, the result is the same. As long as it is the regional or provincial government that earmarks the use of its general revenue for programs authorized by its legislature, the funding of a program cannot be determined to be from general central government funds and, therefore, the program cannot be construed as a regional subsidy.

Comment 2: Petitioner argues that any programs administered by the Galician government that are funded by national tax revenues must be considered as part of a regional development scheme and, as such, are countervailable. Petitioner argues that, even though some revenues, such as revenue from bonds, lotteries, etc., are collected by the regional government, the funds used by the Galician government to support its regional development are based on national revenues. Petitioner further points out that nothing indicates that the tax revenue allocation obtained by the Galician government from the Spanish government has a direct correlation to the amount of taxes collected in that region. Therefore, it is likely that national funds are distributed as the national government sees fit.

Respondents argue that the government of Spain has no control or discretion over the Galician budget, nor does it earmark any of the funds it transfers to Galicia; therefore, any program whose funds are earmarked by the Galician government from its own budget and whose benefits are "generally available" should be determined not countervailable.

DOC Position: The fact that the central government allocates a certain amount of national taxes collected to the general budget of a region or province and the fact that some of this money is then authorized and appropriated by the regional or provincial government to be used in programs established by its legislature does not make these programs regional. A program is determined to be regional and, therefore, limited only when its funding is specifically authorized by the central government to benefit only some regions within its jurisdiction as in the case of the LAIEG program. (See section I.B.)

We verified that the distribution of tax proceeds provided by the central government to the Galician government went into the general revenues of the province of Galicia and was not provided for specific programs. (See also *DOC Position* on *Comment 1*).

Comment 3: Petitioner argues that, in determining whether a program is limited to a specific industry or enterprise or group of industries or enterprises, the Court of International Trade (CIT) in *Cabot v. United States*, 620 F. Supp. 722 (CIT May 15, 1985) (*Cabot*) and *PPG Industries, Inc. v. United States*, Slip Op. 87–57 (USCIT 1987) (*PPG Industries*) requires the Department to review the actual availability and receipt of benefits under each program and determine whether, *inter alia*, "a group of industries" has benefitted as opposed to the society in general. Petitioner argues that the fact that there is a "variety" or "many" industries, whether it be 10 or 10 sectors or industries, does not mean that the benefits are not limited to a "specific group."

Respondents point out that in *PPG Industries*, the CIT held "that the mere fact that a program contains certain eligibility requirements for participation does not transform the program into one which has provided a countervailable benefit."

DOC Position: There is no conflict between the CIT's most recent pronouncements and our determination in this case. During this investigation, we have reviewed both the laws and regulations governing various Spanish programs as well as the actual availability and receipt of benefits under such programs. In each instance, we have made a factual determination whether benefits were conferred in such a manner as to be properly considered limited to a specific industry or group of industries.

Comment 4: Petitioner argues that, since the *Banco de Espana* (Bank of Spain) refused to cooperate in verifying commercial rates for loans, the Department should use the highest average commercial interest rate paid by the respondents and verified by the Department as the benchmark in this investigation.

DOC Position: During verification, the Bank of Spain refused to meet with us to discuss the interest rates for loans published in the *Boletin Estadistico*. In this case, we considered it important to discuss these rates to ensure that the statistical base used in developing the average rates does not include interest on non-commercial loans such as personal credit loans, mortgages, etc.

Since the Bank of Spain would not meet with us, we examined published information on interest rates from such independent sources of interest rate information as the Morgan Guarantee *World Financial Markets* and the International Monetary Fund. The short- and long-term interest rates from these sources are comparable to the average rates listed in the *Boletin Estadistico*. During verification, we found that the average commercial interest rates paid by the respondents are also within the range of the average rates published by the Bank of Spain. Therefore, we determine that the average *Boletin Estadistico* interest rates are the best information available in this case.

Comment 5: Petitioner argues that verification regarding the PCECP was incomplete due to the refusal by the Bank of Spain and the Banco Exterior to meet with the verification team. Since the date of when the last PCECP loan was cancelled was not verified, the Department should not consider the program terminated.

Respondents argue that the Department should find that the PCECP is terminated, or in the alternative, should impose a zero deposit rate for the PCECP program, since the PCECP program was completely phased out as of March 6, 1987.

DOC Position: We verified at the government of Spain the *de jure* termination of the PCECP working capital loans as of January 1, 1986. We verified at the companies that the last PCECP working capital loans were paid off before our preliminary determination. Therefore, we are taking into account this termination and are imposing a zero cash deposit rate for the PCECP working capital loan. (See section I.A.)

As for the PCECP pre- and post-export loans, we verified at the government the *de jure* termination of these loans as of March 6, 1987. We noted at the company verifications, however, that some pre- and post-financing export loans were still outstanding as of the date of our preliminary determination, *i.e.*, after the imposition of suspension of liquidation. Therefore, in this investigation, we did not take into account the termination of the PCECP program with regard to pre- and post-financing export loans. (See sections I.A.2 and I.A.3).

Comment 6: Respondents argue that the Department's calculation in the preliminary determination of net benefits received by Ingemar under the PCECP is erroneous because some loans were utilized to pre-finance exports of non-granite products.

DOC Position: We found at verification that many export shipments include both the subject merchandise and other products; therefore, in calculating the benefits under the PCECP for this final determination, we used as the denominator the total value of exports to the United States. (See section I.A.2).

Comment 7: Petitioner argues that Basque Decree 153/1985 is countervailable due to the explicit "export" orientation of the program. In addition, petitioner argues that the fact that a large number of applicants in 1985 and 1986 were denied benefits demonstrates that this program is not "generally available."

Respondents argue that this program should be found not countervailable because it benefits both domestic and export promotion. They argue that the term "exports" as used in the decree refers to products exported from the "autonomous community of the country", be it within Spanish territory or abroad. In support of their position, respondents cite *Final Affirmative Countervailiang Duty Determination: Certain Fresh Atlantic Grounfish from Canada* (51 FR 10041 (March 24, 1986); where the Department determined that the New Brunswick Marketing and Promotion Activities was not countervailable "because the services performed by the DCT are available to all industries, for both domestic and export promotion."

DOC Postion: The grant given to Ingemar under Decree 153/1985 was for the specific purpose of setting up an office to promote sales in the United States. Since this grant was tied specifically to export promotion, we find it to be an export subsidy. (See section I.C.)

Comment 8: Respondents argue that should the Department find that Decree 153/1985 is countervailable in 1986, it should find the program to be terminated and impose a zero deposit rate. They cite *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Israel* [52 FR 3316, 3318, February 3, 1987], where the Department imposed a zero deposit rate for programs that were terminated prior to the preliminary determination.

DOC Position: The Basque government did not provide us with any documentation to show that Decree 153/1985 has been terminated; therefore, we are not adjusting the deposit rate for this program.

Comment 9: Petitioner contends that even though Basque Decree 146/1985 is not limited to a specific enterprise or industry, or group of enterprises or industries, it is supported by funds from the government of Spain, and, as such, is a regional development program.

Respondents argue that the Department should determine that this program is not countervailable because it is available to all companies in the Basque country that employed individuals in "hard-to-place" sectors of the work force.

DOC Position: We agree that Decree 146 is not limited to a specific enterprise or industry or group of enterprises or industries and, therefore, not countervailable. With regard to petitioner's contention that this program is supported by government of Spain funds and, as such, is a regional development program, see *DOC Position* on *Comment 1.*

Comment 10: Petitioner argues that grants given under Galician Decree 107/1985 are funded by national tax revenues disbursed to Galicia by the national government. Since the government of Spain has not given adequate information regarding regional budgets and development programs, there is no information on the record regarding the methods of allocating national tax revenues to the regional or local authorities and, therefore, there is no information regarding the criteria by which the national government funds regional programs. Thus, Decree 107/1984 should be determined a regional program and countervailable. Furthermore, petitioner argues that it is industry-specific because it is not given to all industries.

Respondents argue that assistance given under Decree 107/1984 should be found not countervailable, because it is an umbrella decree establishing an overall assistance program by the government of Galicia to all industries in Galicia.

DOC Position: We verified that benefits under Decree 107/1984 were given under various ministerial orders to all types of mining as well as to other industries throughout Galicia. We also verified that funding for the program came from the general budget of the Galician government and not from the government of Spain and that the government of Spain did not earmark any funds specifically for Decree 107/1984 when it allocated revenue to the Galician government.

The fact that benefits were given to the mining sector as a whole as well as to various other industries makes the program too broad to be considered specific. The fact that benefits were available to companies throughout Galicia, that funding came from the Galician general budget and not from the government of Spain budget, and that it was the Galician government which earmarked the funds and administered the program precludes it from being considered a regional subsidy.

Comment 11: Petitioner argues that even though Galician Decree 82/1984 is funded entirely by Galician revenues, it is drafted and administered on a selective basis that limits the companies eligible for its benefits. Only small- or medium-sized companies registered or investing in Galicia are eligible for benefits under this program. Furthermore, increased percentage points were available if the product is produced in Galicia and if the company locates the facility in a special industrial area or industrial park. Petitioner argues that, if nothing else, this latter incentive would qualify as a regional incentive which is countervailable under U.S. law.

Respondents argue that the Department should find Galician Decree 82/1984 to be not countervailable since it is funded by Galician government funds and is available to the vast majority of companies in Galicia.

DOC Position: We agree with respondents that the basic benefits given under this program are not limited to a specific industry or group of industries and, therefore, are not countervailable. However, the zone and sector preferences are limited and, therefore, countervailable. (See section I.D.).

Comment 12: Petitioner argues that under the LAIEG program, the entire grant should be found countervailable because this is a regional program funded by the government of Spain.

Respondents argue that the zone preference and sector preference grants given under the LAIE program are "generally available" and, therefore, not countervailable.

DOC Position: We agree with petitioner that benefits under the LAIE program as a whole are countervailable. (See section I.B.1).

Comment 13: Petitioner argues that due to the "inability to verify the operation or receipt of benefits under the LAIE program, the Department should use best information available and countervail any below-market-rate credits obtained by respondents who have qualified for general LAIE benefits." Petitioner further argues that the benchmark for determining the value

of such credits should be the highest average commercial rate for the relevant commercial credits that are otherwise verified by the Department in this investigation.

Respondents argue that, as part of the LAIE program, access to official credit is "generally available" to any company eligible to benefit under the program and, therefore, is not countervailable.

DOC Position: The LAIE program is a central government program designed to give benefits to certain regions of Spain. Therefore, long-term loans given under the program on non-commercial terms are limited and countervailable. (See section I.B.2).

However, we do not agree with petitioner that all below-market-rate credits given to respondents who have qualified for general LAIE benefits should be treated as having been provided under the LAIE program. We verified at the companies that loan agreements given under the LAIE specifically mentioned the fact that they were given under this program. Furthermore, LAIE loans were reported in the company records as such.

As for petitioner's argument regarding the benchmark, see *DOC Position* on *Comment 4.*

Comment 14: Petitioner argues that the program dealing with import duty exemptions under RD 2586/1985 and 932/1986 should be found countervailable because the program offers selective duty exemptions for new equipment to be used in LAIE areas or by "industries that produce high technology capital goods." The fact that only certain sectors are listed as beneficiaries under this program serves as conclusive evidence that the program is limited to a specific group of enterprises or industries. Furthermore, petitioner argues that the fact that duty exemptions are available on a "discretionary basis" under other programs such as Law 1/1960 cannot be deemed sufficient evidence that the RD 2586 program is "generally available."

Respondents argue that the Department correctly concluded in the preliminary determination that this program is not countervailable because RD 2586/1985 (succeeded by 932/1986), together with Law 1/1960, establishes the framework for the entire tariff system in Spain and a program whereby any company in Spain can obtain importation of duty-free goods from the EEC that are not manufactured in Spain. Furthermore, respondents argue that when Spain joined the EEC in 1986, it accepted the obligation of bringing its tariff system into conformity with that of the communities by 1992. This means that by 1992, no duty will be levied on any product traded among the member nations of the EEC. Consistent with this obligation, Spain implemented RD 2586/1985 and 932/1986. These decrees provide for the immediate duty-free entry of certain products imported from the EEC. These two decrees constitute the first step in realizing the goal of complete duty-free trade among Spain and other members of the EEC.

DOC Position: We have determined that benefits given under RD 2586/1985 and 932/1986 are not countervailable because they are not limited to a specific enterprise or industry, or group of enterprises or industries. We verified that hundreds of products have received automatic duty exemptions and that companies throughout Spain are exempted. (See section II.A.).

Comment 15: Petitioner points out that the verification report indicates that the Basque interest rebate program is available only to small- and medium-sized companies and that the agricultural, energy and hydro-power sectors were excluded from this program. In addition, petitioner notes that the program is further limited by providing interest rebates *only* if the small- or medium-sized company uses the loan to purchase new capital assets. Petitioner further states that although there may be many recipients and relatively few rejections, there were clearly many who did not even apply becuase they were ineligible. Petitioner contends, therefore, that it is evident from the record that the interest rebate program is limited in its availability and, therefore, countervailable.

Respondents argue that the Department should confirm its finding that this program is not countervailable because it did not benefit a specific enterprise or industry, or group of enterprises or industries.

DOC Position: We have determined that the Basque rebate program is not countervailable. The fact that all sectors and industries except agriculture, energy and hydro-power have received rebates under this program makes it too broadly used to be considered limited in its availability. Furthermore, the fact that it is available only to small- and medium-sized companies does not limit it to a specific enterprise or industry, or group of enterprises or industries (See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Textile Mill Products from Mexico* (50 FR 10824, March 18, 1985). Reasonable eligibility requirements, such as these, do not necessarily make a program industry-specific. (See section II.C.).

Comment 16: Petitioner argues that the verification report supplies information that demonstrates clear discrimination in the application of the program under Guipuzcoa Decree 41/1985. Petitioner points out that benefits under this program are available only to small- and medium-sized companies and that these companies must show that the money will be used to develop new product designs, technologies and/or foreign markets. This latter aspect demonstrates the export-oriented feature of the program.

Respondents argue that, in its preliminary determination, the Department rightly concluded that Basque Decree 149/1985 and Guipuzcoa Decree 41/1985 are linked and that the program established by these decrees is not countervailable. Respondents further argue that, even were Guipuzcoa Decree 41/1985 to be considered separately, it should be determined to be not countervailable, since the program is "generally available" to companies in Guipuzcoa and funded by monies collected in Guipuzcoa by Guipuzcoan authorities, as evidenced in the verification report.

DOC Position: We agree with respondents that benefits under Decree 41/1985 are not countervailable. We verified that the program is not limited to an industry or group of industries and that the program is funded by monies from Guipuzcoan general revenues.

We disagree with petitioner's argument that the program is discriminatory in nature. We verified that small- and medium-sized companies, whether they are exporters or not, can and have received benefits under this program. Furthermore, we found no specific export conditions attached to the grants received by the respondent companies. (See section II.B.)

Comment 17: Petitioner argues that, although administered by the Galician government, Decree 151/1984 was funded by national tax revenues; therefore, it constitutes a regional development program.

Respondents argue that grants received under Decree 151/1984 are not countervailable because the program was funded solely by revenues raised by the Galician government and because the program was generally available to all companies in Galicia.

DOC Position: This program was not used by the companies under investigation during the review period, so the issue is moot. (See section III.H.).

Comment 18: Petitioner argues that there are significant discrepancies between the government of Spain's export figures and those reported by the companies and that respondent

companies failed to subtract currency exchange losses, sales cancellations, service charges, resale of unfinished block, and/or credits from the gross sales figures; therefore, the Department should make every possible deduction from the sales and export values.

DOC Position: During verification, we took into account all sales cancellations, service charges and/or credits from the gross sales before arriving at the sales figures. For some companies, currency exchange losses/gains with respect to sales were also taken into account. For others, the companies' records did not segregate the exchange losses/gains on sales, so we did not take them into account; however, the exchange losses/gains are so small that they would have had no effect on the calculation of the benefits.

Comment 19: Petitioner argues that the Department should find that any and all export financing obtained by the respondents below the average commercial market rate was given under the PCECP program and, as such, is countervailable. Petitioner states that, according to one company, loan agreements did not necessarily have to specify the fact that the loans were made under the auspices of the PCECP program.

DOC Position: We disagree. Even though the loan agreements between the banks and some of the companies do not specify that they were made under the auspices of the PCECP program, we were able to distinguish which ones were PCECP loans through the interest rates charged, the length of the loans, and the stated purposes of the loans as identified in the loan agreements. These factors are different for PCECP loans as opposed to other types of loans. Therefore, we are not countervailing loans other than those described in section I.A.

Comment 20: Petitioner argues that respondents benefitted from RD 942/1964 warehouse construction loans during the review period because the program, as part of the PCECP system, was not terminated until March 1987. Because the government of Spain proferred no documentation on the beneficiaries under the program, petitioner argues that insufficient verification requires the Department to use best information available regarding the benefits available and used under the program.

DOC Position: We disagree. Although we were unable to verify at the government the usage of this program, we verified at the companies under investigation that they did not have any such loans on which principal or interest was outstanding during the review period.

Comment 21: Petitioner argues that loans obtained at non-commercial rates from the Banco Exterior during the review period are countervailable because the bank is a government-owned entity, the function of which is to promote exports, and because "interest rates for export-oriented loans (not necessarily based on PCECP) issued by the bank were preferential and lower than normal commercial rates."

DOC Position: We disagree. Government ownership or control of a bank does not necessarily lead to the conclusion that the bank is operating in other than a commercial fashion, nor does it mean that all funds provided are part of a countervailable program. The fact that the Banco Exterior is government-owned does not automatically make all its loans preferential and countervailable. In fact, we found that interest rates charged by the Banco Exterior to the respondent companies were both above and below the average commercial rates. Furthermore, we found no indication at verification that there was any other government-sponsored short-term loan program to promote exports except the PCECP.

Comment 22: Petitioner argues that the Department should use the best information available to determine that the tax deductions taken under Law 46/1985 and RD 1667/1986 discovered at verification are limited to a specific group of enterprises or industries, because no copies of the law or decree were made available by the government of Spain or the respondents and because these programs were not properly verified.

DOC Position: Neither of these programs was alleged by petitioner. We found use of these tax deductions by several companies during verification. We requested and have been provided with copies of Law 46/1985 and RD 1667/1986. The laws indicate that these are general tax provisions which apply to all taxpayers, including public organizations and individuals as well as private companies, just as the companies stated at verification. Section 775 of the Act states that, "If, in the course of an investigation under this title, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority shall include the practice in the investigation if it appears to be a subsidy with respect to the merchandise which is the subject of the investigation." Since there is no indication that these two tax provisions appear to be subsidies, we are not considering them in this final determination.

Comment 23: Petitioner argues that the tax deduction received by one of the respondents for over-payment of pre-IVA (value-added) taxes should be treated as a government grant and, therefore, countervailable since nothing was submitted to explain the over-payment of pre-IVA taxes nor why that amount should enjoy a special deduction under the new IVA instituted in 1986. Petitioner argues that the Department should not accept such a deduction without further corroboration from the government of Spain regarding the tax consequences of the conversion from the old tax system to the new IVA system.

DOC Position: We verified that the company did not receive benefits from this tax deduction during the review period, therefore, we are not considering it in this investigation.

Comment 24: In its May 16 brief, petitioner states that a commercial office operating in the United States under the auspices of the government of Spain's National Institute for Fostering Exports had been promoting sales of Spanish wine as late as 1985. Petitioner argues that, since the office is still in operation, it is reasonable to assume that other sectors of the Spanish export market were also being supported including the granite industry. Petitioner requests that the Department consider the existence and activities of this office and assign a value to its services that benefited the Spanish granite export industry in 1986. Petitioner argues that a "justifiable benchmark would be the total advertising costs of the largest Spanish exporter of the year."

In the same brief, petitioner states that the non-confidential version of the antidumping verification report reported that one of the respondents received free inland freight from the shipping companies. Petitioner argues and requests that this practice be reviewed with other Spanish companies to determine the extent of this subsidization.

Also in its May 16 brief, petitioner alleges that one of the respondent companies in the United States is supported by an arrangement between McDonnell Douglas Aircraft Company and the government of Spain. Petitioner argues that this service is "clearly government supported and should be countervailed." Petitioner suggests that an appropriate rate would be the costs attributable to a full-time agent (including commissions) in the United

States. Petitioner also cites the non-confidential antidumping verification report to support this allegation.

DOC Position: These are untimely allegations, raised after our preliminary determination and verification and thus too late for the Department to investigate and verify, as required by sections 355.34 and 355.39 of our Regulations; therefore, we will not consider them in this investigation.

Comment 25: Petitioner contends that the questionnaire responses were general and, therefore, inadequate and that the bulk of the information regarding the programs was given only at verification. Petitioner argues that "these tactics mock the investigative process contemplated by Congress in which petitioner and the Department should be able to review data and issues in a timely manner." Petitioner urges the Department to make its determination using inferences adverse to the non-responding part, *i.e.* the respondents.

DOC Position: We disagree. The respondents provided us with adequate information to make the preliminary determination. At verification, we were provided with back-up documentation to verify the information given in the responses as well as additional information and documentation to clarify some questions we had on certain programs. This additional information was submitted in supplemental responses at our request. We do not consider the additional information obtained at verification to be sufficiently significant to justify disregarding the responses and using best information available.

Comment 26: Petitioner argues that the OECD loan program should also be treated as a government-supported, export-financing scheme that benefits Spanish exporters by making financing available at preferential rates. Therefore, since the OECD program "replaced" the PCECP and there is a lack of verified information regarding several aspects of the PCECP and OECD programs, the Department should use best information available and treat as countervailable all forms of financing provided to Spanish granite producers at below the highest average commercial market rate verified by the Department.

DOC Position: We verified that none of the companies under investigation received loans under the OECD program.

Verification

In accordance with section 776(a) of the Act, except where noted in this determination, we verified the information used in making our final determination. We followed the standard verification procedures including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents of the respondents. Our verification results are outlined in detail in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination, published on December 24, 1987, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require a cash deposit or bond equal to the duty deposit rate. This final countervailing duty determination was extended to coincide with the companion final antidumping determination, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). Under Article 5, paragraph 3 of the Agreement of Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidy and injury. Therefore, on April 19, 1988, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 22, 1988, but to continue the suspension of liquidation of all entries or withdrawals from warehouse, for consumption, of the subject merchandise entered between December 24, 1987, and April 22, 1988. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and require duty deposits on all entries of the subject merchandise except entries from Granitos Ibericos-Grayco, S.A., and Santal, S.A. in the amounts indicated below:

Manufacturer/producer/exporter	Estimated net subsidy	Duty deposit rate
Granitos Espanoles, S.A.	3.77	3.54
Marmoles y Granitos de Espana, S.A.	3.77	3.54
All others	1.08	0.85

Granitos Ibericos-Grayco, S.A., and Santal, S.A., are excluded from this determination because their duty deposit rates are *de minimis* (less than 0.50 percent *ad valorem*) and zero respectively. Therefore, their entries will not be subject to the suspension of liquidation.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of certain granite from Spain entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

June 21, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-14549 Filed 6-27-88; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense 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).

Title, Applicable form, and applicable OMB Control Number: Home Health Care Demonstration, Inpatient Cost vs. Home Health Care Costs; CHAMPUS

Form 724; and OMB Control Number 0704–0265.

Type of Request: Extension.

Annual Burden Hours: 1,000.

Annual Responses: 2,000.

Needs and Uses: The Home Health Care (HHC) Demonstration, Inpatient Costs vs. Home Health Care Costs is necessary to ensure the most appropriate and cost-effective benefits are being provided to CHAMPUS beneficiaries. The form requests specific data on inpatient costs versus home health care costs. This data is used by OCHAMPUS in determining which is more cost-effective.

Affected Public: Individuals or households; Business or other for-profit.

Frequency: Semiannually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 22, 1988.

[FR Doc. 88–14506 Filed 6–27–88; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Contracted Provider Arrangement (CPA) Norfolk Demonstration Project

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice addresses seven (7) issues pertaining solely to the Contracted Provider Arrangement (CPA) Norfolk Demonstration Project. The subjects of these issues are (1) Impact of Medicare Linkage Legislation on non-contract Norfolk CPA hospital providers; (2) Psychotropic drugs and their administration; (3) Non-covered services; (4) Case Management; (5) Beneficiary liability for care; (6) Nonmental health medical services; and (7) History and physicals. Each issue addressed represents a final decision which either clarifies, expands, or confirms previous practice in the CPA demonstration. Publication of these statements serves as official notification to all individuals participating in this demonstration, providers and beneficiaries alike.

EFFECTIVE DATE: June 28, 1988, unless otherwise indicated in text of notice.

FOR FURTHER INFORMATION CONTACT: Terri Katsouranis, Project Officer, Program Operations Division, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303)–361–3285.

SUPPLEMENTARY INFORMATION: Chapter 55, Title 10 United States Code, sections 1079 and 1086 authorizes the Secretary of Defense to contract for the delivery of CHAMPUS benefits. Section 1092(a) of Chapter 55 authorizes the Secretary to establish demonstrations of alternative approaches to delivery and financing of CHAMPUS health benefits and alternative approaches to reimbursement for the administrative charges for health care plans. This section (1092(a)) also allows the Secretary to deviate from sections 1079 and 1086, in certain circumstances.

In FR Doc. 86–22426, appearing in the **Federal Register** on October 3, 1986 (51 FR 35388), the Office of the Secretary of Defense published a notice of the contracted provider arrangement (CPA) Norfolk Mental Health Services demonstration project. This mental health demonstration contract, awarded to Sentara Alternative Delivery Systems Corporation (doing business as Sentara First Step) of Norfolk, Virginia and encompassing the Newport News, Portsmouth, and Norfolk, Virginia areas, was operational October 1, 1986. This contract allows for a demonstration of providing comprehensive mental health services of all CHAMPUS beneficiaries under a case management system at the lowest, safest, and most effective level of care.

During the course of this demonstration, a number of issues were raised requiring clarification and expansion of the intent of the existing contract. This notice addresses seven (7) such issues, each falling under one of the above mentioned categories. Each issue is listed separately with all pertinent information following.

1. *Impact of Medicare Linkage Legislation on Noncontract Norfolk CPA Providers.* The categories of professional and institutional providers in the CPA mental health demonstration are CHAMPUS authorized institutional providers and individual practitioners who are either contracted providers/practitioners with Sentara First Step or non-contracted providers/practitioners. Of the eleven inpatient hospital facilities which provide psychiatric services in the area, all but one participate in Medicare, and five are Sentara First Step contract facilities. Approximately one-half of the mental health practitioners in the demonstration area are Sentara First Step contract practitioners. All contract providers/practitioners must participate in CHAMPUS. Contract providers/practitioners agree to accept the Sentara First Step contract rate as payment in full for their services. Noncontract providers/practitioners who do not participate in CHAMPUS have the option to bill beneficiaries for the difference between the Sentara First Step contract rates (CHAMPUS allowable charge) and their billed charges. (For purposes of this demonstration, the CHAMPUS allowable amount is the Sentara First Step contract rate.)

A hospital which provides inpatient hospital services for which payment may be made under 42 U.S.C. 1395cc is qualified to participate under this title and is eligible for payments under this title if it files with the Secretary of Health and Human Services (HHS) an agreement "to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of Title 10, or under section 613 of Title 38, United States Code in accordance with admission practices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary (of Health and Human Services (HHS)) and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of Title 10, United States Code, * * *".

This Medicare linkage legislation requires hospitals that participate in Medicare to also participate on CHAMPUS claims. It applies to non-contracted Norfolk CPA hospital providers that are Medicare participating providers. OCHAMPUS has concluded that it was not clear if, for purposes of a demonstration, the linkage was automatic or notice was required. To avoid disputes OCHAMPUS has concluded that it will give notice before implementing the Medicare linkage in this demonstration. Consequently, non-contracted hospital providers who are Medicare participating hospitals are required to participate in CHAMPUS due to the Medicare linkage and must accept the Sentara First Step contract rate and not seek reimbursement from the

beneficiary for any amount over the Sentara First Step contract rate.

2. *Psychotropic Drugs and Their Administration.* Reimbursement for inpatient psychotropic drugs and their administration is included in the Sentara First Step contract rate used to reimburse facilities. Injectable psychotropic drugs administered by a physician in his/her professional office are reimbursed for the cost of the drug and its administration by Sentara First Step. Prescriptions for psychotropic drugs are not reimbursable by Sentara First Step, but may be submitted to the fiscal intermediary for the Mid-Atlantic region.

3. *Non-covered Services.* Contracted providers will accept the contractor-determined allowable charge as payment in full, holding the beneficiary harmless for any disallowed charges. CPA contracted providers shall not bill for or collect from a CHAMPUS beneficiary any additional amounts for care not covered under CHAMPUS. The only exception to this is when specific prior written authorization by the beneficiary acknowledges that care outside the scope of CHAMPUS coverage will be provided to, and paid for by, the CHAMPUS beneficiary.

4. *Case Management.* The CPA Norfolk demonstration project is operated under a case management system to ensure appropriateness of care and reduction of unnecessary services. This system reviews and preauthorizes the care received by all patients regardless of provider (contracted or non-contracted) and level of care (inpatient, outpatient, etc.). The system description is lengthy, and it is not considered necessary to reiterate, in this notice, a process that has been in place since inception of the demonstration on October 1, 1986, for which notice was given in FR Doc. 86–224326 (51 FR 35388). Rather, changes in case management will be highlighted (with effective dates), in this notice.

a. *Timely Submission of Practitioner Treatment Plans (PTP's).* In an effort to assure timely submission of Practitioner Treatment Plans (PTP), effective August 1, 1988, Sentara First Step will begin notifying beneficiaries by written document or telephone of the date the PTP is due to Sentara First Step, that the PTP for continued service has not been received, that current authorization expires on a specific date, and that continued care may not be preauthorized until the PTP is submitted by the practitioner and processed by Sentara First Step.

b. *Administrative Denials.* Effective August 1, 1988, a failure to comply with case management procedures by the beneficiary, an individual practitioner or an institutional provider will result in an administrative denial of preauthorization of the requested services. Sentara First Step shall notify the party(ies) requesting preauthorization that the request has been denied for failure to comply with case management procedures. The notice will also inform the party(ies) of their right to file a claim within 90 days of the date of the delivery of services which were not preauthorized, and of their right to appeal should payment for the claimed services be denied.

(1) *Contracted Providers.* Contracted providers must comply with case management, as defined in the contracted provider's contract with Sentara First Step.

(2) *Non-contracted Providers.* (a) Sentara First Step will deny payment of claims for non-contracted providers whose patients do not comply with case management until the actions in paragraphs *1, 2,* and *3* below, take place.

1 Conduct of an intake assessment. Intake assessment is described as the first step in the case management system, i.e., the beginning of the patient's treatment across any level of care. The patient enters an intake center where an assessment of the patient needs are accomplished. This involves informal gatherings, family member interviews, clinical assessment, referral for care, and preauthorization. Crisis intervention is available with immediate help when warranted.

2 Submission of the following documentation.

a For inpatient care, those non-contracted practitioners whose patients do not go through case management prior to the initiation of treatment must submit the following before payment will be considered.

(*1*) A release of information form, amended to include beneficiary financial risk of not going through intake and prospective case management, accompanied by a Statement of Nonavailability.

(*2*) An initial PTP, or an equivalent document which provides: (a) Initial diagnosis; (b) formulation of risk factors and causation; (c) precipitating factors requiring hospitalization; (d) appropriate treatment plan including immediate (first five days of hospitalization), and long term (to discharge from treatment) objectives; and, (e) criteria for discharge (from an inpatient level of care) and appropriate timetable for attaining objectives and discharge date.

(*3*) A discharge PTP which provides: (a) Diagnosis; (b) specification of progress (to include how each initial and intermediate treatment plan objectives were met, how demonstrated and when); (c) factors indicating discharge to next level of care; (d) appropriate treatment plan for next level of care to include long term objectives and any changes from original long term objectives; and, (e) criteria for discharge from next level of care and from treatment.

(*4*) Copy of complete clinical record pertaining to the patient.

(*5*) Copy of the Global Assessment Scale (GAS) (or CBCL or SCL90) assessment at start of treatment and at discharge from each level of care, as appropriate for the patient.

b For outpatient care, those noncontracted practitioners whose patients do not go through case management prior to the initiation of treatment, must submit the following before payment will be considered.

(*1*) A release of information from, as above for inpatient.

(*2*) An initial PTP, dated, signed, and submitted to Sentara First Step which includes: (a) Initial diagnosis; (b) formulation of risk factors and causation; (c) precipitating factors requiring treatment; (d) appropriate treatment plan including immediate (first five units of treatment), intermediate (next twelve units of treatment), and long term (to discharge from treatment) objectives; (e) criteria for discharge and appropriate timetable for attaining treatment objectives and discharge date; and, (f) justification for any psychological testing included in treatment plan.

(*3*) A PTP which provides: (a) Diagnosis; (b) specification of progress with respect to immediate, intermediate, and long range objectives, as appropriate, and how the objectives were met and when; (c) factors indicating continued treatment on an outpatient basis; (d) appropriate treatment plan for additional treatment at this level and any changes from original long range objectives; and, (e) revised criteria for discharge from treatment, if any.

(*4*) Copy of clinical progress notes which, at a minimum, indicate the following: (a) Date of each unit of service; (b) description of each unit of service delivered; (c) progress toward meeting treatment objectives that occurred during each delivery of service; (d) change in diagnosis and reasons therefore; (e) results from testing; (f) changes in treatment plan and reasons therefore; (g) changes in discharge criteria and reasons therefore; and (h) justification for changes in level of care, if appropriate.

(5) Copy of the GAS (or CBCL or SCL90) assessment at start of treatment and at time of submission of the subsequent PTP, as appropriate for the patient.

3 Submission of claims by institutional providers and individual practitioners within 90 days of the date of the delivery of services. Claims received after 90 days will be returned to the submitting party unpaid. (The CHAMPUS Regulation (DoD 6010.8–R) allowing claims to be submitted by December 31, of the year following the year in which the care was rendered is not applicable to the Norfolk CPA demonstration.) This filing deadline pertains only to claims submitted for services which have been administratively denied.

(b) The case manager that would have been assigned to the patient will review the documentation submitted as required in paragraph 4.b.(2)(a)*2* above.

(c) The Treatment Plan Review Team (TPRT) will review the practitioner's documentation, the Case Manager Treatment Report (CMTR) and any other information obtained by the consulting psychiatrist from the practitioners involved and determine the medical and psychological necessity and appropriateness of level of care for each unit of care delivered.

(d) The Medical Director and President, Sentara First Step, will review the TPRT determinations and changes in those determinations, as appropriate, with notification of final determinations to beneficiaries and providers/practitioners.

(e) Payment is based on the contractor's rates in force as of the date of delivery, for those services that would have been preauthorized based upon medical and psychological necessity of such care at the level of care that would be appropriate given the model of care described in the contract. All care delivered outside that scope, as determined by the TPRT and finalized by the Medical Director and the President, Sentara First Step, shall be denied.

(f) Beneficiaries and providers/practitioners shall be notified of such decisions, including their rights to reconsideration and appeal, by the issuance of an Explanation of Benefits (EOB's).

c. *Appeals.* Following receipt of a claim for payment for services, Sentara First Step shall issue an initial determination to appropriate parties. The initial determination will be based on the medical and psychological necessity of the care, the appropriateness of the level of care, and compliance with case management procedures, regardless of the presence of preauthorization. Any party to the initial determination, except the beneficiary in a contracted provider situation, who is dissatisfied with the initial determination may request a reconsideration. The request must be mailed within 60 days of the date of the notice of the initial determination. It is the responsibility of the appealing party to submit the documentation required to establish entitlement to payment for the services provided. The reconsideration determination is final if one or more of the following exist: (a) The reconsideration determination finds that a contracted provider did not comply with case management procedures; (b) the reconsideration determination finds that a non-contracted provider did not comply with case management procedures or, as an alternative, did not comply with the requirements in 4.b.(2) above; (c) the amount in dispute is less than $50.00; or, (d) appeal rights have been offered, but a request for formal review was not mailed to OCHAMPUS within 60 days of the notice of the reconsideration determination.

5. *Beneficiary Liability for Care.* a. Contracted Providers—If beneficiaries receive services from a contracted provider, they are at financial risk for:

(1) Required co-payment and deductible; and

(2) Noncovered care, or care not preauthorized for which the practitioner has provided the beneficiary with written advance notice concerning the beneficiary's financial liability.

(3) Failure to cooperate. (See c. below.)

b. Non-contracted Providers—If beneficiaries receive services from a non-contracted provider, they are at financial risk for:

(1) Co-payment and deductible;

(2) Balance billing for practitioners who do not accept assignment, except for Medicare participating hospitals;

(3) Cost of care denied by Sentara First Step, as upheld by the appeals process for lack of medical/psychological necessity or lack of Sentara First Step's approval of the appropriate level of care;

(4) Any noncovered care (services which are not CHAMPUS covered benefits); and

(5) Any care provided which has not been documented for case management.

c. Failure to cooperate—Contracted providers can bill beneficiaries for care denied by Sentara First Step if the basis of that denial is that the beneficiary refused to comply with Sentara First Step's case management procedures or requirements. Practitioners who bill beneficiaries under these circumstances should have appropriate documentation to demonstrate that the beneficiary refused to comply with Sentara First Step's case management system.

6. *Non-mental Health Medical Services.* Contractual provisions have been revised involving non-mental health medical services as follows:

Effective May 1, 1988, non-mental health medical services which are delivered on or after May 1, 1988 (for example, surgery, radiology, or laboratory services), not related to the mental health diagnosis rendered during the course of a mental health treatment, and for which a separate charge is made, will be separately billed by the provider on a CHAMPUS claim form for benefit and reimbursement determination by the CHAMPUS fiscal intermediary for the Mid-Atlantic region. Non-mental health services include diagnostic services required to rule out medical bases for mental health diagnoses. For inpatient services, if a beneficiary receives care for medical diagnosis and a mental health diagnosis and the medical diagnosis is primary and reimburseable under CHAMPUS DRG's, the contractor (Sentara First Step) shall forward such claims to the Fiscal Intermediary for the Mid-Atlantic region for processing. If the beneficiary receives care for a medical diagnosis and a mental health diagnosis and the medical diagnosis is either *not* the primary diagnosis or is not subject to reimbursement under CHAMPUS DRG's (to include services rendered in DRG exempt facilities), Sentara First Step shall be responsible for hospital room and board charges, based on the primary diagnosis as well as associated mental health services. Sentara First Step shall forward to the fiscal intermediary a copy of the claim, along with information on any reimbursements made for mental health services. The fiscal intermediary will adjudicate the claim for non-mental health care on the basis of the line items appropriate to the medical services provided, to include those rendered by hospital-based phsyicians.

7. *History and Physicals.* Effective retroactively to October 1, 1986, when the initial history and physical is performed and billed for a psychiatric admission in the CPA demonstration, the physician providing the service may be reimbursed, whether or not he/she is the attending physician, by the CPA contractor (at the contracted rate). Although retroactive to inception of the CPA demonstration, Sentara First Step will not be required to search their files for those claims that may have been denied prior to issuance of this policy.

However, any previously denied claims submitted due to appeals, requests from beneficiaries, etc., must be processed according to policy.

L.M Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 22, 1988.

[FR Doc. 88-14505 Filed 6-27-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; New Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice of five new systems of records, subject to the Privacy Act of 1974, being published for any public comment.

SUMMARY: The Air Force is adding five new record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice July 28, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Ms. Linda G. Adams, SAF/AADAQI, The Pentagon, Washington, D.C. 20330-1000, telephone: 202-694-3488, Autovon: 224-3488.

SUPPLEMENTARY INFORMATION: The Air Force inventory of systems of records notices, subject to the Privacy Act of 1974, have been published in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22332) May 29, 1985 (Compilation)
FR Doc. 85-14122 (50 FR 24672) June 12, 1985
FR Doc. 85-15062 (50 FR 25737) June 21, 1985
FR Doc. 85-26775 (50 FR 46477) November 8, 1985
FR Doc. 85-29261 (50 FR 50337) December 10, 1985
FR Doc. 86-2527 (51 FR 4531) February 5, 1986
FR Doc. 86-4546 (51 FR 7371) March 3, 1986
FR Doc. 86-10044 (51 FR 16735) May 6, 1986
FR Doc. 86-11696 (51 FR 18927) May 23, 1986
FR Doc. 86-25787 (51 FR 41382) November 14, 1986
FR Doc. 86-25788 (51 FR 41402) November 14, 1986
FR Doc. 86-27635 (51 FR 44332) December 9, 1986

New system reports, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 were submitted on June 17, 1988 to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 22, 1988.

F030 AFSC A

SYSTEM NAME:

AFSC Discrimination Complaint File.

SYSTEM LOCATION:

Headquarters, Air Force Systems Command (AFSC), divisions, center, laboratories, units, and bases.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel who have filed a complaint of discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes the complaint forms, statements, reports, and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2000e-16; 10 U.S.C. 8012, Secretary of the Air Force: Powers and duties, delegation by; and Executive Order 9397.

PURPOSE(S):

Used to record information on discrimination complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in files or on computers and computer output products.

RETRIEVABILITY:

Records are retrieved by name or SSN.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets, locked rooms, or buildings with controlled entry. Computer records are controlled by computer system software.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after date of final decision or 2 years after date of any action on the case after final decision, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Social Actions or Personnel Officers of the base or unit where complaint was filed.

NOTIFICATION PROCEDURES:

Requests from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURE:

Individuals may gain access from the system manager.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12-35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from the individual, witnesses and investigating officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 USAFE A

SYSTEM NAME:

Student Identification/Locator Card.

SYSTEM LOCATION:

7027th School Squadron, APO NY 09021; 7028th School Squadron, APO NY 09238; 3d AF NCO Leadership School, APO NY 09238; 16th AF NCO Leadership School, APO NY 09286; and 17th AF NCO Leadership School, APO NY 09633.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students attending United States Air Force in Europe (USAFE) NCO academies and leadership schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaire including military data such as name, SSN, grade, age, race, education data, personal data, locator data, and evaluation data.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Powers and Duties; delegation as implemented by Air Force Regulation (AFR) 50-39, Noncommissioned Officer Professional Military Education, USAFE Supplement 1.

PURPOSE(S):

Used for student identification, locator purposes, and to evaluate student academic progress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. Records are used to verify past attendance and final academic standing/awards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Destroy 10 years after student completes training by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commandants at 7027th School Squadron, Kapaun AS, GE; 7028th School Squadron, RAF Upwood, UK; 3d AF NCO Leadership School, RAF Upwood, UK; 16th AF NCO Leadership School, Zaragoza AB, SP; and 17th AF NCO Leadership School, Lindsey AS, GE.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Individual student.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F053 AFA D

SYSTEM NAME:

Registrar Records.

SYSTEM LOCATION:

United States Air Force Academy (USAFA), Colorado Springs, CO 80840–5701.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Data used in the candidate selection process for the USAF Academy, including high school records, admissions test scores, candidate fitness test scores, medical qualification status, letters or recommendations, address, phone number, social security number, race, height, weight, citizenship, statement of reasons for attending the Academy, nomination(s), preparatory school or college record, if applicable, service academy precandidate questionnaire; (2) Permanent record cards (transcripts), special orders, grade and quality point averages, course grade distributions, general and academic orders of merit, military dependents on merit lists, squadron assignments, academic program summaries, matriculation rosters, biographical data sheets, military parents, cadets whose fathers are general officers, letters of evaluation from high schools or colleges.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 USC Chapter 903, United States Air Force Academy; Executive Order 9397.

PURPOSE(S):

(1) Forwarded by the Admissions Directorate to form the nucleus of the Master Cadet Personnel Record for candidates selected to attend the Academy. Used to procure various biographical information on incoming cadets for press releases. (2) Used to evaluate academic and military achievement and to coordinate statistics relating to cadet strength and attrition.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. Information from the system may be disclosed to members of Congress in connection with nominations and appointments. Biographical information on incoming cadets may be used for press releases.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in file folders, computer and computer output products, microform and notebooks/binders.

RETRIEVABILITY:

By name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties, who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, safes or vaults, and computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

(1) Records on candidates who are appointed are received from the Admissions Directorate to be included in the Master Cadet Personnel Record. (2) Destroyed upon separation or reassignment or when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Cadet Examinations and Records (DFRR), USAF Academy, Colorado Springs, CO 80840–5701.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, from automated system interfaces from the individual on forms filled out as a candidate, College Entrance Examination Board and American College Testing scores, Air Force medical examinations, individual letters of recommendation, and from individual and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 USC 552a(k)(5). The exemption rule for this system is contained in Air Force Regulation 12–35 (32 CFR Part 806b).

F205 AFSC A

SYSTEM NAME:

Space Human Assurance and Reliability Program (SHARP).

SYSTEM LOCATION:

HQ SD/CLRX, P.O. Box 92960, Los Angeles AFB, Los Angeles, CA 90009–2960; WSMC/SP, Vandenberg AFB, CA 93437–6021; 6550 SPS/SPA, Patrick AFB, FL 32925–6215; CSTC/VOB, P.O. Box 3430, Onizuka AFB, CA 94088–3430; and AFWL/SP, Kirtland AFB, NM 87118–6008.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, civilian and contractor personnel who require SHARP certification for unescorted entry to specified space launch and operations related facilities and areas at designated locations administered by the DOD or by the National Aeronautics and Space Administration (NASA), or who occupy designated SHARP space related positions at these same locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation used to request certification, to include the applicant's social security number, date and place of birth, level of security investigation, medical, financial, and arrest information, and data pertaining to the applicant's certification, such as date of certification, date certification suspended, withdrawn, or denied (as appropriate) and date recertification required.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Power and duties; delegation by: As implemented by Headquarters Space Division Regulation 55–3, Space Human Assurance and Reliability Program; Executive Order 9397.

PURPOSE(S):

To screen and evaluate personnel for unescorted entry to specified space launch and operations related facilities or areas, or who may occupy positions at certain USAF or NASA installations requiring certification as designated by the commander of such installations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from the system of records may be disclosed for any of the blanket routine uses publishes by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Maintained in file folders, binders, card files, and on computer output.

RETRIEVABILITY:

Filed by name and social security number.

SAFEGUARDS:

Records are accessed by the custodian of the records system and by personnel responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or file containers, in locked rooms or vaults or areas over which secure controls have been established. Records are controlled by computer system software and personnel screening.

RETENTION AND DISPOSAL:

Records are destroyed as soon as they are no longer needed. Destruction method includes: shredding, pulping, burning, or burial.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Space Division, Deputy Commander for Launch Systems, HQ SD/CLRX, P.O. Box 92960, Los Angeles AFB, Los Angeles, CA 90009–2960.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the system manager or the system location where the certification was recorded. Individuals will be asked to provide name, social security number, or both, to facilitate access.

RECORD ACCESS PROCEDURES:

Written requests should be notarized and addressed to the system manager or to the system location where the certification was recorded. For personal visits, the individual may be asked to show a valid identification card, a driver's license, or some similar proof of identity.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information is provided by the individual, his/her supervisor and the servicing security policy organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F215 AU A

SYSTEM NAME:

Air University (AU) Library Patron Database.

SYSTEM LOCATION:

Primary Site: Air University Library, Bldg 1405, Maxwell AFB, AL 36112–5564. Branch: USAF Senior NCO Academy Library, Bldg 1110, Gunter AFS, AL 36114–5732.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian students in the various schools of Air University; active-duty Air Force personnel assigned to Maxwell AFB and Gunter AFS; civilian federal employees at Maxwell and Gunter; military retirees living in the area; students at local universities whose libraries have a reciprocity agreement with AUL.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, SSN, local address and phone and/or base address on phone, type-of-patron and library-privilege codes, expiration date of patron registration.

AUTHORITY FOR MAINTAINING THE SYSTEM:

War Department General Order #18 (May 25, 1920) (authorized establishment of The Air Service School, the first Air University predecessor, at Langley Field); Air University General Order #35 (August 26, 1949) (authorized establishment of Air University Library); Executive Order 9397.

PURPOSE(S):

To allow Library Circulation staff to carry out the following tasks required for operating an automated circulation system: Create and maintian records identifying individuals as authorized borrowers; issue library cards bearing authorization number; charge materials out to properly-identified patronship produce overdue notices for follow-up of delinquent borrowers; clear records of departing patrons and delete their names from the data base of authorized borrowers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from the system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Automated, maintained on computer storage devices.

RETRIEVABILITY:

By name, SSN, and library card bar code number.

SAFEGUARDS:

Records are accessed by Library Circulation staff in the performance of their duties, and by Library Systems

staff in performing system maintenance. Access is by password through terminals restricted to staff use only, and data is further secured in computer storage devices protected by system software.

RETENTION AND DISPOSAL:

Patron records of military members attending Air University schools are purged from the system according to graduation date of the schools. All other patron records are purged three years from registration date. Printouts are destroyed by tearing them into pieces.

SYSTEM MANAGER(S) AND ADDRESS:

Systems Librarian, AUL/LSS, Bldg 1405, Maxwell AFB, AL 36112-5564.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Individual may ask the System Manager for access to his/her own record.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determiantions by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12-35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Data input from information provided by individual orally and/or on patron registration form; data, loaded from magnetic computer tape, obtained from MPC data bases such as the Pipeline Management System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-14507 Filed 6-27-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[FEIS BLM-AK-PT-88-003-1792-910]

Final Environmental Impact Statement for the Trans-Alaska Gas System (Tags) Prudhoe Bay, AK; Availability

AGENCY: Bureau of Land Management, Alaska State Office—Interior and U.S. Army Corps of Engineers, Alaska District—Defense.

ACTION: Notice of Availability of Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management (BLM) and the U.S. Army Corps of Engineers (USACE) on or about June 28, 1988 will have released a FEIS for the proposed location, construction and operation of TAGS. This tiered FEIS also serves as the environmental documentation for proposed action by the Economic Regulatory Administration—Energy, the Federal Energy Regulatory Commission and the Forest Service—Agriculture.

ADDRESS: A limited number of copies of the TAGS FEIS are available upon request from the Branch of Pipeline Monitoring (983), Alaska State Office, 701 C Street, Box 30, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Jules Tileston, TAGS Project Officer, Alaska State Office, Bureau of Land Management at the above address, telephone: (907) 267-1266.

SUPPLEMENTARY INFORMATION: The TAGS FEIS analyzes the proposed location, construction and operation of a buried, chilled, 36-inch outer diameter natural gas pipeline that generally parallels the existing Trans-Alaska Pipeline System (oil) between Prudhoe Bay and Port Valdez. A Liquefied Natural Gas (LNG) plant and marine terminal would be constructed at Anderson Bay. The TAGS natural gas pipeline and related facilities are located wholly within the State of Alaska. The purpose of the TAGS project is to transport natural gas from the North Slope of Alaska to Anderson Bay and to export it in liquid form to Pacific Rim nations such as Japan, Taiwan and Korea.

The BLM proposes to issue a grant of right-of-way under the Mineral Leasing Act, as amended for the construction and operation of TAGS on certain Federal lands in Alaska. The USACE proposes to establish a tiered processing procedure for its permit actions under section 404 of the Clean Water Act and section 10 of the River and Harbor Act of 1899 for the discharge of dredged or fill material into waters of the United States (including adjacent wetlands) and for work (including structures placed) in navigable waters of the United States. The Economic Regulatory Administration (ERA) has before it an export application to evaluate pursuant to section 3 of the Natural Gas Act, and the FEIS will be used to support its decision. The FEIS also will be used by the Federal Energy Regulatory Commission (FERC) to support its actions under section 3 of the Natural Gas Act to approve or disapprove the place of export at Anderson Bay. The FEIS also serves as a basis for Forest Service actions on National Forest lands adjacent to Anderson Bay, should a pending transfer of certain National Forest lands selected by the State of Alaska not be complete.

No National conservation System Unit lands are crossed by the proposed TAGS Project.

The TAGS FEIS is tiered in accord with the provisions of 40 CFR 1502.20. Proposed authorizations by BLM and USACE will be conditioned upon receipt of site specific engineering and environmental data at the Notice-to-Proceed stage, upon issuance of an export license by the ERA, and upon approval of the place of export by FERC.

The President of the United States on January 12, 1988 determined that export of Alaskan North Slope natural gas would not diminish the total quantity of energy available to United States consumers or that export would not increase the price of energy available to consumers. He also concluded that export should not hinder completion of the Alaska Nautral Gas Transportation System (ANGTS).

The TAGS FEIS reflects the results of formal hearings held in Alaska on the Draft EIS during October, 1987. Twenty nine comment letters were received before the formal comment period closed November 20, 1987. Responses to these oral and written comments have been coordinated with the State and Federal cooperting agencies. In some cases, responses were prepared by a cooperating State or Federal agency at the request of BLM.

Atlernatives

In addition to the proposed alignment between Prudhoe Bay and Anderson Bay, the TAGS FEIS evaluates and alternative route to LNG plant and marine terminal at Boulder Point on Cook Inlet and the "No Action" alternative.

Additional Information

The BLM has determined that the proposed TAGS Project from Prudhoe Bay to Anderson Bay would be compatible with the existing Trans-Alaska Pipeline System (oil) operated by Alyeska Pipeline Service Company. The TAGS Project also would be compatible with the Federally authorized but

unconstructed ANGTS. The latter determination was made after consultation with the Office of the Federal Inspector (ANGTS); both were coordinated with the Office of Pipeline Safety—Transportation.

Due to an expected influx of workers during the 36-month pipeline construction period it has been determined that there would be a significant restriction on subsistence uses by rural Alaskan residents living along the TAGS alignment between Wiseman/Coldfoot and Livengood and along the alignment through the Cooper River Valley. Formal hearings on the subsistence findings were held at Coldfoot, Stevens Village and Glennallen. It has been determined that Federal authorization of the proposed TAGS Project is: Consistent with sound management principles for utilization of public lands; will involve the minimal amount of public lands necessary to construct and operate a natural gas pipeline system, and; Reasonable steps will be taken to minimize adverse impacts of TAGS upon subsistence uses and resources.

Yukon Pacific Corporation also has filed an application with the State of Alaska Department of Natural Resources (ADNR) to use certain State lands between Prudhoe Bay and Anderson Bay. The TAGS FEIS has been perpared in cooperation with ADNR and other State agencies. Although the State decisions relative to non-Federal lands are being conducted under a separate process, proposed Federal and State permitting actions have been very closely coordinated to assure Federal and State actions are consistent to the greatest extent possible and that mitigation measures reflect current conditions and technology.

Copies of the TAGS FEIS are available for public review at the BLM Alaska State Office Public Room and Branch of Pipeline Monitoring (983), BLM Fairbanks Support Center, BLM Glennallen District Office and BLM Division of Rights-of-Ways (330) in Washington, DC; USACE Alaska District Office, Anchorage-Regulatory Branch; Freedom of Information Reading Room, U.S. Department of Energy, Room, 1E190, Forrestal Building; FERC, Washington, DC, and Office of Pipeline Safety-Department of Transportation in Washington, DC. In addition it is available for inspection at the following libraries: Loussac, Anchorage; BLM Resources Library, Anchorage; Rassmussen and Wein Libraries, Fairbanks, Consortium Libraries in Achorage and Valdez, Alaska State Library, Juneau, and; Department of Interior, Washington, DC.

Michael J. Penfold,

Alaska State Director, Bureau of Land Management.

Col. Wilbur T. Gregory, Jr.

District Engineer, Alaska, U.S. Army Corps of Engineers.

[FR Doc. 88-14624 Filed 6-27-88; 8:45 am]

BILLING CODE 4310-JA-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before July 28, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 23, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Revision
Title: New and Continuing Application for Grants under Bilingual Education Programs
Frequency: Annually
Affected Public: Individuals or households; State or local governments; businesses or other for-profit; non-profit institutions
Reporting Burden:
Responses: 750
Burden Hours: 61,250
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by local educational agencies, institutions of higher education, non-profit and for-profit private institutions to apply for funding under Title VII of the Elementary and Secondary Education Act, as amended. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension
Title: Request for Designation as an Elsigible Institution
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 1,000
Burden Hours: 8,000
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by institutions of higher education to apply for funding under the Strengthening Institutions Programs and the Endowment Challenge Grant Programs. The Department will use the information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Extension

Title: Nomination Form for the Initiative to Improve the Education of Disadvantaged Children
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 255
Burden Hours: 1,275
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be submitted by State educational agencies to the Department to identify unusually successful projects and programs serving disadvantaged children. The information will be used to improve the quality of compensatory educational programs.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Report of Vending Facility Program
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 423
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: State Vocational Rehabilitation agencies report on services to blind individuals under the Vending Facility Program. The Department will use the information to ensure financial accountability and solvency of the program.

Office of Special Education and Rehabilitative Services

Type of Review: New
Title: Data Collection Forms for Evaluation of Independent Living Services
Frequency: Annually
Affected Public: State or governments; non-profit institutions
Reporting Burden:
Responses: 170
Burden Hours: 2,252
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: These forms will be used by Independent Living Centers that have been funded under Title VII, Part B of the Rehabilitation Act of 1973, as amended. The Department will use the information to determine grantee compliance with Independent Living Center standards.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Report of Special Education and Related Services in Need of Improvement
Frequency: Annually
Affected Public: State and local governments
Reporting Burden:
Responses: 58
Burden Hours: 116
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will collect information from States on the number and type of special education programs and related services in need of improvement. The Department will use the information to assist in establishing programmatic priorities and for reporting purposes.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Report of: (A) handicapped Children and Youth Exiting the Educational System and (B) Anticipated Services Needed by Handicapped Children and Youth
Frequency: Annually
Affected Public: State and local governments
Reporting Burden:
Responses: 58
Burden Hours: 13,978
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by States to report the number of handicapped youth exiting the school system and the services needed by these youth in the following year. The Department will use the information to assess progress and effectiveness of State efforts to implement programs under Part B of the Education of the Handicapped Act, as amended.

[FR Doc. 88-14567 Filed 6-27-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Grants and Cooperative Agreements; Availability, etc.; Research and Development of a Process Control Sensor for the Glass Industry

The U.S. Department of Energy requests applications for financial assistance for research and development of a process control sensor for the glass industry. The objective of this research is to increase the energy efficiency of the glass making process through the development of advanced sensors and control systems.

This solicitation encompasses research and development projects on innovative sensor concepts for on-line, real time process control for glass industry applications. Included are all process steps from batch preparation, melting and fining, forming, and post-forming operations. Applications should be directed at the development of new sensors and control systems. DOE will not consider mathematical modeling unless it is coupled with hardware development.

DOE suggests but does not require, a multiphase approach to the research: Phase 1 consisting of concept development and feasibility studies in a simulated environment at an appropriate laboratory scale and prototype design; Phase 2 consisting of prototype fabrication, testing and feasibility evaluation and design of the proof-of-concept testing; and, Phase 3 consisting of long-term proof-of-concept testing and verification in an industrial application. Applicants who have already completed the initial phase(s) or portions thereof are requested to submit applications for the subsequent phases.

DOE anticipates that this solicitation will result in one cooperative agreement award. The project awarded will be cost-shared by DOE and the Participant. DOE's share is anticipated to be $175,000. No fee or profit will be paid to the Participant. Negotiation and award administration will be in accordance with DOE Financial Assistance Regulations (10CFR Part 600). The Catalog of Federal Domestic Assistance number for this program is 81.078.

Individuals, educational institutions, nonprofits profit-making institutions, and other entities are eligible to submit applications in response to this solicitation. Federal agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government are not eligible for award and should not submit applications. Applications which anticipate participation of such a laboratory by subcontract, use agreement, or other arrangement must include satisfactory evidence of specific authorization from the cognizant Federal agency.

All timely proposals received will be evaluated and point-scored in accordance with the following criteria: Criterion 1 is the technical feasibility of the proposed approach and the degree to which it fulfills the objective of this solicitation; Criterion 2 is the qualifications, experience, and capabilities of the applying organization

and the proposed key personnel; Criterion 3 is the clarity of the statement of work, its responsiveness to the solicitation, and its adequacy to achieve the stated project objective; Criterion 4 is the completeness and adequacy of the management plan proposed for the project; Criterion 5 is the degree to which the cost share plan proposed is representative of the amount of risk to be borne by the proposer. Criteria 1 and 2 combined weigh approximately two-thirds of the total weight of all the criteria, with Criterion 1 weighing slightly more than Criterion 2. Criterion 3, 4, and 5 combined weigh approximately one-third of the total weight of all the criteria and are equal. Applications should be responsive to the criteria listed above and should include the financial statements for the applicant's previous two years of operation.

In conducting the evaluation of applications, the Government may utilize assistance and advice from non-Government pesonnel. Applicants are therefore requested to state on the cover sheet of the application if they do not consent to an evaluation by such non-Government personnel. Applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. Information contained in the applications shall be treated in accordance with the policies and procedures set forth in 10 CFR Part 600.18.

Cost considerations will not be point scored or adjectivally rated. Applicants are advised, however, that notwithstanding the lower relative importance of the cost considerations, the evaluated cost may be the basis for selection. In making the selection decision, the apparent advantages of individual technical and business applications will be weighed against the evaluated probable costs to determine whether better applications, excluding cost considerations, are worth the evaluated probable cost differences.

DOE reserves the right to reject any and all applications received in response to this solicitation or to select any application as a basis for negotiation. DOE may require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations. Notice is also given of the possibility that award may be made without dicussions or negotiations. The Government is not liable for any costs incurred in the preparation of an application. Further, costs incurred prior to the signing of a cooperative agreement are not reimburseable.

Dates

The due date for applications is 4:00 pm, Mountain Daylight Time, on August 23, 1988. Late applications will be handled in accordance with 10 CFR Part 600.13. Prospective applicants who intend to submit an application in response to this solicitation should notify the contact below of their intent in writing. Questions regarding this solicitation should also be submitted to this contact in writing by July 5, 1988. Questions and answers will be issued in writing by amendment to this solicitation. Copies of all amendments to this solicitation will be sent only to those notifying this office of their intent to submit an application. Selection is expected to be made in October, 1988 and award in November, 1988.

Contacts

Three copies of each proposal, including the signed original, should be submitted to: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402. Attn: Elizabeth M. Bowhan, Contracts Management Division.

Questions relating to this Solicitation for Financial Assistance Applications may be directed to E.M. Bowhan, telephone: (208) 526–1229.

Issued at Idaho Falls, Idaho on June 13, 1988.

J.P. Anderson,

Acting Director, Contracts Management Division.

[FR Doc. 88–14555 Filed 6–27–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP88–131–001]

Carnegie Natural Gas Co.; Compliance Filing

June 23, 1988.

Take notice that on June 17, 1988, Carnegie Natural Gas Company (Carnegie) tendered for filing certain revised and additional tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet No. 47a
Substitute Second Revised Sheet Nos. 93 and 94
First Revised Sheet Nos. 96 through 135
Original Sheet Nos. 136 through 139

Carnegie states that these sheets are filed in compliance with Ordering Paragraphs (B), (C) and (E) of the Commission's Order Accepting and Suspending Ceretain Tariff Sheets for Filing Subject to Refund and Conditions, Rejecting Other Tariff Sheets, Establishing a Hearing and Granting and Denying Waivers issued May 27, 1988 in this proceeding. In addition, Carnegie states that the filing reflects various changes to conform Carnegie's tariff to accepted industry practice. The revised tariff sheets are proposed to be effective on June 2, 1988.

Carnegie states that its filing was served on parties to Docket No. RP88–131–000 and 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 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 June 30, 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. 88–14562 Filed 6–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–47–004]

Phillips Gas Pipeline Co.; Compliance Filing

June 23, 1988.

Take notice that on June 16, 1988, Phillips Gas Pipeline Company ("PGPL") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") regulations under the Natural Gas Act, revised original and original sheets to its FERC Gas Tariff, Original Volume No. 1 as required by the Commission's Letter Order dated May 16, 1988 in the referenced docket, approving with modifications the Offer of Settlement filed by PGPL intended to resolve all issues in the Docket.

PGPL states that the tendered revised original and original tariff sheets reflect its understanding of the required modifications to its tariff as mandated by the Letter Order, "Reference: Offer of

Settlement Filed in Docket No. RP87–47–000" issued May 16, 1988 in the referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 30, 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. 88–14563 Filed 6–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–80–004]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 23, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 16, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective June 1, 1988:

Second Revised Sheet Nos. 52, 53, 54 and 55

Second Revised Sheet Nos. 482 and 483

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover, along with United Gas Pipe Line Company's (United) take-or-pay charges to Texas Eastern, the flowthrough by Texas Gas Transmission Corporation (Texas Gas) to Texas Eastern of a portion of Texas Gas' share of United's take-or-pay charges as proposed by Texas Gas in a filing made on May 24, 1988 in Docket No. RP88–177.

Texas Eastern states that the purpose of Texas Gas' filing is to flowthrough to Texas Eastern a portion of United's take-or-pay costs originally billed to Texas Gas. The tariff sheets listed above are being filed solely to include the flow-through to Texas Eastern by Texas Gas of a portion of United's take-or-pay charges billed to Texas Gas, along with United's take-or-pay charges billed to Texas Eastern.

Texas Eastern states that Tariff Sheet Nos. 52, 53, 54 and 55 set forth the principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay to Texas Eastern in order to recover United's and Texas Gas's portion of United's take-or-pay charges billed to Texas Eastern. Texas Eastern's portion of United's total take-or-pay costs to be billed by Texas Gas is $1,012,896. Additionally, United is currently billing Texas Eastern for a total amount of $71,714,628. Accordingly, the aggregate amount to be billed Texas Eastern by Texas Gas and United is now $72,727,524. Texas Eastern proposes to recover this amount through fixed monthly charges of $2,020,209. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which includes a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Attachment A of the filing. Texas Eastern is also filing alternate tariff sheets which reflect the elimination of all interruptible sales volumes in the determination of the base and deficiency period volumes for all customers. Workpapers for the alternate tariff sheets setting forth Texas Eastern's determination of the allocation factor for the principal amount (which includes a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Attachment B of the filing.

Texas Eastern states that if at any time Texas Gas is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedure and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Texas Gas in Docket No. RP88–177.

Copies of this filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 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 June 30, 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. 88–14564 Filed 6–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–5–29–001]

Transcontinental Gas Pipe Line Corp.; Filing

June 23, 1988.

Take notice that on June 15, 1988, Transcontinental Gas Pipe Line Corporation (Transco) filed Substitute Ninth Revised Sheet No. 15–A to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective August 1, 1988.

Transco states that the purpose of this filing, pursuant to conversations with Commission Staff, is to reflect the same cost of gas in the Base Purchased Gas Cost, As Adjusted in the Last Scheduled PGA as shown for Base Purchased Gas Cost, As Adjusted in the Current PGA. Transco states that the revisions do not affect the rate levels contained in its filing of June 2, 1988.

Transco states that a copy of this filing is being sent to all parties on the service list.

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 June 30, 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. 88–14565 Filed 6–27–88; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 22, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following reports, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before July 19, 1988.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availablility of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer whose name appears below. 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).

Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Reports

1. *Report title:* Report of Transaction Accounts, Other Deposits and Vault Cash; Reports of Certain Eurocurrency Transactions; and Advance Reports of Deposits.

Agency form No.: FR 2900; FR 2950/51; and FR 2000/2001

OMB Docket No.: 7100–0087

Frequency: Weekly, Quarterly, Daily dependent upon report.

Reporters: Depository institutions.

Annual reporting hours: 2,557,114

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a), 461, 3105] and is given confidential treatment [5 U.S.C. 552 b(4) and b(8)].

This package of reports collects information on: deposits and related items from depository institutions that have transaction accounts or nonpersonal time deposits and that are not fully exempt from reserve requirements (FR 2900); Eurocurrency transactions from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches (FR 2950, 2951); and selected items on the 2900 in advance from samples of commercial banks on a daily basis (FR 2000) and on a weekly basis (FR 2001). An increase in the deposit cutoff used to determine weekly versus quarterly FR 2900 reporting is proposed. Under normal indexing procedures, the cutoff rises from $28.6 million to $30.0 million; under the proposal, the cutoff would be raised even further, to $40.0 million. In addition, the total number of items collected on the FR 2900, 2000, and 2001 reports is proposed to be reduced by two items. Information provided by these reports is used for administering Regulation D—Reserve Requirements of Depository Institutions; or for constructing, analyzing, and controlling the monetary and reserves aggregates, or both.

2. *Report title:* Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities and Annual Report of Total Deposits and Reservable Liabilities.

Agency form No.: FR 2910q; FR 2910a

OMB Docket No.: 7100–0175

Frequency: Quarterly; Annually

Reporters: Depository institutions

Annual reporting hours: 6,255

Small businesss are affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a) and 461] and is given confidential treatment [5 U.S.C. 552 b(4) and b(8)].

These reports collect information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and Agreement Corporations) that are fully exempt from reserve requirements under the Garn-St Germain Depository Institutions Act of 1982. Information provided by these reports is used to construct and analyze the monetary aggregates and to ensure compliance with Regulation D—Reserve Requirements of Depository Institutions. An increase is proposed for the deposit cutoff used to determine quarterly FR2910q versus annual FR 2910a reporting. Under normal indexing procedures, the cutoff rises from $28.6 million to $30.0 million; under the proposal, the cutoff would be raised even further, to $40.0 million.

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report

1. *Report title:* Allocation of Low Reserve Tranche and Reservable Liabilities Exemption.

Agency form No.: FR 2930; FR 2930a

OMB Docket No.: 7100–0088

Frequency: Annually

Reporters: Depository institutions.

Annual reporting hours: 42

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a), 461] and is given confidential treatment [5 U.S.C. 552 b(4) and b(8)].

This report provides information on the allocation of the low reserve tranche and reservable liabilities exemption among particular offices of those families of institutions that have offices located in more than one state or Federal Reserve district, which submit separate deposits reports instead of one single, nationally aggregated report. These data are needed for the calculation of required reserves.

Board of Governors of the Federal Reserve System, June 22, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–14479 Filed 6–27–88; 8:45 am]

BILLING CODE 6210–01–M

Banc One Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 20, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; requests relief from commitments previously made in conjuction with its application to acquire American Fletcher Corporation, Indianapolis, Indiana. The subject commitments limit the general insurance agency powers of the insurance department of Bank One, Franklin, Franklin, Indiana, a state-chartered bank subsidiary, formerly known as Union Bank & Trust Company, Franklin, Indiana, pursuant to section 4(a)(2) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, June 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14480 Filed 6-27-88; 8:45 am]

BILLING CODE 6210-01-M

Jack V. Christenson and Dr. R.A. Whiteneck; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 20, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

(1) *Jack V. Christenson*, Castle Rock, Colorado; to acquire an additional 1.80 percent of the voting shares of The Banking Group, Ltd., Castle Rock, Colorado, and thereby indirectly acquire The First National Bank of Castle Rock, Castle Rock, Colorado.

(2) *Dr. R.A. Whiteneck*, Woodward, Oklahoma; to acquire an additional 0.65 percent of the voting shares of American Interstate Bancshares, Inc., Woodward, Oklahoma, and thereby indirectly acquire American National Bank, Woodward, Oklahoma.

Board of Governors of the Federal Reserve System, June 22, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14481 Filed 6-27-88; 8:45 am]

BILLING CODE 6210-01-M

First Florida Banks, Inc., et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Florida Banks, Inc.*, and 7L Corporation, both in Tampa, Florida; to engage *de novo* through their subsidiary, First Management Group, Inc., Tampa, Florida, in providing management services to troubled savings and loan associations under the management consignment program pursuant to § 225.25(b)(11); and through Florida Asset Management Group, Inc., Tampa, Florida, in assisting in the disposition of the nonearning assets and other applicable assets of savings and loan associations pursuant to § 225.25(b)(23) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to engage *de novo* in consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Dai-Ichi Kangyo Bank, Limited*, Tokyo, Japan; to engage *de novo* through its subsidiary, DKB Credit Corporation, New York, New York, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit, acquiring accounts receivable and accepting drafts) of the types which could be made, acquired or serviced by a commercial finance company, either for DKB's account or for the account of others pursuant to § 225.25(b)(1); and leasing personal or real property, or acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

2. *Home Interstate Bancorp*, Signal Hill, California; to engage *de novo* through its subsidiary, Bancorp Capital Group, Inc., Irvine, California, in data processing services to nonaffiliated persons pursuant to § 225.25(b)(7) of the Board's Regulation Y.

3. *Pacific Western Bancshares*, San Jose, California; to engage *de novo* through its subsidiary, Bancorp Capital Group, Inc., Irvine, California, in data processing services to nonaffiliated persons pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14482 Filed 6-27-88; 8:45 am]

BILLING CODE 6210-01-M

GL & ML, Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

(1) *GL & ML, Limited*, Aplington, Iowa; to acquire Meyer Insurance Agency, Aplington, Iowa, and thereby engage in general insurance agency activities in Aplington, Iowa, a town with a population of under 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y; and lending activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 22, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14483 Filed 6-27-88; 8:45 am]

BILLING CODE 6210-01-M

Soperton Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 20, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

(1) *Soperton Bancshares, Incorporated*, Soperton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Soperton, Soperton, Georgia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South Lasalle Street, Chicago, Illinois 60690:

(1) *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of State Savings Bank of South Lyon, South Lyon, Michigan.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

(1) *Mark Twain Bancshares, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of Bancenter One Group, Inc., Chesterfield, Missouri, and thereby indirectly acquire Bankcenter One, Ellisville, Missouri.

(2) *Mercantile Bancorp, Inc.*, Quincy, Illinois; to acquire at least 51.05 percent of the voting shares of Security State Bank of Hamilton, Hamilton, Illinois.

(3) *North Adams Bancshares, Inc.*, Ursa, Illinois; to acquire at least 75.63 percent of the voting shares of B.W. Bancshares, Inc., Warrensburg, Illinois, and thereby indirectly acquire Bank of Warrensburg, Warrensburg, Illinois.

Board of Governors of the Federal Reserve System, June 22, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14484 Filed 6-27-88; 8:45 am]

BILLING CODE 6210-01-M

Warren Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 15, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Warren Bancorp, Inc.*, Peabody, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Warren Five Cents Savings Bank, Peabody, Massachusetts, successor to the merger of Warren and Beverly Savings Bank, Beverly, Massachusetts, and indirectly acquire 14.5 percent of the outstanding shares of Beverly National Corporation, Beverly, Massachusetts, and Beverly National Bank, Beverly, Massachusetts.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Citizens Bancorp*, Riverdale, Maryland; to acquire 100 percent of the voting shares of McLachlen Bancshares Corporation, Washington, D.C., and thereby indirectly acquire McLachlen National Bank, Washington, D.C.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hickman Corporation*, Hickman, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Hickman, Nebraska.

Board of Governors of the Federal Reserve System, June 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14485 Filed 6-27-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Peripheral and Central Nervous System Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on June 4, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: June 22, 1988.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-14492 Filed 6-27-88; 8:45 am]

BILLING CODE 4160-01-M

Science Advisory Board to the National Center for Toxicological Research; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Science Advisory Board to the National Center for Toxicological Research by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on June 2, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: June 22, 1988.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-14493 Filed 6-27-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. July 28 and 29, 1988, 8:15 a.m., National Institutes of Health, Bldg. 31, Conference Rm. 10, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open committee discussion, July 28, 1988, 8:15 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12:30 p.m., unless public participation does not last that long; closed committee deliberations, 1 p.m. to 6 p.m.; closed committee deliberations, July 29, 1988, 8 a.m. to 3:30 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 13, 1988, and

submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 28, 1988, 8:15 a.m. to 11:30 a.m., the committee will discuss Hepatitis B vaccines.

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to pending license applications and IND's in the Office of Biologics Research and Review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guidelines (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrat implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Example of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a classs of marketed drugs or devices; review of date and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 20, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–14533 Filed 6–27–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal **Register**, Vol. 51, No. 122, pp. 23157–23158, dated Wednesday, June 25, 1986)

is amended to reflect a reorganization within the Office of Legislation and Policy. The Division of Policy Analysis and its two subordinate components, the Medicaid Branch and Medicare Branch, will be abolished. They will be replaced by the Office of Policy Analysis, the Division of Medicaid and Long-Term Care Policy, and the Division of Medicare Policy. The Division of Legislation (DL) and the Division of Legislative Services and Congressional Affairs (DLSCA) will be abolished. Their functions will be consolidated to form the Office of Legislation and Congressional Affairs (OLCA). The Medicaid Branch and Medicare Branch in DL will be abolished and replaced by the Division of Medicaid Legislation and the Division of Medicare Legislation, with the corresponding transfer of functions. Finally, the Legislative Services Branch and Congressional Affairs Branch in DLSCA will be abolished. These components will be replaced by the Legislative Services Staff and Congressional Affairs Staff, both of which will report to the Director, OLCA. They will provide staff support in the areas of legislative and congressional activities.

The specific changes to Part F. are described below:

• Section FD.10., Office of Legislation and Policy (FB) (Organization) is amended by deleting the organization titles and administrative codes for all subordinate components and replacing them with the following:

A. Office of Policy Analysis (FBA).
1. Division of Medicaid and Long-Term Care Policy (FBA1).
2. Division of Medicare Policy (FBA2).
B. Office of Legislation and Congressional Affairs (FBB).
1. Legislative Services Staff (FBB–1).
2. Congressional Affairs Staff (FBB–2).
3. Division of Medicaid Legislation (FBB1).
4. Division of Medicare Legislation (FBB).

• Section FD.20.A., Division of Policy Analysis (FBA), is amended by deleting the existing division title and all subordinate organizational titles, functional statements, and administrative codes and replacing them with the following:

A. Office of Policy Analysis (FBA)

Plans and conducts for the Administrator long-range and short-term policy analyses of health care financing issues and legislative proposals, in such areas as reimbursement reform, alternative cost-control systems, reimbursement of new delivery systems, and long-term care. Plans and directs the legislative planning and development activities of HCFA as part of the annual budget process. In consultation with the office of Legislation and Congressional Affairs, reviews, analyzes, and develops policy alternatives for legislative proposals. Coordinates the development of HCFA's legislative program and manages the submission of legislative proposals to the Office of Management and Budget. Develops technical specifications for HCFA legislation. Reviews policy documents, including regulations, issue papers, and memoranda, before they are signed by the Administrator. Provides technical consultation to the Office of Research and Demonstrations, the Bureau of Eligibility, Reimbursement and Coverage, other HCFA components, and through the Office of the Assistant Secretary for Legislation, to the Congress on the policy implications and technical aspects of legislative, policy, or research initiatives.

1. Division of Medicaid and Long-Term Care Policy (FBA1)

Performs policy relevant analyses of issues related to Medicaid and long-term care. In assigned areas, conducts long-range policy studies, coordinates the development of legislative proposals as part of the budget process, and develops the technical specifications for legislation. Reviews regulations and other policy documents for the Director of the Office of Legislation and Policy in assigned areas. Substantive areas of policy analysis include Medicaid eligibility, reimbursement, coverage, and financing; problems of access to health services for low income populations; alternative delivery systems; and post-acute and long-term care. Works with senior officials of HCFA, the Department, and other Federal agencies in areas of mutual concern or interest and provides technical support to the Congress on policy and legislative issues relating to Medicaid and long-term care.

2. Division of Medicare Policy (FBA2)

Performs policy relevant analyses of Medicare issues, reviews Medicare regulations and other policy documents for the Director of the Office of Legislation and Policy, coordinates the development of new budget proposals for the Medicare program, and conducts long-range studies of Medicare policy issues. Develops technical specifications for Medicare legislation. Substantive areas of policy analysis include Medicare benefits, eligibility, and financing; problems of access to health services for the elderly; alternative delivery systems and physician reimbursement. Works with senior officials of HCFA, the Department, and other Federal agencies in areas of mutual concern or interest and provides technical support to the Congress on Medicare policy and legislative issues.

• Section FD.20.B., Division of Legislation (FBB) and Section FD.20.C., Division of Legislative Services and Congressional Affairs (FBC), are amended by deleting the existing division titles and all subordinate organizational titles, functional statements, and administrative codes and replacing them with the following:

B. Office of Legislation and Congressional Affairs (FBB)

Plans, develops, and directs legislative strategy to enhance the enactment of the Administration's legislative program for changes to the health care financing programs and to the Medicare or Medicaid aspects of proposals for changes to other HHS programs. In conjunction with the Office of Policy Analysis, analyzes the impact of HCFA and congressional legislative proposals affecting HCFA programs and makes recommendations to the Administrator and the Department. Develops bill reports communicating HCFA's official position and recommends the Department's position on legislation likely to be considered by the Congress. Clears enrolled bill reports and recommends Presidential veto or signature of bills. Prepares testimony and technical briefing materials for the Administrator's and others' appearances at congressional hearings on HCFA programs and clears the HCFA-related testimony of other Departments' witnesses. Serves as principal advisor to the HCFA senior staff on congressional legislative initiatives of interest or concern to the Agency. Through the Office of the Assistant Secretary for Legislation (ASL) provides information on HCFA programs and legislative plans to members of the Congress and the congressional committees. Coordinates legislative activities and prepares for congressional hearings with the ASL. Provides legislative research and analysis services to HCFA staff and produces regular and special reports to HCFA and the Department on legislative issues and activities. Prepares background materials for congressional hearings and briefing sessions and coordinates with HCFA components and the ASL on the preparation of bill reports and bill report clearances. Maintains and services HCFA with a legislative research and reference library. Responds directly or coordinates responses to written and

verbal congressional and legislative requests for information related to HCFA programs. Organizes and prepares materials for briefing of Members and their constituents. Monitors the interest or concerns of Members and prepares recurring reports on significant congressional contacts. Analyzes alternative responses to congressional issues and makes recommendations to higher officials on specific issues.

1. Legislative Services Staff (FBB–1)

Provides legislative reference and research services to HCFA, the Department, and the general public. Analyzes and reviews HCFA legislative authorities on request and maintains a legislative reference library for the Agency. Coordinates the development of bill reports with HCFA components and the Department; prepares a variety of regularly scheduled reports on congressional legislative activities; reviews and develops reports on HCFA and departmental regulatory activities; and prepares special reports on health legislative initiatives that require coordination with other departments or agencies. Assists other components of the Office of Legislation and Policy by preparing legislative histories and congressional profiles for congressional hearings.

2. Congressional Affairs Staff (FBB–2)

Responds to a large volume of congressional inquiries and constituent concerns related to HCFA programs and policies. Organizes and conducts briefings for individual Congressmen, Congressional Staff, and the general public on specific issues and prepares reports on these issues for higher level staff. Provides notification to Congress on specific HCFA activities of interest to Members; coordinates congressional liaison activities with the Office of the Assistant Secretary for Legislation; provides advice to the Director of the Office of Legislation and Congressional Affairs, the Director of the Office of Legislation and Policy, and the Administrator on the resolution of sensitive congressional issues and serves as the focal point in HCFA for all congressional liaison activities.

3. Division of Medicaid Legislation (FBB1)

Develops legislative stretegy concerning proposals for changes to the health care financing programs and the Medicaid aspects of proposals for changes to other HHS programs, in particular the AFDC and SSI programs. Provides input for the development of technical specifications for Medicaid legislation. In conjunction with the Office of Policy Analysis, analyzes the impact of HCFA and congressional legislative proposals affecting HCFA programs and makes recommendations to the Administrator and the Department. Develops bill reports communicating HCFA's official position and recommends the Department's position on Medicaid legislation likely to be considered by the Congress. Clears enrolled bill reports and recommends Presidential veto or signature of Medicaid bills. Prepares legislative summaries of newly enacted Medicaid legislation. Prepares testimony and briefing materials for the Administrator's and others' appearances at congressional hearings on Medicaid and clears HCFA-related testimony of other Departments' witnesses. Provides consultative services to Senators, House Members, Congressional Staff, and the public on Medicaid legislative issues. Transmits congressional information, views, and inquiries to appropriate HCFA components.

4. Division of Medicare Legislation (FBB2)

Develops legislative strategy concerning proposals for changes to the health care financing programs and the Medicare aspects of proposals for changes to other health programs. Provides input for the development of technical specifications for Medicare legislation. In conjunction with the Office of Policy Analysis, analyzes the impact of HCFA and congressional legislative proposals affecting HCFA programs and makes recommendations to the Administrator and the Department. Develops bill reports communicating HCFA's official position and recommends the Department's position on Medicare legislation likely to be considered by the Congress. Clears enrolled bill reports and recommends Presidential veto or signature of Medicare bills. Prepares legislative summaries of newly enacted Medicare legislation. Prepares testimony and briefing materials for the Administrator's or others' appearances at congressional hearings on Medicare and clears HCFA-related testimony of other Departments' witnesses. Provides consultative services to Senators, House Members, Congressional Staff, and the public on Medicare legislative issues. Transmits congressional information, views, and inquiries to appropriate HCFA components.

Date: June 10, 1988.

William L. Roper,

Administrator.

[FR Doc. 88–14545 Filed 6–27–88; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–88–1817]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours

needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of any agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 21, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Urban Homesteading Program (FR–1624).

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: HUD collects application and funding needs data in order to provide program benefits. In addition, community development, racial/ethnic, income range, Section 810 funds usage, and housing rehabilitation data are essential to meet the statutory requirements that HUD needs to provide an annual report to Congress and conduct continuing evaluations of the Urban Homesteading Program.

Form Number: HUD–40050, 40063, and 40063–A.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping, on Occasion, Quarterly, and Annually.

Reporting Burden:

	Number of respondents	X	Frequency of respondents	X	Hours per response	=	Burden hours
Application	20		1		24		480
Application Amendment	13		1		4		52
Annual Requirement	112		1		2		224
HUD-40050	132		4		¼		132
HUD-40063-A	132		4		½		264
Quarterly Property Report	132		2		⅛		44
Quarterly Progress Report	192		4		1		768
Recordkeeping	192		1		3		576

Total Estimated Burden Hours: 2,540.

Status: Extension.

Contact: Louise D. Thompson, HUD, (202) 755–5324, John Allison, OMB, (202) 395–6880.

Date: June 14, 1988.

Proposal: District Heating and Cooling Systems Survey.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed use: HUD will use the survey to assess its activities in the district heating area and to determine directions for future technical assistance and related activities. Information will be made available to local and State governments, to business and industry, and to other interested parties to assist them in the development of district heating systems.

Form Number: None.

Respondents: State or Local Governments and Businesses or Other For-Profit.

Frequency of Submission: Single-Time.

Reporting Burden:

	Number of respondents	X	Frequency of respondents	X	Hours per response	=	Burden hours
Survey No. 1	80		1		.6		48
Survey No. 2	80		1		.6		48

Total Estimated Burden Hours: 96
Status: New.
Contact: Wyndham Clarke, HUD, (202) 755–5504, John Allison, OMB, (202) 395–6880.
Date: June 14, 1988.

[FR Doc. 88–14476 Filed 6–27–88; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–88–1819]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as requested by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 22, 1988.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Application for Approval as a Coinsuring Lender—Category A Documentation (FR–1198)
Office: Housing
Description of the Need for the Information and its Proposed Use: HUD needs this information to review the lender's financial, technical, and organizational capacity to be approved as a coinsuring lender. HUD also uses this information to review the approved lender's first three cases before endorsement to make sure they are capable of administering the program.
Form Number: None
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Application	20	1	320	6,400

Total Estimated Burden Hours: 6,400
Status: Extension
Contact: James L. Hamernick, HUD, (202) 755–6500, John Allison, OMB, (202) 395–6880
Date: June 21, 1988.

Proposal: Project Applications and Review of Application—Category B Documentation (FR–1198)
Office: Housing
Description of the Need for the Information and its Proposed Use: HUD needs this information to review approved coinsuring lender's processing of applications. HUD uses this information to make sure lenders adhere to underwriting and processing guidelines and to ensure they are complying with program standards.
Form number: None
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application	20	10	460	92,000

Total Estimated Burden Hours: 92,000
Status: Extension
Contact: James L. Hamernick, HUD, (202) 755–6500, John Allison, OMB, (202) 395–6880
Date: June 21, 1988.

Proposal: Tenant Participation and Management in Public Housing Projects; Eligibility for Comprehensive Improvement Assistance Program Funds (FR–2519)
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: This information is needed to make sure Public Housing Agencies (PHAs) are in compliance with the management of their projects. HUD uses this information to hold the PHAs accountable for a resident group's performance under the management contract.
Form Number: None
Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Summary of Tenant Comments	500	1	4	2,000
Rejection Documentation	50	1	2	100
Performance Documentation	75	1	2	150

Total Estimated Burden Hours: 2,250
Status: Revision
Contact: Janice D. Rattley, HUD, (202) 755-7970, John Allison, OMB, (202) 395-6880
Date: June 14, 1988.

[FR Doc. 88-14532 Filed 6-27-88; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Intent to Prepare a Draft Environmental Impact Statement; Lake Berryessa Reservoir Area Management Plan

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement for Actions to Be Considered in the Lake Berryessa Reservoir Area Management Plan (RAMP), Napa County, CA.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation intends to prepare an Environmental Impact Statement (EIS). The EIS will address the impacts from several land management, water surface management, and concession management actions the Bureau is considering for eventual adoption in a RAMP for Lake Berryessa.

At workshops held in April and June of 1987, the public was afforded an opportunity to comment on a variety of actions being considered during the Bureau's initial planning efforts for the Lake. The Bureau will consider any additional input the public may wish to provide in order to determine significant issues and impacts which should be analyzed and included in the EIS. Written comments should be sent to the Lake Berryessa Recreation Office identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Brockman, Outdoor Recreation Planner, Bureau of Reclamation, Mid-Pacific Region (MP-401), 2800 Cottage Way, Sacramento, CA 95825; telephone: (916) 978-5313 or Mr. Vern Smith, Recreation Manager, Lake Berryessa, Bureau of Reclamation, P.O. Box 9332, Spanish Flat Station, Napa, CA 94558; telephone: (707) 966-2111.

SUPPLEMENTARY INFORMATION: Lake Berryessa has been in existence since 1957, after the impoundment of Putah Creek by Monticello Dam. Managed initially by Napa County until 1975, and now by the Bureau of Reclamation, recreation lands at the Lake have experienced use changes ranging from dispersed use of undeveloped lands to highly concentrated development and use in seven resort areas. A Public Use Plan (PUP) was prepared by the National Park Service which designated certain areas for development with suggestions regarding specific types of improvements and their locations. Over the years, improvements were made which did not always follow the original designations of areas and uses. In addition, some lands were never fully developed as specified in the PUP. To compound this situation, the demand for day use and other short-term recreation facilities has increased while most development has been oriented toward long-term mobile home and travel trailer parks. In view of the above, and recognizing the need to further identify the long-range needs and use of Lake Berryessa, the Bureau has initiated a planning effort which will culminate in a Reservoir Area Management Plan, updating and revising the earlier PUP.

The EIS to be prepared by the Bureau will analyze the impacts of various actions which are being considered for inclusion and adoption in the RAMP for the Lake. Key actions involve the development of additional short-term recreation facilities, establishing a houseboat program, removal and protection of facilities subject to flooding, actions to promote safer and varied water-use activities, removal of long-term sites in key shoreline locations during resort reorganizations, expansion of visitor information services, increases in law enforcement presence, establishment of a fish and wildlife management area, and other development and master planning actions.

Environmental consequences of the actions will be analyzed for various impact categories including soils and topography, water quality, vegetation and wildlife, fish resources, recreational uses, land uses, cultural resources, traffic and circulation, scenic resources, and socio-economics (recreation visitors, resort tenants, resort owners, and local economy).

Date: June 21, 1988.
William C. Klostermeyer,
Acting Commissioner.

[FR Doc. 88-14542 Filed 6-27-88; 8:45 am]
BILLING CODE 4310-09-M

Land Management Bureau

Utah—Invitation to Participate in Coal Exploration Program—Beaver Creek Coal Company—U-64233

Beaver Creek Coal Company is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Emery County, Utah:

T. 17 S., R. 6 E., SLM, Utah,
Sec. 26, W½SW¼NE¼, S½NW¼, SW¼, W½W½SE¼;
Sec. 27, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 34, NE¼, E½NW¼, E½SW¼, SE¼;
Sec. 35, lots 3, 4, W½SW¼NE¼, S½NW¼, SW¼, W½W½SE¼.
T. 18 S., R. 6 E., SLM, Utah,
Sec. 1, lots 1-8, S½N½;
Sec. 2, lots 1-8, S½N½;
Sec. 3, lots 1, 2 and 8.
T. 18 S., R. 7 E., SLM, Utah,
Sec. 6, lots 4-7, W½SE¼NW¼, W½E½S W¼.

Containing 2,730.81 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111-2303 and to Kenneth S. Fleck, geologist, Beaver Creek Coal Company, P.O. Box 1378, Price, Utah 84501. Such written notice must be received within 30 days after the publication of this notice in the **Federal Register.**

Any party wishing to participate in the coal exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rate bases. A copy of the exploration plan, as submitted by Beaver Creek Coal Company, is available for public review during business hours in the same BLM

office as mentioned above under Serial Number U–64233.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–14497 Filed 6–27–88; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Martin Luther King, Jr., National Historic Site; Advisory Commission Meeting

AGENCY: National Park Service, Martin Luther King, Jr., National Historic Site, Interior.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: July 13, 1988.

ADDRESS: The Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Room 261, Freedom Hall, 449 Auburn Avenue, NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312, Telephone (404) 331–5190.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphrey
Mrs. Christine King Farris
Mr. Daniel H. Nall
Mr. Arthur J. Clement
Mrs. Valena Henderson
Mr. William W. Allison
Mr. John W. Cox
Reverend Jospeph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The matters to be discussed at the meeting will include: the status of park development and interpretive activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: June 15, 1988.

Robert L. Deskins,

Acting Regional Director Southeast Region.

[FR Doc. 88–14537 Filed 6–27–88; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 18, 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 July 13, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Wrangell-Petersburg Division

Wrangell vicinity, *ETOLIN CANOE*, Tongass National Forest

DELAWARE

Sussex County

Laurel, *Laurel Historic District*, West St. to Rossakatum Creek and Broad Creek to Tenth St.

LOUISIANA

DeSoto County

Keachi vicinity, *Keachi United Methodist Church*, LA 5
Keachi vicinity, *Prude House*, LA 5
Keachi vicinity, *Spell House*, LA 5

Natchitoches County

Natchez vicinity, *Cedar Bend Plantation*, LA 119

MARYLAND

Prince George's County

Aquasco, *Villa DeSales*, 22410 Aquasco Rd.

MISSISSIPPI

Warren County

Vicksburg, *House 916 Farmer Street (Vicksburg Pierced Columns MPS)*, 916 Farmer St.
Vicksburg, *House at 1113 Clay Street (Vicksburg Pierced Columns MPS)*, 1113 Clay St.
Vicksburg, *House at 1200 Harrison Street (Vicksburg Pierced Columns MPS)*, 1200 Harrison St.
Vicksburg, *House at 1206 Adams Street (Vicksburg Pierced Columns MPS)*, 1208 Adams St.
Vicksburg, *House at 1215 Magnolia Street (Vicksburg Pierced Columns MPS)*, 1215 Magnolia St.
Vicksburg, *House at 1306 Farmer Street (Vicksburg Pierced Columns MPS)*, 1306 Farmer St.
Vicksburg, *House at 1307 First North Street (Vicksburg Pierced Columns MPS)*, 1307 First North St.
Vicksburg, *House at 1312 First North Street (Vicksburg Pierced Columns MPS)*,1312 First North St.
Vicksburg, *House at 1319 Jackson Street (Vicksburg Pierced Columns MPS)*,1319 Jackson St.
Vicksburg, *House at 1406 Clay Street (Vicksburg Pierced Columns MPS)*, 1406 Clay St.
Vicksburg, *House at 1414 Harrison Street (Vicksburg Pierced Columns MPS)*, 1414 Harrison St.
Vicksburg, *House at 1416 Openwood Street (Vicksburg Pierced Columns MPS)*, 1416 Openwood St.
Vicksburg, *House at 1418 Harrison Street (Vicksburg Pierced Columns MPS)*, 1418 Harrison St.
Vicksburg, *House at 1520 Great Street (Vicksburg Pierced Columns MPS)*, 1520 Great St.
Vicksburg, *House at 1604 South Street (Vicksburg Pierced Columns MPS)*, 1604 South St.
Vicksburg, *House at 1701 Cherry Street (Vicksburg Pierced Columns MPS)*, 1701 Cherry St.
Vicksburg, *House at 1831 Cherry Street (Vicksburg Pierced Columns MPS)*, 1831 Cherry St.
Vicksburg, *House at 2200 Pearl Street (Vicksburg Pierced Columns MPS)*, 2200 Pearl St.
Vicksburg, *House at 2304 Pearl Street (Vicksburg Pierced Columns MPS)*, 2304 Pearl St.
Vicksburg, *House at 2521 Pearl Street (Vicksburg Pierced Columns MPS)*, 2521 Pearl St.
Vicksburg, *House at 2720 Washington Street (Vicksburg Pierced Columns MPS)*, 2720 Washington St.
Vicksburg, *House at 519 Farmer Street (Vicksburg Pierced Columns MPS)*, 519 Farmer St.
Vicksburg, *House at 618 Farmer Street (Vicksburg Pierced Columns MPS)*, 618 Farmer St.
Vicksburg, *House at 722 Cherry Street (Vicksburg Pierced Columns MPS)*, 722 Cherry St.
Vicksburg, *House at 800 Walnut Street (Vicksburg Pierced Columns MPS)*, 800 Walnut St.
Vicksburg, *McGehee House (Vicksburg Pierced Columns MPS)*, 1123 South St.

MONTANA

Flathead County

Big Prairie vicinity, *McCarthy, Margaret, Homestead (Settlement on the North Fork of the Flathead River, Glacier National Park TR)*, Glacier National Park
Big Prairie vicinity, *Miller, J. K., Homestead (Settlement on the North Fork of the Flathead River, Glacier National Park TR)*, Glacier National Park
Big Prairie vicinity, *Raftery, William, Homestead (Settlement on the North Fork of the Flathead River, Glacier National Park TR)*, Glacier National Park
Big Prairie vicinity, *Schoenberger, Anton, Homestead (Settlement on the North Fork of the Flathead River, Glacier National Park TR)*, Glacier National Park
Big Prairie vicinity, *Schoenberger, Charlie, Homestead (Settlement on the North Fork of the Flathead River, Glacier National Park TR)*, Glacier National Park
Big Prairie vicinity, *Walsh's Johnnie, Guest Lodge (Settlement on the North Fork of the Flathead River, Glacier National Park TR)*, Glacier National Park
Big Prairie vicinity, *Walsh, Johnnie, Homestead (Settlement on the North Fork of the Flathead River, Glacier National Park TR)*, Glacier National Park

NEW MEXICO

Colfax County

Cimarron vicinity, *Ring Place, The*, Questa Ranger District, Carson National Forest, Forest Rds. 1950 and 1981A.

NORTH CAROLINA

Mitchell County

Penland vinicity, *Willis, Henry, House*, SR 1164.

Nash County

Drake vicinity, *Hart, Dr. Franklin, Farm*, NC 48.

OHIO

Auglaize County

Wapakoneta, *Nichols John H., House*, 103 S. Blackhoof St.

Montgomery County

Dayton, *Memorial Hall*, 125 E. First St.

OREGON

Lane County

Eugene, *Hall, Howard A., House*, 1991 Garden Ave.
Eugene, *Williams, C. S., House*, 1973 Garden Ave.

Multnomah County

Portland vicinity, *Whidden—Kerr House and Garden*, 11648 SW Military La.
Portland, *Arminius Hotel*, 1022—1038 SW Morrison St.

Polk County

Independence, *Eldridge, Kersey C., House*, 675 Monmouth St.

Umatilla County

Adams vicinity, *Greasewood Finnish Apostolic Lutheran Church*, Finn Rd. at Finland Cemetery Rd.

Union County

La Grande, *La Grande Neighborhood Club*, 1108 N Ave.

Washington County

Forest Grove, *Blank Stephen and Parthena M., House*, 2117 A St.
Forest Grove, *Cornelius, Benjamin, Jr., House*, 2314 Nineteenth Ave.
Forest Grove, *Robb, James D., House*, 2606 Seventeenth Ave.

TENNESSEE

Cheatham County

Patterson Forge (40CH87) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).
Turnbull Forge (40CH97) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).

Coffee County

Tullahoma, *North Atlantic Street Historic District*, 200—500 blks. of N. Atlantic St.

Decatur County

Brownsport II Furnace (40DR86) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).

Dickson County

Cumberland Furnace Historic District (40DS22) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).
Jones Creek Forge (40DS30) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).
Upper Forge (40DS32) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).
Valley Forge (40DS28) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).
White Bluff Forge (40DS27) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).
Charlotte, *Napier, Richard C., House (Iron Industry on the Western Highland Rim 1790s—1920s MPS).* Old Hwy. 48

Lawrence County

Davenport, T. D., Forge (40LR7) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).

Lincoln County

Fayetteville, *Borden Powdered Milk Plant*, S. Main St.

Maury County

Rockdale Furnace Historic District (40MU487) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).

Perry County

Cedar Grove Furnace (40PY77) (Iron Industry on the Western Highland Rim 1790s—1920s MPS).

Summer County

Hendersonville, *Hendersonville Presbyterian Church*, 172 W. Main St.

TEXAS

Harris County

Houston, *Forum of Civics*, 2503 Westheimer Rd.

VERMONT

Addison County

Leicester, *Leicester Meeting House*, US 7 and Town Hwy. 1.
Leicester, *School House and Town Hall*, US 7 and Town Hwy. 1.

Windham County

Westminster, *Westminster Village Historic District*, Main and School Sts., and Grout Ave.

Windsor County

Windsor, *Juniper Hill Farm—Maxwell Evarts House*, Juniper Hill Rd.

The 15-day commenting period for the following property has been waived in order to assist in the building's preservation.

OREGON

Marion County

Salem, *Oregon State Capitol*, Capitol Mall.

[FR Doc. 88–14538 Filed 6–27–88; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

LO Shippers Action Committee; Notice

The Commission, citing Section 5b Application No. 2, *Western Railroads—Agreement* (not printed), served September 21, 1983, stated that prior approval of the Commission was unnecessary and dismissed the petition of LO Shippers Action Committee seeking approval under 49 U.S.C. 10706(a)(5)(A) to amend its by-laws by making general membership available to lessors who lease covered hopper cars to shipper members and by restricting associate-member status to car lessors who participate in the cost-of-ownership studies for LO Shipper Action Committee.

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: June 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–14517 Filed 6–27–88; 8:45 am]
BILLING CODE 7035–01–M

Western Railroads Traffic Association; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rate bureau agreement.

SUMMARY: The Commission is approving the rate bureau agreement submitted by the Western Railroad Traffic Association. The Commission is denying without prejudice the Association's request to expand its subject jurisdiction to include matters that have been under the purview of another agreement.

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, 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: June 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Chairman Gradison commented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–14518 Filed 6–27–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31292]

Rails-to-Trails Conservancy et al.; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of a declaratory order proceeding.

SUMMARY: The Office of Compliance and Consumer Assistance (OCCA) of the Interstate Commerce Commission, the City of Seattle, Washington, the Rails-to-Trails Conservancy and the Lake Union and Ship Canal Trails Coalition seek an order declaring: (1) That the Burlington Northern Railroad Company's (BN) railroad tracks and right-of-way in the City of Seattle from about milepost 6 near 3rd Avenue, NW., to milepost 8, just east of Latona Avenue, NE., and Interstate Highway 5 are a line of railroad within the meaning of Section 10903 of the Interstate Commerce Act and not "spur, industrial, team, switching, or side tracks" exempt from Commission abandonment regulation under 49 U.S.C. 10907(b)(1); and (2) that abandonment of this property cannot be effected unless the Interstate Commerce Commission issues a certificate under 49 U.S.C. 10903 declaring that the present or future public convenience and necessity permit such discontinuance or abandonment (or an exemption granted under 49 U.S.C. 10505). A proceeding is being instituted to determine whether BN's property in issue is a railroad line and whether abandonment authority must be obtained. The Commission requests verified statements which include evidence on whether the involved property is a railroad line, or is "spur" track exempt from the abandonment provisions of the Act.

DATES: Interested parties are asked to submit a statement of intent to participate by July 18, 1988. The filing and service of pleadings will be as follows: (a) Opening statement of facts and arguments by petitioners and any party supporting petitioners on or before July 28, 1988; (b) 30 days after that date, statement of facts and arguments by any party in opposition; and (c) reply by petitioners and supporting parties 20 days thereafter.

ADDRESS: Interested parties should file an original and one copy of a notice of intent to participate with the Rail Section, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423. For administrative convenience, parties should indicate in the statement of intent whether they intend to participate actively, in which case they will be placed on the service list, or whether they merely wish to receive copies of the decisions of the Commission. A service list will then be compiled and distributed. Parties which actively participate in this proceeding by submitting written statements must serve copies of their statements on all parties on the service list. An original and ten copies of written statements must be filed with the Commission.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: On or about February 2, 1988, BN executed a quitclaim deed conveying, among other things, that portion of its track property from about milepost 6 near 3rd Avenue in Seattle, Washington, to milepost 8, just east of Latona Avenue, NE., and Interstate Highway 5, to be used for non-rail purposes. The City of Seattle contends that the property in question is a railroad line that falls within the Commission's abandonment jurisdiction, and that BN should have initiated a Commission abandonment proceeding pursuant to 49 U.S.C. 10903–10906 prior to taking any actions concerning the property. OCCA believes that the property may be a railroad line and that discontinuance of service or abandonment of the line cannot be effected without Commission authorization. Similarly, the Rails-to-Trails Conservancy and the Lake Union and Ship Canal Trails Coalition believe that the property is a railroad line subject to the Commission's agbandonment procedures. BN apparently believes it can dispose of the property without Commission authorization.

Additional information is contained in the Commission 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).

Authority: 5 U.S.C. 554(e), 49 U.S.C. 10903, 10907(b)(1).

Decided: June 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–14519 Filed 6–27–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31285]

Georgia Woodlands Railroad Co.; Acquisition and Operation Exemption; Georgia Eastern Railroad Co.

Georgia Woodlands Railroad Company (Woodlands) has filed a notice of exemption to acquire and operate a line of railroad owned by Georgia Eastern Railroad Company. The line, known as the Washington Branch, extends from milepost 0.56 near Barnett, GA, to milepost 17.33 near Washington, GA, a distance of 16.68 miles. The transaction was expected to be consummated on June 3, 1988. Any comments must be filed with the Commission and served on Edward K. Wheeler, Wheeler & Wheeler, Suite 200, 1729 H St., NW., Washington, DC 20006 and Robert C. Finley, Chicago West Pullman Transportation Company, 2728 E. 104th St., Chicago, IL 60617.

Woodlands has certified that no properties qualifying for inclusion in the National Register of Historic Places will be transferred as a result of this transaction.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-14398 Filed 6-29-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31295; Directed Service Order No. 1504]

The New York, Susquehanna and Western Railway Corp. et al.; Railroad Operation, Acquisition, Construction, etc.

AGENCY: Interstate Commerce Commission.

ACTION: Directed Service Order.

SUMMARY: Pursuant to 49 U.S.C. 11125, the Commission is authorizing for a 45-day period The New York, Susquehanna and Western Railway Corporation (NYS&W) to provide service as a "directed rail carrier" without federal subsidy or compensation under 49 U.S.C. 11125(b)(5) over the lines of the Delaware and Hudson Railway Company (D&H).

This unsubsidized and non-compensated directed service order is predicated on the cessation of service by D&H, and its request that the Commission designate and authorize a carrier to provide directed service over its lines. *See* 49 U.S.C. 11125(a)(3).

DATES: *Effective Date:* Directed Service Order No. 1504 shall be effective on June 22, 1988, and authorized rail service shall commence upon cessation of service operations by D&H and its notification that it has done so to the Commission and the NYS&W. NYS&W shall immediately notify the Commission and all parties to this proceeding of the date it commences operations under this authority.

Expiration Date: Unless otherwise modified by the Commission, Directed Service Order No. 1504 will expire 45 days from the date NYS&W notifies the Commission that it has commenced service.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard, (202) 275-7849, or Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTAL INFORMATION: The D&H announced on Friday, June 17, 1988, that it intended to file for bankruptcy, and on Monday, June 20, 1988, it did file a bankruptcy petition in the U.S. District Court of the District of Delaware (Bankruptcy Filing No. 88-3427). During the latter part of the week of June 13, 1988, and during the latter part of the week of June 20, 1988, the D&H has indicated that service on the D&H might stop sometime during the week of June 20, 1988 because the D&H "would have insufficient cash to continue operations." On June 21, 1988, pursuant to stated authorization of the D&H Board, the D&H orally requested the Commission to direct service over the D&H. The D&H owns and provides service on 569 miles of track in New York and Pennsylvania and provides service over an additional 1,012 miles of trackage in these states and in New Jersey, Maryland, Vermont, Virginia, and the District of Columbia pursuant to operating agreements, leases, and trackage rights over Conrail and other railroads. The railroad provides local rail service to a number of shippers and communities on its line and provides a rail link between New England and Canada, on the one hand, and the Middle Atlantic States on the other. Amtrak operates passenger service over portions of the line.

On June 16, 1988, the New York State Department of Transportation (NYDOT) filed with this Commission an emergency petition for the entry of a directed service order over the lines of the D&H. NYDOT states that the lines owned and operated by the D&H constitute an integral part of the New York rail network, and continued operation of these lines is essential to the economic well-being of New York State and the surrounding region. NYDOT states that the cessation of service on the D&H will create a transportation crisis in the Northeast. NYDOT asks this Commission to direct an alternative carrier or carriers to provide service over the D&H. NYDOT does not specify any carrier to provide such service,[1] but states that we should take into account such considerations as the ability of the particular carriers to provide service, the competitive effect of directed service by various carriers, and the willingness of particular carriers to provide service without compensation.

Two rail carriers have offered to provide service over the D&H system, and to do so without subsidy or compensation from the commission for such services. Conrail, by letter sent to the Commission on June 17, 1988, offered to provide service to local shippers on the D&H lines pursuant to section 11123 of the Act and to carry D&H's overhead traffic on Conrail trains pursuant to section 11124.

Also on June 17, 1988, the NYS&W filed a notice of intent to file a petition for a directed service order under section 11125 or, in the alternative, a petition for emergency relief under section 11123. Later the same day, the NYS&W filed a letter petition asking that the NYS&W be directed pursuant to section 11125 to operate the lines of the D&H. In support of its request, the NYS&W states that:

> NYS&W's operation of the D&H would continue competitive rail access to New York, New Jersey, Pennsylvania and New England. Without this independent access over the D&H lines, this entire region will be subject to a Conrail rail monopoly.

We have authority under various sections of the Act (*e.g.*, 49 U.S.C. 11123-25), as qualified in those sections, to assist in maintaining necessary rail service. Authorization of directed service under section 11125 is contingent upon one of three findings: That a debilitated carrier's continuing operation is impossible due to a cash shortage; that it is under a court order to discontinue transportation; or that it has discontinued transportation without the requisite section 10903 authorization.

Under a directed service order from the Commission, a directed carrier is authorized and may apply for compensation for its services.[2] A directed carrier, may however, voluntarily choose to waive any subsidy or compensation to which it may be entitled from the Commission.

Accordingly, we may order uncompensated directed service where the carrier being ordered to provide the service waives its right to receive compensation. *See* Directed Service Order No. 1456, *St. Louis Southwestern Railway Company—Directed Service—*

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[1] NYDOT states that carriers that might be directed to provide service over all or portions of the D&H's lines include Conrail, CSX, NYS&W and the Rochester and Southern Railroad.

[2] Our ability to provide for compensated directed service is subject to budgetary resources. In this fiscal year, our resources are limited to no more than $475,000 for directed service. See Pub. L. 100-202 (December 22, 1987).

Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Between Memphis, TN and Fordyce, AR., 363 I.C.C. 1 (1980).[3]

The emergency nature of the situation compels us to conclude that advance public notice and hearings would be impractical and contrary to the immediate public interest concern to secure continued rail transporation services. Accordingly, we exercise our authority under 49 U.S.C. 11125(a) to waive advance public notice and hearings in the present circumstances.

Section 11125 permits us to direct service for an initial period of not more than 60 days, with an option to extend the directed service period for an additional 180 days if cause exists. We believe directed service to be necessary here at least for an initial 45-day period.

In view of D&H's announced imminent cessation of service, the fact that D&H has not obtained Commission approval to discontinue service and D&H's request that the Commission direct service over its system, we find that upon cessation of service the statutory standard will have been met. 49 U.S.C. 11125(a)(3).[4]

In selecting lines for directed service, the key factor is "essentiality" of service. As section 11125's legislative history makes clear, we should direct operations only where service is essential. *See* S. Rept. 93–302. 93rd Cong., 1st Sess., at 2 (1973). In the brief time available, however, we cannot precisely identify what service is "essential." Therefore, in recognition of another purpose of section 11125 (*i.e.*, prevention of economic disruption), we are initially requiring the continuation of rail service over the entire D&H system,[5] including overhead and on-line services to all present D&H customers.

In order to better determine what D&H service is most essential, we intend, during the initial 45-day period, to analyze the transportation needs of present D&H shippers, as well as the economic potential for existing D&H lines. Our primary concerns will be twofold: (1) Identification of "essential" D&H services; and (2) at least temporary continuation of service to those critical shipping points that do not receive adequate service from other railroads or other transportation modes.

We have chosen the NYS&W as the uncompensated directed service operator for this 45-day period. Both carriers propose identical scopes of operation, and are capable of performing them adequately. Of the two offerors, we initially find that our authorization of NYS&W will rise fewer potential competitive issues.[6]

We invite comments on this action as well as offers from other rail carriers for equivalent operations.

Terms and Conditions

Effective date. Directed Service Order No. 1504 shall be effective on the date D&H discontinues operations and notifies the Commission and the NYS&W that it has done so. NYS&W shall immediately notify the Commission and all parties to this proceeding of the date it commences operations under this authority.

Expiration date. Unless otherwise modified by the Commission, Directed Service Order No. 1504 will expire at 11:59 p.m. on the 45th day from the date NYS&W notifies the Commission that it has commenced service.

Waiver of compensation. NYS&W's authority under Directed Service Order No. 1504 is expressly conditioned upon its waiver of all compensation under 49 U.S.C. 11125(b)(5).

Track safety. In accordance with 49 U.S.C. 11125(b)(2)(a), NYS&W need not operate over any D&H line segments certified by the Federal Railroad Administration (FRA) as being below class I track safety standards.

Cars and operating equipment. In operating D&H's line, NYS&W shall use its own cars and operating equipment wherever possible. However, NYS&W may use D&H cars and operating equipment to the extent authorized in any subsequent orders of the Commission.

Employees. In providing service under this directed service order NYS&W shall comply with the requirements of 11125(b)(4) in dealing with D&H employees.

Preservation of D&H estate. During the period of its operation of the D&H system, NYS&W shall be responsible for preserving the value of that line to the D&H estate. NYS&W shall thus have an affirmative duty to perform that degree of maintenance necessary to avoid deterioration of the line and related facilities.

Rates. NYS&W is authorized to act on behalf of D&H in all matters concerning rates and charges applicable to the line. NYS&W may seek changes in existing D&H rates and charges regarding the line. All such charges shall accrue to NYS&W's account during the effective period of this order, and shall not constitute assets of the D&H estate.

NYS&W's liability for expenses. Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility and liability of NYS&W. Any such costs or expenditures shall not in any way be deemed an obligation or liability of the United States Govrnment. NYS&W shall hold the United States harmless from any all and claims or claimants arising out of authorized service.

Operational difficulties. Any operational difficulties associated with the authorized operations shall be resolved by NYS&W and any other affected party through negotiated agreement, or failing agreement, by the Commission.

Reporting requirements. To assist us in monitoring NYS&W's operation of the line, we shall require NYS&W to file such data as we may require regarding the line.

Traffic reports. NYS&W shall at the end of 30 days from service institution (and, if this order is extended, at the end of each subsequent 30 day period), file with the Commission, on a monthly basis, a traffic report identifying: (a) The number of carloads transported over the line daily; (b) the total gross revenue for those carloads; and (c) D&H's normal portion of the total gross revenue.

We find:

1. D&H intends to discontinue service over its lines and has requested that the Commission select a carrier willing and able to provide continued rail services over its lines.

2. In order to prevent severe transportation and economic disruptions in the event D&H ceases operations, it is necessary for the Commission to authorize NYS&W to operate D&H's lines under 49 U.S.C. 11125 with a waiver of any compensation.

3. Our action in this decision will not substantially impair the ability of NYS&W to serve its own patrons adequately, or to meet its outstanding common carrier obligations. *See* 49 U.S.C. 11125(b)(2)(B).

This action will not significantly affect either the quality of the human environment or energy conservation.

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[3] Likewise, the Commission may authorize directed rail service without provision for compensation of the carrier over which service is directed. *Konsas City Terminal Ry. Co.—Operate—Chicago R.I.& P.*, 360 I.C.C. 289 (1979). Our order here does not contemplate, require or provide compensation to D&H in the circumstances of this case.

[4] At this juncture, we here need not reach D&H's cashlessness claim or the issue of cash shortage (see 49 U.S.C. 11125(a)(1)). We note, however, that we are independenly reviewing D&H's financial position and are conducting an audit, which we expect to complete within approximately 2 weeks.

[5] The D&H system includes service on 569 miles of track owned by D&H as well as the additional 1012 miles of trackage over which service is authorized pursuant to agreements, leases and trackage rights arrangements with other railroads.

[6] We invite comments on this action as well as offers from other carriers for equivalent operations.

It is ordered:

1. NYS&W is authorized to enter upon and operate D&H's lines pursuant to this unsubsidized directed service order under 49 U.S.C. 11125.

(a) The entry may occur on the date D&H discontinues service and shall continue no later than 45 days from the NYS&W notifies the Commission that it has commenced service. (b) NYS&W shall immediately notify the Commission and the parties to this proceeding, in writing, of the date it commences operations under this order.

2. Operations under this order shall conform with the directions prescribed above.

3. All submissions filed in this proceeding should refer to DSO No. 1504 and Finance Docket No. 31295 and be sent to the Commission's headquarters at 12th and Constitution Avenue, NW., Washington, DC 20423. An original and 10 copies should be submitted.

4. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

5. The Commission retains jurisdiction to modify, supplement, or reconsider this order at any time.

6. Notice of this decision shall be given to the general public by publication in the **FEDERAL REGISTER.** This decision will also be served on The Federal Railroad Administration, The Association of American Railroads, The American Shortline Railroad Association, The Regional Railroads of America, Amtrak, The Railway Labor Executives' Association, the D&H, NYS&W, and Conrail.

7. This decision and order shall be effective on June 22, 1988.

8. Unless otherwise modified by the Commission, this decision and order will expire 45 days from the date NYS&W notifies the Commission that it has commenced service.

Decided: June 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Sterrett did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88-14399 Filed 6-27-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 10X)]

Southern Railway Co.; Exemption for Abandonment Between Eden and Leaksville, NC

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.94-mile line of railroad between milepost 26LK+1363 feet near Eden, NC and milepost 27L+1064 feet near Leaksville, NC.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint file by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective July 28, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by July 8, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 18, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: F. Blair Wimbush, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by July 3, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7216.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 17, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-14128 Filed 6-27-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance,* 4 I.C.C. 2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440—48446).

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 Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often 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 and the average hours per respondent.

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

Employment and Training Administration

Evaluation of Teenage Parent Employability Demonstration Projects

One-time

Individuals or households

600 respondents; 200 burden hours; 20 minutes per response; no form

The data collection effort requested here will be used to determine the effectiveness of a demonstration project aimed at the employability development of teenage parents. Outcomes to be examined include earnings, employment, and welfare dependency.

Revision

Bureau of Labor Statistics

Standard Industrial Classification Refiling Forms 1220–0032

Public and private employers; small businesses

Form No.	Respondents	Frequency	For fiscal year	Average time per response (minutes)
BLS 3023R [1]	800,000	One time, nonrecurring	1988	7
BLS 3023V [2]	1,842,525	Annually	1989–91	5.11
BLS 3023C [2]	41,327	Annually	1989–91	5.11
BLS 3023CA [2,3] and BLS 3023P [2,3]				

[1] 91,200 total hours.
[2] 160,127 total hours.
[3] Calculations are not available.

For FY 1988, information is being collected from public and private employers, including small businesses, whose industrial classification may change due to the 1987 revision of the Standard Industrial Classification (SIC) Manual and will be used by Bureau of Labor Statistics (BLS) and cooperating State Employment Security Agencies (SESAs) to assign 1987 SIC codes to employers. For each of FY 1989, 1990, and 1991 and based on an establishment's industrial classification, one-third of the universe and public employers classified as operating establishments will be surveyed. This information will be used by BLS and SEASs to review and update the industrial and geographic codes to employers.

Revision

Occupational Safety and Health Administration Fatality/Catastrophe Reporting, 1218–0007; Form OSHA–36(F) and (S), State and local governments; farms; businesses or other for profit; non-profit institutions; small businesses or organizations, 2,927 responses; 732 hours; 15 minutes per response; 2 forms

All workplace fatalities and catastrophes must be reported so that OSHA can schedule an inspection to investigate. Such reporting is required by law.

Extension

Employment and Training Administration Application for Alien Employment Certification, 1205–0015; ETA 750, On occasion; Individuals or households; Businesses or other for-profit, 850,000 respondents; 125,000 burden hours; 2.5 hours per response; 1 form

The Application for Alien Labor Certification serves as the basic application for labor certification and is used by DOL to fulfill its obligations under 29 CFR 621 and 656.

Extensions

Employment Standards Administration General Regulations under the Walsh-Healy Public Contracts Act 41 CFR Part 50–201(a)(2)(i) and (ii), 50–201.501, 50–201.604(a) and (c) 1215.0162; On occasion; Businesses or other for-profit; small businesses or organizations, 1,888 responses; 157 hours.

Contractors subject to the Public Contracts Act must keep employment records which would permit DOL to determine compliance with the Act. Regular dealers must notify manufacturers that furnish goods directly to the U.S. that the minimum wage and overtime provisions of such contract work is subject to the Act.

Occupational Safety and Health Administration Occupational Exposure to Noise, OSHA 238, 1218–0048, Recordkeeping; On occasion; Businesses or other for-profit; small businesses or organizations, 2,700,306 responses; 5,416,629 hours; 0 forms; 2 hours per response

This standard requires employers to establish and maintain accurate records of employee exposure to noise and the results of audiometric testing performed in compliance with the provisions of the standard. Our previous estimate of 5,959,961 burden hours has been adjusted by 54,332 hours to 5,416,629 hours due to Automated Data Processing systems in some firms

Signed at Washington, DC this 21st day of June, 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88–14508 Filed 6–27–88; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Job Training Partnership Act Advisory Committee; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the establishment of the Job Training Partnership Act (JTPA) Advisory Committee is in the public interest in connection with performance of duties imposed on the Department by JTPA.

The Committee will advise the Department on the issues to be studied in a review of JTPA. The purpose of the review will be to enhance the quality of services provided to JTPA enrollees. The Committee will comment on all analytic products produced during the review. The Committee will be comprised of respresentatives of business, labor, States, local government, community-based organizations, the job training community, State and local education, academia, and public interest groups. Other than the Federal Government members, the members shall not be compensated and shall not be deemed to be employees of the United States.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen (15) days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Job Training Partnership Act Advisory Committee. Such comments should be addressed to: Ms. Dolores Battle, Administrator, Office of Job Training Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N-4459, Washington, DC 20210, Telephone: (202) 535-0236.

Signed at Washington, DC, this 16th day of June 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-14510 Filed 6-27-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 13, 1988–June 17, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,592; Doehler Jarvis/Farley Metals, Inc., Toledo, OH

TA-W-20,616; New York Twist Drill, Inc., Worchester, MA

TA-W-20,516; Parallel Petroleum Corp., Midland, TX

TA-W-20,614; Matsil Brothers, Inc., Long Island City, NY

TA-W-20,613; Interpro Fabricators, Inc., Houston, TX

TA-W-20,623; Huron Forge & Machine Co., Detroit, MI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,619; Southwestern Sheet Metal Works, Inc., Sheet Metal Products Co., El Paso, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,646; Madison Garment Co., Madison Heights, VA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,625; Iwaki Corp., Fairfield, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1984.

TA-W-20,628; Scotts Branch Mine, Pikeville, KY

U.S. imports of steam coal are negligible.

TA-W-20,680; Todd Shipyards Corp., Galveston Div., Galveston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,618; Shampain Citron Clark, Inc., Elizabeth, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,631; White Consolidated Industries, Belding, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,632; White Consolidated Industries, Greenville, MI

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,578; Shenago China Co., New Castle, PA

A certification was issued covering all workers separated on or after March 5, 1987.

TA-W-20,642; International Shoe Co., Perryville, MO

A certification was issued covering all workers separated on or after February 1, 1988.

TA-W-20,608; General Motors Corp., BOC Kalamazoo, Kalamazoo, MI

A certification was issued covering all workers separated on or after April 5, 1987.

TA-W-20,669; Farah Manufacturing Services, El Paso, TX

A certification was issued covering all workers separated on or after May 3, 1987.

TA-W-20,611; The Hoover Co., North Canton, OH

A certification was issued covering all workers engaged in the production of floor care products separated on or after April 5, 1987.

TA-W-20,648; Morris Maler Mfg. Co., Inc., Prescott, AZ

A certification was issued covering all workers separated on or after April 19, 1987 and before April 18, 1988.

TA-W-20,605; Anchor Hocking Industrial Glass, Monaca, PA

A certification was issued covering all workers separated on or after April 1, 1987.

TA-W-20,610; General Motors Corp., AC Spark Plug Div., Flint, MI

A certification was issued covering all workers engaged in the production of

instrument clusters separated on or after April 5, 1987.

A certification as issued covering all workers engaged in the production of oil and air filters separated on or after April 5, 1987 and before January 1, 1988.

I hereby certify that the aforementioned determinations were issued during the period June 13, 1988–June 17, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 21, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–14512 Filed 6–27–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–20,464]

Litton Microwave Cooking Products, Sioux Falls, South Dakota; Negative Determination Regarding Application for Reconsideration

By an application dated May 23, 1988 a company official requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by Local #1180 of the United Electrical Workers on behalf of workers at Litton Microwave Cooking Products, Sioux Falls, South Dakota. The denial notice was signed on April 13, 1988 and published in the **Federal Register** on April 26, 1988 (53 FR 14865).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that the Department's customer survey did not adequately describe Litton's market since several of its large customers are exclusive Litton distributors and do not import. Also, the company claims that at least one large customer switched its purchases from Litton to imports in 1987.

Litton's Sioux Falls workers were certified eligible to apply for adjustment assistance benefits through June 26, 1987 under petition TA–W–15, 830.

In order for a worker group to be certified eligible to apply for adjustment assistance it must meet all three criteria of the Group Eligibility Requirements of the Trade Act of 1974. The subject investigation under TA–W–20, 464 shows that in addition to U.S. imports of microwave ovens decreasing both absolutely and relative to domestic shipments in 1987 compared to 1986. they also decreased absolutely in the last half of 1987 compared to the same period in 1986 and in the first three months of 1988 compared to the same period in 1987

Because of the company's claim concerning the Department's survey, the Department looked at market shares. Data in the investigative file shows that although Litton's market share for microwave ovens declined in 1987 compared to 1986 so did the import share. Customer comments indicate that the market is saturated and highly seasonal with sales coming in the last part of the year. The investigative file shows the seasonality of employment at Sioux Falls with large layoffs in January and February in every year applicable under the petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–14513 Filed 6–27–88; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Child Labor Advisory Committee, Subcommittee on Hazardous Occupations Order No. 10; Meeting

A meeting of the Child Labor Advisory Committee, Subcommittee on Hazardous Occupations Order No. 10, will be held on August 3, 1988, from 9:00 a.m. to 5:00 p.m., and on August 4, 1988, from 9:00 a.m. to 5:00 p.m. This meeting will be held in Room N2437, Frances Perkins Building, Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

The Subcommittee will consider whether a recommendation is necessary with respect to the scope of this Hazardous Order, and whether specific machinery should or should not be covered by this Order.

Members of the public are invited to attend these proceedings; however, since these are work sessions, seating is limited. Written data, reviews or arguments pertaining to the business before the Subcommittee must be received by the Committee Coordinator prior to the meeting date. Twenty-six copies are needed for distribution to the members and for inclusion in the Subcommittee Report.

Telephone inquiries and communications concerning this meeting should be directed to Ms. Nila Stovall, Coordinator for the Child Labor Advisory Committee, Room, S3028, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: area code (202) 523–7640.

Signed at Washington, DC, this 22nd day of June 1988.

Paula V. Smith,

Administrator.

[FR Doc. 88–14509 Filed 6–27–88; 8:45 am]

BILLING CODE 4510–27–M

Office of Federal Contract Compliance Programs

Corporate-level Selection Decisions

AGENCY: Office of Federal Contract Compliance Programs (OFCCP), Labor.

ACTION: Notice.

SUMMARY: On June 14, 1988, the OFCCP issued a Policy Directive designated Order No. 83a1. The Directive provides guidance to Government contractors and subcontractors regarding the formatting of workforce and utilization data for purposes of written Affirmative Action Programs (AAPs).

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Annie A. Blackwell, Director, Division of Policy, Planning and Review, Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor, 200 Constitution Avenue, NW. Washington, DC 20210 (202–523–9430).

SUPPLEMENTARY INFORMATION: On June 14, 1988, the Office of Federal Contract Compliance Programs (OFCCP) issued a new Policy Directive designated as OFCCP Order No. 830a1. The Directive addresses the contents of written affirmative action programs (AAP) for

Government contractors and subcontractors subject to Executive Order 11246, as amended. Because the Directive will affect the way in which many contractors prepare their AAPs the Notice and the full text of the Directive are being published in the **Federal Register** to achieve wide dissemination of the new policy.

The regulations at 41 CFR Part 60–2 require nonconstruction contractors to prepare written APPs for each of their establishments. 41 CFR 60–2.1(a). In preparing their AAPs, contractors must place each job title into a job group, compare the race and sex composition of the incumbents of the job group against availability for the job group, and when there is underutilization establish goals and timetables and action oriented programs for improving the employment of minorities and women. 41 CFR 60–2.11, 60–2.12, 60–2.13. Under existing practice, most contractors include all jobs in the AAP of the establishment in which the job is located.

Among multi-establishment employers selections for some jobs may not be made at the establishment level. For example, plant managers may be selected by the corporate office; likewise, there may be centralized recruitment and hiring for accountants, engineers or other skilled positions. For affirmative action to be most effective, it must be applied at that level in the contractor's organization which has responsibility for the selection at issue. That is, if selections of plant managers are made by the corporate office, it is ineffective to establish in each plant's AAP a goal for the manager of that plant because that plant has no control over attainment of the goal. Instead, it is logical to include all plant managers in one job group at the corporate level, where goals and timetables and other affirmative action measures will relate directly to the actual selections for plant manager positions.

The purpose of Order No. 830a1 is to foster affirmative action in high level managerial, professional and technical jobs. The Directive does this by requiring that corporate office and intermediate level office AAPs include in their "workforce analysis, utilization analysis and goal setting * * * all those positions located in subordinate and/or lower-level establishments for which the selection decisions are made" at the corporate office or intermediate level office. Thus, affirmative action analyses and efforts will be focused where the authority and responsibility for filling positions is located, rather than arbitrarily lodged at each position's site of employment.

During OFCCP's development of this Directive, a number of questions arose as to the scope and effect of the policy. Following are several questions and answers intended to clarify OFCCP's views on this subject.

1. *Question:* When must contractors update their AAPs to conform to Order No. 830a1?

Answer: Contractors are not required to amend their AAPs until their current corporate headquarters or intermediate level AAPs expire, or until 90 days from June 14, 1988, whichever is later.

2. *Question:* How does this policy affect a contractor's right to make its own personnel decisions?

Answer: This Directive does not tell a contractor how to make its staffing decisions or who within the contractor's organization should make them. The policy simply requires that the contractor's AAPs reflect the actual decisionmaking process. Indeed, the Directive states that "[m]anagement should be given substantial discretion in determining proper organizational levels for job title placement * * *."

3. *Question:* By requiring that jobs located in one establishment be carried in another establishment's AAP, does this policy result in duplicate or additional recordkeeping?

Answer: If a particular job is located in one establishment but selection for the job is made at another establishment, the job will be listed only once for purposes of the utilization analysis, goals and timetables and action oriented programs—in the AAP of this establishment where the selection is made. In order for OFCCP to keep track of all jobs, the Directive requires that such jobs be listed in the workforce analysis sections of both AAPs. Two points bear emphasis. First, this policy applies only to a limited number of jobs, and will therefore have no effect whatsoever on the way most jobs are addressed in local establishment AAPs. Second, with the limited exception of requiring that jobs for which selections are not made locally be listed in two workforce analyses, OFCCP is not imposing additional requirements on contractors. Existing rules and policy require that a contractor's AAPs address all of its job titles—this Directive simply further designates the particular AAP within which certain jobs must be addressed.

4. *Question:* In which AAP should a job be listed if the selection is made at one level of the corporation but concurred in at a higher level? What if the level at which selection is made fluctuates from time to time?

Answer: The contractor should use its good judgment in determining the best way to treat such situations. As noted in the answer to question 2, OFCCP is not attempting to dictate to contractors how best to conduct their businesses, and OFCCP will accord the contractor substantial discretion in determining the proper organization level.

5. *Question:* What impact will this Directive have on availability computations?

Answer: The basic approach to computing availability remains unchanged—for each job group the contractor must consider at least the eight avaiability factors set forth in 41 CFR 60–2.11. Of course, because certain positions will now appear in a single job group in the corporate level AAP, rather than being scattered in several AAPs nationwide, the actual availability figure may vary from that previously used.

6. *Question:* How does this Directive affect OFCCP's compliance review procedures? Will OFCCP shift from its emphasis on single establishment reviews to emphasis on simultaneously reviewing an entire corporation?

Answer: OFCCP will continue to conduct nonconstruction compliance reviews as it has in the past, on a single establishment basis. The only deviation from prior practice is that a review of a corporate headquarters or intermediate level establishment will include review of positions for which selections are made at that level but which are located at subordinate level establishments.

7. *Question:* What prompts OFCCP to issue the Directive at this time?

Answer: As the agency charged with administering the nondiscrimination and affirmative action requirements of Executive Order 11246, OFCCP is constantly seeking improved methods and procedures for advancing the employment of minorities and women. Several recent studies, and OFCCP's own experience in reviewing the compliance of Government contractors, have shown that there remains substantial underemployment of minorities and women in managerial, professional and technical occupations. OFCCP believes that one of the reasons for this, although certainly not the only reason, is that the current approach to AAPs does not require contractors to place sufficient scrutiny and emphasis on these jobs. By this Directive, those positions for which the vital staffing decisions are made at a particular corporate level and location will be grouped for analysis and goal setting purposes in the AAP of that same

corporate level and location. In this way, the affected positions, which may be scattered in a number of subordinate establishments, will be incorporated into the AAP of the establishment in which the pertinent decision makers are located and where managerial responsibility for action programs to achieve the goals affecting these positions may be assigned.

June 23, 1988.
Washington, DC.
Jerry D. Blakemore,
Director.

The text of the Directive, OFCCP Order No. 830al, is as follows:

1. *Subject:* Corporate-level Selection Decisions

2. *Purpose:* To provide OFCCP policy/guidance regarding inclusion in corporate or intermediate level affirmative action programs (AAPs) of positions located at individual, subordinate establishments for which selection decisions are made at the corporate or intermediate level

3. *Background:* In the case of multi-establishment contractors, it is not unusual for selection decisions regarding certain positions to be made at the corporate level or at an intermediate level, rather than at the subordinate establishment where the position is located. This is particularly true for example, in the case of plant manager positions, but it also may apply to other positions such as professional and technical jobs. In such cases, it is not appropriate for affirmative action goals for such positions to be established in the subordinate establishment's AAP because the decision to select regarding such positions is not within the control of that establishment. On the other hand, the inclusion of such positions in the AAP of the contractor's corporate or intermediate level offices would provide for utilization analysis and goal setting for those positions to be accomplished at the same level at which the selection decisions are made. OFCCP's practice of encouraging contractors to treat such positions in this fashion is longstanding.

4. *Policy:* Equal Opportunity Specialists conducting a compliance review of a multi-establishment contractor's corporate office or intermediate level office must investigate and otherwise ensure that the affirmative action program of that office includes in its workforce analysis, utilization analysis and goal setting, as required by 41 CFR 60–2.11(a), 60–2.11(b), and 60–2.12, respectively, all those positions located in subordinate and/or lower-level establishments for which the selection decisions are made at the establishment under review. Similarly, Equal Opportunity Specialists conducting a compliance review of a contractor's establishment which is subordinate to a higher-level establishment in the contractor's organization will ensure that all positions in the work force of this lower-level establishment for which the selection decisions are made at a higher corporate level are excluded from the utilization analysis and goal setting of the establishment under review, although such positions must still be shown in the establishment's work force analysis, as required by 41 CFR 60–2.11(a), in order that the complete work force structure of the establishment under review is readily apparent.

In those cases where because of informal or fluctuating managerial appointment authorities, the appropriate level for job title placement cannot be clearly or consistently defined, managerial and other appropriate titles should be placed in the AAP of the highest organizational level where ultimate approval authority may reside. As a result, there may be instances when the majority of mid- and upper-level management and other titles should appropriately be placed in the corporate headquarters' AAP, notwithstanding personnel responsibility at intermediate organizational levels. Management should be given substantial discretion in determining proper organizational levels for job title placement provided such placement is not inconsistent with the purpose of this directive.

OFCCP will not require contractors to amend affirmative action programs to conform to this directive until their current corporate headquarters' or intermediate level's program plans expire, or until ninety (90) days from the date of this directive, whichever is later. At such time, contractors shall be required to conform such plans to this directive.

Jerry D. Blakemore,
Director.
June 14, 1988.

[FR Doc. 88–14552 Filed 6–27–88; 8:45 am]
BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection:
   —DOE/NRC Form 742—Material Balance Report and NUREG/BR–0007, Instructions for completing Forms 742, 742C, and 740M
   —DOE/NRC Form 742C—Physical Inventory Listing
3. The form number if applicable: Same as item 2 above.
4. How often the collection is required: Semiannually for affected special nuclear material licensees. Annually for affected source material licensees. As specified in Facility Attachments for licensees reporting under 10 CFR Part 75.
5. Who will be required or asked to report: Persons licensed to possess specified quantities of special nuclear material or source material.
6. An estimate of the number of responses:
   —DOE/NRC Form 742: 600
   —DOE/NRC Form 742C: 600
7. An estimate of the total number of hours needed to complete the requirement or request:
   —DOE/NRC Form 742: One hour per response, for a total of 600 hours annually.
   —DOE/NRC Form 742C: Eight hours per response, for a total of 4,800 hours annually.
8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.
9. Abstract: Each licensee authorized to possess special nuclear material totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, and any licensee authorized to possess 1,000 kilograms of source material, is required to submit DOE/NRC Form 742. Licensees required to submit DOE/NRC Form 742, and facilities subject to 10 CFR Part 75, are required to submit DOE/NRC Form 742C. The information is used by NRC to fulfull its responsibilities as a participant in the US/IAEA Safeguards Agreement and bilateral agreements with Australia and

Canada and to satisfy its domestic safeguards responsibilities.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 21st day of June 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–14525 Filed 6–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36 issued to Main Yankee Atomic Power Company, (the licensee), for operation of the Main Yankee Atomic Power Station, located in Lincoln County, Maine.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specification (TS) relating to the fuel enrichment limit of the reactor core.

The proposed action is in accordance with the licensee's application for amendment dated March 24, 1988.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide for the change of maximum nominal enrichment of the fuel allowed to be used in the reactor core for operating Cycle 11 and beyond. Main Yankee is currently in Cycle 10 operation.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The proposed revision would allow the licensee to change the fuel enrichment specification from a maximum nominal weight percent of 3.5 U–235 to 3.7 weight percent U–235. Therefore, the proposed change does not increase the probability of consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 29, 1988 (53 FR 15479). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station dated July 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 24, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room, Wiscasset Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 22nd day of June, 1988.

For The Nuclear Regulatory Commission.

Richard H. Wessman,

Dirctor, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–14522 Filed 6–27–88; 8:45 am]

BILLING CODE 7590–01–M

[License No. 6010–2, Docket No. 55–08347, EA 88–164]

Order Suspending License (Effective Immediately) and Denial of Application For Renewal of License; Maurice P. Acosta, Jr.

I

Mr. Maurice P. Acosta, Jr. (Licensee) is the holder of Operator License No. 6010–2 (License) issued by the Nuclear Regulatory Commission (NRC/Commission) or July 1, 1986. He is employed by the Southern California Edison Company (SCE) and is authorized to manipulate the controls of the reactors at San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS). The License was originally issued on July 1, 1982 and last renewed on July 1, 1986. The License is due to expire on July 1, 1988. An application to renew the License was dated on May 12, 1988 and is pending before the NRC.

II

On March 6, 1986, May 12, 1986, and May 28, 1988, the Licensee failed urinalysis screening tests conducted by SCE, testing positive for marijuana. The Confirmed results of those screening tests were subsequently reported to SCE on March 10, 1986, May 15, 1986, and June 2, 1983, respectively. After each of these confirmations, the Licensee was counseled by SCE to emphasize that access authorization is contingent on abstinence from the use of illegal drugs. As a result of these positive test results, SCE has administratively suspended Licensee's protected area access in accordance with SCE's procedures.

III

The responsibilities associated with a reactor operator license issued pursuant to 10 CFR Part 55 are significant with respect to the protection of the public health and safety. The execution of these responsibilities requires sound judgment and may at times require a licensed operator to react quickly to assure that the reactor is properly

operated or to mitigate the consequence of abnormal operation. Failure of a licensed operator to be fit for duty and alert creates an undue risk to the public health and safety.

The character of the individual, including the individual's exercise of sound judgment, is a consideration in issuing an operator license. *See* section 182a of the Atomic Energy Act of 1954, as amended. In determining whether or not an individual seeking a license to be a reactor operator has the necessary character, including sound judgment, the Commission may take into account a history of illegal drug use by the applicant. Prior to May 26, 1987, each applicant for a license to be a reactor operator was required to certify that he/she had no drug or narcotic habit on the Certificate of Medical History, NRC Form 396. Since May 1987, the NRC has required an evaluation of the applicant prepared by a licensed medical practitioner as part of a license application. *See* 10 CFR 55.23(a). This evaluation is presented on a Certificate of Medical Examination, NRC Form 396. *See* 10 CFR 55.23. Among the factors to be considered by the certifying physician are factors such as continued use of illegal drugs or abuse of alcohol. *See* Form 396; also ANSI/ANS 3.4–1983, Section 5.2.2.

The Commission's Policy Statement on Fitness for Duty (51 FR 27921; August 4, 1986) provides that all nuclear power plant utilities should establish programs to provide reasonable assurance that all nuclear power plant personnel with access to vital areas at operating plants are fit for duty. SCE has established procedures to restrict and monitor the use of illegal drugs by persons granted unescorted access to protected and vital areas of SONGS.

IV

The Licensee's history of positive drug tests indicates a continuing use of marijuana and violation of SCE's drug program. This suggests a pattern of behavior and lack of sound judgment that may be inimical to the public health and safety. The failure of the Licensee to conform to SCE's prohibition against illegal drug use, which has the purpose of protecting the public health and safety, demonstrates a disregard of the important obligations of a licensed operator and of the public's trust in him. While the tests themselves do not necessarily establish that the Licensee was incapacitated at the time the samples were taken, the NRC does not have the necessary reasonable assurance that the Licensee will carry out his duties in the future with sufficient alertness and ability to safely operate SONGS and observe all applicable requirements including obligations imposed by SCE's policies and procedures, as well as the NRC's requirements. For these reasons, if at the time the License was issued, the NRC had known of the Licensee's inability or unwillingness to refrain from the use of illegal drugs, the License would not have been issued. Section 186 of the Atomic Energy Act of 1954, as amended, and 10 CFR 55.61(b) provide that a license may be revoked for any reason for which a license would not be issued upon an original application. The past performance of the Licensee in contravention of SCE's drug program is a relevant consideration in denial of a renewal application under 10 CFR 55.57(b)(4).

Consequently, I have determined that permitting this Licensee to conduct licensed activities would be inimical to the public health and safety, and therefore the License should be suspended. I have also determined, pursuant to 10 CFR 2.201(c) and 2.202(f), that the public health and safety requires that this action be immediately effective. In addition, because the Licensee has failed to demonstrate that he is capable of continuing to competently and safely assume license duties, 10 CFR 55.57(b)(2)(i), or that his part performance has been satisfactory, 10 CFR 55.57(b), in light of the drug test results, I have determined that the renewal application should be denied.

V

In view of the foregoing and pursuant to sections 107, 161 b and i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.103 and 2.202 and 10 CFR Part 55, *It Is Hereby Ordered That:*

A. Effective immediately, activities authorized under License No. OP 6010–2 are hereby suspended and the Licensee shall not manipulate the controls of the reactors at the San Onofre Nuclear Generating Station, Units 2 and 3 or otherwise engage in activities reserved for licensed nuclear plant operators, pending final action on the Licensee's renewal application.

B. The renewal application for License OP 6010–2 is denied.

VI

Pursuant to 10 CFR 2.202(b), the Licensee may show cause why this Order should not have been issued and why his renewal application should not be denied by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the Licensee relies. The Licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the provisions specified in Section V above. Upon consent of the Licensee to the provisions set forth in Section V of this Order, or upon the Licensee's failure to file an answer within the specified time, the provisions specified in Section V above shall be final without further Order and the License shall be terminated.

VII

Pursuant to 10 CFR 2.103(b) and 2.202(b), the Licensee or any other person adversely affected by this Order may request a hearing within 20 days of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address and to the Regional Administrator, NRC Region V, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An Answer To This Order Or A Request For Hearing Shall Not Stay The Immediate Effectiveness Of Section V.A Of This Order.

If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland this 15th day of June 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–14521 Filed 6–27–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–325 and 50–324]

Carolina Power and Light Co., Brunswick Steam Electric Plant, Units 1 and 2; Exemption

I

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–71 and DPR–62, which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2. The licenses provide, among other things, that the facilities

are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 103(c)(2) to 10 CFR Part 20 requires a determination by a physician at least once very 12 months that an individual is physically able to use the respiratory protective equipment in an environment containing airborne radioactive material.

By letter dated January 30, 1986, the licensee requested an exemption from 10 CFR 20.103(c)(2) with regard to the interval for the administration of a physical examination for users of respiratory equipment. Specifically, the licensee requested an exemption to permit the physicals to be administered at an interval of every 9 to 15 months rather than the currently scheduled 8 to 12 months. In support of its request, the licensee notes that the exemption would provide greater flexibility in scheduling of examinations and would preclude the need for administration of two examinations in the same calendar year.

The acceptability of the exemption request is discussed below.

III

In order to satisfy the 10 CFR 20.103(c)(2) requirement of "at least once every 12 months," the licensee has to administratively schedule the physical examinations every 8 to 12 months because of the large number of workers for whom these examinations have to be scheduled. Therefore, over a period of a few years, a substantial number of workers would receive two physical examinations within one calendar year. This would result in an unnecessary expenditure of the licensee's resources. On the other hand, according to the licensee's proposed schedule of a physical examination of every 9 to 15 months, it would be possible for a worker to average fewer than one examination every year over an extended period of time, for example, only four examinations in five years. This practice clearly does not meet the intent of the regulation.

In order to provide the licensee with administrative flexibility and yet meet the intent of the regulation to provide one physical examination every year, the staff has determined that an exemption to 10 CFR 20.103(c)(2), as requested by the licensee, with a provision that the total time over any three consecutive physical examination periods will not exceed 39 months, should be granted.

The Commission has determined that, pursuant to 10 CFR 20.501, this exemption is authorized by law, and will not result in undue hazard to life or property. Accordingly, the Commission hereby grants an exemption related to the time interval requirement of 10 CFR 20.103(c)(2) on physical examinations from "at least once every 12 months" to "every 9 to 15 months, provided that the total time over any three consecutive physical examination periods does not exceed 39 months." Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (53 FR 18627).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 21st day of June 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-14524 Filed 6-27-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-62 issued to Illinois Power Company[1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. (the licensees), for operation of Clinton Power Station, Unit 1 located in DeWitt County, Illinois.

This amendment includes a proposed change to Technical Specification Tables 2.2.1-1 and 3.3.2-2 for the main steam line radiation-high full power background radiation levels and associated trip setpoints. The proposed change consists of the addition of a footnote to the text regarding the hydrogen injection test and its effect on the main steam line radiation-high trip function. This proposed change will permit the main steam line radiation monitor setpoints to be temporarily changed based on either calculations or measurements of actual radiation levels resulting from the hydrogen injection test. Illinois Power Company intends to perform a hydrogen injection test on the reactor coolant system at the Clinton Power Station. The purpose of the test is to determine the feasibility of hydrogen water chemistry control as a means of reducing intergranular stress corrosion cracking of stainless steel piping.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 28, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intevene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to Leif J. Norrholm: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** Notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zable, Esq., of Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 18, 1988, as supplemented on June 2, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 21st day of June 1988.

For the Nuclear Regulatory Commission.

Leif J. Norrholm,

Acting Director, Project Directorate III-2, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 88–14523 Filed 6–27–88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service, Schedules A, B, and C; Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted services, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on May 24, 1988 (53 FR 18632). Individual authorities established or revoked under Schedule A, B, or C between May 1, 1988, and May 31, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions were established:

Department of Treasury

Two positions of Senior Visiting Pension Actuary, GS–1510–14/15, in the Internal Revenue Service. Appointments to these positions must be for periods not to exceed 24 months. Effective May 4, 1988.

Department of Defense

Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under Part 302, Chapter I, 5 CFR, are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to exend the service limits contained in any other appointing authority. Effective May 3, 1988.

The following exceptions were revoked:

Department of Health and Human Service, Saint Elizabeth's Hospital

Fifteen positions of psychodrama trainees, including interns and first and second-year residents. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351 and 5352. Effective May 19, 1988.

Positions of Chaplain Residents: Provided, the employment under this authority shall not exceed 39 months for any individual. This authority shall be applied only to positions whose compensation if fixed in accordance with the provisions of 5 U.S.C. 5351 and 5352. Effective May 19, 1988.

Ten positions of group dynamics and group psychotherapy trainees, including interns and residents in the Overholser Training and Research Division. Employment under this authority shall not exceed 2 years, and shall be applied only to positions with compensation fixed under 5 U.S.C. 5351 and 5352. Effective May 19, 1988.

Ten positions of Interns, Residents and Fellows for work in mental health and deafness. Employment under this authority may not exceed 1 year for any individual. Effective May 19, 1988.

Fifteen positions of Interns and Residents in Applied and Evaluative Research (Mental Health) Program. Employment under this authority may not exceed 2 years for any individual. Effective May 19, 1988.

Schedule B

No Schedule B authorities were established or revoked during May.

Schedule C

Department of Agriculture

One Private Secretary to the Assistant Secretary for Marketing and Inspection Services. Effective May 12, 1988.

Department of Commerce

One Confidential Assistant to the Assitant Secretary for Tourism Marketing. Effective May 2, 1988.

One Congressional Liaison Specialist to the Director for Congressional Affairs Staff, Bureau of Export Administration. Effective May 2, 1988.

On Special Assistant to the Chief Scientist for National Oceanic and Atmospheric Administration. Effective May 12, 1988.

One Confidential Assistant to the Deputy Unde Secretary for Travel and Tourism. Effective May 16, 1988.

One Confidential Assistant to the Deputy Under Secretary for International Trade Administration. Effective May 24, 1988.

Department of Defense

One Personal and Confidential Assistant to the Director of Defense Research and Engineering. Effective May 2, 1988.

One Law Clerk to the Judge for the United States Court of Military Appeals. Effective May 3, 1988.

Department of Education

One Executive Director, Intergovernmental Advisory Council on Education to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective May 3, 1988.

One Confidential Assistant to the Assistant Secretary for Civil Rights. Effective May 13, 1988.

One Deputy Secretary's Regional Representative to the Secretary's Regional Representative for the Office of Intergovernmental/Interagency Affairs. Effective May 24, 1988.

One Special Assistant to the Director for the Office of Bilingual Education and Minority Languages Affairs. Effective May 24, 1988.

One Confidential Assistant to the Under Secretary. Effective May 26, 1988.

Department of Energy

One Confidential Assistant (Secretary) to the Assitant Secretary for Fossil Energy. Effective May 11, 1988.

One Staff Assistant to the Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 13, 1988.

One Deputy Director to the Director for Office of Congressional Affairs. Effective May 18, 1988.

One Deputy Assistant Secretary for Senate Liaison to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 18, 1988.

Department of Health and Human Services

One Special Assistant to the Deputy Assistant Secretary for Human Development Services. Effective May 3, 1988.

One Special Assistant to the Under Secretary. Effective May 3, 1988.

Department of Housing and Urban Development

One Executive Assistant to the Assistant Secretary for Housing. Effective May 2, 1988.

One Associate General Deputy Assistant Secretary to the General Deputy Assistant Secretary for Public and Indian Housing. Effective May 4, 1988.

One Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective May 18, 1988.

One Associate Deputy General Counsel to General Counsel. Effective May 23, 1988.

One Assistant to the Deputy Assistant Secretary for Congressional Relations. Effective May 24, 1988.

Department of Justice

One Special Assistant to the Assistant Attorney General for Civil Division. Effective May 2, 1988.

One Public Affairs Officer to the Director for Office of Congressional and Public Affairs. Effective May 18, 1988.

One Confidential Assistant to the Associate Deputy Attorney General. Effective May 18, 1988.

One Special Counsel to the Associate Attorney General. Effective May 24, 1988.

Department of Labor

One Executive Assistant to the Deputy Under Secretary for International Affairs. Effective May 26, 1988.

One Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective May 26, 1988.

Department of the Navy

One Private Secretary to the Assistant Secretary of the Navy for Research, Engineering and Systems. Effective May 12, 1988.

Department of State

One Staff Assistant to the Deputy Secretary of State. Effective May 24, 1988.

Department of Transportation

One Congressional Liaison Officer to the Director for Office of Congressional Affairs. Effective May 2, 1988.

One Special Assistant to the Assistant Secretary for Governmental Affairs. Effective May 2, 1988.

One Confidential Assistant to the Assistant Secretary for Governmental Affairs. Effective May 5, 1988.

Department of Treasury

One Legislative Manager to the Assistant Secretary for Legislative Affairs. Effective May 3, 1988.

One Confidential Assistant to the Secretary. Effective May 12, 1988.

Agency for International Development

One Special Assistant to the Deputy Assistant Administrator for Bureau of External Affairs. Effective May 3, 1988.

Arms Control and Disarmament Agency

One Secretary (Stenography) to the Deputy Director. Effective May 2, 1988.

One Deputy Director to the Director for Office of Congressional Affairs. Effective May 5, 1988.

Commission on Civil Rights

One Special Assistant to the Staff Director. Effective May 10, 1988.

Environmental Protection Agency

One Special Assistant to the Assistant Administrator for Office of Administration and Resources Management. Effective May 3, 1988.

Federal Communications Commission

One Special Assistant to the Director for the Office of Public Affairs. Effective May 24, 1988.

Federal Emergency Management Agency

One Confidential Assistant to the Associate Director for External Affairs Directorate. Effective May 16, 1988.

Office of Management and Budget

One Staff Assistant to the Associate Director for Legislative Affairs. Effective May 24, 1988.

Federal Labor Relations Authority

One Special Assistant to the General Counsel. Effective May 3, 1988.

International Trade Commission

One Staff Assistant (Legal) to a Commissioner. Effective May 12, 1988.

One Confidential Assistant to a Commissioner. Effective May 25, 1988.

National Credit Union Administration

One Executive Assistant to a Board Member. Effective May 20, 1988.

Small Business Administration

One Special Assistant to the Administrator. Effective May 6, 1988.

United States Tax Court

One Trial Clerk to a Judge. Effective May 18, 1988.

Veterans Administration

One Confidential Assistant to the Director for the Office of Intergovernmental Affairs. Effective May 18, 1988.

U.S. Office of Personnel Management

Constance Horner,

Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

[FR Doc. 88–14354 Filed 6–27–88; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. MC88-2; Order No. 791]

Mail Classification Schedule, 1988, Second-Class Eligibility

Issued June 23, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom, W. H. "Trey" LeBlanc, III

Notice is hereby given that on June 17, 1988, the United States Postal Service, pursuant to § 3623 of title 39, United States Code, filed a request with the Postal Rate Commission for a Recommended Decision on proposed changes to the Domestic Mail Classification Schedule to exclude "Plus" publications from second class. "Plus" publications are total market coverage publications consisting primarily of advertising with minimal amounts of nonadvertising. The Service proposes to achieve this objective by expanding the definition of "separate publications" in DMCS § 200.0123 to include issues published on the same day as another regular issue "or at such other frequency as prescribed by the Postal Service by Regulation" and such issue is distributed to more than 10 percent nonsubscribers or twice as many nonsubscribers as another issue on the same day or "if no other issue that day, any other issue distributed at the same frequency," whichever is greater. 39 CFR 3001.68, 200.0123.[1] This filing has been designated Docket No. MC88–2.

The proposal was accompanied by the filing of the Direct Testimony of Ernest J. Collins in support of the proposal.

Motion for waiver of Rules 64(b)(3). Simultaneously with the filing of the case, the Postal Service filed a Motion for Waiver of section 64(b)(3) of the Commission's rules of practice. [39 CFR 3001.64(b)(3)]. Section 64(b)(3) requires the Postal Service to file a statement "identifying the degree of economic substitutability between the various classes and subclasses" including a description of cross-elasticity of demand between various classes of mail.

The Postal Service says that it should be granted a waiver because the proposed changes will not cause any actual changes in the manner in which mail is handled. Accordingly, because the proposed changes are limited to clarifying the Service's authority to prevent mailing of Plus publications at second class rates, an analysis of the economic substitutability of the different classes of mail is neither necessary or useful. Persons who wish to address the Postal Service's motion should file their answers on or before July 25, 1988.

The request of the Postal Service for a recommended decision on establishing changes to the Domestic Mail Classification Schedule and the motion for waiver of certain filing provisions of the Commission's rules of practice and procedure are on file with the Commission and are available for public inspection during regularn business hours.

Intervention. Any person desiring to be heard with reference to the proposal submitted by the Postal Service in Docket No. MC88–2 and to become a party to the proceeding, or to participate as a party in any hearing thereon, should file a notice of intervention. Notices of intervention must be filed with the Secretary, Postal Rate Commission, Washington, DC 20268–0001 on or before July 25, 1988, and must be in accordance with section 20 of the Commission's rules of practice [39 CFR 3001.20]. We direct specific attention to section 20(b) which provides that notices of intervention shall affirmatively state whether or not the petitioner requests a hearing, or, in lieu thereof, a conference; and further, whether or not the petitioner intends to participate actively in the hearing.[2] Alternatively, persons seeking limited participation but who do not wish to become parties may, on or before July 25, 1988, file a written notice of limited participation, pursuant to § 3001.20a. In addition, persons wishing to express their views informally, and not desiring to become a party or limited participant, may file comments pursuant to section 20b of the Commission's rules, 39 CFR 3001.20b.

Officer of the Commission. The Officer of the Commission charged with representing the interests of the general public in this docket [39 U.S.C. § 3624(a)] is Stephen A. Gold, Director, Office of the Consumer Advocate. During this proceeding, he will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in nor advise as to any Commission decision [39 CFR 3001.8]. The Officer of the Commission shall supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case.

In this case the Officer of the Commission shall be separately served with three copies of all filings, in addition to and simultaneously with service on the Commission of the 25 copies required by section 10(c) of the rules of practice [39 CFR 3001.10(c)].

The Commission Orders

(A) Notices of intervention as a full or limited participator in this docket shall be sent to Charles L. Clapp, Secretary, Postal Service Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001, on or before July 25, 1988.

(B) Responses to the Postal Service's motion for waiver of sections 64(b)(3) and 64(c) of the rules of practice shall be due on or before July 25, 1988.

(C) Stephen A. Gold is designated Officer of the Commission to represent the interests of the general public in this proceeding. Service of documents on the Commission shall not constitute service on the Officer of the Commission, who shall separately be served three copies of all documents.

(D) The Secretary shall cause this Notice and Order to be published in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 88–14568 Filed 6–27–88; 8:45 am]

BILLING CODE 7715-01-M

[1] The specific changes to the Domestic Mail Classification Schedule are set out in legislative format in Attachment A of the Postal Service's Request.

[2] Parties are encouraged to inform the Postal Service informally and promptly of desired preliminary clarifications of the Postal Service's presentation, and to consider the possibility of settlement of any or all issues or questions of fact. If the Postal Service believes that settlement negotiations may be fruitful, it should consider filing a motion to postpone the prehearing conference.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25831; File No. SR-NASD-88-21]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Article III, Section 21 of the NASD Rules of Fair Practice

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Article III, Section 21 of the NASD Rules of Fair Practice to require the marking of customer order tickets for each transaction in the non-NASDAQ security to reflect the dealers contacted to determine the best inter-dealer market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Recently, the NASD adopted proposed rule changes that provide for the routine surveillance of the non-NASDAQ, over-the-counter ("OTC") securities market. The proposed rule changes providing for new Schedule H to the NASD By-Laws were approved by the Commission on May 2, 1988.[1] In pertinent part, the new rules also amend the Interpretation of the Board of Governors—Execution of Retail Transactions in the Over-the-Counter Market (the "Best Execution Interpretation") by adding a new paragraph (D) that requires members to check a minimum of three dealers (or all dealers in a security if three or less) prior to executing any transaction on behalf of a customer in a non-NASDAQ security.

In order for members to demonstrate compliance with the new amendment to the Best Execution Interpretation, the NASD is proposing to amend Article III, Section 21 of the NASD Rules of Fair Practice (pertaining to the maintenance of books and records). The proposed amendment to Section 21 would require that a member demonstrate its compliance with the Interpretation by noting on its order ticket the identities of the dealers contacted and the quotations received to determine the best inter-dealer markets as required by the amended Best Execution Interpretation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment creates any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding (ii) as to which the self-regulatory organization constents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commissoin, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be avalailable for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 19, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR. 200.30-3(a)(12).

Dated: June 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14516 Filed 6-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25826; File No. SR-NYSE-87-48]

Self-Regulatory Organization; New York Stock Exchange, Inc. Order Approving Proposed Rule Change

On December 15, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Commission, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4[2] thereunder, a proposed rule change that provides for annual adjustments to the Exchange's Electronic Access Membership fee.

Notice of the proposal together with its terms of substance was provided in a Commission release (Securities Exchange Act Rel. No. 25451, March 11, 1988) and by publication in the Federal Register 53 FR 9157. No comments were received with regard to the proposal.

As provided in the Exchange's Constitution, Electronic Access Membership dues currently are determined by the Exchange's Board of Directors, whereas the costs of other forms of access, including the purchase of equity seats and the establishing of lease rentals, are determined by market conditions in negotiations between buyer and seller or lessor and lessee. Consequently, as the prices of equity

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[1] *See* File No. SR-NASD-87-55, Securities Exchange Act Release 25637, May 2, 1988.

[1] 15 U.S.C. 78s(b)(3)(A).

[2] 17 CFR 240.19b-4.

seats and lease rentals rose significantly in recent years, the cost of an electronic access membership remained unchanged. The Exchange addressed this disparity in the first portion of this filing, imposing a rate increase in the Electronic Access Membership fee from $37,000 to $77,000. The Commission granted immediate effectiveness to this part of the proposed rule change.[3]

The other part of the proposed rule change would permit the Exchange to adjust, on an annual basis, the membership fee incurred by electronic access members. The revised fee would be 70% of the 12 month average Physical Access fee.[4] The Exchange believes that the annual adjustments in the fee will create a mechanism that will ensure that the cost of an electronic access membership is periodically updated to reflect its true market value.[5]

After careful review, the Commission believes that the proposal to enable the Exchange to adjust annually its Electronic Access Membership fee is reasonable. In this regard, the Commission agrees with the Exchange that the annual adjustments in the fee should ensure that the cost of an Electronic Access Membership realistically reflects its market value. Further, the Commission believes that the proposal will establish consistency in the pricing of the various forms of Exchange access as the cost of each form will now be determined by its prevailing market value. Accordingly, the proposal is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

At the same time, the Commission notes that while it generally considers annual adjustments in the fee appropriate, it nevertheless expects the NYSE to continue to submit to the Commission, for review and approval, pursuant to Section 19(b) of the Act, proposed rule changes implementing the annual adjustments in Electronic Access Membership fee. The submissions will ensure that the general public, including Exchange members, have an opportunity to comment upon any aspect of the proposal fee adjustment. The Commission further notes that any future NYSE proposal seeking to revise its Physical Access fee must contain a statement discussing the impact of the proposed fee increase upon the Electronic Access Membership fee since the annual adjustments in the Electronic Access Membership fee will be directly affected by changes in the fee assessed to Physical Access members. In view of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14560 Filed 6-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25825; File No. SR-Phlx-88-11]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On March 25, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and the rules and regulations thereunder, copies of a proposed rule change that would permit Phlx specialists to receive primary issue orders over the PACE system.

Notice of the proposal together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25606, April 21, 1988) and by publication on the Federal Register (53 FR 15326). No comments were received in connection with the filing.

Under current Phlx rules, orders in Phlx primary issues are ineligible for delivery over the PACE system; only orders in secondary issues can be sent over the system.[2] Consequently, to enter orders in primary issues, member firms must either contact the specialists or floor brokers handling the stocks by telephone or send messages to them by private wire. As a result of the proposed rule change, however, member firms will now be permitted to transmit orders in Phlx primary listings to the Exchange floor over PACE.

According to the Exchange, participation in the program by Phlx specialists and member firms will be voluntary. To participate in the service, a specialist must elect to place one or more primary issues on PACE; thereafter, member firms will be allowed to route orders in these securities to the specialist on the trading floor over PACE. The Exchange notes, however, that the new service will be limited to order routing; Phlx specialists will continue to be required to execute these orders on a manual basis.

The Exchange states that the purpose of the proposal is to provide an alternate method of routing order flow in primary issues to the Exchange floor. Further, the Exchange maintains that the proposal is consistent with section 6(b)(5) of the Act in that the proposal will facilitate more efficient order handling of primary issues.

After careful consideration, the Commission believes the proposal is appropriate and consistent with the Act. In particular, the Commission notes that the proposal will allow orders in Phlx primary listings to be delivered to the Exchange floor on a fully automated basis, thereby making the task of transmitting such orders less costly and time consuming. For example, member firms participating in the program will no longer need telephone or private wire contact with floor brokers or specialists to enter these orders; consequently, these firms will not incur the expenses typically associated with telephone or private wire use. Further, participation in the program will be voluntary. Phlx specialists and member firms will have the discretion to determine whether their interests would be furthered by participating in the service. Finally, although the proposal increases the

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[3] *See* Securities Exchange Act Rel. No. 25451, March 11, 1988) 534 FR 9157.

[4] Using this formula, the 1989 Electronic Access Membership fee would be $96,922. To obtain this figure, electronic access member firms would compute 70% of $138,460, the 12 month average Physical Access fee ($136,960) plus a standard fee of $1,500. The Commission notes that in some instances of the annual adjustment in the Electronic Access Membership fee may lead to a reduction in the fee incurred by electronic access member firms, should the 12 month average Physical Access fee decline from the preceding year.

[5] Physical Access fees are determined by calculating the 12 month average of lease rentals.

[1] 15 U.S.C. 78s(b)(1).

[2] For purposes of the proposed rule, Phlx "primary" issues would be deemed to include any securities traded solely on Phlx or any securities traded on Phlx that are listed on another regional exchange or on NASDAQ but that are not listed on the NYSE or Amex, whether these securities are listed on Phlx or traded on Phlx pursuant to unlisted trading privileges. According to the Exchange, there are currently 83 priamry issues listed on the Exchange; however, approximately 30 issues are not actively traded. Accordingly, the maximum number of primary issues eligible for order routing under the proposal would be 53.

number of issues eligible for order routing over PACE, Phlx has indicated to the Commission that the increased order flow will not negatively impact PACE's system capacities, and that it would be extremely unlikely that the additional order flow from primary issues would lead to queuing during periods of increased trading volume or heavy system traffic.[3]

Based upon the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[3] Telephone conversation between Michael Finnegan, Senior Vice President, Phlx, and Ervin L. Jones, Jr., Attorney, Division of Market Regulation, on June 16, 1988. The Phlx indicates that PACE's current capacity is 50 orders per minute, which translate into the delivery of 19,500 orders per trading day. The Phlx believes that the additional order flow resulting from the delivery of primary issue orders over PACE will only utilize a small fraction (less than 3%) of the system's current capacity.

Dated: June 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14561 Filed 6-27-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-88-20]

Petitions for Exemption; Summary and Disposition

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: July 18, 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 June 20, 1988.

Deborah E. Swank,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
18324	American Airlines	14 CFR 43.3 and 121.709(b)(3)	To extend Exemption No. 2678E, as amended, that allows petitioner's certified flight engineers to stow supplemental oxygen masks during flight and to make an entry in the aircraft maintenance logbook.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
20314	Flight training devices	14 CFR 61.63(d)(2) and (3), 61.157(d)(1) and (2), and portions of Appendix A of Part 61.	To amend Exemption No. 3022, as amended, that allows petitioner to use the FAA-approved visual simulators to meet certain training and testing requirements of the FAR. This amendment modifies Condition No. VI to grant relief for simulator instructors. *Grant, June 15, 1988, Exemption No. 3022E.*
25238	Chromalloy American Corp	14 CFR 145.1(b)	To allow petitioner to be a domestic repair station partially located within the United States and partially located outside the United States. *Grant, June 9, 1988, Exemption No. 4948.*
25242	Experimental Aircraft Association	14 CFR 61.58(c) and 91.4	To allow pilots who are members of the petitioner and who have successfully completed the FAA accepted training program, within the preceding 12 months, to act as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember, without having completed a pilot proficiency check administered by an FAA inspector or pilot proficiency examiner as required. *Grant, June 7, 1988, Exemption No. 4941.*

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
25286	United States Parachute Association	14 CFR 91.15(a)(2), 91.47, and 105.43(a)(2).	To allow foreign nationals to participate in the U.S. National Skydiving Championship events at Muskogee Municipal Airport (Davis Field), Muskogee, Oklahoma, and at other locations to be determined without having to comply with parachute equipment and packing requirements. In addition, to allow the carriage of 40 parachutists in the DC-3/C-47 aircraft during parachute competitions. *Grant, June 10, 1988, Exemption No. 4946.*
25310	John Wayne Stanis	14 CFR 61.151(a) and (b); 61.155(a) and (b)(1) and (2); and 63.37(a)(1) and (2) and (b)(1-7).	To allow petitioner to: (1) Have his private pilot certificate reinstated; (2) revalidate his airline transport pilot (ATP) written test retroactive to November 8, 2985; (3) determine that he is eligible to take an ATP flight test; and (4) release his flight engineer, B-727, written test taken on Decembrer 21, 1985. *Denial, June 15, 1988, Exemption No. 4951.*
25405	Peninsula Airways, Inc	14 CFR 43.3(a) and (g)	To allow petitioner's pilots to perform the preventive maintenance functions of removing and replacing the passenger seats and seat belts of petitioner's aircraft used in FAR Part 135 operations. *Grant, June 13, 1988, Exemption No. 4949.*
25562	Bar Harbor Airways, Inc., dba Eastern Express.	14 CFR 135.225(e)(1)	To allow pilots of petitioner to perform IFR takeoffs at foreign airports when the visibility is less than 1 mile. *Grant, June 10, 1988, Exemption No. 4947.*
25575	United Parcel Service	14 CFR Part 121, Appendix H	To allow petitioner to utilize certain of its instructor and check airmen to conduct training under an Advanced Simulation Training Program (ASTP) who have less than 1 year employment with petitioner. *Grant, June 7, 1988, Exemption No. 4940.*

[FR Doc. 88-14470 Filed 6-27-88; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the moving expense schedule for displaced persons for all States, including the District of Columbia and Puerto Rico, as required by section 405(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat. 132 (1987 Amendments).

EFFECTIVE DATE: The provisions of this Notice are effective June 28, 1988. For further information about implementation dates, see the discussion in the supplementary information section below.

FOR FURTHER INFORMATION CONTACT: Gerald Starkweather, Operations Division, Office of Right-of-Way (202-366-2037); or Reid Alsop, Office of the Chief Counsel (202-366-1371), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours, Monday—Friday are from 7:45 a.m. to 4:15 p.m., ET.

SUPPLEMENTARY INFORMATION: Section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (Uniform Act), as amended by section 405(b) of the 1987 Amendments provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense and dislocation allowance schedule established by the head of the lead agency as an alternative to being paid for moving and related expenses actually incurred. Section 405(b) eliminated specific limitations on the amounts that could be provided pursuant to such a schedule. Implementing regulations at 49 CFR 24.302 provide that FHWA will develop and approve this schedule.

The purpose of this notice is to publish the schedule approved by FHWA for the use of all Federal, State and local governments, and persons affected by the Uniform Act, as amended. It has been developed from data provided by States, and incorporates the dislocation allowance within the schedule's payment amounts. Exceptions and limitations governing the use of this schedule are found at 49 CFR 24.302.

The separate moving expense schedule for mobile homes has been discontinued. Occupants of mobile homes may be paid for moving their personal property within the mobile home in accordance with the attached moving expense schedule. Any payment for moving the mobile home itself will be made on an actual cost basis.

Implementation Dates

Any government, agency or person that is in compliance with 49 CFR Part 24 may implement the schedule being published today. Any government, agency or person that is unable to comply with 49 CFR Part 24 at this time may continue to use the moving expense schedule published in the Federal Register on December 30, 1986, until April 2, 1989. The schedule published herewith becomes mandatory no later than April 2, 1989, the date that the 1987 Amendments and 49 CFR Part 24 become fully applicable. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(42 U.S.C. 4601; 49 CFR 24.302(a)).

Issued on: June 7, 1988.

Robert E. Farris,

Deputy Administrator.

RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE PAYMENT

State	Occupant provides furniture									Occupant does not provide furniture	
	Number of rooms of furniture								Each additional rm.	First room	Each additional room
	1	2	3	4	5	6	7	8			
Alabama	250	350	450	550	625	700	775	850	75	200	25
Alaska	350	500	650	800	925	1,050	1,175	1,300	100	225	35
Arizona	250	400	550	650	750	850	950	1,050	100	225	35
Arkansas	250	350	450	550	625	700	775	850	75	200	25
California	250	400	550	650	750	850	950	1,050	100	225	35
Colorado	250	400	550	650	750	850	950	1,050	100	225	35
Connecticut	250	400	550	650	750	850	950	1,050	100	225	35
Delaware	250	350	450	550	625	700	775	850	75	200	25
District of Columbia	250	400	550	650	750	850	950	1,050	100	225	35
Florida	250	350	450	550	625	700	775	850	75	200	25
Georgia	250	350	450	550	625	700	775	850	75	200	25
Hawaii	250	400	550	650	750	850	950	1,050	100	225	35
Idaho	250	350	450	550	625	700	775	850	75	200	25
Illinois	250	400	550	650	750	850	950	1,050	100	225	35
Indiana	250	400	550	650	750	850	950	1,050	100	225	35
Iowa	250	350	450	550	625	700	775	850	75	200	25
Kansas	250	350	450	550	625	700	775	850	75	200	25
Kentucky	250	400	550	650	750	850	950	1,050	100	225	35
Louisiana	250	350	450	550	625	700	775	850	75	200	25
Maine	250	350	450	550	625	700	775	850	75	200	25
Maryland	250	400	550	650	750	850	950	1,050	100	225	35
Massachusetts	250	400	550	650	750	850	950	1,050	100	225	35
Michigan	250	400	550	650	750	850	950	1,050	100	225	35
Minnesota	250	400	550	650	750	850	950	1,050	100	225	35
Mississippi	250	350	450	550	625	700	775	850	75	200	25
Missouri	250	350	450	550	625	700	775	850	75	200	25
Montana	250	350	450	550	625	700	775	850	75	200	25
Nebraska	250	350	450	550	625	700	775	850	75	200	25
Nevada	250	400	550	650	750	850	950	1,050	100	225	35
New Hampshire	250	350	450	550	625	700	775	850	75	200	25
New Jersey	250	400	550	650	750	850	950	1,050	100	225	35
New Mexico	250	400	550	650	750	850	950	1,050	100	225	35
New York	250	400	550	650	750	850	950	1,050	100	225	35
North Carolina	250	350	450	550	625	700	775	850	75	200	25
North Dakota	250	350	450	550	625	700	775	850	75	200	25
Ohio	250	400	550	650	750	850	950	1,050	100	225	35
Oklahoma	250	350	450	550	625	700	775	850	75	200	25
Oregon	250	400	550	650	750	850	950	1,050	100	225	35
Pennsylvania	250	400	550	650	750	850	950	1,050	100	225	35
Puerto Rico	250	350	450	550	625	700	775	850	75	200	25
Rhode Island	250	350	450	550	625	700	775	850	75	200	25
South Carolina	250	350	450	550	625	700	775	850	75	200	25
South Dakota	250	350	450	550	625	700	775	850	75	200	25
Tennessee	250	350	450	550	625	700	775	850	75	200	25
Texas	250	350	450	550	625	700	775	850	75	200	25
Utah	250	350	450	550	625	700	775	850	75	200	25
Vermont	250	350	450	550	625	700	775	850	75	200	25
Virginia	250	400	550	650	750	850	950	1,050	100	225	35
Washington	250	400	550	650	750	850	950	1,050	100	225	35
West Virginia	250	400	550	650	750	850	950	1,050	100	225	35
Wisconsin	250	400	550	650	750	850	950	1,050	100	225	35
Wyoming	250	350	450	550	625	700	775	850	75	200	25

[FR Doc. 88-14546 Filed 6-27-88; 8:45 am]
BILLING CODE 4910-22-M

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective February 8, 1988, Peoples National Bank of Washington and Old National Bank of Washington were consolidated under the Charter of Peoples National Bank of Washington with the title "U.S. Bank of Washington, National Association."

Dated: June 22, 1988.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 88-14489 Filed 6-27-88; 8:45 am]
BILLING CODE 4910-81-M

[Docket No. S-831]

Mormac Marine Group, Inc.; Application for a Waiver

By application of May 20, 1988, Mormac Marine Group, Inc. (Mormac) requests the waiver to permit acquisition of an interest in or chartering of nine foreign-flag crude and product tankers. The charters will be for a period of eight years. Mormac requests that the waiver, if granted, extend through December 9, 1995, the termination date of its Operating-Differential Subsidy Agreement, Contract MA/MSB-295.

Mormac currently operates three Coronado class 39,200 DWT subsidized U.S.-flag product tankers: the MORMACASUN, MORMACSKY, and MORMACSTAR. These vessels were built in 1975-77, and currently serve the worldwide oil market, operating exclusively in the spot market.

Mormac intends to acquire an interest in or to charter nine tankers, three 130,000 DWT, three 80,000 DWT, and three 40,000 DWT. In all likelihood, these vessels would be currently operating vessels and not newly built. All of these vessels would carry oil worldwide, most likely in the spot market.

Mormac states that it fully supports a strong and viable U.S.-flag bulk fleet and believes that of all the operating-differential subsidy (ODS) bulk operators, it has made the most consistent effort to fulfill the objectives of the ODS program by competing directly in the foreign market, rather than relying primarily on preference and military cargo.

However, as a result of current economic conditions affecting the U.S. fleet, further expansion into U.S.-flag operations cannot be undertaken in the near term. Expanding into foreign-flag operations is the best action in Mormac's opinion that it can take at the present time in order to achieve the kind of cost reductions that are vitally necessary for Mormac's continued viability. With no ODS and no CDS, it is simply impossible for U.S.-flag vessels to compete in the worldwide oil market because of higher operating and capital costs.

Mormac believes that expansion into foreign-flag operations is especially important for operators, such as Mormac, whose ODS vessels are getting older and more costly to operate. As Mormac's subsidized vessels are near the age of 15, when costs increase sharply and employment opportunities diminish, the sharing of administrative costs becomes even more critical. Only by adding additional vessels can Mormac reduce its administrative costs per vessel. Mormac states that if it cannot reduce its administrative costs, its U.S.-flag service could quickly become non-competitive, jeopardizing the U.S.-flag service, the jobs currently supported by Mormac's U.S.-flag operations and the Title XI debt on these vessels. In contrast, Mormac's proposed foreign operations in its view would strengthen Mormac's position as a U.S.-flag operator and improve its ability to meet its Title XI obligations.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on August 1, 1988. This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Date: June 22, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-14488 Filed 6-27-88; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. 88-11, Notice 1]

Federal Motor Vehicle Safety Standard; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The National Highway Traffic Safety Administration is sponsoring two public meetings regarding child passenger protection systems use in motor vehicles. While surveys show a steady increase in the numbers of children protected in safety seats during motor vehicle travel, the agency wishes to achieve still further advances in both the use and effectiveness of child safety seats and other child passenger protection systems. The agency is holding these public meetings to get information that will help it determine the most efficient way to use its resources in improving the safety of children in automobiles.

DATE:

Deadline for reserving speaking time. July 18, 1988.

Submission of oral presentation outlines. July 18, 1988.

Public meetings. July 26, 1988, Rosemont, Illinois; August 9, 1988, Washington, DC, beginning at 9:00 a.m.

Deadline for written comments. September 9, 1988.

ADDRESS:

Submission of oral presentation outlines: see **"FOR FURTHER INFORMATION CONTACT,"** below.

Public meetings. In Rosemont, IL., Hyatt Regency O'Hare, 9300 West Bryn Mawr, Rosemont, IL 60018, (312) 696-1234. In Washington, DC, 400 Seventh Street, SW., Room 2230, Washington, DC 20590, (202) 366-2585.

Written comments. Reference the docket and notice numbers set out at the beginning of this document. If confidential treatment is not being requested for any material being submitted, then send comments to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. The Docket Section hours are weekdays, 8:00 a.m. to 4:00 p.m.

If confidential treatment is being requested for information being submitted, send three complete copies of your comments to: Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC, 20590. Send seven copies with the purported confidential information deleted, to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen McCulloch, Office of Plans and Policy, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-2585.

SUPPLEMENTARY INFORMATION: Increasing the number of young children protected by properly installed and adjusted child passenger protection systems (infant protective system; toddler and booster safety seats) is among the highest priorities of the National Highway Traffic Safety Administration (NHTSA). To this end, the agency is sponsoring two public meetings this summer regarding child passenger protection systems for use in passenger motor vehicles. As noted in greater detail below, while great progress has been made in the last 8 years in improving the safety of young children through the increased use of these passenger protection systems, still further gains may be possible.

A variety of issues concerning use of child passenger protection systems have come to the agency's attention through correspondence, interaction with various motor vehicle industry and medical groups, and research reports on matters respecting child seat design and use. NHTSA is soliciting public comment on the following issues to help the agency determine the most efficient way to use its resources in encouraging both the widest use and availability of child seat systems that is reasonably possible.

Use

As a result of the enactment and enforcement of child safety seat use

laws in all states, and of education programs, child seat usage has increased dramatically. Since NHTSA began surveying child safety seat use in 1979, the rate of use has increased from 15 percent in that year, to 80.5 percent for children up to one-year old, and 82.4 percent for children from one to four years old in 1987. On the other hand, surveys, show that 30 percent of all child safety seats are used improperly. Consequently, only 55 percent of all children are fully protected while they are traveling in passenger cars.

In a December 1986 study, it was found that human factors significantly affect child seat use. (DOT HS 807 116, Strategies to Increase the Use of Child Safety Seats: An Assessment of Current Knowledge, National Analysts.) This finding is borne out by reports from some state program officials who are charged with facilitating child protection systems use in their areas, and who collect information on use of these safety systems among various population segments. These officials inform NHTSA that people in certain demographic categories (for example, teenage parents, people outside urban and suburban areas, and economically-disadvantaged people), use child safety seats less frequently than other population segments. A 1986 study by the University of Michigan's Transportation Research Institute, confirms the correlation between economic status and child safety seat use. (UMTRI–86–47, Correlates of Child Restraint Use, September, 1986.)

NHTSA would like to see that rate of child seat use increase to as near 100 percent as possible. The agency is interested in suggestions on the kinds of education programs, enforcement strategies, or other approaches that might reach and impress those categories of parents and custodians who do not use child protections systems regularly. NHTSA also seeks responses to the following questions:

1. What actions can NHTSA take to ensure that children are placed in child protection systems starting with the ride home from the hospital, and that use continues until the child is able to use vehicle safety belts?

2. What is the effect of seat design on nonuse?

3. How do factors such as family income, family spending priorities and risk assessment affect the purchasing and use of child passenger protection systems by various demographic groups?

4. The agency already has information (the National Analysts study) showing that positive promotional messages are more effective ways to increase child protection systems use than are messages that raise anxieties. What other actions might NHTSA take to increase the numbers of children whose parents or guardians regularly place them in child protection systems? Are there better outlets to reach parents than those already in use? Are there special actions needed to reach various demographic groups? What channels can or should be used?

Misuse

Given surveys showing that only 55% of all children riding in child protection systems are fully protected, the agency requests comments on what actions NHTSA might take to increase proper use. The National Analysts report, cited earlier in this notice, states that use is influenced by factors such as difficulty in properly securing a child safety seat with the vehicle belt assembly, and confusion about when a child is large enough for parents to switch from a child safety seat to a vehicle safety belt. The agency believes that even where these factors do not result in nonuse, they may lead to misuse. Therefore, NHTSA requests comment on whether it can improve labeling requirements to decrease both the risk of improper installation, and the use of vehicle safety belts by children who, because of their size and weight, should continue to use child safety seats.

There have been significant changes in the design of child protection systems, and in the design of motor vehicle safety belts used to secure those systems. Further changes are anticipated. Child seating systems equipped with top tether straps virtually have disappeared. Booster seats, a type of safety system that secures the child with a padded shield, have garnered a substantial share of the child safety seats market. A typical child safety seat is still anchored either by a manual lap and shoulder belt in the front seat or by a manual lap belt in the rear seat. However, many new cars have automatic belt systems in the front seat. Within a few years, most cars will have air bags or automatic belts in the front seat, and manual lap and shoulder belts in the rear seat. These and other design factors may have a direct effect on proper child safety seat use.

The agency requests commenters to address specific features of child passenger systems that may promote misuse, and problems regarding compatibility between vehicle belt assemblies and child safety seats that similarly promote system misuse.

Innovation

It is NHTSA's desire to assure that Federal motor vehicle safety standard 213, *Child Restraint Systems*, does not inhibit innovation in child passenger protection system designs. For example, the standard's dynamic test procedures, which were issued in 1979, reflect the influence of the child safety systems and motor vehicle designs and testing methodology of the mid-1970s. The agency is interested in comment on whether these influences are still valid. Several examples will illustrate this point. First, when the agency set energy-absorption requirements for non-structural materials of child protection systems, there was no test device or method available, other than static testing, to measure the absorption properties of these materials. Second, NHTSA established many structural performance requirements for designs available in the 1970s when most child protection systems were made primarily of plastic. Third, the acceleration curves for the dynamic test procedures reflect the crash pulses of a 1970 automobile.

The agency seeks public comment on whether Standard 213 needs to be updated in order to aid efforts to redesign child protection systems in response to changes in: (1) Vehicle and vehicle passenger protection designs, (2) new materials and technology, and (3) the needs of today's child passenger population. For example, the agency understands from the medical community that there are an increasing number of low birth-weight infants leaving hospitals in motor vehicles. Most child safety seat manufacturers advise users to add something to the seat (a rolled blanket, for example) to compensate for the small size of these children. However, this step may not solve all of the problems these children experience. A 1986 University of Nebraska study found that convalescing infants born before normal term may have breathing problems associated with child safety seats, because these seats do not provide an optimal breathing position for such children. (Willett, Leuschen, Nelson, and Nelson, *Risk of Hypoventilation In Premature Infants in Car Seats*, Division of Neonatology, Department of Pediatrics University of Nebraska Medical Center, August, 1986.) The agency is interested in comments on whether Standard 213 itself inhibits innovative child protection system design and fabrication. If that is so, what particular features of the standard are restrictive? How can the agency change Standard 213 to

eliminate these features without compromising safety?

The agency is interested in the lack of availability and use of car-beds, i.e., protection systems where infants can lie flat. The standard sets performance specifications for car-beds, and NHTSA understands that car-beds provide a better protective environment both for low birth-weight, normal term infants, and for convalescing infants born before normal term. Yet, the agency knows of no car-bed either widely manufactured or widely used in the United States. Are there aspects of Standard 213 that inhibit production of this type of system, or are factors associated with this apparent unavailability?

For all types of child passenger protection systems, are there costs or other market factors that inhibit new design and construction? Does Standard 213 have a significant, negative impact on these factors? If yes, describe how the standard influences market forces.

Test Surrogates

Under current Standard 213 performance requirements, if a child protection system is labeled for infant use (from birth to 20 pounds), NHTSA conducts compliance tests with the smaller of the two dummies currently specified by NHTSA's regulations, i.e., an uninstrumented, 17.4-pound dummy representing a six-month-old child. If the system is labeled for toddlers (20 to 50 pounds), then the agency conducts its tests with the other child dummy specified by NHTSA's regulations, i.e., an instrumented, 33.3-pound dummy representing a three-year-old child.

NHTSA is in the process of developing proposed specifications for a 20-pound, instrumented dummy representing a nine-month-old child, and for a 47-pound, instrumented dummy representing a six-year-old child. Because many manufacturers label their child safety seats for use by children of a broad weight range, the agency is developing these surrogates to ensure that toddler and booster systems are suitable for protecting children of different sizes and weights. The agency is interested in objective data and empirical information describing user experiences with child safety seats when children on the extremes of the range are placed in them. Would the development of additional surrogates aid in appropriately evaluating these seats? What size surrogates would serve as the most useful tests devices, and how would these sizes improve the assurance of adequate performance?

A child protection systems inventor has raised the question of whether the size of the smallest, specified test surrogate is a factor in the availability of child protection systems for low birth-weight babies and very small children. The agency requests comment on whether the size of the specified test surrogates affects the availability of child protection systems for newborns and children under 17 pounds.

Crash Experience With Child Safety Seats

Crash data and accident investigations do not always reveal how well child safety seats perform when they are properly installed and used. NHTSA continues to be interested in efficient collection of useful data on child protection systems performance in actual motor vehicle crashes. The agency seeks information from the public regarding their accident experiences, and suggestions for improving the systematic collection of accident and injury data concerning the performance of child safety systems.

Accessories

Recently, the agency received a letter suggesting that NHTSA explore the growing market in product accessories for child passenger protection systems. This market includes such accessories as attachable sun visors, seat pads, harness comfort attachments, and travel trays. From time to time, NHTSA receives letters from inventors, lawyers, and businesses asking the agency to give its opinion of whether an after-market product must comply with Standard 213. Although there is no current safety standard applicable to child protection systems accessories, there are statutory provisions governing after-market products that contain a safety-related defect, or whose installation reduces the safety performance of a child safety system. (The latter provision applies only where the installer is a motor vehicle or equipment manufacturer, distributor, dealer, or repair business.)

NHTSA is unaware of data showing that there is a safety problem associated with after-market accessories. The agency requests comment on field experiences with these products. Do child safety system accessories compromise the safety of these protective systems? Is there a need to set performance requirements for any of these products? If there are safety problems, do they center on product misuse? If yes, then what can the agency do to help discourage misuse?

Participation In The Public Meetings

The agency invites members of the public, the pediatric health community, and the motor vehicle and equipment industry to participate in these meetings, and to comment on the full range of issues raised in this notice.

Procedural Matters

Persons wishing to speak at a public meeting should contact Dr. Kathleen McCulloch, whose address and telephone number appear in this document under the caption "**FOR FURTHER INFORMATION CONTACT.**" Please contact Dr. McCulloch by July 18, 1988, so that NHTSA can determine the need for any special equipment, and can make any other special arrangements. Each participant should submit a broard outline of his or her oral presentation by July 18, 1988, and limit the presentation to 10 minutes. The agency will accept written comments of any length. If the presentation will include slides, motion pictures, or other visual aids, bring at least one copy to the meeting so that the agency can include them in the public record. If the number of requests for oral presentations exceeds the available time, NHTSA will ask prospective speakers and organizations with similar views to combine presentations. If there is time availabe at the end of the scheduled presentations, NHTSA will permit unscheduled speakers to make statements.

The presiding officials at the meeting may ask questions of any speaker, and any participant may submit written questions for the agency panel, at its discretion, to address to other meeting participants. However, there will be no opportunity for participants directly to question each other.

A schedule of participants making oral presentations will be available at the designated meeting room. Please be aware that the agency will place a copy of any written statement in the docket for this notice. Further a verbatim transcript of the meeting will be prepared and placed in the docket as soon as possible following the meeting.

An interested person can submit written comments on the issues set out in this notice, for inclusion in the docket. Unless a person is requesting confidential treatment for information in his or her submission, the person need not submit more than one copy of the comments. However, the agency requests that ten be submitted. If a person wishes to be notified when NHTSA receives his or her comment, the person should enclose a stamped, self-addressed postcard.

Issued on: June 23, 1988.

Adele Derby,

Associate Administrator for Plans and Policy

[FR Doc. 88-14514 Filed 6-27-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

1989 Magnetic Tape Filing Test; Form 1040NR, Income taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Form 1040NR; Magnetic tape filing test.

SUMMARY: The Internal Revenue Service is planning to conduct a pilot program during the 1989 filing period for 1040NR Returns (U.S. Nonresident Alien Income Tax Returns) with schedules D and E and Form 4797 to be filed via magnetic tape. This pilot program will be available without geographic limitation, although all processing will be centralized at the Internal Revenue Service Center in Philadelphia, Pennsylvania. Participants must have secured prior authorization from the Internal Revenue Service (IRS). Interested parties can obtain copies of the draft revenue procedures by writing or calling IRS. These draft procedures will be available by October 15, 1988. Comments on the pilot program are welcome.

DATE: Expressions of interest are requested by November 15, 1988. Applications to participate must be received by December 31, 1988.

ADDRESS: Director, Internal Revenue Service, Philadelphia Service Center, P.O. Box 245, Drop Point 430, Bensalem, PA 19020, Attention: Magnetic Tape Coordinator, Telephone: 215-969-7166 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Internal Revenue Service is receiving an increasing number of computer prepared returns, and is exploring methods to use the flexibility provided by computer preparation to achieve efficiencies of processing. The Internal Revenue Service (IRS) is planning a pilot test to encompass the filing of Form 1040NR via magnetic tape. These returns will be filed beginning in June 1989.

Magnetic tape filing eliminates most of the manual processes required by IRS to handle paper documents, which will increase the quality of the final product, speed up the processing and reduce unnecessary correspondence. For those filers who file Form 1040NR returns and are interested in participating in the test, the draft revenue procedure should be available by October 15, 1988. Generally, the revenue procedures will call for the filing of returns on magnetic tape of all the data currently supplied on the paper return, including those schedules and forms which usually accompany the return. Additionally, filers will be required to send to the IRS a separate form with certain key information from the return and the signatures of the taxpayer and preparer. A consolidated form has been approved by the IRS enabling preparers/filers to transmit the required information covering multiple returns with a single set of signatures.

Don Spagnuolo,

Assistant Regional Commissioner, (Data Processing).

[FR Doc. 88-14543 Filed 6-27-88; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

A 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 designated 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 Educational 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:

Foundations of Democracy: Constitutional Guarantees of Freedom of Speech and Freedom of the Press

The Office of Private Sector Programs will assist in supporting a workshop that will celebrate the Bicentennial of the U.S. Constitution and one hundred years of democracy in Costa Rica by bringing forty-six news media publishers and editors, political party leaders, and leaders of government information bureaucracies from fifteen countries to San Jose, Costa Rica. The participants will discuss issues concerning freedom of expression with experts on the subject from such fields as journalism, constitutional history, political science, and American Studies. Participants from Spain and Latin America (Colombia, Mexico, Panama, Venezuela, Brazil, Peru, Argentina, Uruguay, Chile, Nicaragua, Honduras, Guatemala, El Salvador, and Costa Rica) will be selected by USIA representatives abroad. This program will focus primarily on discussions of the institutional structures that ensure and support freedom of speech and freedom of the press in newly formed democracies and political systems in transition. The three-day workshop, conceived and executed by a U.S. not-for-profit institution in cooperation with a host institution in San Jose, is scheduled for December 1988.

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 twenty-one 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. Please refer to this specific program by name in your letter of interest.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs, Foundations of Democracy), United States Information Agency, 301 4th Street SW., Washington, DC 20547

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-14499 Filed 6-27-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 124
Tuesday, June 28, 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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Wednesday, July 6, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Revision of § 1601.30 of the Commission's Procedural Regulations.
4. Advance Notice of Proposed Rulemaking on Early Retirement Plans.

Closed Session

Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, (202) 634-6748.

Date: June 23, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88-14588 Filed 6-21-88; 11:14 am]

BILLING CODE 6750-06-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 22, 1988

TIME AND DATE: 10:00 a.m., Wednesday, June 29, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Wilfred Bryant v. Dingess Mine Service, Winchester Coals,* etc., Docket No. WEVA 85-43-D. (Issues include whether the judge erred in finding that the operator did not discriminate against the complaint in violation of section 105(c)(1) of the Mine Act. 30 CFR 815(c)(1)).

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Wilfred Bryant v. Dingess Mine Service,* etc., Docket No. WEVA 85-34-D. (See oral argument listing)
2. Secretary of Labor ex rel. Joseph Gabossi v. Western Fuels-Utah, Inc., Docket No. WEST 86-24-D. (Issues include whether the judge erred in finding that the operator did not discriminate against the complaintant in violation of section 105(c)(1) of the Mine Act. 30 CFR 815(c)(1)).

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/ (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-14582 Filed 6-24-88; 10:28 am]

BILLING CODE 6735-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-14]

TIME AND DATE: Wednesday, July 6, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-405 (P) (Sewn Cloth Headwear from the People's Republic of China)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

June 22, 1988.

[FR Doc. 88-14641 Filed 6-24-88; 3:36 pm]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-15]

TIME AND DATE: Monday, July 11, 1988 at 3:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Electronic Dart Games (Docket Number 1450)
5. Inv. No. 731-TA-406-408 (P) (Electrolytic Manganese Dioxide from Greece, Ireland, and Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

June 22, 1988.

[FR Doc. 88-14642 Filed 6-24-88; 3:38 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 27, July 4, 11, and 18, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 27

Monday, June 27

10:00 a.m.
Briefing on Proposed Rule on Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)

Wednesday, June 29

10:00 a.m.
Initial Briefing by the Advisory Committee on Nuclear Waste (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 4—Tentative

Tuesday, July 5

2:00 p.m.
Briefing on Accountability of Radioactive Material Used by Material Licensees (Public Meeting)

Wednesday, July 6

10:00 a.m.
Briefing on EEO Program (Public Meeting)

Thursday, July 7

2:00 p.m.
Briefing on Continuity of Government Handbook (Closed—Ex. 1)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 11—Tentative

Tuesday, July 12

10:00 a.m.
Annual Briefing by INPO (Public Meeting)
2:00 p.m.
Briefing on Policy Paper for Plant Life Extension (Public Meeting)

Wednesday, July 13

1:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Thursday, July 14

10:00 a.m.
Briefing on Final Rule on 10 CFR 50.46—ECCS Acceptance Criteria (Appendix K) (Public Meeting)
2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, July 15

10:00 a.m.
Briefing on Matters of Common Interest Between NRC and EPA in the Regulation of Radiological Hazards (Public Meeting)

Week of July 18—Tentative

Thursday, July 21

10:00 a.m.
Briefing on Current Status of Nuclear Materials Transportation (Public Meeting)
2:00 p.m.
Briefing on Individual Plant Examinations Generic Letter (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, July 22

10:00 a.m.
Briefing on Interim Report on BWR Mark I Containment Issues (Public Meeting)

Note.—Affirmation sessions are initially scheduled and announced to the public on a 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.

June 23, 1988.

[FR Doc. 88–14634 Filed 6–24–88; 3:00 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 5, 1988.

An open meeting will be held on Thursday, July 7, 1988, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Thursday, July 7, 1988, at 10:00 a.m., will be:

1. Consideration of a two-part recommendation from its Division of Market Regulation concerning predispute arbitration clauses in broker-dealers' agreements with their customers. First, the Commission will consider a recommendation that it propose an amendment to the Securities Exchange Act of 1934 that would prohibit a broker-dealer from conditioning investor access to brokerage services on the signing of a predispute arbitration agreement. The Commission will also consider whether to send a letter to each of the securities industry's self-regulatory organizations that currently operates an arbitration system requesting that they consider using their broad rulemaking authority to take independent action to effect the same result. For further information, please contact Robert A. Love at (202) 272–3064.

2. Consideration of whether to authorize for publication: (1) A release adopting amendments to Regulation S–X that would require accountants' reports included in Commission filings to be signed by an independent accountant who within the last three years has undergone a peer review of its accounting and auditing practice, and (2) a release publishing for comment proposals to specify procedures to be used to review an accountant's audit work pending the accountant's compliance with peer review requirements when the accountant first becomes subject to the requirement due to accepting a Commission registrant as a client or a current client becoming a Commission registrant. For further information, please contact John Heyman at (202) 272–2130.

3. Consideration of whether to issue for comment proposed rules to require that registrants include a report by management in Forms 10–K and annual reports to shareholders. The management report would acknowledge management's responsibilities for the financial statements and internal control, discuss how these responsibilities were fulfilled and provide management's assessment of the effectiveness of the registrant's internal controls. The registrant's independent accountant would be associated with management's assessment of the effectiveness of internal controls through its existing responsibilities under generally accepted auditing standards. For further information, please contact John W. Albert, Office of the Chief Accountant, at (202) 272–2130 or Howard P. Hodges, Division of Corporation Finance at (202) 272–2553.

4. Consideration of whether to adopt an amendment to Rule 2(e)(7) of the Commission's Rules of Practice to provide that Rule 2(e) proceedings shall be public unless the Commission, on its own motion or after consideration of the request of a party, otherwise directs. For further information, please contact Emily P. Gordy at (202) 272–2422.

5. Consideration of whether to adopt proposed Rule 19c–4 which would add to the rules of national securities exchanges and national securities associations, a prohibition on an exchange listing, or an association authorizing for quotation and/or transaction reporting on an inter-dealer quotation system, the common stock or other equity security of a domestic issuer if the issuer issues securities or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share voting rights of any common stock of such issuer registered under section 12 of the Securities Exchange Act of 1934. For further information, please contact Stephen Luparello at (202) 272–2891 or Sharon Itkin at (202) 272–2451.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters haven been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272–3195.

Jonathan G. Katz,

Secretary.

June 23, 1988.

[FR Doc. 88–14556 Filed 6–23–88; 4:55 pm]

BILLING CODE 8010–01–M

federal register

Tuesday
June 28, 1988

Part II

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for February 1988

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53103; FRL-3396-7]

Premanufacture Notices; Monthly Status Report for February 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for February 1988.

Nonconfidential portion of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53103)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during February; (b) PMNs received previously and still under review at the end of February; (c) PMNs for which the notice review period has ended during February; (d) chemical substances for which EPA has received a notice of commencement to manufacture during February; and (e) PMNs for which the review period has been suspended. Therefore, the February 1988 PMN Status Report is being published.

Publication of the monthly status reports for PMNs have been delayed due to a computer sorting error, which has been corrected. A cumulative October 1987 through January 1988 report is currently being prepared, and will be published shortly. This report for February 1988 reflects the correction of the error and reestablishes the monthly sequential publication of the PMN status reports.

Date: June 1, 1988.

Douglas Sellers,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report February 1988

I. 243 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	
P 88-0601	P 88-0748
P 88-0690	P 88-0749
P 88-0691	P 88-0750
P 88-0692	P 88-0751
P 88-0693	P 88-0752
P 88-0694	P 88-0753
P 88-0695	P 88-0754
P 88-0696	P 88-0755
P 88-0697	P 88-0756
P 88-0698	P 88-0757
P 88-0699	P 88-0758
P 88-0700	P 88-0759
P 88-0701	P 88-0760
P 88-0702	P 88-0761
P 88-0703	P 88-0762
P 88-0704	P 88-0763
P 88-0705	P 88-0764
P 88-0706	P 88-0765
P 88-0707	P 88-0766
P 88-0708	P 88-0767
P 88-0709	P 88-0768
P 88-0710	P 88-0769
P 88-0711	P 88-0770
P 88-0712	P 88-0771
P 88-0713	P 88-0772
P 88-0714	P 88-0773
P 88-0715	P 88-0774
P 88-0716	P 88-0775
P 88-0717	P 88-0776
P 88-0718	P 88-0777
P 88-0719	P 88-0778
P 88-0720	P 88-0779
P 88-0721	P 88-0780
P 88-0722	P 88-0781
P 88-0723	P 88-0782
P 88-0724	P 88-0783
P 88-0725	P 88-0784
P 88-0726	P 88-0785
P 88-0727	P 88-0786
P 88-0728	P 88-0787
P 88-0729	P 88-0788
P 88-0730	P 88-0789
P 88-0731	P 88-0790
P 88-0732	P 88-0791
P 88-0733	P 88-0792
P 88-0734	P 88-0793
P 88-0735	P 88-0794
P 88-0736	P 88-0795
P 88-0737	P 88-0796
P 88-0738	P 88-0797
P 88-0739	P 88-0798
P 88-0740	P 88-0799
P 88-0741	P 88-0800
P 88-0742	P 88-0801
P 88-0743	P 88-0802
P 88-0744	P 88-0803
P 88-0745	P 88-0804
P 88-0746	P 88-0805
P 88-0747	P 88-0806
P 88-0807	P 88-0870
P 88-0808	P 88-0871
P 88-0809	P 88-0872
P 88-0810	P 88-0873
P 88-0811	P 88-0874
P 88-0812	P 88-0875
P 88-0813	P 88-0876
P 88-0814	P 88-0877
P 88-0815	P 88-0878
P 88-0816	P 88-0879
P 88-0817	P 88-0880
P 88-0818	P 88-0881
P 88-0819	P 88-0882
P 88-0820	P 88-0883
P 88-0821	P 88-0884
P 88-0822	P 88-0885
P 88-0823	P 88-0886
P 88-0824	P 88-0887
P 88-0825	P 88-0888
P 88-0826	P 88-0889
P 88-0827	P 88-0890
P 88-0828	P 88-0891
P 88-0829	P 88-0892
P 88-0830	P 88-0893
P 88-0831	P 88-0894
P 88-0832	P 88-0895
P 88-0833	P 88-0896
P 88-0834	P 88-0897
P 88-0835	P 88-0898
P 88-0836	P 88-0899
P 88-0837	P 88-0900
P 88-0838	P 88-0901
P 88-0839	P 88-0902
P 88-0840	P 88-0903
P 88-0841	P 88-0904
P 88-0842	P 88-0918
P 88-0843	P 88-0968
P 88-0844	Y 88-0106
P 88-0845	Y 88-0107
P 88-0846	Y 88-0108
P 88-0847	Y 88-0109
P 88-0848	Y 88-0110
P 88-0849	Y 88-0111
P 88-0850	Y 88-0112
P 88-0851	Y 88-0113
P 88-0852	Y 88-0114
P 88-0853	Y 88-0115
P 88-0854	Y 88-0116
P 88-0855	Y 88-0117
P 88-0856	Y 88-0118
P 88-0857	Y 88-0119
P 88-0858	Y 88-0120
P 88-0859	Y 88-0121
P 88-0860	Y 88-0122
P 88-0861	Y 88-0123
P 88-0862	Y 88-0124
P 88-0863	Y 88-0125
P 88-0864	Y 88-0126
P 88-0865	Y 88-0127
P 88-0866	Y 88-0128
P 88-0867	Y 88-0129
P 88-0868	Y 88-0130
P 88-0869	

II. 151 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	
P 83-0669	P 86-0092
P 84-1182	P 86-0294
P 84-1183	P 86-0295
P 85-0216	P 86-0592
P 85-0535	P 86-1078
P 85-0536	P 86-1189
P 85-0619	P 86-1235
P 85-0718	P 86-1358
P 85-0941	P 86-1440
P 86-0065	P 86-1602
P 86-0066	P 86-1603
P 86-0067	P 86-1604

P 86-1607
P 86-1712
P 87-0057
P 87-0058
P 87-0059
P 87-0068
P 87-0105
P 87-0197
P 87-0198
P 87-0199
P 87-0200
P 87-0201
P 87-0318
P 87-0323
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P 87-0723
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P 87-0779
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P 87-1272
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P 87-1318
P 87-1319
P 87-1337
P 87-1379
P 87-1417
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P 87-1437
P 87-1471
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P 88-0288
P 88-0290
P 88-0319
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P 88-0348
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P 88-0465
P 88-0468
P 88-0515
P 88-0522
P 88-0547
P 88-0567
P 88-0568
P 88-0576
P 88-0598
P 88-0602
P 88-0606
P 88-0609
P 88-0622
P 88-0649
P 88-0658
P 88-0665
P 88-0671

III. 1982 Premanufacture Notices and Exemption Request for Which the Notice Review Period Has Ended During the Month

[Expiration of the notice review pericd does not signify that the chemical has been added to the inventory.]

PMN No.

P 85-0929
P 86-1315
P 86-1648
P 87-0571
P 87-0904
P 87-1265
P 87-1484
P 87-1710
P 87-1711
P 87-1712
P 87-1714
P 87-1716
P 87-1718
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P 88-0325
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P 88-0327
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Y 88-0075
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Y 88-0098
Y 88-0099
Y 88-0100
Y 88-0101
Y 88-0102
Y 88-0103
Y 88-0104
Y 88-0105
Y 88-0107
Y 88-0108
Y 88-0109
Y 88-0110
Y 88-0111
Y 88-0115

IV. 2 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 87-0290	Triono/Re-45550	Mar. 31, 1987.
Y 88-0019	G Polyester	Dec. 1, 1987

V. 33 Premanufacture Notices for Which the Period Has Been Suspended

PMN No.

P 87-1759
P 87-1787
P 88-0059
P 88-0129
P 88-0181
P 88-0217
P 88-0244
P 88-0245
P 88-0262
P 88-0263
P 88-0270
P 88-0275
P 88-0288
P 88-0290
P 88-0319
P 88-0320
P 88-0772
P 88-0773
Y 88-0021
Y 88-0022
Y 88-0023
Y 88-0024
Y 88-0103
Y 88-0106
Y 88-0112
Y 88-0113
Y 88-0114
Y 88-0116
Y 88-0117
Y 88-0120
Y 88-0121
Y 88-0122
Y 88-0123

[FR Doc. 88-13213 Filed 6-27-88; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Tuesday
June 28, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-52]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Baton Rouge Metro Ryan Field, LA; Charleston Yeager Airport, WV; and Santa Barbara Municipal Airport, CA. With the exception of Santa Barbara, each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 U.T.C., July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 109 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On January 11, 1988, the FAA proposed to designate ARSA's at Baton Rouge Metro Ryan Field, LA; Charleston Yeager Airport, WV; City of Colorado Springs Municipal Airport, CO; Palm Springs Municipal Airport, CA; and Santa Barbara Municipal Airport, CA (53 FR 674). This rule designates ARSA's at these airports with the exception of Colorado Springs, CO, and Palm Springs, CA. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

Discussion of comments

Twenty-six comments were received concerning this rulemaking action. One commenter supported all of the proposed locations while the Soaring Society of America (SSA) objected to all of the proposed locations. The SSA's main objection is based on a related requirement proposed in FAA Rulemaking Docket No. 25531, Notice No. 88-2, Transponder with Automatic Altitude Reporting Capability Requirement. This proposed rule has been adopted, Amendment No. 91-203, 53 FR 23356, published on June 21, 1988. SSA stated that when the related proposal was adopted as a final rule in accordance with section 203 of Pub. L. 100-223, the ARSA Regulatory Evaluation would be invalidated. SSA suggested that the FAA should, therefore, suspend all action on any proposed ARSA's. In addition, the SSA requested clarification of an excerpt from the public law.

The FAA does not agree. The possible effect of Amendment 91-203 has no bearing on this action at least until that portion of the rule which impacts upon the ARSA becomes effective on December 30, 1990. Furthermore, the potential impact of the requirements of that final rule on ARSA's has been fully considered in the rule's corresponding regulatory evaluation. Inclusion of those costs in the cost-benefit analysis for this rulemaking would represent double-counting of the same impact. The FAA will continue to monitor the potential impact. The interpretation of Pub. L. 100-223 is discussed in the preamble of Amendment 91-203.

Baton Rouge, LA

Two commenters wrote concerning the proposal at Baton Rouge. One stated that while he supported the ARSA program and the ARSA proposed at Baton Rouge, the commenter recommended that a crossing altitude be established to coincide with the 5-mile radius bondary, to prevent falling out of the bottom of the 5-10-mile area. The FAA does not agree. The ARSA program was not intended to provide for the containment of instrument approach procedures, but to provide an area of required communcations so that ATC has knowledge of all aircraft operating at those critical altitudes in this close proximity to the airport.

The other commenter stated a belief that the NAR findings on the problems with the TRSA program were accurate; however, the NAR recommendations to replace TRSA's with ARSA's was flawed. This commenter stated that the problems in navigable airspace were not a rulemaking issue but an education issue. Even with increased pilot education, the FAA finds a need to know of all aircraft operating in close proximity to the airport. Education, while always being very important and a high priority in the FAA, will not ensure this knowledge.

Charleston, WV

One commenter wrote in opposition to the ARSA proposed at Charleston, WV. The commenter suggested that an ARSA was not needed at Charleston nor would it enhance safety. The FAA does not agree. The air traffic control facility has a need to know of all traffic operating in close proximity to the airport once an airport reaches this level of activity.

Colorado Springs, CO

This proposed ARSA is being delayed to a later date. All comments received will be retained and addressed when the final rule is published.

Palm Springs, CA

This proposed ARSA is being delayed to a later date. All comments received will be retained and addressed when the final rule is published.

Santa Barbara, CA

Seven commenters wrote offering recommendations and/or objections to the proposal. One commenter objected stating that there were too many trainees at the facility to handle the increase in traffic without delays. The FAA does not agree. The Santa Barbara facility manager is confident that the facility can handle any increase without significant delays. The facility has no more trainees proportionately than similar facilities throughout the United States.

Another commenter submitted two recommended modifications to the proposed ARSA. After study of the requested alterations, the FAA has decided to modify the 5–10 mile area by moving the northern boundary east of the airport to the south. This rule reflects that change. The FAA has otherwise not adopted the recommendations because they would be inconsistent with the purpose of the ARSA.

Two commenters wrote in objection, stating that the main reason for the ARSA was to eliminate a natural conflict between eastbound departures and Runway 25 approaches. They made recommendations to alter the traffic flow and thereby remove the need for the ARSA. The FAA, while agreeing that the recommendations have some merit, does not agree that amended procedures would be sufficient to remove the need for the ARSA. Santa Barbara meets the ARSA establishment criteria adopted by the FAA, and the FAA finds a need to know of all aircraft operating in close proximity to the airport at these critical altitudes once an airport has reached this level of activity.

The last commenter objected to the ARSA, stating that it would unnecessarily complicate his flying and that the system is not geared to the possible increased workload. The ARSA rule, recommended by the NAR and adopted by the FAA, made it relatively simple to avoid the ARSA. Those aircraft not intended to operate at the airport for which it was established may simply overfly the ARSA ceiling, which is only 4,000 feet above airport elevation, or circumnavigate. The FAA, as stated in the Regulatory Evaluation, did not expect and has not found an overwhelming increase in the volume of traffic. The already high participation rate in existing radar services indicated that the major change would be to standardize airspace design and provide the FAA with knowledge of all aircraft in close proximity to the airport to enhance safety.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long-term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operations, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the radar services and radio communication with ATC is voluntary, operations at airports inside the core might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Baton Rouge Metro Ryan Field, LA; Charleston Yeager Airport, WV; and Santa Barbara Municipal Airport, CA. With the exception of Santa Barbara, each location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in

effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

Baton Rouge Metro, Ryan Field, LA [New]

That airspace within a 5-mile radius of the Baton Rouge Metro, Ryan Field (lat. 30°31'57" N., long. 91°08'59" W.) extending upward from the surface to and including 4,100 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,300 feet MSL to and including 4,100 feet MSL.

Charleston Yeager Airport, WV [New]

That airspace within a 5-mile radius of Yeager Airport (lat. 38°22'23" N., long. 81°35'36" W.) extending upward from the surface to and including 5,000 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 2,800 feet MSL to and including 5,000 feet MSL.

Santa Barbara Municipal Airport, CA [New]

That airspace within a 5-mile radius of the Santa Barbara Municipal Airport (lat. 34°25'34" N., long. 119°50'22" W.) extending upward from the surface to and including 4,000 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,500 feet MSL to and including 4,000 feet MSL, excluding that airspace from the 295° bearing from the airport, between the 5- and 10-mile radius, clockwise to the 090° bearing from the airport.

Issued in Washington, DC, on June 23, 1988.

William C. Davis,

Acting Manager, Airspace-Rules and Aeronautical Information Divison.

[FR Doc. 88-14547 Filed 6-27-88; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday
June 28, 1988

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on September 18, 1986, an arbitration panel rendered a decision in the matter of Robert Albanese, vendor, v. the State of Delaware, Delaware Department of Health and Social Services. This agency is the "State Licensing Agency" (SLA) designated by the Secretary of Education. The panel was convened by the Secretary pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner Robert Albanese on December 11, 1984 (Docket No. R–S/85–3).

Under this section of the Act, a blind licensee who is dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the SLA. If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, Room 3230, Mary E. Switzer Building, Department of Education, 330 C Street SW., Washington, DC 20202, Area Code (202) 732–1317 or TTY (202) 732–1298. A synopsis of the panel's decision is appended. The full text of the arbitration panel decision can be obtained from this contact.

Dated: June 22, 1988.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

Synopsis of Arbitration Panel Decision

The claimant asserted before the panel that the Delaware licensing agency had improperly charged him for maintenance and repair of certain equipment at a cafeteria he operated under the State's vending facility program. He demanded reimbursement for the sums he had been charged from April 1, 1981 through the remainder of his tenure at the facility. In response, the State asked the panel to affirm that portion of the State hearing officer's decision which held that claimant bore the responsibility for these expenses. The State also interposed a counterclaim to reverse the ruling of the State hearing officer to the effect that the claimant's guaranteed base salary should be excluded from computation of his contribution to the "set aside" fund established by the State pursuant to the Randolph-Sheppard Act (hereafter "the Act") and implementing federal regulations.

The panel first determined that the State of Delaware's counterclaim was not arbitrable, finding that under 20 U.S.C. 107d–1(a) cited above, the scope or arbitration is limited to and determined exclusively by the grievances raised by a blind vendor. On the merits, the panel held that based on State rules and regulations implemented to carry out the Act, the State was obligated to assume the cost of maintenance and repairs on blind operated vending facility equipment only when such equipment wore out or became obsolete, or when the blind vendor was financially unable to assume the costs. As a matter of fact, the panel determined that the claimant did not meet either of these conditions and therefore ruled against him on this point. His request for retroactive damages was therefore denied. The panel, however, awarded claimant attorney's fees incurred in defeating the State's counterclaim.

The views expressed by the panel do not necessarily represent the views of the Department of Education.

[FR Doc. 88–14529 Filed 6–27–88; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
June 28, 1988

Part V

Department of Education

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Notice

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on June 18, 1985, an arbitration panel rendered a decision in the matter of Myrtie Weddle, vendor, v. the State of Indiana, Indiana Rehabilitation Services, a "State Licensing Agency" (SLA) designated by the Secretary of Education. This panel was convened by the Secretary pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner Myrtie Weddle on January 6, 1984 (Docket No. R/S–84–2).

Under this section of the Act, a blind licensee who is dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the SLA. If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, Room 3230, Mary E. Switzer Building, Department of Education, 330 C Street SW., Washington, DC 20202, Area Code (202) 732–1317 or TTY (202) 732–1298. A synopsis of the panel's decision is appended. The full text of the arbitration panel decision can be obtained from this contact.

Dated: June 22, 1988.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

Synopsis of Arbitration Panel Decision

The claimant operated a vending facility at the Evansville Post Office under a permit, issued on or about April 16, 1982, between the Indiana State Licensing Agency (SLA) and the United States Postal Service (USPS). Under Federal regulations implementing the Act, the permit documents the rights and responsibilities of the SLA and the Federal property managing agency. *See* 34 CFR 395.1(o) and 395.16. A separate agreement, signed on April 16, 1982, between the SLA and USPS required any blind vendor assigned to the facility to pay a commission from sales receipts to the Post Office Employee's Association.

The claimant subsequently objected to the commission arrangement after having made sixteen monthly payments in the amount of $7,163.35. After the claimant ceased payment, the SLA informed her that USPS requested termination of her facility. When the SLA refused to seek reversal of the USPS decision, claimant requested a fair hearing under 20 U.S.C. 107d–1(a). The hearing officer determined that the payment of commissions was in violation of the Act as it constituted an impermissible "limitation" on the operation of her facility under 20 U.S.C. 107(b). He further recommended that the agreement authorizing the commissions be terminated and that the Evansville Post Office Employee's Association reimburse claimant in the amount received as commissions.

Subsequent to this decision, USPS directed the SLA to terminate claimant's facility on the grounds that the decision invalidating the commission agreement resulted in an invalidation of the permit. Since claimant was dissatisfied with this result, she filed an arbitration complaint requesting the Secretary of Education to convene a panel which would rule that the commission requirement was illegal under the Act as an unauthorized "set aside" [1] charge, but would find that the permit still remained in full force and effect. Claimant further requested the panel to find that the SLA was responsible for repayment of the commissions because of its acquiescence in the USPS requirement. The SLA countered that the matter should be remanded to the Secretary because the USPS requirement constituted a limitation under section 107(b), which needed to be justified to and approved by the Secretary.

The panel held that the commissions were not a valid set aside under section 107b(3), and further violated the provisions of section 107d–3 regarding "income-sharing" [2]. The latter section of the Act had not been cited or otherwise briefed by the parties to the arbitration. The panel declared that the commission agreement therefore was void, but that the permit was still valid. The panel further determined that the SLA must pay the claimant the amount of $7,163.35, minus $716.34, which constituted the 10% set aside charge to which the SLA was legally entitled. The final repayment figure was $6,447.01.

The views expressed by the panel do not necessarily represent the views of the Department of Education.

[FR Doc. 88–14530 Filed 6–27–88; 8:45 am]

BILLING CODE 4000–01–M

[1] Under 20 U.S.C. 107f(3), SLAs are authorized to set aside funds from the net proceeds of blind-operated vending facilities to apply to the five program purposes enumerated in this section.

[2] Under 20 U.S.C. 107b–3, income from vending machines operated on Federal property must be collected by the Federal property managing agency and disbursed, in varying percentages, to blind vendors on the premises, or to SLAs.

federal register

Tuesday
June 28, 1988

Part VI

Department of Education

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Notice

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on June 2, 1987, an arbitration panel rendered a decision in the matter of Betty Moffitt, vendor, v. the State of Tennessee, Tennessee Department of Human Services. The agency is the "State Licensing Agency" (SLA) designated by the Secretary of Education. The panel was convened by the Secretary pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner Betty Moffitt on December 3, 1985 (Docket No. R–S/85–6).

Under this section of the Act, a blind licensee who is dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the State Licensing Agency. If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, Room 3230, Mary E. Switzer Building, Department of Education, 330 C Street SW., Washington, DC 20202, Area Code (202) 732–1317 or TTY (202) 732–1298. A synopsis of the panel's decision is appended. The full text of the arbitration panel decision can be obtained from this contact.

Dated: June 22, 1988.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

Synopsis of Arbitration Panel Decision

The Tennessee Department of Human Services (TDHS) is the Tennessee State agency designated under the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* Ms. Moffitt is a blind vendor licensed by TDHS to operate a vending facility at Sequoyah, a nuclear powered electric generating plant operated by the Tennessee Valley Authority (TVA). The Federal Arbitration Panel Award decided two different disputes between Ms. Moffitt and TDHS.

In the first dispute, Ms. Moffitt claimed, under section 107d–3 of the Act, income from beverage vending machines operated at Sequoyah by a non-blind vendor under contract with TDHS. TDHS contended that the machines were on a separate "Federal property," namely, the TVA construction site at Sequoyah, as distinguished from the power production site. The Panel found, as urged by Ms. Moffitt, that Sequoyah was a single site for purposes of the Act. The Panel concluded, however, that the vending machines had not been in direct competition with Ms. Moffitt's facility, and, pursuant to the formula set forth in section 107d–3, awarded her 50% of the income from the machines for the period she claimed. In making that award, the Panel rejected an argument by TDHS that the remedial authority of the Panel was diminished either by the Eleventh Amendment to the U.S. Constitution or by restrictions on the Panel's jurisdiction which the Commissioner of Rehabilitation Services, U.S. Department of Education, had imposed when appointing the Panel.

In the second dispute, Ms. Moffitt claimed that TDHS acted improperly in establishing a second vending facility at Sequoyah and issuing a license to another blind vendor for its operation. The Panel found in Ms. Moffitt's favor on the ground that TDHS had established the second facility without first promulgating policies and standards for deciding such matters, and that formal policies and standards, established in conjunction with the State Committee of Blind Vendors, were specifically required by the regulations of TDHS. The panel directed TDHS to withdraw the license for the second facility, but without prejudice to the lawful issuance of such license or licenses in the future.

The views expressed by the Panel do not necessarily represent the views of the Department of Education.

[FR Doc. 88–14531 Filed 6–27–88; 8:45 am]

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Federal Register

Tuesday
June 28, 1988

Part VII

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2570

Proposed Prohibited Transaction Exemption Procedures; Employee Benefit Plans; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2570

Proposed Prohibited Transaction Exemption Procedures; Employee Benefit Plans

AGENCY: Department of Labor, Pension and Welfare Benefits Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation that describes the procedures for filing and processing applications for exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and the Federal Employees' Retirement System Act of 1986. The Secretary of Labor is authorized to grant exemptions from these restrictions and to establish an exemption procedure to provide for such exemptions. The proposed regulation updates the description of the Department's procedures to reflect changes in the Department of Labor's exemption authority and to clarify the procedures by providing a more comprehensive description of the prohibited transaction exemption process.

DATES: Written comments concerning the proposed regulation must be received by August 29, 1988. If adopted, the regulation would be effective with respect to exemption applications filed at any time after the date 30 days from the date of its publication as a final regulation.

ADDRESS: Written comments on the proposed regulation (preferably three copies) should be submitted to: The Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, Washington, DC 20210, Attention: "Proposed Prohibited Transaction Exemption Procedures."

FOR FURTHER INFORMATION CONTACT: Linda N. Winter, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9596, or Miriam Freund, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 523–8194.

SUPPLEMENTARY INFORMATION: Section 406 of the Employee Retirement Income Security Act of 1974 (ERISA) prohibits certain transactions between employee benefit plans and "parties in interest" (as defined in section 3(14) of ERISA). In addition, section 407(a) of ERISA imposes restrictions or plan investments in "employer securities" (as defined in section 407(d)(1) of ERISA) and "employer real property" (as defined in section 407(d)(2) of ERISA). Most of the transactions prohibited by section 406 of ERISA are likewise prohibited by section 4975 of the Internal Revenue Code of 1986 (the Code), which imposes an excise tax on those transactions to be paid by each "disqualified person" (defined in section 4975(e)(2) of the Code in virtually the same manner as the term "party in interest") who participates in the transactions.

Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules. In addition, section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions from the restrictions of sections 406 and 407(a) of the Act while section 4975(c)(2) of the Code authorizes the Secretary of the Treasury or his delegate to grant exemptions from the prohibitions of section 4975(c)(1). Sections 408(a) of ERISA and 4975(c)(2) of the Code direct the Secretary of Labor and the Secretary of the Treasury, respectively, to establish procedures to carry out the purposes of these sections.

Under section 3003(b) of ERISA, the Secretary of Labor and the Secretary of the Treasury are directed to consult and coordinate with each other with respect to the establishment of rules applicable to the granting of exemptions from the prohibited transaction restrictions of ERISA and the Code. Under section 3004 of ERISA, moreover, the Secretaries are authorized to develop jointly rules appropriate for the efficient administration of ERISA. Pursuant to these provisions, the Secretaries jointly issued an exemption procedure on April 28, 1975 (ERISA Proc. 75–1, 40 FR 18471, also issued as Rev. Proc. 75–26, 1975–1 C.B. 722). Under these procedures, a person seeking an exemption under both section 408(a) of ERISA and section 4975(c)(2) of the Code was obliged to file an exemption application with the Internal Revenue Service as well as with the Department of Labor.

Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, effective on December 31, 1978), transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code, with certain enumerated exceptions, to the Secretary of Labor. As a result, the Secretary of Labor now possesses authority under section 4975(c)(2) of the Code as well as under section 408(a) of ERISA, to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code. The Secretary has delegated this authority, along with most of his other responsibilities under ERISA, to the Assistant Secretary for Pension and Welfare Benefits. *See*, Secretary of Labor's Order 1–87, 52 FR 13139 (April 21, 1987).

The Federal Employees' Retirement System Act of 1986 (FERSA) also contains prohibited transaction rules that are applicable to parties in interest with respect to the Federal Thrift Savings Fund established by FERSA, and the Secretary of Labor is directed to prescribe, by regulation, a procedure for granting administrative exemptions from certain of those prohibited transactions. *See* 5 U.S.C. 8477(c)(3).

The proposed regulation updates ERISA Procedure 75–1 to reflect the changes made by Reorganization Plan No. 4 and extends the procedure to applications for exemptions from the FERSA prohibited transaction rules. In addition, the proposed regulation codifies various procedures developed by PWBA since the adoption of ERISA Procedure 75–1. Formal adoption of those procedures will facilitate review of exemption applications. These new procedures also fill in some of the gaps left in ERISA Proc. 75–1, thereby providing a more detailed description both of the steps to be taken by applicants in applying for exemptions and the steps normally taken by the Department in processing such applications. Finally, the proposed regulation modifies some of the procedures described in ERISA Proc. 75–1 to better serve the needs of the administrative exemption program as demonstrated by the Department's experience with the program over the past twelve years. These amendments are intended to promote the prompt and fair consideration of all exemption applications.

The Scope of the Regulation

The proposed regulation establishes new procedures to replace ERISA Proc. 75–1. These new procedures reflect changes in the Department of Labor's exemption authority effected by Reorganization Plan No. 4 of 1978. Thus, the procedures apply to all applications for exemption which the Department has authority to issue under section 408(a) of ERISA, or, as a result of Reorganization Plan No. 4, under section 4975(c)(2) of the Code. The procedures reflect current practice under which the Department generally treats any exemption application filed solely under section 408(a) of ERISA or solely under section 4975(c)(2) of the Code as an

application for exemption filed under both section 408(a) and section 4975(c)(2) if it relates to a transaction prohibited under corresponding provisions of both ERISA and the Code. The grant of an exemption by the Department in such instances protects disqualified persons covered by the exemption from the excise taxes otherwise assessable under section 4975 (a) and (b) of the Code.

The proposed procedures do not apply to applications for exemptions reserved to the jurisdiction of the Secretary of the Treasury by Reorganization Plan No. 4. To ascertain the correct procedures for filing and processing applications for these exemptions applicants should consult the Internal Revenue Service.

The Department has also concluded that it is appropriate to apply the procedures proposed here to exemption applications filed under FERSA as well as those filed under ERISA or the Code. Although the prohibited transaction provisions of FERSA and the scope of the Department's exemptive authority differ somewhat from ERISA and the Code, administrative exemption matters under FERSA are likely to involve many of the same issues as are presented by similar matters involving private plans. Thus, adopting uniform procedures should help assure uniform administration of the exemption programs.[1]

Applications for Exemptions

The Department's experience to date with the administrative exemption program suggests that the program's efficiency could be increased if the quality of exemption applications were improved. In the past, applications have been incomplete, have omitted or misstated facts or legal analyses needed to justify requests for exemptive relief, and in some cases have been so poorly drafted that the details of the transactions for which exemptive relief is sought ("exemption transactions") are unclear. The time and effort required to deal with such deficient applications and to obtain accurate and complete information about exemption transactions have contributed to processing delays. Moreover, in many exemption applications the discussion of the substantive basis for the exemption does not take adequate account of positions adopted by the Department with respect to other, similar applications.

The proposed regulation attempts to address these problems in a number of ways. First, the regulation requires that applicants provide more complete information in their applications about exemption transactions and about the plans and the parties in interest involved in those transactions. The Department's experience suggests that this additional information is usually helpful, and is often essential, for a complete understanding of the exemption transaction and of the context surrounding it. Accordingly, it is the Department's view that the inclusion of such additional information in exemption applications will expedite review of these applications on their merits.

For the same reason, the proposed regulation requires that copies of the relevant portions of documents bearing on transactions for which individual exemptions are sought be filed with the exemption application. This will avoid delays in the evaluation of exemption applications pending receipt of relevant documents. By filing comprehensive applications with necessary supporting documentation, applicants can do much to facilitate the Department's review of requested exemptions and to expedite the exemption process as a whole.

To further expedite the exemption process, the proposed regulation requires that an applicant include with his application a statement explaining why the requested exemption satisfies requirements set forth in sections 408(a) of ERISA and 4975(c)(2) of the Code and 5 U.S.C. 8477(c)(3)(C) that an exemption be:

(1) Administratively feasible;

(2) In the interests of the plan and of its participants and beneficiaries; and

(3) Protective of the rights of the plan's participants and beneficiaries.

This requirement is not new. Under ERISA Procedure 75–1, applicants have been required to include with their applications statements explaining why a requested exemption satisfies the statutory prerequisites for an exemption. Too often, however, applicants have attempted to satisfy this requirement with generalizations and perfunctory assurances about the benefits to be reaped by plans and their participants and beneficiaries from the proposed exemption.

The Department will not seek out reasons to grant an exemption that has not been adequately justified by an applicant. Indeed, the Department considers that it is the responsibility of applicants to demonstrate clearly that exemptions they are requesting meet statutory criteria. Accordingly, under the proposed regulation, applicants are expected to review the statutory criteria for granting administrative exemptions and explain with as much specificity as possible why a requested exemption would pose no administrative problems, what benefits affected plans and their participants and beneficiaries can expect to receive from it, and what conditions would be attached to protect the rights of participants and beneficiaries of affected plans.[2]

Under ERISA Procedure 75–1, applicants have been given the option, but have not been required, to submit a draft of the proposed exemption. The proposed regulation preserves this option. However, while not requiring the submission of a draft of the proposed exemption, the Department recommends that applicants include in their exemption applications draft language which defines the scope of the requested exemption, including the specific conditions under which the requested exemption would apply. A draft which explains the exemption requested in a clear and concise manner and focuses on what the applicant considers to be the essential features of the exemption transaction and the critical safeguards supporting the requested relief is likely to facilitate the process of review. Obviously, the degree of detail necessary to adequately describe the proposed exemption will vary depending on the complexity of the transaction and the kind of relief requested.

Section 2570.34 of the proposed regulation lists the information that is required in every exemption application, whether it be an application for an individual or class exemption. Additional information specified in § 2570.35 of the regulation must be included in applications for individual exemptions.

Section 2570.32 incorporates the provisions of ERISA Procedure 75–1 relating to who may file applications for exemptions and sets forth simplified rules relating to representation of applicants by third parties. If the same person will represent both the plan and the parties in interest involved in an

[1] Under section 111 of the FERSA Technical Corrections Act of 1988 (Pub. L. 99–556, October 27, 1986), the Department's existing exemption procedures are made applicable to exemption applications under FERSA until the earlier of the date of publication of final regulations adopting an exemption procedure or December 31, 1988. Thus, persons applying for exemptions from the FERSA prohibited transaction rules should follow the requirements of ERISA Proc. 75–1 until such time as the regulations being proposed here are published in final form.

[2] The Department must find that the statutory criteria are satisfied before granting a prohibited transaction exemption. The legislative history of ERISA makes it clear, however, that the Department has broad discretion in determining whether or not to grant an exemption. H.R. Rep. 1280, 93 Cong., 2d Sess. 311 (1974).

exemption transaction in matters relating to the exemption application, § 2570.34 requires the applicant to disclose this fact in the application. Such shared representation may raise questions under the exclusive purpose and prudence requirements of sections 403(c) and 404(a) of the Act and under the prohibited transaction provisions of section 406 of the Act and section 4975(c)(1) of the Code.[3]

Section 2570.33 indicates that the Department will not consider on its merits an application that omits any of the information required by § 2570.34 or, if applicable, § 2570.35. Thus, applicants should not file applications for exemption until they have compiled all the information required by these sections and can submit it in an organized and comprehensive fashion together with all necessary supporting documents and statements.

Duty to Amend and Supplement Information

The proposed regulation preserves in § 2570.37 the requirement established in ERISA Procedure 75–1 that an applicant promptly notify the Division of Exemptions if he discovers that any material fact or representation contained in his application, or in any supporting documents or testimony, was inaccurate or if any such fact or representation substantially changes. However, the proposed regulation adds the requirement that an applicant notify the Division of Exemptions when anything occurs that may affect the *continuing* accuracy of such facts or representations.

The Department expressly conditions every exemption on the accuracy and completeness of the facts and representations provided by an applicant in support of the exemption. Therefore, as § 2570.49 of the proposed regulation indicates, an exemption does not take effect or otherwise operate to protect parties in interest from liability for any excise tax assessable under section 4975 of the Code or any civil penalty assessable under section 502(i) of ERISA or 5 U.S.C. 8477(e) if the material facts and representations contained in the application or in any other materials, documents or testimony submitted by the applicant in support of the application were inaccurate or incomplete.

[3] Similarly, a plan's payment of the expenses associated with the filing or processing of an exemption application raises questions under the cited fiduciary responsibility and prohibited transaction restrictions to the extent that any party in interest benefits from the transaction for which an exemption is sought. *See* section 406(a)(1)(D) of ERISA.

Decision to Deny an Exemption

Although ERISA Proc. 75–1 established no procedures to be followed by the Department in denying exemption applications or to be followed by applicants in responding to such denials, the Department has developed procedures over the years to notify applicants, first, to the tentative and, later, of the final denial of their applications. In large part, the proposed regulation codifies these procedures.

Section 2570.33 of the proposed regulation describes certain cases in which the Department will ordinarily not consider the merits of exemption application. As noted above, this section provides that the Department will ordinarily not consider an incomplete application. In addition, the proposal makes it clear that the Department ordinarily will not consider applications that relate to a transaction, or a party in interest, that is the subject of an ERISA enforcement action or investigation. In certain cases, however, the Department may exercise its discretion to consider exemption applications in these categories, for example, where deficiencies in an exemption application are merely technical or where an enforcement matter is clearly unrelated to the exemption transaction.

Under the proposed regulation, the Department may decide to deny an exemption request at any one of a number of stages in the review process. For example, it may decide after its initial review of an application that the requested exemption does not satisfy the statutory criteria set forth in sections 408(a) of the Act and 4975(c)(2) of the Code. In that event, the department will send a tentative denial letter to the applicant pursuant to § 2570.38 of the regulation. That letter will inform the applicant of the Department's tentative decision to deny the application and of the reasons therefor. Under § 2570.38, an applicant has 20 days from the date of this letter to request a conference with the Department and/or to notify the Department of his intent to submit additional information in writing to support the application. If the Department receives no request for a conference and no notice of intent to submit additional information within that time, it will send the applicant a final denial letter pursuant to § 2570.41 of the regulation.

If an applicant wishes to submit additional information in support of a tentatively denied exemption application, he may notify the Department of his intention to do so within the prescribed 20-day period either by telephone or by letter. After issuing such a notice an applicant has 30 days from the date of the notice to furnish additional information to the Department. If an applicant notifies the Department of his intent to submit additional information but requests no conference and subsequently fails to submit the promised information within the prescribed 30-day period, the Department will issue the applicant a final denial letter pursuant to § 2570.41 of the proposed regulation. However, an applicant who realizes that he will be unable to submit his additional information within the allotted time may avoid receiving a final denial letter by withdrawing his application before the end of the 30-day period pursuant to § 2570.44 of these procedures. Simply by sending the outstanding additional information to the Division of Exemptions, an applicant who chooses this option may reinstate his application at any time within two years of its withdrawal without resubmitting any information or materials previously filed in connection with the application.

As an alternative to withdrawing his application, an applicant who, for reasons beyond his control, is unable to meet the 30-day deadline may request an extension of time for filing additional information pursuant to § 2570.39 of the proposed procedures. However, the Department will grant such extensions of time only in unusual circumstances.

Under § 2570.40 of the proposed regulation, an applicant is also given 20 days after the date of any conference to submit to the Department in writing any additional data or arguments discussed at the conference but not previously or adequately presented in writing. If, after considering such additional material, the Department remains persuaded that the requested exemption should not be granted, it will issue a final denial letter. Despite a request for a conference, the Department may also issue a final denial letter to an applicant who, without good cause, fails to appear for a scheduled conference or declines to schedule a conference for any of the times proposed by the Department within the 45-day period following its receipt of the request.

In most cases, the procedure outlined above will also be followed in denying exemptions that the Department has already proposed through publication of a notice of proposed exemption in the **Federal Register**. However, in cases where the Department holds a hearing on an exemption, the proposed regulation allows the Department to issue a final denial letter without first issuing a tentative denial letter and without providing the applicant with the

opportunity for a conference. In the Department's view, where a hearing on a proposed exemption is conducted, the applicant and other proponents of the exemption have a more than adequate opportunity to present their evidence and arguments in support of the exemption; thus, little is gained by providing the applicant with yet another opportunity to air his views.

After issuing a final denial letter on an exemption, the Department will not consider a renewed application covering the same transaction unless the applicant presents significant new facts or arguments in support of the exemption. By "new facts or arguments," the Department means facts or arguments which, for good reason, the applicant could not have submitted for the Department's consideration during its initial review of the exemption application. If able to develop significant new facts or arguments, an applicant may present them to the Department in a request for reconsideration under § 2570.45 of the proposed regulation. Under § 2570.45, a request for reconsideration must be submitted within 180 days after the issuance of the final denial letter.

Procedures for Granting an Exemption

The proposed regulation supplements and refines, but does not signficantly alter, procedures established by ERISA Procedure 75–1 for granting an exemption. Under § 2570.42 of the regulation, the Department will publish a notice of proposed exemption in the **Federal Register** if, after reviewing an exemption application and any additional information submitted by an applicant, it tentatively concludes that the requested exemption satisfies the statutory criteria for the granting of an exemption and that the requested exemption is otherwise appropriate.

Like ERISA Procedure 75–1, the proposed regulation requires applicants to provide notice to interested persons in the event that the Department decides to propose the exemption. Section 2570.34 of the regulation requires an applicant to submit with his application a description of the interested persons to whom notice will be provided and a description of the manner in which the applicant proposes to provide notice. That section also requires an applicant to provide an estimate of the time he will need to furnish notice to interested persons following publication of a notice of proposed exemption.

Section 2570.43 of the proposed regulation provides guidance on methods an applicant may use to notify interested persons of a proposed exemption and indicates what must be included in the notice. In addition to the Notice of Proposed Exemption published in the **Federal Register**, the applicant must include in the notification to interested persons a supplemental statement. Section 2570.43 also states that, once the Department has published a notice of proposed exemption, the applicant must notify the interested persons described in his application in the manner indicated in the application unless the Department has informed the applicant beforehand that it considers the method of notification described in the application to be insufficient in some way. Where the Department has so informed an applicant, it will also require the applicant to enter into an agreement to provide notice in the time and manner and to the persons designated by the Department. After furnishing notification, an applicant must submit to the Department a declaration under penalty of perjury certifying that notice was given to the persons and in the manner specified in his application or the superseding agreement with the Department.

A notice of proposed exemption will invite interested persons to submit comments in writing on the exemption. Where appropriate, it will also invite such persons to request hearings on the exemption pursuant to § 2570.46 of the proposed procedures. If, after considering all of the applicant's submissions, together with any comments received from interested persons and the record of any hearing held in connection with the requested exemption, the Department finally determines that the exemption should be granted, it will publish a notice in the **Federal Register** granting the exemption pursuant to § 2570.48 of the proposed procedures.

Hearings on Proposed Exemptions

Section 406(b) of ERISA prohibits a fiduciary from engaging in various acts of self-dealing. Under section 408(a) of the Act, the Department has authority to grant exemptions from the prohibitions of section 406(b) just as it has authority to grant exemptions from the restrictions of sections 406(a) and 407(a). However, section 408(a) specifies that the Department may not grant an exemption from section 406(b) unless it affords an opportunity for a hearing and makes a determination on the record with respect to the three statutory criteria established for granting an exemption.[4]

Because section 408(a) specifies that an opportunity for a hearing must be given before an exemption under section 406(b) is *granted*, but not before such an exemption is denied, the Department interprets section 408(a) to mean that only opponents of such an exemption must be given an opportunity for a hearing. Moreover, the Department has concluded that it must provide a hearing on the record to opponents of a proposed exemption under section 406(b) only where it appears that there are material factual issues relating to the proposed exemption that cannot be fully explored without such a hearing. Indeed, in the Department's experience, such hearings are not useful where the only issues to be decided are matters of law or where material factual issues can be adequately explored by less costly and more expeditious means, such as written submissions. Accordingly, under § 2570.46 of the proposed regulation, the Department requires that persons who may be adversely affected by the grant of an exemption from section 406(b) of ERISA offer some evidence of the existence of issues that can be fully examined only at a hearing before it will grant a request for a hearing. Where persuasive evidence of the existence of such issues is offered, however, the Department will grant the requested hearing.

Under § 2570.47 of the proposed procedures, the Department may schedule a hearing on its own motion if it determines that a hearing would be useful in exploring issues relevant to the requested exemption. Under the proposed procedures, if the Department decides to conduct a hearing on an exemption under either § 2570.46 or § 2570.47, the applicant must notify interested persons of the hearing in the manner prescribed by the Department. Ordinarily, such notice may be provided by furnishing interested persons with a copy of the notice of hearing published by the Department in the **Federal Register** within 10 days of its publication. After furnishing notice, the applicant must submit to the Department a declaration under penalty of perjury certifying that notice has been provided in the manner prescribed.

Any testimony or other evidence offered at a hearing held under either § 2570.46 or § 2570.47 becomes part of the administrative record to be used by the Department in making its final decision on an exemption application.

Effective Date

The proposed regulation would be effective with respect to all applications for exemptions filed with the

[4] Section 4975(c)(2) of the Code and 5 U.S.C. 8477(c)(3)(D), added FERSA, contain similar hearing requirements. The following discussion of the hearing requirements of section 408(a) of ERISA is equally applicable to those statutory provisions.

Department under section 408(a) of ERISA, section 4975(c)(2) of the Code, or 5 U.S.C. 8477(c)(3) at any time after the date 30 days from the date the regulation is published in final form in the **Federal Register**. Applications for exemptions filed before that date would be governed by ERISA Procedure 75–1.

Executive Order 12291 Statement

The Department has determined that the proposed regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: An annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department has determined that this regulation would not have a significant economic impact on small plans or other small entities. As stated previously, this regulation would do little more than describe procedures that reflect practices already in place for filing and processing applications for exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986 and the Federal Employee Retirement Systems Act of 1986.

Paperwork Reduction Act

This proposed regulation modifies current collection of information requirements. It does so largely by codifying requests for facts and opinions that are routinely addressed to applicants for exemptions under current procedures. Accordingly, the regulation will not increase the paperwork burden for applicants. The regulation has been forwarded for approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511).

Statutory Authority

The proposed regulation would be issued under the authority granted in sections 408(a) (Pub. L. 93–406, 88 Stat. 883, 29 U.S.C. 1108(a)) and 505 (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135) of ERISA, under Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), under 5 U.S.C. 8477(c)(3), and under Secretary of Labor's Order No. 1–87 (52 FR 13139 April 21, 1987).

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Federal Employees' Retirement System Act, Party in interest, Prohibited transactions, Pensions.

Proposed Regulation

For the foregoing reasons set out in the preamble, Title 29, Chapter XXV, Part 2570 of the Code of Federal Regulations is proposed to be amended as follows:

[Note: Part 2570, consisting of Subpart A (§§ 2570.1–2570.13), was proposed at 51 FR 30504, August 27, 1986.]

PART 2570—[AMENDED]

1. The authority for Part 2570 is revised to read as follows:

Authority: 29 U.S.C. 1108(a), 1135; Reorganization Plan No. 4 of 1978; 5 U.S.C. 8477(c)(3); Secretary of Labor's Order No. 1–87.

Sections 2570.1 to 13 are also issued under 29 U.S.C. 1132(i).

2. By adding in the appropriate place the following new Subpart B:

Subpart B—Procedures for Filing and Processing Prohibited Transaction Exemption Applications

Sec.

2570.30 Scope of rules.
2570.31 Definitions.
2570.32 Persons who may apply for exemptions.
2570.33 Applications the department will not ordinarily consider.
2570.34 Information to be included in every exemption application.
2570.35 Information to be included in applications for individual exemptions only.
2570.36 Where to file an application.
2570.37 Duty to amend and supplement exemption applications.
2570.38 Tentative denial letters.
2570.39 Opportunities to submit additional information.
2570.40 Conferences.
2570.41 Final denial letters.
2570.42 Notice of proposed exemption.
2570.43 Notification of interested persons by applicant.
2570.44 Withdrawal of exemption applications.
2570.45 Requests for reconsideration.
2570.46 Hearings in opposition to exemptions from restrictions on fiduciary self-dealing.
2570.47 Other hearings.
2570.48 Decision to grant exemptions.
2570.49 Limits on the effect of exemptions.
2570.50 Revocation or modification of exemptions.
2570.51 Public inspection and copies.

Subpart B—Procedures for Filing and Processing Prohibited Transaction Exemption Applications

§ 2570.30 Scope of rules.

(a)(1) The rules of procedure set forth in this subpart apply to all applications for exemption which the Department has authority to issue under:

(i) Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA);

(ii) Section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) (See Reorganization Plan No. 4 of 1978); or

(iii) The Federal Employees' Retirement System Act of 1986 (FERSA) (5 U.S.C. 8477(c)(3)).

(b) The Department will generally treat any exemption application which is filed solely under section 408(a) of ERISA or solely under section 4975(c)(2) of the Code as an exemption filed under both section 408(a) and section 4975(c)(2) if it relates to a transaction that would be prohibited both by ERISA and by the corresponding provisions of the Code.

(c) The procedures set forth in this subpart represent the exclusive means by which the Department will issue administrative exemptions. The Department will not issue exemptions upon oral request alone. Likewise, the Department will not grant exemptions orally. An applicant for an administrative exemption may request and receive oral advice from Department employees in preparing an exemption application. However, such advice does not constitute part of the administrative record and is not binding on the Department in its processing of an exemption application or in its examination or audit of a plan.

§ 2570.31 Definitions.

For purposes of these procedures, the following definitions apply:

(a) An "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any director of, relative of, or partner in, any such person;

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner; and

(4) Any employee or officer of the person who—

(i) Is highly compensated (as defined in section 4975(e)(2)(H) of the Code), or

(ii) Has direct or indirect authority, responsibility, or control regarding the custody, management, or dispostion of plan assets.

(b) A "class exemption" is an administrative exemption, granted under section 408(a) of ERISA, section 4975(c)(2) of the Code, and/or 5 U.S.C. 8477(c)(3), which applies to any parties in interest within the class of parties in interest specified in the exemption who meet the conditions of the exemption.

(c) "Department" means the U.S. Department of Labor and includes the Secretary of Labor or his delegate exercising authority with respect to prohibited transaction exemptions to which this subpart applies.

(d) "Exemption transaction" means the transaction or transaction for which an exemption is requested.

(e) An "individual exemption" is an administrative exemption, granted under section 408(a) of ERISA, section 4975(c)(2) of the code, and/or 5 U.S.C. 8477(c)(3), which applies only to the specific parties in interest named or otherwise identified in the exemption.

(f) A "party in interest" means a person described in section 3(14) of ERISA or 5 U.S.C. 8477(a)(4) and includes a "disqualified person," as defined in section 4975(e)(2) of the Code.

§ 2570.32 Persons who may apply for exemptions.

(a) The Department may initiate exemption proceedings on its own motion. In addition, the Department will initiate exemption proceedings upon the application of:

(1) Any party in interest to a plan who is or may be a party to the exemption transaction;

(2) Any plan which is a party to the exemption transaction; or

(3) In the case of an application for an exemption covering a class of parties in interest or a class of transactions, in addition to any person described in paragraphs (a)(1) and (a)(2) of this section, an association or organization representing parties in interest who may be parties to the exemption transaction.

(b) An application by or for a person described in paragraph (a) of this section, may be submitted by the applicant or by his authorized representatives. If the application is submitted by a representative of the applicant, the representative must submit proof of his authority in the form of:

(1) A power of attorney; or

(2) A written certification from the applicant that the representation is authorized.

(c) If the authorized representative of an applicant submits an application for an exemption to the Department together with proof of his authority to file the application as required by paragraph (b) of this section, the Department will direct all correspondence and inquiries concerning the application to the representative unless requested to do otherwise by the applicant.

§ 2570.33 Applications the Department will not ordinarily consider.

(a) The Department will not ordinarily consider:

(1) An application that fails to include all the information required by §§ 2570.34 and 2570.35 or otherwise fails to conform to the requirements of these procedures; or

(2) An application for an exemption involving a transaction or transactions which are the subject of an investigation for possible violations of ERISA or FERSA or an application for an exemption involving a party in interest who is the subject of such an investigation or who is a defendant in an action by the Department or the Internal Revenue Service to enforce ERISA or FERSA.

(b) If for any reason the Department decides not to consider an exemption application, it will inform the applicant of that decision in writing and of the reasons therefor.

(c) An application for an individual exemption relating to a specific transaction or transactions will ordinarily not be considered separately if the Department is considering a class exemption relating to the same type of transaction or transactions.

§ 2570.34 Information to be included in every exemption application.

(a) All applications for exemptions must contain the following information:

(1) The name(s) of the applicant(s);

(2) A detailed description of the exemption transaction and the parties in interest for whom an exemption is requested, including a description of any larger integrated transaction of which the exemption transaction is a part;

(3) Whether the affected plan(s) and any parties in interest will be represented by the same person with regard to the exemption application;

(4) Reasons a plan would have for entering into the exemption transaction;

(5) The prohibited transaction provisions from which exemptive relief is requested and the reason why the transaction would violate each such provision;

(6) Whether the exemption transaction is customary for the industry or class involved;

(7) Whether the exemption transaction is or has been the subject of an investigation or enforcement action by the Department or by the Internal Revenue Service; and

(8) The hardship or economic loss, if any, which would result to the person or persons on behalf of whom the exemption is sought, to affected plans, and to their participants and beneficiaries from denial of the exemption.

(b) All applications for exemption must also contain the following:

(1) A statement explaining why the requested exemption would be—

(i) Administratively feasible;

(ii) In the interests of affected plans and their participants and beneficiaries; and

(iii) Protective of the rights of participants and beneficiaries of affected plans.

(2) With respect to the notification of interested persons required by § 2570.43:

(i) A description of the interested persons to whom the applicant intends to provide notice;

(ii) The manner in which the applicant will provide such notice; and

(iii) An estimate of the time the applicant will need to furnish notice to all interested persons following publication of a notice of the proposed exemption in the **Federal Register**.

(3) If an advisory opinion has been requested with respect to any issue relating to the exemption transaction—

(i) A copy of the letter concluding the Department's action on the advisory opinion request; or

(ii) If the Department has not yet concluded its action on the request:

(A) A copy of the request or the date on which it was submitted together with the Department's correspondence control number as indicated in the acknowledgement letter; and

(B) An explanation of the effect of a favorable advisory opinion upon the exemption transaction.

(4) If the application is to be signed by anyone other than an individual party in interest seeking exemptive relief on his own behalf, a statement which—

(i) Identifies the individual who will be signing the application and his position with the applicant; and

(ii) Explains briefly the basis of his familiarity with the matters discussed in the application.

(5)(i) A declaration in the following form: Under penalty of perjury, I declare that, to the best of my knowledge and belief, the representations made in this application are true and correct.

(ii) This declaration must be dated and signed by:

(A) The applicant himself in the case of an individual party in interest seeking exemptive relief on his own behalf;

(B) A corporate officer or partner who is familair with the matters discussed in

the application where the applicant is a corporation or partnership;

(C) A designated officer, official, or trustee who is familar with the matters discussed in the application where the applicant is a plan or an association, organization, or other unincorporated enterprise.

(iii) Specialized statements from third-party experts— such as appraisals, analyses of market conditions, or opinions of independent fiduciaries— submitted to support an application for exemption must also be accompanied by a declaration under penalty of perjury that, to the best of the expert's knowledge and belief, the representations made in the statement are true and correct. This declaration must be dated and signed by the expert who prepared the statement.

(c) An application for an exemption may also include a draft of the requested exemption which defines the transaction and parties in interest for which exemptive relief is sought and the specific conditions under which the exemption would apply.

§ 2570.35 Information to be included in applications for individual exemptions only.

(a) Every application for an individual exemption must include, in addition to the information specified in § 2570.34, the followig information:

(1) The name, address, telephone number, and type of plan or plans to which the requested exemption applies;

(2) The Employer Identification Number (EIN) and the plan number (PN) used by such plan or plans in all reporting and disclosure required by the Department;

(3) Whether any plan or trust affected by the requested exemption has ever been found by the Department, the Internal Revenue Service, or by a court to have violated the exclusive benefit rule of section 401(a) of the Code, or to have engaged in a prohibited transaction under section 503(b) of the Code or corresponding provisions of prior law, section 4975(c)(1) of the Code, sections 406 or 407(a) of ERISA, or 5 U.S.C. 8477(c)(3);

(4) Whetehr any relief under section 408(a) of ERISA, section 4975(c)(2) of the Code or 5 U.S.C. 8477(c)(3) has been requested by, or provided to, the applicant or any of the parties on behalf of whom the exemption is sought and, if so, the exemption application number or the prohibited transaction exemption number;

(5) Whether the applicant or any of the parties to the exemption transaction is currently, or has been within the last five years, a defendant in any lawsuit or criminal action concerning such person's conduct as a fiduciary or party in interest with respect to any plan;

(6) Whether the applicant or any of the parties to the exemption transaction has, within the last 13 years, been convicted of any crime described in section 411 of ERISA;

(7) Whether, within the last five years, any plan affected by the exemption transaction or any party to the exemption transaction has been under investigation or examination by, or has been engaged in litigation or a continuing controversy with, the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, or the Federal Retirement Thrift Investment Board involving compliance with provisions of ERISA, provisions of the Code relating to employee benefit plans, or provisions of FERSA relating to the Federal Thrift Savings Fund. If so, the applicant should submit copies of all correspondence with the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, or the Federal Retirement Thrift Investment Board regarding the substantive issues involved in the investigation, examination, litigation, or controversy;

(8) Whether any plan affected by the requested exemption has experienced a reportable event under section 4043 of ERISA;

(9) Whether a notice of intent to terminate has been filed under section 4041 of ERISA respecting any plan affected by the requested exemption;

(10) Names, addresses, and taxpayer identifying numbers of all parties in interest involved in the subject transaction;

(11) The estimated number of participants and beneficiaries in each plan affected by the requested exemption as of the date of the application;

(12) The percentage of the fair market value of the total assets of each affected plan that is involved in the exemption transaction;

(13) Whether the exemption transaction has been consummated already or will be consummated only if the exemption is granted;

(14) If the exemption transaction has already been consummated:

(i) The circumstances which resulted in plan fiduciaries causing the plan(s) to engage in the subject transaction before obtaining an exemption from the Department;

(ii) Whether the transaction has been terminated;

(iii) Whether the transaction has been corrected as defined in Code section 4975 (f)(5);

(iv) Whether Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, has been filed with the Internal Revenue Service with respect to the transaction;

(v) Whether any excise taxes due under section 4975 (a) and (b) of the Code by reason of the transaction have been paid.

(15) The name of every person who has investment discretion over any assets involved in the exemption transaction and the relationship of each such person to the parties in interest involved in the exemption transaction and the affiliates of such parties in interest;

(16) Whether or not assets of the affected plan(s) are invested in loans to any party in interest involved in the exemption transaction, in property leased to any such party in interest, or in securities issued by any such party in interest, and, if such investments exist, a statement for each of these three types of investments which indicates:

(i) The type of investment to which the statement pertains;

(ii) The aggregate fair market value of all investments of this type as reflected in the plan's most recent annual report;

(iii) The approximate percentage of the fair market value of the plan's total assets as shown in such annual report that is represented by all investments of this type; and

(iv) The statutory or administrative exemption covering these investments, if any.

(17) The approximate aggregate fair market value of the total assets of each affected plan;

(18) The person(s) who will bear the costs of the exemption application and of notifying interested persons; and

(19) Whether an independent fiduciary is or will be involved in the exemption transaction and, if so, the names of the persons who will bear the cost of the fee payable to such fiduciary.

(b) Each application for an individual exemption must also include:

(1) True copies of all contracts, deeds, agreements, and instruments as well as relevant portions of plan documents, trust agreements, and any other documents bearing on the exemption transaction;

(2) A discussion of the facts relevant to the exemption transaction that are reflected in these documents and an analysis of their bearing on the requested exemption; and

(3) A copy of the most recent financial statements of each plan affected by the requested exemption.

§ 2570.36 Where to file an application.

The Department's prohibited transaction exemption program is administered by the Pension and Welfare Benefits Administration (PWBA). Any exemption application governed by these procedures should be mailed or otherwise delivered to: Exemption Application, PWBA, Office of Regulations and Interpretations, Division of Exemptions, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

§ 2570.37 Duty to amend and supplement exemption applications.

(a) An applicant must promptly notify the Division of Exemptions in writing if he discovers that any material fact or representation contained in his application or in any documents or testimony provided in support of the application is inaccurate, if any such fact or representation changes, or if anything occurs that may affect the continuing accuracy of any such fact or representation.

(b) If, at any time after filing his exemption application, an applicant or any other party in interest who would participate in the exemption transaction becomes the subject of an investigation or enforcement action by the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, or the Federal Retirement Thrift Investment Board involving compliance with provisions of ERISA, provisions of the Code relating to employee benefit plans, or provisions of FERSA relating to the Federal Thrift Savings Fund, the applicant must promptly notify the Division of Exemptions.

(c) The Department may require an applicant to provide documentation it considers necessary to verify any statements contained in the application or in supporting materials or documents.

§ 2570.38 Tentative denial letters.

(a) If, after reviewing an exemption file, the Department concludes that it will not grant the exemption, it will notify the applicant in writing of its tentative denial of the exemption application. At the same time, the Department will provide a short statement of the reasons for its tentative denial.

(b) An applicant will have 20 days from the date of a tentative denial letter to request a conference under § 2570.40 of these procedures and/or to notify the Department of its intent to submit additional information in writing under § 2570.39 of these procedures. If the Department does not receive a request for a conference or a notification of intent to submit additional information within that time, it will issue a final denial letter pursuant to § 2570.41.

(c) The Department need not issue a tentative denial letter to an applicant before issuing a final denial letter where the Department has conducted a hearing on the exemption pursuant to either § 2570.46 or 2570.47 of these procedures.

§ 2570.39 Opportunities to submit additional information.

(a) An applicant may notify the Department of its intent to submit additional information supporting an exemption application either by telephone or by letter sent to the address furnished in the applicant's tentative denial letter. At the same time, the applicant should indicate generally the type of information that he will submit.

(b) An applicant will have 30 days from the date of the notification discussed in paragraph (a) of this section to submit in writing all of the additional information he intends to provide in support of his application. All such information must be accompanied by a declaration under penalty of perjury attesting to the truth and correctness of the information provided, which is dated and signed by a person qualified under § 2570.34(b)(5) of these procedures to sign such a declaration.

(c) If, for reasons beyond his control, an applicant is unable to submit in writing all the additional information he intends to provide in support of his application within the 30-day period described in paragraph (b) of this section, he may request an extension of time to furnish the information. Such requests must be made before the expiration of the 30-day period and will be granted only in unusual circumstances and for limited periods of time.

(d) If an applicant is unable to submit all of the additional information he intends to provide in support of his exemption application within the 30-day period specified in paragraph (b) of this section, or within any additional period of time granted to him pursuant to paragraph (c) of this section, the applicant may withdraw the exemption application before expiration of the applicable time period and reinstate it later pursuant to § 2570.44 of these procedures.

(e) The Department will issue, without further notice, a final denial letter denying the requested exemption pursuant to § 2570.41 of these procedures where—

(1) The Department has not received the additional information that the applicant indicated he would submit within the 30-day period described in paragraph (b) of this section, or within any additional period of time granted pursuant to paragraph (c) of this section;

(2) The applicant did not request a conference pursuant to § 2570.38(b) of these procedures; and

(3) The applicant has not withdrawn his application as permitted by paragraph (d) of this section.

§ 2570.40 Conferences.

(a) Any conference between the Department and an applicant pertaining to a requested exemption will be held in Washington, DC, except that a telephone conference will be held at the applicant's request.

(b) An applicant is entitled to only one conference with respect to any exemption application. An applicant will not be entitled to a conference, however, where the Department has held a hearing on the exemption under either § 2570.46 or § 2570.47 of these procedures.

(c) Insofar as possible, conferences will be scheduled as joint conferences with all applicants present where:

(1) More than one applicant has requested an exemption with respect to the same or similar types of transactions;

(2) The Department is considering the applications together as a request for a class exemption;

(3) The Department contemplates not granting the exemption; and

(4) More than one applicant has requested a conference.

(d) The Department will attempt to schedule a conference under this section for a mutually convenient time during the 45-day period following the later of—

(1) The date the Department receives the applicant's request for a conference, or

(2) The date the Department notifies the applicant, after reviewing additional information submitted pursuant to § 2570.39, that it is still not prepared to propose the requested exemption.

If the applicant is unable to attend a conference at any of the times proposed by the Department during this 45-day period or if the applicant fails to appear for a scheduled conference, he will be deemed to have waived his right to a conference unless circumstances beyond his control prevent him from scheduling a conference or attending a scheduled conference within this period.

(e) Within 20 days after the date of any conference held under this section, the applicant may submit to the Department a written record of any additional data, arguments, or

precedents discussed at the conference but not previously or adequately presented in writing.

§ 2570.41 Final denial letters.

(a) The Department will issue a final denial letter denying a requested exemption where:

(1) The conditions for issuing a final denial letter specified in § 2570.38(b) or § 2570.39(e) of these procedures are satisfied;

(2) After issuing a tentative denial letter under § 2570.38 of this part and considering the entire record in the case, including all written information submitted pursuant to § 2570.39 and § 2570.40(e) of these procedures, the Department decides not to propose an exemption or to withdraw an exemption already proposed; or

(3) After proposing an exemption and conducting a hearing on the exemption under either § 2570.46 or § 2570.47 of this part and after considering the entire record in the case, including the record of the hearing, the Department decides to withdraw the proposed exemption.

§ 2570.42 Notice of proposed exemption.

If the Department tentatively decides, based on all the information submitted by an applicant, that the exemption should be granted, it will publish a notice of proposed exemption in the **Federal Register**. The notice will:

(a) Explain the exemption transaction and summarize the information received by the Department in support of the exemption;

(b) Specify any conditions under which the exemption is proposed;

(c) Inform interested persons of their right to submit comments in writing to the Department relating to the proposed exemption and establish a deadline for receipt of such comments;

(d) If the proposed exemption includes relief from the prohibitions of section 406(b) of ERISA, section 4975(c)(1) (E) or (F) of the Code, or section 8477(c)(2) of FERSA, inform interested persons of their right to request a hearing under § 2570.46 of this part and establish a deadline for receipt of requests for such hearings.

§ 2570.43 Notification of interested persons by applicant.

(a) If, as set forth in the exemption application, the notification that an applicant intends to provide to interested persons upon publication of a notice of proposed exemption in the **Federal Register** is inadequate, the Department will so inform the applicant and will secure the applicant's written agreement to provide what it considers to be adequate notice under the circumstances.

(b) If a notice of proposed exemption is published in the **Federal Register** in accordance with § 2570.42 of this part, the applicant must notify interested persons of the pendency of the exemption in the manner and time period specified in his application or in any superseding agreement with the Department. Any such notification must include:

(1) A copy of the notice of proposed exemption; and

(2) A supplemental statement in the following form:

> You are hereby notified that the United States Department of Labor is considering granting an exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974. The exemption under consideration is explained in the enclosed Notice of Proposed Exemption. As a person who may be affected by this exemption, you have the right to comment on the proposed exemption by [date].[1] [If you may be adversely affected by the grant of the exemption, you also have the right to request a hearing on the exemption by [date].[1] [2]
>
> Comments or requests for a hearing should be addressed to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room _____ [3], U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, ATTENTION: Application No. _____.[4]
>
> The Department will make no final decision on the proposed exemption until it reviews all comments received in response to the enclosed notice. If the Department decides to hold a hearing on the exemption before making its final decision, you will be notified of the time and place of the hearing.

(c) The method used to furnish notice to interested persons must be reasonably calculated to ensure that interested persons actually receive the notice. In all cases, personal delivery and delivery by first-class mail will be considered reasonable methods of furnishing notice.

(d) After furnishing the notice required by this section, an applicant must provide the Department with a statement confirming that notice was furnished to the persons and in the manner and time designated in its exemption application or in any superseding agreement with the Department. This statement must be accompanied by a declaration attesting to the truth of the information provided in the statement and signed by a person qualified under § 2570.34(b)(5) of these procedures to sign such a declaration. No exemption will be granted until such a statement and its accompanying declaration have been furnished to the Department.

§ 2570.44 Withdrawal of exemption applications.

(a) An applicant may withdraw his application for an exemption at any time by informing the Department, either orally or in writing, of his intent to withdraw.

(b) Upon receiving an applicant's notice of intent to withdraw an application for an individual exemption, the Department will confirm by letter the applicant's withdrawal of the application and will terminate all proceedings relating to the application. If a notice of proposed exemption has been published in the **Federal Register** the Department will publish a notice withdrawing the proposed exemption.

(c) Upon receiving an applicant's notice of intent to withdraw an application for a class exemption or for an individual exemption that is being considered with other applications as a request for a class exemption, the Department will inform any other applicants for the exemption of the withdrawal. The Department will continue to process other applications for the same exemption. If all applicants for a particular class exemption withdraw their applications, the Department may either terminate all proceedings relating to the exemption or propose the exemption on its own motion.

(d) If, following the withdrawal of an exemption application, an applicant decides to reapply for the same exemption, he may submit a letter to the Department requesting that the application be reinstated and referring to the application number assigned to the original application. If, at the time the original application was withdrawn, any additional information to be submitted to the Department under § 2570.39 of these procedures was outstanding, that information must accompany the letter requesting reinstatement of the application. However, the applicant need not resubmit information previously furnished to the Department in connection with a withdrawn

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[1] The applicant will write in this space the date of the last day of the time period specified in the notice of proposed exemption.

[2] To be added in the case of an exemption that provides relief from section 406(b) of ERISA or corresponding sections of the Code or FERSA.

[3] The applicant will fill in the room number of the Division of Exemptions. As of the date of these proposed regulations, the room number of the Division of Exemptions was N-5669.

[4] The applicant will fill in the exemption application number, which is stated in the notice of proposed exemption, as well as in all correspondence from the Department to the applicant regarding the application.

application unless reinstatement of the application is requested more than two years after the date of its withdrawal.

(e) any request for reinstatement of a withdrawn application submitted in accordance with paragraph (d), above, will be granted by the Department, and the Department will take whatever steps remained at the time the application was withdrawn to process the application.

§ 2570.45 Requests for reconsideration.

(a) The Department will entertain one request for reconsideration of an exemption application that has been finally denied pursuant to § 2570.41 of this part if the applicant presents in support of the application significant new facts or arguments, which, for good reason, could not have been submitted for the Department's consideration during its initial review of the exemption application.

(b) A request for reconsideration of a previously denied application must be made within 180 days after the issuance of the final denial letter and must be accompanied by a copy of the Department's final letter denying the exemption and a statement setting forth the new information and/or arguments that provide the basis for reconsideration.

(c) A request for reconsideration must also be accompanied by a declaration attesting to the truth of the new information provided, which is signed by a person qualified under § 2570.34(b)(5) of these procedures to sign such a declaration.

(d) If, after reviewing a request for reconsideration, the Department decides that the facts and arguments presented do not warrant reversal of its original decision to deny the exemption, it will send a letter to the applicant reaffirming that decision.

(e) If, after reviewing a request for reconsideration, the Department decides, based on the new facts and arguments submitted, to reconsider its denial letter, it will notify the applicant of its intent to reconsider the application in light of the new information presented. The Department will then take whatever steps remained at the time it issued its final denial letter to process the exemption application.

(f) If, at any point during its subsequent processing of the application, the Department decides again that the exemption is unwarranted, it will issue a letter affirming its prior final denial.

§ 2570.46 Hearings in opposition to exemptions from restrictions on fiduciary self-dealing.

(a) Any interested person who may be adversely affected by an exemption which the Department proposes to grant from the restrictions of section 406(b) of ERISA, section 4975(c)(1) (E) or (F) of the Code, or section 8577(c) of FERSA may request a hearing before the Department with the period of time specified in the **Federal Register** notice of the proposed exemption. Any such request must state:

(1) The name, address, and telephone number of the person making the request;

(2) The nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and

(3) A statement of the issues to be addressed and a general description of the evidence to be presented at the hearing.

(b) The Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. However, the Department may decline to hold a hearing where:

(1) The request for the hearing does not meet the requirements of paragraph (a);

(2) The only issues identified for exploration at the hearing are matters of law; or

(3) The factual issues identified can be fully explored through the submission of evidence in written form.

(c) An applicant for an exemption must notify interested persons in the event that the Department schedules a hearing on the exemption. Such notification must be given in the form, time, and manner prescribed by the Department. Ordinarily, however, adequate notification can be given by providing to interested persons a copy of the notice of hearing published by the Department in the **Federal Register** within 10 days of its publication, using any of the methods approved in § 2570.43(c) of this part.

(d) After furnishing the notice required by paragraph (c) of this section an applicant must submit a statement confirming that notice was given in the form, manner, and time prescribed. This statement must be accompanied by a declaration under penalty of perjury attesting to the truth of the information provided in the statement, which is signed by a person qualified under § 2570.34(b)(5) of these procedures to sign such a declaration.

§ 2570.47 Other hearings.

(a) In its discretion, the Department may schedule a hearing on its own motion where it determines that issues relevant to the exemption can be most fully or expeditiously explored at a hearing.

(b) An applicant for an exemption must notify interested persons of any hearing on an exemption scheduled by the Department in the manner described in § 2570.46(c). In addition, the applicant must submit a statement subscribed as true under penalty of perjury like that required in § 2570.46(d).

§ 2570.48 Decision to grant exemptions.

(a) If, after considering all the facts and representations submitted by an applicant in support of an exemption application, all the comments received in response to a notice of proposed exemption, and the record of any hearing held in connection with the proposed exemption, the Department determines that the exemption should be granted, it will publish a notice in the **Federal Register** granting the exemption.

(b) A **Federal Register** notice granting an exemption will summarize the transaction or transactions for which exemptive relief has been granted and will specify the conditions under which such exemptive relief is available.

§ 2570.49 Limits on the effect of exemptions.

(a) An exemption does not take effect or protect parties in interest from liability with respect to the exemption transaction unless the material facts and representations contained in the application and in any materials and documents submitted in support of the application were true and complete.

(b) An exemption is effective only for the period of time specified and only under the conditions set forth in the exemption.

(c) Only the specific parties to whom an exemption grants relief may rely on the exemption. If the notice granting an exemption does not limit exemptive relief to specific parties, all parties to the exemption transaction may rely on the exemption.

§ 2570.50 Revocation or modification of exemptions.

(a) If, after an exemption takes effect, changes in circumstances, including changes in law or policy, occur which call into question the continuing validity of the Department's original conclusions concerning the exemption the Department may take steps to revoke or modify the exemption.

(b) Before revoking or modifying an exemption, the Department will publish a notice of its proposed action in the **Federal Register** and provide interested persons with an opportunity to comment on the proposed revocation or modification. In addition, the Department will give the applicant at least 30 days notice of the proposed revocation or modification and the reasons therefor and will provide the applicant with the opportunity to comment on the revocation or modification.

(c) Ordinarily the revocation or modification of an exemption will have prospective effect only.

§ 2570.51 Public inspection and copies.

(a) The administrative record of each exemption application will be open to public inspection and copying at the Public Disclosure Branch, PWBA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

(b) Upon request, the staff of the Public Disclosure Branch will furnish photocopies of an administrative record, or any specified portion of that record, for a specfied charge per page.

Signed at Washington, DC, this 22nd day of June, 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

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Federal Register

Tuesday
June 28, 1988

Part VIII

The President

Presidential Determination No. 88-17—Eligibility of Sao Tome and Principe To Be Furnished With Defense Articles and Services

Proclamation 5835—50th Anniversary of the Javits-Wagner-O'Day Act, 1988

Federal Register
Vol. 53, No. 124
Tuesday, June 28, 1988

Presidential Documents

Title 3—

The President

Presidential Determination No. 88–17 of May 27, 1988

Eligibility of Sao Tome and Principe To Be Furnished With Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503 of the Foreign Assistance Act of 1961, as amended, and Section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Government of Sao Tome and Principe will strengthen the security of the United States and promote world peace.

You are directed on my behalf to report this finding to the Congress.

This finding shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, May 27, 1988.

[FR Doc. 88–14706
Filed 6–27–88; 10:40 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 5835 of June 24, 1988

50th Anniversary of the Javits-Wagner-O'Day Act, 1988

By the President of the United States of America

A Proclamation

We can all be grateful that during the past 50 years a special effort has made more employment opportunities available to blind and other severely disabled Americans. The Wagner-O'Day Act, which became law on June 25, 1938, directed Federal agencies to purchase products from sheltered workshops staffed by blind Americans. In 1971, amendments proposed by Senator Javits extended this program by including workshops employing those with severe disabilities and by expanding the role of the Committee for Purchase from the Blind and Other Severely Handicapped in the administration of the program.

Today, more than 16,000 blind and other severely disabled people work in nearly 350 facilities under this program. From a modest beginning, when traditional products such as mops and brooms were produced, the program has grown to include a broad range of sophisticated goods and services.

Under this law, now known as the Javits-Wagner-O'Day Act, countless blind and other severely disabled Americans have received training and employment and have developed and displayed the skills and abilities to take competitive jobs outside sheltered settings and to reach their full potential and independence. Our Nation benefits from such contributions, and the Federal government benefits from the program because fine products and services are provided at fair market prices. Achievements under the program have been many, but we must continue our efforts to hire and train the majority of disabled people of working age who have not yet become employed.

We should all appreciate the wisdom and dedication of Senators Jacob Javits and Robert Wagner and of Congresswoman Caroline O'Day, by whose names this Act is known. We should also commend the efforts of the Committee for Purchase from the Blind and Other Severely Handicapped, the National Industries for the Blind, and the National Industries for the Severely Handicapped, whose goals are making the wisdom of the Act a reality.

The Congress, by Senate Concurrent Resolution 121, has requested the President to issue a proclamation commemorating June 25, 1988, as the 50th Anniversary of the Javits-Wagner-O'Day Act.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby commemorate the 50th Anniversary of the Javits-Wagner-O'Day Act on June 25, 1988. I call upon the people of the United States to observe this day with appropriate ceremonies and activities designed to reaffirm the Act's historical objectives of providing employment opportunities to blind and other severely handicapped Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of June, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-14707
Filed 6-27-88; 10:41 am]
Billing code 3195-01-M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws in not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 147/Pub. L. 100-344

Designating the week beginning on the third Sunday of September in 1988 as "National Adult Day Care Center Week." (June 23, 1988; 102 Stat. 642; 1 page) Price: $1.00