8-4-88
Vol. 53 No. 150
Pages 29323-29440

federal register

Thursday
August 4, 1988

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for six months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 53, No. 150

Thursday, August 4, 1988

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

11269 (Amended by EO 12647)..... 29323
12647..... 29323

7 CFR

27..... 29325

Proposed Rules:

401 (2 documents)..... 29340, 29341
1910..... 29341

14 CFR

1260..... 29328

19 CFR

Proposed Rules:

177..... 29343

26 CFR

Proposed Rules:

1..... 29343

30 CFR

Proposed Rules:

773..... 29343
843..... 29343

32 CFR

385..... 29329
387..... 29330

40 CFR

370..... 29331

Proposed Rules:

50..... 29346
51..... 29346
58..... 29346
304..... 29428

48 CFR

208..... 29332
252..... 29332

Proposed Rules:

215..... 29347

50 CFR

17..... 29335
611..... 29337
661..... 29337
663..... 29338

Federal Register
Vol. 53, No. 150
Thursday, August 4, 1988

Presidential Documents

Title 3—

The President

Executive Order 12647 of August 2, 1988

Multilateral Investment Guarantee Agency

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1 of the International Organizations Immunities Act (22 U.S.C. 288), Reorganization Plan No. 4 (30 F.R. 9353), and the Multilateral Investment Guarantee Agency Act (22 U.S.C. 290k), and in order to facilitate U.S. participation in the Multilateral Investment Guarantee Agency, it is hereby ordered that:

Section 1. The Multilateral Investment Guarantee Agency, in which the United States participates pursuant to P.L. 100–202 and the Convention establishing the Multilateral Investment Guarantee Agency, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges and immunities that such organization has acquired or may acquire by international agreements or by statute.

Sec. 2. Executive Order No. 11269, as amended, is further amended by deleting "and Inter-American Investment Corporation," and adding "Inter-American Investment Corporation, and Multilateral Investment Guarantee Agency" in Sections 2(c), 3(d), and 7, respectively.

Ronald Reagan

THE WHITE HOUSE,
August 2, 1988.

[FR Doc. 88–17745
Filed 8–2–88; 4:26 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 53, No. 150
Thursday, August 4, 1988

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

Revision of Regulations for Determining Price Quotations for Spot Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for determining price quotations for spot cotton. The provisions of the proposed rule which was published in the **Federal Register** on June 14, 1988, are adopted without change. The proposal provided for: (1) The indefinite suspension of the quotations committee system and the assumption of the committees' duties by the Cotton Division of the Agricultural Marketing Service; (2) the publication of the volume of bales traded used to determine a quotation along with the quotation; (3) the quotation of all cotton qualities which are tenderable or deliverable on active futures contracts and all nondeliverable qualities normally produced or traded in a particular market in the five markets designated for contract settlement purposes; (4) the quotation of only those qualities normally produced or traded in each of the remaining markets; (5) the expansion and redesignation of the current designated spot markets to seven regional designated spot markets. These modifications are expected to enhance the accuracy and reliability of the quotations.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Garry Lewicki, USDA/AMS/Cotton Division, Room 2641, P.O. Box 96456, Washington, DC, 20090-6456.

SUPPLEMENTARY INFORMATION: A proposed rule which detailed the revisions of the regulations for determining price quotations for spot cotton was published in the **Federal Register** on June 14, 1988 (53 FR 22178). The proposal stated that changes to the regulations are necessary because of the current status of the committee system and to enhance the accuracy and reliability of the quotations.

A 30-day comment period was provided to interested persons to submit comments on the proposed changes in the regulations. No comments were received.

This rule has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as determined in the Order.

The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the revisions: (1) Enhance the accuracy of the information gathered and disseminated; (2) do not affect the competitive position or market access of small entities in the cotton industry; (3) do not impose any new costs on the affected industry. It is further found that good cause exists for not postponing the effective date of these revisions until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The beginning of the marketing year is August 1. Therefore, it is advantageous to have the new regulations in effect as soon as possible so that they may be applicable to as much 1988-1989 cotton as possible. Representatives of all segments of the cotton industry were apprised of the proposed changes at the April 13, 1988, meeting of the National Advisory Committee on Cotton Marketing and no negative comments were received. In addition, no comments were received during the 30-day comment period.

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control number 0581-0029 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Background

The Secretary of Agriculture is authorized under the U.S. Cotton Futures Act (7 U.S.C. 15b) to make such regulations as determined necessary to carry out the provisions of the Act. The Act provides for the designation of at least five bona fide spot markets from which spot cotton price information can be collected. Presently, there are eight such designated markets. Five of the eight are used to determine prices and differences for the settlement of futures contracts. Only the No. 2 New York Cotton Exchange futures contracts are currently active. To facilitate the collection of price information, quotation committees were established in the designated markets. These committees are made up of members of the cotton exchanges or their employees. The regulations contain provisions whereby the committees provide information on prices and price differences of cotton to the Cotton Division of the Agricultural Marketing Service on a daily basis. The Cotton Division also provides market information under the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)).

Spot Cotton Quotations Committees

Recently, a significant number of trade representatives have indicated that they will no longer participate in quotations committee meetings. In three of eight markets, the committees have ceased to function, and the Cotton Division is determining price quotations in these markets without the assistance of the committees. Therefore, it is necessary to amend the regulations to provide for a new method of determining price quotations. This rule indefinitely suspends the committee system of determining price quotations, with the Cotton Division assuming the duties of the committees. To accomplish this, the provisions pertaining to the committee system of determining price quotations are deleted. The new method of quoting prices will be assessed by the Cotton Division after a period of operation to determine if it needs to be adjusted or changed. Section 27.97 is deleted and § 27.98 is revised to reflect the changes.

Trading Volume on Which Quotations are Based

Price quotations for all qualities in all markets which are based on data from actual sales will be prefixed by the volume of bales traded. Price quotations that are determined when there has been no trading will be prefixed with a zero.

Quotations in Markets Designated for Contract Settlement Purposes

Price quotations for all qualities of cotton deliverable on cotton futures contracts will be determined each business day in the markets used to quote prices or values and to determine actual differences for the settlement of futures contracts. The price or value of other qualities of cotton which are normally produced or traded in a particular market will also be determined for that market. In the process of determining price quotations, market reporters of the Cotton Division of AMS will interview, in person or by telephone, at least three persons in each bona fide market. Individuals or firms engaged in the buying and/or selling of cotton will be requested to provide information concerning prices and volume of cotton purchased to the Cotton Division. Analysis of all data obtained will be made to ascertain the current value of all deliverable qualities in each market and of the non-deliverable qualities normally produced or traded in each particular market. Quotations for qualities where no sale shall have been made and for which there is no price data will continue to be determined as provided in § 27.99 of the regulations. All quotations will be reviewed and approved by the Branch Chief or the Assistant Branch Chief of the Cotton Division's Market News Branch before publication.

Quotations in Other Markets

In markets not designated for contract settlement purposes, price quotations for all qualities of cotton normally produced or traded in a particular market will be determined on each business day in the same manner as stated above.

Additional Revisions

Presently, price quotations and differences are determined in eight designated markets where cooperating cotton exchanges, whose members comprise the quotations committees, are located. These markets bear the names of the cities in which the exchange are located. However, the advent of telephonic and electronic marketing in recent years has expanded the area of trade for each of the designated markets making the geographic limitations of the local area no longer necessary. Therefore, this proposal redesignates and renames the spot markets as seven regional markets which conform to the seven growth areas widely recognized by the cotton industry. This expansion of the designated spot markets is expected to enhance the accuracy of the quotations by broadening the price data base.

Section 27.93 is revised to list the seven designated markets as follows:

Southeastern

All counties in the states of Alabama, Florida, Georgia, North Carolina and South Carolina and all counties in the state of Tennessee east of and including Stewart, Houston, Humphreys, Perry, Wayne and Hardin counties.

North Delta

All counties in the states of Arkansas and Missouri and all counties in Tennessee west of and including the counties of Henry, Benton, Henderson, Decatur, Chester and McNairy counties and the Mississippi counties of Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union and Yalobusha.

South Delta

All counties in the state of Louisiana and all counties in the state of Mississippi not included in the North Delta market.

East Texas and Oklahoma

All counties in the state of Oklahoma and the Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

West Texas

All Texas counties not included in the East Texas, Oklahoma and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt and Lea.

Desert Southwest

The Texas counties of Val Verde, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Culberson, Hudspeth and El Paso, all New Mexico counties except those included in the West Texas market, all counties in the state of Arizona and the California counties south of and including Riverside and Orange counties.

San Joaquin Valley

All California counties except those included in the Desert Southwest market.

Section 27.94 is revised to list only designated markets for the settlement of No. 2 contracts, since those are the only contracts which are presently active.

Section 27.96 is revised by deleting the reference to the price or value of Strict Low Middling 1 1/16 inches cotton and by referring to cotton in its generic term. Strict Low Middling 1 1/16 inches cotton is used as the base quality in the No. 2 New York Cotton Exchange futures contract, which is the only cotton futures contract presently active. In the event that other contracts are established with a different base quality, this section will be applicable to these as well. Other changes are made to clarify the regulations and to remove unnecessary language.

This rule amends and revises the language in §§ 27.93 through 27.99 of Part 27 of Title 7 of the Code of Federal Regulations to accommodate the changes necessary in the spot quotations system. Section 27.97 is removed and the provisions of § 27.100 are added to § 27.98. All subsequent sections are redesignated.

List of Subjects in 7 CFR Part 27

Spot markets, Price quotations and differences.

For the reasons set forth in the preamble, 7 CFR Part 27 is amended as follows:

PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

1. The authority citation for Part 27 is revised to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 473e, 7 U.S.C. 1622(g).

2. Section 27.93 is revised to read as follows:

§ 27.93 Bona fide spot markets.

The following markets have been determined, after investigation, and are hereby designated to be bona fide spot markets within the meaning of the act:

Southeastern, North Delta, South Delta, East Texas and Oklahoma, West Texas, Desert Southwest and San Joaquin Valley. Such markets will comprise the following areas:

Southeastern

All counties in the states of Alabama, Florida, Georgia, North Carolina and South Carolina and all counties in the state of Tennessee east of and including Stewart,

Houston, Humphreys, Perry, Wayne and Hardin counties.

North Delta

All counties in the states of Arkansas and Missouri and all counties in Tennessee west of and including the counties of Henry, Benton, Henderson, Decatur, Chester and McNairy counties and the Mississippi counties of Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union and Yalobusha.

South Delta

All counties in the state of Louisiana and all counties in the state of Mississippi not included in the North Delta market.

East Texas and Oklahoma

All counties in the state of Oklahoma and the Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

West Texas

All Texas counties not included in the East Texas, Oklahoma and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt and Lea.

Desert Southwest

The Texas counties of Val Verde, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Culberson, Hudspeth and El Paso, all New Mexico counties except those included in the West Texas market, all counties in the state of Arizona and the California counties south of and including Riverside and Orange counties.

San Joaquin Valley

All California counties except those included in the Desert Southwest market.

3. Section 27.94 is revised to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

The following are designated as spot markets for the purpose of determining as provided in paragraph 15b(f)(3) of the act, the differences above or below the contract price which the receiver shall pay for grades tendered or deliverable in settlement of a basis grade contract:

(a) For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange:

Southeastern, North Delta, South Delta, Eastern Texas and Oklahoma, and Desert Southwest.

(b) [Reserved]

4. Section 27.95 is revised to read as follows:

§ 27.95 Spot markets to conform to Act and regulations.

Every bona fide spot market shall, as a condition of its designation and of the retention thereof, conform to the act and any applicable regulations.

5. Section 27.96 is revised to read as follows:

§ 27.96 Quotations in bona fide spot markets.

The price or value and differences between the price or value of grades and staple lengths of cotton shall be based solely upon the official cotton standards of the United States and shall be the actual commercial value or price and differences as determined by the sale of spot cotton in such spot market. Quotations shall be determined and maintained in each designated spot market by the Cotton Division, Agricultural Marketing Service, USDA, as follows:

(a) In spot markets designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volume the prices or values of base qualities which are deliverable on any active futures contracts, as well as the differences for all other qualities deliverable on such contracts. The prices or differences for non-deliverable qualities will be determined and quoted by bale volume in each such spot market for those qualities normally produced or traded in that particular market.

(b) In spot markets not designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volume the prices or differences for all qualities of cotton normally produced or traded in each such spot market.

§ 27.97 [Removed]

6. Section 27.97 is removed.

§ 27.98 [Redesignated as § 27.97 and revised]

7. Section 27.98 is redesignated as § 27.97 and is revised to read as follows:

§ 27.97 Ascertaining the accuracy of price quotations.

The buyers and sellers of cotton in each spot market shall be responsible for providing accurate and timely price, quality, and volume of purchases data by growth area to the Cotton Division. The Cotton Division is responsible for ascertaining the accuracy of the price quotations in each designated spot market. The Cotton Division will carry out this responsibility by performing the following duties and functions:

(a) The Cotton Division will collect and analyze pertinent information on the prices and values of spot cotton from each spot market.

(b) In the process of determining price quotations, the Cotton Division will contact a minimum of three buyers and sellers of cotton in each bona fide market at least two times per week during the active trading season and one time per week during the remainder of the year to obtain information on prices, qualities, volume, and terms of sales in sufficient detail to determine quotations.

(c) The Cotton Division will summarize the price and quality data and, based on analysis of this summary, make determinations regarding quotations of price, value and differences.

(d) Quotations for each spot market shall be reviewed and approved by the Cotton Division's Market News Branch Chief or Assistant Branch Chief prior to publication.

(e) The Cotton Division will publish the appropriate quotations by bale volume for grades, staple lengths, micronaire determinations, and other quality factors for each spot market on a daily basis.

[The information collection requirements contained in this section were approved by the Office of Management and Budget under OMB control number 0581–0029.]

§ 27.99 [Redesignated as § 27.98 and revised]

8. Section 27.99 is redesignated as § 27.98 and is revised to read as follows:

§ 27.98 Value of grade where no sale; determination.

As provided in § 27.96, whenever no sale of a particular grade of cotton shall have been made on a given day in a particular spot market, the value of such grade in the market on that day will be determined as follows:

(a) If on such given day there shall have been in such market both a sale of any higher grade and a sale of any lower grade, the average of the declines, or advances, or decline and advance, as the case may be, of the next higher grade and the next lower grade so sold shall be deducted from, or added to, as the case may be, the value, on the last preceding business day, of the grade the value of which on such given day is sought to be ascertained.

(b) If on such given day there shall have been in such market a sale of either a higher or a lower grade, but not sales of both, the decline or advance of the next higher or the next lower grade so sold shall be deducted from, or added to, as the case may be, the value on the last preceding business day of the grade the value of which on such given day is sought to be ascertained.

(c) If on such given day there shall have been in such market no sale of spot cotton of any grade, the value of each grade shall be deemed to be the same as its value therein on the last preceding business day, unless in the meantime

there shall have been bona fide bids and offers, or sales of hedged cotton, or other sales of cotton, or changes in prices of futures contracts made subject to the act, which in the usual course of business would clearly establish a rise or fall in the value of spot cotton in such market, in which case such rise or fall may be calculated and added to or deducted from the value on the preceding business day of cotton of all grades affected thereby.

§ 27.100 [Removed]

9. Section 27.100 is removed.

§ 27.101 [Redesignated as § 27.99]

10. Section 27.101 is redesignated as § 27.99.

§ 27.102 [Redesignated as § 27.100]

11. Section 27.102 is redesignated as § 27.100.

Dated: July 29, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-17697 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

Interim Changes to NASA Grant and Cooperative Agreement Handbook

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: This rule eliminates unnecessary administrative burdens on sponsored research by applying the most successful subset of the Florida Demonstration Project procedures to all NASA research grants.

DATES: Effective August 4, 1988. Comments are due not later than September 6, 1988.

ADDRESS: Comments should be addressed to: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

By memorandum of May 18, 1988, to the heads of executive departments and establishments, Mr. Joseph R. Wright, Jr., Deputy Director, Office of Management and Budget, provided guidance to reduce unnecessary administrative burdens on sponsored research projects. The memorandum noted that grant accounting and administration remain relatively complex and that overhead costs had gone up while productivity has gone down. The "Florida Demonstration Project (FDP)," which has just been expanded by the Presidential Task Force on Regulatory Relief, was mounted as an attempt to remedy this situation. As a result, OMB authorized the agencies to make routine use, as appropriate, of the most successful subset of the FDP procedures. This rule applies the four authorized procedures to all new NASA research grants.

Agencies are required to report to OMB by January 1, 1989, on experience using these procedures. The short time period allowed to implement these changes and to obtain meaningful feedback constitute urgent and compelling circumstances which are being met by (1) allowing application of the authorized procedures to existing grants (in addition to new awards) at the grantee's request and (2) issuing this rule as an interim rule to permit its immediate use.

Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that this rule will not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not significantly alter any reporting or recordkeeping requirements currently approved under OMB Control Numbers 2700-0045, 2700-0047, 2700-0048, and 2700-0049.

List of Subjects in 14 CFR Part 1260

Grants.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement.

PART 1260—[AMENDED]

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

Authority: Pub. L. 97-258, 31 U.S.C. 6301 *et seq.*

Subpart 4—Research Grant and Cooperative Agreement Provisions

2. Paragraph 1260.420(f) is added to read as follows:

§ 1260.420 Special conditions.

* * * * *

(f) The following provision shall be appended to all grants and cooperative agreements as a special condition, pending revisions to OMB Circular A-110 and NASA Form 1463A, Provisions for Research Grants and Contracts. The grants officer is authorized to issue a letter agreement making the special condition immediately applicable to all current grants and cooperative agreements at an awardee institution, if so requested by the institution.

Elimination of Unnecessary Administrative Burden (July 1988)

The following special terms take precedence over NASA Form 1463A, Provisions for Research Grants and Cooperative Agreements and other terms in the Grant and Cooperative Agreement Handbook, NHB 5800.1 (14 CFR Part 1260).

(a) Prior Approvals

Cost related and administrative "prior approvals" required by OMB circulars A-110 and A-21 are hereby waived, except for change in scope or objective, change in principal investigator, or other approvals specifically required by the terms of this grant. The prior approval requirement in NASA Form 1463A regarding domestic travel costs is waived and the prior approval threshold for acquiring property not included in the proposed budget is raised to $5,000. The grantee may maintain such internal prior approval systems as it considers necessary.

(b) Preaward Costs

Grantees may approve preaward costs of up to ninety (90) days prior to the effective date of a new award, provided the costs are necessary for the effective and economical conduct of the project and they are otherwise allowable under the terms of the grant. Any preaward expenditures are made at the grantee's risk. Approval by the grantee does not impose any obligations on NASA in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the grantee anticipated.

(c) No Cost Extensions

Grantees may extend the expiration date of a grant or a supplement thereto if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the expiration date. The grantee must notify the grants officer in writing within 10 days of the extension. Absent timely notification the prior approval requirement (Form 1463A) shall apply.

(d) Unobligated Balances

Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the project. If uncommitted carryover funds are likely to be

substantial, the estimated amount shall be included in any continuation proposal.

[FR Doc. 88-17602 Filed 8-3-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 385

[DoD Directive 5111.1]

Under Secretary of Defense for Policy; Organizations, Functions, and Authority Delegations

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part adds 32 CFR Part 385 to identify the Under Secretary of Defense for Policy and delineates its responsibilities, functions, and authorities pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. section 134.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. H. Becker, Office of the Director of Administration & Management, the Pentagon, Washington, DC 20301-1950, telephone (202) 695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 385

Organization and function.

Accordingly, Title 32, Chapter I, is amended to add Part 385 as follows:

PART 385—UNDER SECRETARY OF DEFENSE FOR POLICY

Sec.

Authority: 10 U.S.C. 134.

§ 385.1 Purpose.

This part establishes, pursuant to 10 U.S.C. 134 the position of Under Secretary of Defense for Policy (USD(P)) with assigned responsibilities, functions, and authorities as prescribed herein.

§ 385.2 Definition.

DoD Components. The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, and the Defense Agencies.

§ 385.3 Responsibilities and functions.

The Under Secretary of Defense for Policy is the Principal Staff Assistant and advisor to the Secretary of Defense for all matters concerning the integration of DoD plans and policies with overall national security objectives. In the exercise of this responsibility, the USD(P) shall:

(a) Represent the Department of Defense, as directed, in matters involving the National Security Council, Department of State, and other Departments and Agencies, and interagency groups with responsibilities in the national security area.

(b) Develop policies and coordinate implementation of arms limitation negotiations, including DoD positions on arms reductions and other defense related international negotiations.

(c) Develop policies and oversee their implementation with respect to the counterintelligence and security activities of the DoD; provide program management to the Foreign Counterintelligence Program and to the Security and Investigative Activities Program; and carry out the responsibilities of the Secretary for the administration of National Disclosure Policy, and his responsibilities as the U.S. Security Authority for NATO.

(d) Develop policies and coordinate implementation of DoD political-military affairs, including: Nuclear weapons policy and strategy; special operations forces; law of the sea; foreign military rights; contingency planning; strategic offensive and defensive forces, theater nuclear matters, general program forces, and the relationship between strategic and theater force planning, programs and budgets.

(e) Review evaluations and develop recommendations to the Secretary of Defense concerning plans and requirements for, and capabilities of, existing or proposed United States or foreign forces and their deployment with particular attention to performance of missions which are or may be critical in the consideration of United States national security policy.

(f) Provide oversight of all DoD activities related to the North Atlantic Treaty Organization East-West economic policy, including East-West trade, and technology transfer.

(g) Develop policies, plans, and procedures for the discharge of DoD functions for emergency planning and preparedness, crisis management, Defense mobilization and expansion in emergency situations, military support of civil authorities, and continuity of operations and continuity of government; provide support, as required, to DoD and other U.S. Government or State agencies on these as well as civil defense and related matters.

(h) Develop policies, coordinate DoD participation, exercise OSD management oversight, and provide appropriate OSD approval process for DoD involvement in national security special activities, sensitive support to non-DoD agencies and other uniquely sensitive national security programs. Provide special support to the Secretary of Defense in connection with his participation in related National Security Council activities.

(i) Plan and conduct net assessment for the Secretary of Defense.

(j) Negotiate and monitor agreements with foreign governments and defense alliances to which the United States is a party.

(k) Provide policy direction for defense security assistance matters; monitor Military Assistance Advisory Groups and other missions pertaining to security assistance; negotiate and monitor security assistance agreements with foreign governments.

(l) Develop DoD policy and coordinate actions relating to humanitarian assistance support.

(m) Develop DoD space policy and priorities. Review and evaluate programs, plans and systems requirements relating to the use of outer space, including participation in outer space activities of the National Security Council and other interagency fora.

(n) Develop the Defense Guidance and coordinate its publication. Coordinate the planning phase of the DoD Planning, Programming and Budgeting System, to include the lead role in developing overall policy, defense strategy, and force and resource planning.

(o) Develop DoD policies and programs concerning psychological operations.

(p) Develop DoD policy guidance for DoD participation in international activities supporting U.S. information programs.

(q) Perform such other functions as the Secretary of Defense may prescribe.

§ 385.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the USD(P) shall:

(1) Exercise direction, authority, and control over:

(i) The Assistant Secretary of Defense (International Security Affairs).

(ii) The Assistant Secretary of Defense (International Security Policy).

(iii) The Deputy Under Secretary of Defense (Policy).

(iv) The Director, Net Assessment

(v) The Defense Security Assistance Agency.

(vi) The Defense Investigative Service.

(2) Coordinate and exchanges information with other DoD and Federal organizations having collateral or related functions.

(3) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) DoD Components and organizations shall coordinate all matters concerning the responsibilities and functions cited in § 386.3 with the USD(P).

§ 385.5 Authorities.

The USD(P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda in assigned fields of responsibility, consistent with the provisions of DoD 5025.1–M. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified or Specified Commands shall be issued through the Joint Chiefs of Staff (JCS).

(b) Obtain such reports, information, advice and assistance, as necessary, consistent with the policies and criteria of DoD Directive 5000.19.[1]

(c) Communicate directly on policy matters with heads of DoD organizations, including the Secretaries of the Military Departments, the Joint Chiefs of Staff (JCS), the Directors of Defense Agencies, and through the JCS, the Commanders of the Unified and Specified Commands.

(d) Communicate with other government agencies, representatives of the Congress, and members of the public, as appropriate, in carrying out assigned functions.

§ 385.6 Effective date.

This part is effective September 27, 1985.

July 29, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–17553 Filed 8–3–88; 8:45 am]

BILLING CODE 3810–01–M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, Philadelphia, PA 19120

32 CFR Part 387

[DoD Directive 5132.2]

Assistant Secretary of Defense (International Security Affairs); Organization, Functions, and Authority Delegations

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part adds 32 CFR Part 387 to identify the Assistant Secretary of Defense (International Security Affairs) and delineates its responsibilities, functions, relationships and authorities pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 136.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. H. Becker, Office of the Director of Administration & Management, the Pentagon, Washington, DC 20301–1950, telephone (202) 695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 387

Organization and function.

Accordingly, Title 32, Chapter I, is amended to add Part 387 as follows:

PART 387—ASSISTANT SECRETARY OF DEFENSE (INTERNATIONAL SECURITY AFFAIRS)

Sec.

Authority: 10 U.S.C. 136.

§ 387.1 Purpose.

This part:

(a) Establishes, pursuant to 10 U.S.C. 136, the position of Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) under the direction, authority, and control and the Under Secretary of Defense for Policy (USD(P)) in accordance with DoD Directive 5111.1[1]

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(ISA).

§ 387.2 Definition.

DoD Components. The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, and the Defense Agencies.

§ 387.3 Responsibilities and functions.

The Assistant Secretary of Defense (International Security Affairs) is the Principal Staff Assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense concerning DoD policy related to general purposes forces, law of the sea, special operations forces and counter-terrorism, and humanitarian assistance. The ASD(ISA) is also the principal staff advisor on other political-military and international economic matters involving foreign countries with the exception of the North Atlantic Treaty Organization (NATO), Europe, and the Soviet Bloc. In the exercise of these responsibilities, the ASD(ISA) shall:

(a) Develop policies and plans, and overall programs related to general purpose forces, law of the sea, special operations forces and counter-terrorism, and humanitarian assistance.

(b) Provide DoD policy guidance and recommendations regarding contingency planning; international trade and energy policy, except technology transfer; economic security relations with foreign countries; and other political-military matters in assigned geographic areas of responsibility.

(c) Develop DoD positions, and recommendations, and coordinate policy matters concerning security assistance, Military Assistance Advisory Groups and other missions pertaining to security assistance in assigned geographic areas of responsibility.

(d) Develop, negotiate, and monitor defense cooperation agreements with foreign governments in assigned geographic areas of responsibility.

(e) Conduct and manage day-to-day bilateral relations with all foreign governments in assigned areas of responsibility.

(f) Cooperate with the Under Secretary of Defense (Research and Engineering) and the Assistant Secretary of Defense (Acquisition and Logistics) to develop industrial cooperation and coproduction arrangements for assigned geographic areas of responsibility.

(g) Serve as DoD focal point for Foreign Military Rights Affairs, negotiations on military facilities, operating rights, status of forces and international political-military matters.

[1] Copies may be obtained, if needed from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia PA 19120.

and monitor agreements with foreign countries for assigned geographic areas of responsibility.

(h) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(i) Perform such other duties as the Secretary of Defense and the USD(P) may prescribe.

§ 387.4 Relationships.

(a) In the performance of assigned responsibilities and functions, the ASD(ISA) shall:

(1) Coordinate and exchange information with other DoD and federal; organizations having collateral or related functions.

(2) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) DoD Components shall coordinate all matters concerning the responsibilities and functions cited in § 387.3 with ASD(ISA).

§ 387.5 Authorities.

The ASD(ISA) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M, which carry out policies approved by the Secretary of Defense, in assigned areas of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments of their designees. Instructions to Unified and Specified Commands shall be issued through the Joint Chiefs of Staff (JCS).

(b) Obtain such reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 5000.19 [2] as necessary.

(c) Communicate directly with heads of DoD Components. Communications with the Unified and Specified Commands shall be coordinated with the JCS; all JCS security assistance communications (except those dealing with NATO and the European countries) shall be coordinated with the ASD(ISA).

(d) Establish arrangements for DoD participation in those non-DoD governmental programs for which primary cognizance is assigned.

(e) Communicated with other government agencies, representatives of the Congress, and the public, as appropriate, in carrying out assigned functions.

[2] See footnote 1 to § 387.1(a).

§ 387.6 Effective date.

This part is effective September 27, 1985.

July 29, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–17552 Filed 8–3–88; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 370

[FRL–3423–4]

Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements; Clarification of Reporting Dates for Newly Covered Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reporting dates.

SUMMARY: On October 15, 1987, EPA published a final rule for reporting under sections 311 and 312 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Under sections 311 and 312, facilities required to prepare or have available a material safety data sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act and its implementing regulations must submit the MSDS (or a list of the hazardous chemicals) and inventory forms to the State Emergency Response Commission, Local Emergency Planning Committee, and the local fire department. This notice clarifies the reporting dates for facilities which are newly covered by the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard as of June 24, 1988.

DATES:

1. Initial submission of MSDSs or alternative list: September 24, 1988.

2. Initial submission of the inventory form containing Tier I information: March 1, 1989.

ADDRESS: The record supporting this notice is contained in the Superfund Docket located in Room Lower Garage at U.S. EPA, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382–3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Brody, Program Analyst, Preparedness Staff, Office of Solid Waste and Emergency Response, OS–120, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, or the Emergency Planning and Community Right To Know Information Line at 1–(800) 535–0202 or in Washington, DC at (202) 479–2449.

SUPPLEMENTARY INFORMATION: On August 24, 1987, OSHA revised its Hazard Communication Standard (52 FR 31852) to expand the scope of the industries covered by the rule from the manufacturing sector to all industries where employees are exposed to hazardous chemicals. The revised rule required the non-manufacturing sector of industry to be in full compliance with its provisions on May 23, 1988. On May 20, 1988, the U.S. Court of Appeals for the District of Columbia Circuit transferred several consolidated cases challenging the standard to the U.S. Court of Appeals for the Third Circuit, and in the interim ordered an administrative stay of the revised standard.

On June 24, 1988, the Third Circuit issued an order granting the stay requested by construction industry representatives. On July 8, 1988, the Third Circuit clarified its earlier order stating: "The order entered on June 24, 1988, is clarified to make clear that the stay applies only with respect to construction employers in the non-manufacturing sector." In a recently published **Federal Register** notice (53 FR 27679, July 22, 1988) OSHA announced that the revised Hazard Communication Standard has been in effect for all non-manufacturing establishments other than construction since June 24, 1988.

Section 311(d)(B) of Title III of SARA requires that the initial MSDS or list submission be made three months after the owner or operator of a facility is required to prepare or have available a MSDS for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act. Therefore, the date established for section 311 compliance for all newly covered employers is September 24, 1988. Section 312 requires that the same facilities subject to section 311 submit the inventory form containing Tier I information annually on March 1, beginning March 1, 1988. Thus, employers in the non-manufacturing sector excluding the construction industry must submit their Tier I inventory reports by March 1, 1989.

Regulations for compliance with sections 311 and 312 of Title III of SARA were promulgated on October 15, 1987

(52 FR 38344) and codified at 40 CFR Part 370. This final regulation established the minimum threshold quantities applicable to the reporting requirements of all facilities subject to OSHA's MSDS requirements under sections 311 and 312, including facilities newly subject to the requirements at a future date, such as those in the non-manufacturing sector. EPA's promulgation of a minimum threshold applicable to the non-manufacturing sector was based upon its initial analysis that the thresholds applicable to the manufacturing sector would be equally applicable to the non-manufacturing sector. Nevertheless, EPA stated in the preamble to that final rule that it was undertaking additional analysis of the applicability of these threshold levels to the universe of facilities newly-covered by the OSHA's MSDS requirements.

The study referred to in the October 15, 1987, final rule has been completed and confirms EPA's regulatory decision to apply the minimum threshold levels applicable to the manufacturing facilities to the non-manufacturing facilities. The study found that chemical usage by non-manufacturers is significant. A number of non-manufacturing industries use as many different hazardous chemicals as manufacturing industries. The MSDSs that non-manufacturers will be expected to maintain under OSHA's expanded HCS will include a substantial number of extremely hazardous substances and other chemicals that must be reported under provisions of SARA Title III. The study also found that the cost impacts of the sections 311 and 312 reporting requirements will not have a significant impact upon a substantial number of small businesses in the non-manufacturing industries.

In the October 15, 1987 final rule the Agency stated that the initial 10,000 pound threshold for reporting by manufacturers of hazardous chemicals that are not extremely hazardous substances (EHS) provides the appropriate balance between ensuring that the public has access to information on large volume chemicals and reducing the number of reports to manageable levels in the first years of the program. 52 FR 38344, 38352. The Agency found that a threshold equal to 10,000 pounds resulted in the reporting of roughly 13 to 22 percent of manufacturing facilities or 8 to 13 percent of chemicals. *Id.* The Agency's non-manufacturing industry study found that the percentage of facilities that will be required to report and the percentage of chemicals that will be reported by the non-manufacturing sector using the 10,000 pound/TPQ or 500 pound threshold will be roughly similar to these figures. Although reporting at the same threshold by non-manufacturers as manufacturers will increase the number of MSDS submissions to State and local officials, the Agency's study also found that the merits of similar reporting between manufacturers and non-manufacturers, as well as the fact that many State right-to-know laws already include the non-manufacturing industry (which lessens the impact of the increase of MSDS submissions), justifies applying the same initial threshold level to the non-manufacturing industry as is currently applied to the manufacturing industry.

The Agency's study of the effects of applying the initial threshold promulgated in the October 15, 1987 rule to the non-manufacturing sector will be available in the docket on August 8, 1988. EPA will accept comments on the study.

List of Subjects in 40 CFR Part 370

Chemical, Hazardous substances, Extremely hazardous substance, Intergovernmental relations, Community right-to-know, Superfund Amendments and Reauthorization Act, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Contingency planning, Reporting, Recordkeeping requirements.

Dated: July 26, 1988.

Thaddeus L. Juszczak, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-17338 Filed 8-3-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 252

Department of Defense Federal Acquisition Regulation Supplement; Antifriction Bearings

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved adding a new Subpart 208.79 to the Defense Federal Acquisition Regulation Supplement to restrict procurement of antifriction bearings and bearing components for use by the DoD to domestic sources. This restriction was deemed necessary to protect and strengthen the domestic industrial base for an industry critical to national security.

DATES: This interim rule is effective on August 4, 1988. Comments on this proposed addition should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before October 3, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 88-35 in all correspondence relating to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)((MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory E. Saunders, Assistant for Commercial Acquisition, OASD(P&L) PS/SDM, Room 2A318, Pentagon, Washington, DC 20301-8000, telephone (202) 695-7915.

SUPPLEMENTARY INFORMATION:

A. Background

The DAR Council published a proposed rule at 53 FR 10129 dated March 29, 1988. Comments was received from over 30 different respondents, both foreign and domestic. As a result of these comments, the following changes were made to the proposed rule:

(1) Definition of domestic manufacture was clarified.

(2) Definition of commercial product clarified to indicate bearings or items described by and developed under (a) a military specification, (b) other DoD prepared specification or (c) purchase description are not considered commercial products.

(3) Wholly manufactured was eliminated and net export value was added as an alternate way.

(4) Exports to Canada were eliminated as a part of the allowable export baseline.

(5) Replace the 6 month phase-in provision with a 12 month phase-in.

(6) Changed to reflect that the Head of the Contracting Activity would grant waivers.

(7) Eliminated the waiving of the restriction after contract award and clarified the manner in which the waiver should be considered.

(8) Clarified the requirement regarding the plan to convert from foreign to domestic manufactured bearings.

(9) Added provision to flow the certification requirement down to the contractor who is purchasing the bearing.

B. Regulatory Flexibility Act

The coverage at Subpart 208.79 is not expected to have a significant impact on small businesses. It will impact only those small businesses that (1) manufacture antifriction bearings, or (2) use antifriction bearings in a subassembly, assembly, or end item sold to the DoD either directly or through a subcontract with a DoD contractor. Although there is no existing data to quantify the number of small businesses which may be impacted, it is estimated that only a small quantity will be affected. Further, because the restriction will be applied across the board giving the same advantages and disadvantages to all, and because commercial items are exempted from the restriction, any impact is expected to be minimal. Therefore, an Initial Regulatory Act Analysis has not been prepared. Please cite DAR Case 88–35 for any comments regarding this determination. In addition, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88–610D.

C. Paperwork Reduction Act

It is expected that this coverage will impose additional burden on contractors. A paperwork burden clearance for OMB Control Number 0704–0205 was submitted to OMB for review and approval. This clearance reflects an increase of 439,383 hours.

D. Determination To Issue an Interim Regulation

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary to protect and strengthen the domestic industrial base for an industry critical to national security.

List of Subjects in 48 CFR Parts 208 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 208 and 252 as follows:

1. The authority citation for 48 CFR Parts 208 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. A new Subpart 208.79, consisting of sections 208.7901 through 208.7904, is added to read as follows:

Subpart 208.79—Antifriction Bearings

Sec.
208.7901 Definitions.
208.7902 Policy.
208.7903 Procedures.
208.7904 Contract clause.

Subpart 208.79—Antifriction Bearings

208.7901 Definitions.

As used in this subpart:

"Bearing" means antifriction bearing or antifriction bearing assembly.

"Commercial product" means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804–3(c) for an explanation of terms). It does not include bearings or items described by and developed under (a) a Military Specification, (b) other DoD prepared specification, or (c) purchase description.

"Custom/speciality Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5;

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. For the purposes of this definition, raw materials, such as preformed bar or rod stock and lubricants, need not be domestically mined or produced.

"Net Export Value" means the value of any bearing manufactured in whole or in part in the United States minus the value of any foreign manufactured components used in that bearing. The value of the imported components in any year may not exceed the value for calendar year 1987 for bearings sold to the Department of Defense. Raw materials, such as preformed bar or rod stock and lubricants, imported for use in domestic manufacture are excluded from the value of imported components.

"Other authorized manufacture" means manufacture in whole or in part by a company which has its corporate headquarters in a NATO participating country (see DFARS 25.001) and which has a United States subsidiary. However a manufacturer's bearings are included within this term only to the extent that (a) the total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the net export value of bearings exported outside the United States by its United States subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/speciality bearings imported for sale to DoD and its contractors in a calendar year does not exceed the total value of such bearings imported in calendar year 1987. Subject to the sales restrictions in (a) and (b) above, bearings manufactured by the following manufacturers are other-authorized manufacture bearings: FAG Bearings Corporation (additional companies may be added to this list based on a survey of domestic firms).

"Super-precision Bearings" means bearings having a precision classification of ABEC/RBEC 5 or higher;

208.7902 Policy.

(a) It has been determined that the ability of the United States bearing industry to meet industrial surge and mobilization requirements for bearings is in serious jeopardy. In view of the national security significance of bearings, the DoD has determined that except as provided in (b) below, all bearings, components of bearings, or items containing bearings, whether procured directly or installed in defense end-items and subassemblies shall be of domestic manufacture. This restriction shall remain in effect for contracts awarded through September 30, 1991. The restriction may be extended an additional two years if conditions warrant.

(b) This subpart does not apply to:

(1) Miniature and instrument bearings restricted by Subpart 208.73;

(2) Bearings covered by the following Military Specifications, for contracts entered into prior to December 31, 1989.

MIL B 6039 Bearing, double row, ball, sealed rod end, antifriction, self-aligning
MIL B 7942 Bearing, ball, airframe, antifriction
MIL B 8942 Bearings, plain, TFE lined, self-aligning
MIL B 8943 Bearing, journal plain and flanged, TFE lined
MIL B 8948 Bearing, plain rod end, TFE lined, self-aligning
MIL B 8952 Bearing, roller, rod end, antifriction self-aligning
MIL B 8976 Bearing, plain, self-aligning, all metal
MIL B 81820 Bearing, plain, self-aligning, self-lubricating, low speed oscillation

MIL B 81934 Bearing, sleeve, plain and flanged, self-lubricating
MIL B 81935 Bearing, plain, rod end, self-aligning, self-lubricating
MIL B 81936 Bearing, plain, self-aligning (BeCU, CRES Race)

208.7903 Procedures.

(a) The Head of the Contracting Activity, without delegation, may waive the domestic bearings requirements of this subpart if there is a determination that there is no domestic bearing manufacturer that meets the requirement or if it is not in the best interest of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestic manufacture bearing would cause unreasonable costs or delays.

(b) The determination of unreasonableness should be made in consideration of the DoD policy to assist the United States industrial mobilization base by awarding more contracts to domestic bearing manufacturers thereby increasing their capability to reinvest and to become more competitive.

(c) Before a waiver is granted for a multiyear contract or contract that may exceed 12 months, the contracting officer shall require offerors to submit a written plan for transitioning from the use of nondomestic to domestic manufacture bearings. The plan shall be reviewed to determine whether a domestic manufacture bearing can be qualified at a reasonable cost, and used in lieu of the foreign bearing during the course of the contract period. If approved, the plan shall be incorporated in the contract and shall:

(1) Identify the bearings that are not domestic or other authorized manufacture, application, and source of supply;

(2) Describe the transition, including cost and timetable, for providing a domestic manufacture bearing. The timetable for completing the transition should normally not exceed one year from the date of the waiver.

208.7904 Contract clause.

The clause set forth at 252.208–7006, Required Sources for Anti-friction Bearings, shall be inserted in all solicitations and resultant contracts, and before exercising an option, except:

(a) Where the contracting officer knows that the item being procured does not contain bearings;

(b) When purchasing commercial products;

(c) When purchasing foreign manufactured bearings, components of bearings, or foreign manufactured products containing bearings overseas for use overseas;

(d) When purchasing for use in a cooperative or co-production project under an international agreement;

(e) When using small purchase procedures, other than in purchases of bearings as the end item.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.208–7006 is added to read as follows:

252.208–7006 Required Sources for Antifriction Bearings.

As prescribed in 208.7904 insert the following clause:

Required Sources for Antifriction Bearings (Aug 1988)

(a) For the purpose of this clause:

"Bearing" means antifriction bearing or antifriction bearing assembly.

"Commercial product" means a product, other than bearings or items described by and developed under a Military Specification or other DoD prepared specification or purchase description, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804–3(c) for an explanation of terms);

"Custom/speciality Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5;

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. For purposes of this definition, raw materials, such as preformed bar or rod stock and lubricants, need not be domestically mined or produced.

"Net Export Value" as used in this subpart means the value of any bearing manufactured in whole or in part in the United States minus the value of any foreign manufactured components used in that bearing. The value of the imported components in any year may not exceed the value for calendar year 1987 for bearings sold to the Department of Defense. Raw materials, such as preformed bar or rod stock and lubricants, imported for use in domestic manufacture are excluded from the value of imported components.

"Other authorized manufacture" means manufacture in whole or in part by a company which has its corporate headquarters in a NATO participating country (see DFARS 25.001) and which has a United States subsidiary. However a manufacturer's bearings are included within this term only to the extent that (a) the total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the net export value of bearings exported outside the United States by its United States subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/specialty bearings imported for sale to DoD and its contractors does not exceed the total value of such bearings imported in calendar year 1987. A list of other authorized bearing manufacturers is at DFARS 208.7901;

"Super-precision Bearings" means antifriction bearings having a precision classification of ABEC/RBEC 5 or higher; and

(b) If the Offeror is a bearing manufacturer, the offeror agrees that, if awarded the contract, that—

(1) Bearings and components of bearings supplied under this contract will be of domestic or other authorized manufacture; and

(2) For bearings that are of other authorized manufacture, acceptance by the Government of this offer will not cause the manufacturer to exceed the sales levels described in the definition of the term "other-authorized manufacture".

(c) If the Offeror is not the bearing manufacturer, the offeror agrees that, if awarded the contract, that the bearings, components of bearings, or bearings installed in defense end-items or subassemblies supplied under this contract will be of domestic or other-authorized manufacture.

(d) The requirements in paragraphs (b) and (c) above may be waived, in whole or in part, by the Government. Before a waiver is granted for a multiyear contract or one that may exceed 12 months, the Contracting Officer will require each offeror to submit a written plan for the transition from bearings that are not of domestic or other authorized manufacture, to domestic manufacture bearings. The plan shall identify all bearings that are not of domestic or other authorized manufacture currently used, their application and source of manufacture, a plan for the transition to domestic manufacture bearings, the costs associated with the transition, and a timetable for transition. If approved, the plan will be incorporated into the contract.

(e) The Contractor will provide written certification upon delivery of the bearings, components of bearings, or defense end-items or subassemblies containing bearings, that to the best of its knowledge and belief, such bearings or components of bearings are of domestic or other-authorized manufacture.

(f) Paragraphs (c) and (d) do not apply to end items and components that are commercial products.

(g) Paragraphs (b), (c), and (d) do not apply to:

(1) Miniature and instrument bearings which are restricted by DFARS Subpart 208.73; and

(2) Bearings covered in the following Military Specifications, for contracts entered into prior to December 31, 1989.

MIL B 6039 Bearing, double row, ball, sealed rod end, antifriction self-aligning
MIL B 7949 Bearing, ball, airframe, antifriction
MIL B 8942 Bearings, plain, TFE lined, self-aligning
MIL B 8943 Bearing, journal plain and flanged, TFE lined

MIL B 8948 Bearing, plain rod end, TFE lined, self-aligning
MIL B 8952 Bearing, roller, rod end, antifriction self-aligning
MIL B 8976 Bearing, plain, self-aligning, all metal
MIL B 81820 Bearing, plain, self-aligning, self-lubricating, low speed oscillation
MIL B 81934 Bearing, sleeve, plain and flanged, self-lubricating
MIL B 81935 Bearing, plain, rod end, self-aligning, self-lubricating
MIL B 81936 Bearing, plain, self-aligning (BeCU, CRES Race)

(h) The Contractor agrees to insert this clause, appropriately modified to reflect the identity of the parties, including this paragraph, in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no bearings or components of bearings.

(End of clause)

[FR Doc. 88-17650 Filed 8-3-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Nonessential Experimental Population Status for an Introduced Population of the Yellowfin Madtom in Virginia and Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service will reintroduce a small catfish, the yellowfin madtom (*Noturus flavipinnis*) (Federally listed as a threatened species), into the North Fork Holston River, Washington County, Virginia. This population is determined to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended. Section 10(j) of the Act authorizes nonessential populations to be treated as if they were proposed species for the purposes of section 7. This releases Federal agencies from the Act's prohibition against jeopardizing this population by their actions. The yellowfin madtom once likely inhabited many of the lower gradient streams of the Tennessee River basin upstream of Chattanooga, Tennessee. Presently, populations are confined to only three stream reaches in the Tennessee River valley. This action is being taken in an effort to reestablish the yellowfin madtom within its historic range.

EFFECTIVE DATE: September 6, 1988.

ADDRESSES: Comments and materials relating to this final rule are available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address.

SUPPLEMENTARY INFORMATION:

Background

Among the significant changes made by the Endangered Species Act Amendments of 1982, Pub. L. 97-304, was the creation of a provision (section 10(j)) which provides for the designation of specific reintroduced populations of listed species as nonessential experimental populations. Under previous authorities in the Act, the Service was permitted to reintroduce populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool.

Under section 10(j) of the 1982 Amendments, past and future reintroduced populations established outside the current range but within the species' historic range, may be designated, at the discretion of the Service, as experimental populations or nonessential experimental populations. Experimental population status allows the Service to treat an endangered species as threatened for the purposes of section 9 of the Act. Species listed as threatened can be managed with greater flexibility, especially regarding incidental take and regulated taking. As the yellowfin madtom is already listed as a threatened species with special rules (50 CFR 17.43), which provide that the fish may be taken in accordance with applicable State law, the species' status relative to section 9 will remain the same for any introduced populations.

Nonessential populations are experimental populations found to be nonessential to the continued existence of the species. These populations are treated as if the species were only proposed for listing under section 7 (except for subsection (a)(1)). Therefore, they are not subject to the provisions of section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species. However, two provisions of section 7 would apply on lands that are not within the National Wildlife Refuge System or National Park System: Section 7(a)(1), which authorizes all Federal agencies to establish conservation programs, and section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. Where the species occurs on Refuge or Park System lands, all provisions of section 7 would apply. The organisms used to establish an experimental population will only be removed from an existing source if (1) the removal will not jeopardize the continued existence of the species and (2) a permit has been issued for the take of individuals from the donor population in accordance with the requirements of 50 CFR 17.31.

The yellowfin madtom was listed as a threatened species with critical habitat on September 9, 1977 (42 FR 45528). The species was probably once widely distributed in many lower gradient streams of the Tennessee River drainage upstream of the Chattanooga, Tennessee, area (Jenkins 1975). The species' present distribution (Burkhead and Jenkins 1982, Shute 1984) is represented by only three known populations (Citico Creek, Monroe County, Tennessee; Powell River, Hancock County, Tennessee; and Copper Creek, Scott and Russell Counties, Virginia). Three other historic populations (Chickamauga Creek, Catoosa County, Georgia; Hines Creek, Anderson County, Tennessee; and North Fork Holston River, Virginia) are believed to have been extirpated primarily due to human-related factors (impoundments, pollution, habitat modification, etc.).

The yellowfin madtom occupies small-to-medium-sized (25 to 135 feet wide) warm water streams with moderate current and clean water with little siltation (Jenkins 1975). The species is generally associated with cover (undersides of flat rocks, detritus, and stream banks) (Jenkins 1975, Shute 1984).

Good habitat for the yellowfin madtom is currently located in the North Fork Holston River, Smyth, Washington, and Scott Counties, Virginia. The establishment of an experimental population in this now unoccupied historic habitat will greatly enhance the recovery potential of this species. During the late summer or early fall of 1988 or 1989, 100 to 200 captive-reared madtoms (taken in the spring and

summer of 1988 or 1989 from nests on Citico Creek, Monroe County, Tennessee) will be reintroduced into one or two pools on the North Fork Holston River, Washington County, Virginia. The techniques for rearing and transplanting the species were developed in 1986 and 1987 when a reintroduction was made into Abrams Creek, Blount County, Tennessee. The success of this introduction attempt is being evaluated.

Based on studies conducted on the Citico Creek population (Shute 1984; David Etnier, Peggy Shute, and Randy Shute, University of Tennessee, personal communication, 1986), it is believed that approximately 125 yellowfin madtom nests exist in Citico Creek each year. The yellowfin madtom nests each contain about 90 eggs. Three to four nests would be taken, and, allowing for natural mortality, these would yield the desired 100 to 200 individuals for stocking. The removal of three to four nests represents only about 3 percent of each year's total clutches. This amount of loss is well within the limits of natural loss that would likely occur on an average reproductive year (D. Etnier, P. Shute, and R. Shute, personal communication, 1986). Therefore, the Service has determined that the removal of the animals from Citico Creek to be used in the North Fork Holston River transplant is not likely to jeopardize the continued existence or viability of the Citico Creek population. Furthermore, the creation of this experimental population, as proposed, will further the conservation of the species throughout its range.

Status of Reintroduced Population

This reintroduced population of yellowfin madtoms is being designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The nonessential experimental population status, which is necessary to gain the acceptance of the Virginia Commission of Game and Inland Fisheries for the reintroduction effort, is appropriate for the following reasons: Reproducing populations of the yellowfin madtom presently exist in three river reaches. The removal of individuals from the extant population in Citico Creek, Monroe County, Tennessee, is not expected to adversely affect the viability of that population (see Background section above). Therefore, the loss of the introduced population would not reduce the likelihood of the survival of the species in the wild. In fact, the anticipated success of this reintroduction will enhance the species' recovery potential by extending its current range and reoccupying currently unutilized historic habitat.

Summary of Comments and Recommendations

In the September 8, 1987, proposed rule (52 FR 33850) and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and interested parties were contacted and requested to comment. Six written comments were received and are summarized below.

Support for the proposal was received from the Tennessee Department of Conservation, U.S. Forest Service, and the Virginia Cooperative Fishery Research Unit. The State of Virginia Department of Game and Inland Fisheries and the Tennessee Valley Authority provided no specific comments, but did request that the Service inform them of the exact location of the transplant site. The Service will coordinate the release of the fish with these agencies, and specific site data will be provided prior to the release.

The Smyth County Board of Supervisors objected to the proposal to establish a nonessential experimental population of the yellowfin madtom in the North Fork Holston River. However, they provided no reason for their objection.

A Service biologist met with the Board and explained the proposed rule specifically emphasizing the greatly reduced protection the Act provides to nonessential experimental populations. The Board voted again to oppose the reintroduction.

The proposed rule stated that the yellowfin madtom would be introduced into the North Fork Holston River in Smyth County, Virginia. Discussion with ichthyologists knowledgeable with the species indicates that suitable sites for introduction are available downstream in Washington and Scott Counties, Virginia (Charles Sayler, Tennessee Valley Authority; David Etnier, University of Tennessee; and Robert Jenkins, personal communications, 1987). The Service has discussed the use of Washington County as a reintroduction site with the Washington County Administrator, and he had no objection to reintroducing the fish into his county. Therefore, because of Smyth County's objection and the availability of suitable sites in Washington County, Virginia, the final rule has been modified to show that the reintroduction will be made into North Fork Holston River in Washington County, Virginia, rather than Smyth County, Virginia. If the reintroduction is successful and the species expands its range downstream and upstream in the North Fork Holston River, the species could be considered for delisting before any of these fish ever reach Smyth County, Virginia.

Location of Reintroduced Population

The area for reintroduction of the yellowfin madtom is totally isolated from existing populations of the species. The madtom will be released into the North Fork Holston River, Washington County, Virginia. This site is separated from other existing populations by both Tennessee River and tributary reservoirs, and the fish is not known from any of these reservoirs or intervening river sections. These reservoirs and river sections act as barriers to movement by the fish and assure that the Holston River population will remain geographically isolated and easily identifiable as a distinct population.

Management

This translocation project will be a joint cooperative effort among the Virginia Commission of Game and Inland Fisheries, the Tennessee Wildlife Resources Agency, and the U.S. Fish and Wildlife Service. Present plans call for the release of 100 to 200 young-of-the-year animals in the late summer or early fall of 1988. Subsequent releases will be made contingent on funds in 1989 and later years. Released animals will be monitored to determine survival, reproductive success, and general health.

This nonessential experimental population would be treated as a threatened species under all provisions of the Act, except section 7. Under section 7 (other than subsection (a)(1) thereof) a nonessential experimental population shall be treated, except when it occurs in an area of the National Wildlife Refuge or National Park Systems, as a species proposed to be listed under the Act as a threatened species. All of the prohibitions referred to in 50 CFR 17.31 would apply to this population. In addition, members of this experimental population could be taken in accordance with applicable State laws. Thus, if a fisherman accidentally took a member of this experimental population based upon a misidentification of the species, there would be no violation of Federal law.

National Environmental Policy Act

An environmental assessment under the National Environmental Policy Act

has been prepared and is available to the public at the Service's Asheville Field Office (see **"ADDRESSES"** section), Atlanta Regional Office (U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303), or the Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, 1000 N. Glebe Road, Arlington, Virginia 22201 (202/235–1975). This assessment formed the basis for the decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

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

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291 and that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). No private entities will be affected by this action. The rule does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

References Cited

Burkhead, N.M., and R.E. Jenkins. 1982. Five-year status review of the yellowfin madtom, *Noturus flavipinnis*, a threatened ictalurid catfish of the Tennessee drainage. Unpublished report to the U.S. Fish and Wildlife Service. 10 pp.

Jenkins, R.E. 1975. Status of the yellowfin madtom, *Noturus flavipinnis*. Unpublished report to U.S. Office of Endangered Species International Activities, Washington. 11 pp.

Shute, P.W. 1984. Ecology of the rare yellowfin madtom (*Noturus flavipinnis*) Taylor, in Citico Creek, Tennessee. Masters thesis. University of Tennessee, Knoxville, TN. 100 pp.

Author

The principal author of this final rule is Richard G. Biggins (see **"ADDRESSES"** section) (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by revising the entry "Madtom, yellowfin" under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population below.	T	28, 317	17.95(e)	17.44(c)
Do	do	do	North Fork Holston River and its tributaries, VA, TN; South Fork Holston River and tributaries upstream to Ft. Patrick Henry Dam, TN; and Holston River and tributaries downstream to John Sevier Detention Lake Dam, TN.	XN	317	NA	17.84(e)

§ 17.84 [Amended]

3. Amend Title 50 CFR 17.84 by adding new paragraph (e) as follows:

* * * * *

(e) Yellowfin madtom (*Noturus flavipinnis*).

(1) The yellowfin madtom population identified in paragraph (4) of this subsection is a nonessential experimental population.

(2) All prohibitions and exceptions listed in §§ 17.31 and 17.32 apply to the population identified in paragraph (e)(4) of this section, except that it may also be incidentally taken in accordance with applicable State laws and regulations.

(3) Any violation of State law regulating the take of this species from the population identified in paragraph (e)(4) of this section will also be a violation of the Endangered Species Act.

(4) This experimental population of the yellowfin madtom is found in the North Fork Holston River watershed, Washington, Smyth and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. The reintroduction site is within the historic range of this species but it is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs, and it is unlikely that they could move 100 river miles through these large reservoirs, the possibility of this population contacting extant wild populations is unlikely.

Dated: June 24, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–17540 Filed 8–3–88; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 80749–8149]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of eligibility criteria for potential limited access to the Pacific coast groundfish fishery.

SUMMARY: This notice announces that eligibility criteria have been adopted which may be used in order to establish priorities for future participation in the Pacific coast commercial groundfish fishery in the event a management regime is developed and implemented that limits or reduces the number of vessels allowed to participate in the fishery. A vessel may be given priority for future participation in the fishery if the vessel made commercial landings of groundfish caught off the coast of Washington, Oregon, or California during a window period between July 11, 1984 and August 1, 1988. The Pacific Fishery Management Council (Council) may also consider whether to include those vessels landing shrimp during the same period. This announcement does not prevent the development or implementation of other eligibility criteria, or restrict the type of management regime selected for limited access. The intended effect of giving priority to vessels which landed during the window period is to discourage speculative entry into the fishery while discussions continue on whether and how access to the groundfish resource should be controlled.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS), 206–526–6150; E. Charles Fullerton (Director, Southwest Region, NMFS), 213–514–6196; or Lawrence D. Six (Executive Director, Pacific Fishery Management Council), 503–221–6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan was approved on January 4, 1982 (47 FR 43964, October 5, 1982), and implementing regulations appear at 50 CFR Parts 611 and 663.

At the July 8–10, 1987 meeting of the Pacific Fishery Management Council (Council) in Millbrae, California, the Council adopted a July 11, 1987, cut-off date for eligibility for future entry into the west coast groundfish fishery in the event a management regime is developed and implemented that limits access to the groundfish resource. However, at its July 13–14, 1988, meeting the Council extended the eligibility cut-off date to August 1, 1988, and adopted an eligibility window from July 11, 1984, to August 1, 1988. If a limited entry program were adopted, fishing activity during the window period may be used to establish priorities for future participation in the commercial groundfish fishery; e.g., limited access priority would be given to vessels that made commercial landings of groundfish caught off Washington, Oregon, and California during the window period. This priority remains with the vessel and would be given to the person who owns this qualifying vessel at the time the limited entry permit system becomes effective, regardless of previous or subsequent transfers of the vessel. In other words, vessel owners would qualify for a limited entry permit if they own an eligibility priority vessel when the permits are issued. Vessel buyers and sellers should be cognizant of the eligibility status a vessel may have in the limited entry proposal before transferring vessels.

In adopting these eligibility criteria, the Council considered the recommendations from its advisory committee of industry representatives, in addition to comments by the Groundfish Management Team (State and Federal fishery and social scientists), Groundfish Advisory Subpanel (industry and consumer representatives), Scientific and Statistical Committee (State, Federal, and university scientists), and the public. The Council also adopted two license limitation proposals recommended by an industry committee, as well as a third proposal—no limited entry, for further review at public workshops to be held next fall and winter.

In making this announcement, NMFS and the Council intend to prevent speculative entry into the fishery during further development and analysis of limited access alternatives. The Council's eligibility criteria will help to distinguish *bona fide* established fishermen from possible speculative entrants to the fishery. Although a vessel may not qualify under the provision that it must have made landings during the window, it may be allowed access to the fishery if it meets exceptions or other criteria which may be developed later. On the other hand, while vessels which have priority according to these criteria may be granted access initially, that access may be conditional and/or given a low priority depending on any future criteria which may be developed. In the future, the Council may reduce the number of participating vessels which may have qualified by having fished during the window.

This announcement establishes the period July 11, 1984 through August 1, 1988 for potential use in determining historical or traditional participation in the Pacific coast groundfish fishery. This action does not commit the Council or the Secretary of Commerce to any particular management regime or eligibility criterion for entry to the groundfish fishery. Fishermen are not necessarily guaranteed future participation in the groundfish fishery regardless of their date of entry or intensity of participation in the fishery. The Council may choose a management regime that does not make use of the eligibility window date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after this period, as may be the case with any permissible exceptions. The Council also may choose to take no further action to control entry or access to the fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 1, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–17592 Filed 8–1–88; 3:46 pm]

BILLING CODE 3510–22–M

---

50 CFR Part 661

[Docket No. 80482–8082]

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

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

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the Queets River to Leadbetter Point, Washington, at midnight, July 31, 1988, to ensure that the coho quota for the subarea from Queets River to Klipsan Beach is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council) and the Washington Department of Fisheries (WDF) that the recreational fishery quota of 50,000 coho salmon for the subarea between the Queets River and Klipsan Beach, Washington, will be reached by July 31, 1988. The closure is necessary to conform to the preseason announcement of 1988 management measures. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the EEZ from the Queets River to Leadbetter Point, Washington, to recreational salmon fishing is effective at 2400 hours local time, July 31, 1988. Comments on

this closure will be received through August 15, 1988.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 recreational fishery for all salmon species in the subarea from the Queets River to Klipsan Beach, Washington, commenced on July 3, 1988, and was scheduled to continue through the earliest of September 5, 1988, or the attainment of either a subarea quota of 50,000 coho salmon or an overall quota of 29,800 chinook salmon north of Cape Falcon, Oregon. An inseason adjustment effective midnight, July 24, 1988, established a closed area in a southern portion (between Leadbetter Point and Klipsan Beach, Washington) of the subarea from Queets River to Klipsan Beach (53 FR 28227, July 27, 1988). Therefore, only that portion of the subarea between the Queets River and Leadbetter Point remains open to recreational salmon fishing. Based on the best available information, the recreational fishery catch in the subarea from Queets River to Klipsan Beach is projected to reach the subarea quota of 50,000 coho salmon by midnight, July 31, 1988. Therefore, that portion of the subarea which remained open must be closed to further fishing to ensure conservation of coho salmon.

NOAA issues this notice to close the recreational salmon fishery in the EEZ from the Queets River to Leadbetter Point, Washington, effective midnight, July 31, 1988. This notice does not apply to Treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Council and WDF regarding a closure of the recreational fishery between the Queets River and Leadbetter Point, Washington. The representatives of WDF confirmed that Washington will close the recreational fishery in state waters adjacent to this subarea of the EEZ effective midnight, July 31, 1988.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 15, 1988.

Other Matters

This action is authorized by 50 CFR 661.21(a)(1) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 1, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–17551 Filed 8–1–88; 12:16 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 150
Thursday, August 4, 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

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 38; Doc. No. 5769S]

General Crop Insurance Regulations; Flaxseed, etc.

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to include provisions for a Late Planting Agreement Option (7 CFR 401.107) on certain crops in the Late Planting Agreement Option Regulations. The intended effect of this rule is to include these crops among those listed in the Late Planting Agreement Option as being eligible for that option.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than September 6, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, July 30, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 28443, issuing a new Part 401 to 7 CFR, Title IV. Included in this rule is 7 CFR 401.107, titled the Late Planting Agreement Option, published at 52 FR 28457.

The Late Planting Agreement Option becomes effective when elected by producers on these crops listed as eligible for that option in the option regulations.

FCIC studies indicate that the crops listed below would benefit from the option. The use of the option benefits the insured by allowing coverage to be obtained after the normal crop planting period.

FCIC proposes to add certain crop endorsements to such listing, effective for the 1989 and succeeding crop years, as follows:

7 CFR 401.116—Flaxseed
7 CFR 401.123—Safflower
7 CFR 401.124—Sunflower
7 CFR 401.109—Hybrid Sorghum Seed
7 CFR 401.118—Canning and Processing Bean

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register.** All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1989 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

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

2. In 7 CFR 401.107—Late Planting Agreement Option, Paragraph (e) is revised to read as follows:

§401.107 Late Planting Agreement Option.

* * * * *

(e) *Applicability to crops insured.* The provisions of this section will be applicable to the provisions for insuring crops under the following FCIC endorsements:

401.101 Wheat Endorsement
401.103 Barley Endorsement
401.105 Oat Endorsement
401.106 Rye Endorsement
401.109 Hybrid Sorghum Seed Endorsement
401.116 Flaxseed Endorsement
401.118 Canning and Processing Bean Endorsement
401.123 Safflower Endorsement
401.124 Sunflower Endorsement

The Late Planting Agreement Option will be available in all counties in which the Corporation offers insurance on these crops unless prohibited by the

actuarial table in certain counties on fall-planted crops.

* * * * *

Done in Washington, DC, on June 24, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-17558 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 401

[Amdt. No. 39; Doc. No. 5642S]

General Crop Insurance Regulations; Sunflower Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to restore a provision for a replanting payment on insured sunflower crops in the Sunflower Endorsement. The intended effect of this rule is to restore the provision allowing a replant payment, previously included in the sunflower policy in effect for the 1986 crop year.

DATE: Written comments, data, and opinions on this proposed rule must be received not later than September 6, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250.

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: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based exterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, November 25, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 45155, to amend the General Crop Insurance Regulations (7 CFR Part 401) by adding a new Section 7 CFR 401.124, Sunflower Seed Crop Endorsement, effective for the 1988 and succeeding crop years, to contain the provisions for crop insurance protection on sunflowers in an enforsement to the general crop insurance policy.

The provision allowing for a replant payment, which had been previously been included in the sunflower policy in effect for the 1986 crop year, was omitted in the rule published at 52 FR 45155. FCIC proposes to restore that provision to the sunflower crop insurance policy.

FCIC is inviting public comment on this rule for 30 days after publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Sunflower endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposed to amend the General Crop Insurance Regulations (7 CFR Part 401), by amending the Sunflower Endorsement (7 CFR 401.124), proposed to be effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

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

2. 7 CFR 401.124—*Sunflower Endorsement* is amended by adding a new subsection 1.c., effective for the 1989 and succeeding crop years, to read as follows:

§ 401.124 Sunflower endorsement.

* * * * *

1. Insured Crop.

* * * * *

c. A replant payment is available under the Sunflower Endorsement. No replant payment will be made on acreage on which our appraisal exceeds 90 percent of the guarantee. The payment per acre will not exceed the product obtained by multiplying 175 pounds times the price election, times your share.

* * * * *

Done in Washington, DC, on June 24, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-17557 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Part 1910

Credit Reports on Individuals

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations regarding credit reports on individuals. The circumstances requiring this action are the number of inquiries received from FmHA field offices concerning whether to order a joint report instead of an individual report on married applicants when there is only one income in the household; and the amount of the fee to be collected when ordering a credit report on an applicant and spouse. The intended effects of this action are to

provde FmHA field guidance on ordering joint reports on married applicants, and guidance as to the fee to be collected when ordering joint reports.

DATE: Comments must be received on or before October 3, 1988.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250, Telephone: 202–475–4209.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance programs affected by this action are:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low to Moderate Income Housing Loans
10.416 Soil and Water Loans
10.420 Rural Self-Help Housing Technical Assistance.

This action is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document had been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program" It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

List of Subjects in 7 CFR Part 1910

Administrative practice and procedure, Credit, Government contracts, Reporting requirements.

Accordingly, Chapter XVII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

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

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Credit Reports (Individual)

2. Section 1910.52 is amended by revising paragraph (a) to read as follows:

§ 1910.52 General.

(a) FmHA will obtain credit reports from credit reporting companies (Contractors) listed in Exhibit A of this subpart (available in any FmHA office) as authorized by the National Office, FmHA. Furthermore, special reports, supplemental employment reports, commercial credit reports, and special services are not authorized.

* * * * *

3. Section 1910.53 is amended by revising paragraphs (d) and (e) as follows:

§ 1910.53 Policy

* * * * *

(d) The County Supervisor will determine whether to order a joint report or an individual report. A joint report will be ordered when the applicant and co-applicant are married, except when the applicant is married and applies as an individual, then an individual report will be ordered. In all other cases, if the applicant and co-applicant are not married, then an individual credit report will be ordered on each of the applicants.

(e) A nonrefundable credit report fee of the amount shown in Exhibit A, *General,* (b) of this subpart (available in any FmHA office) will be a one time charge for each initial credit report ordered.

* * * * *

4. Section 1910.54 is amended by revising paragraphs (b) and (f) as follows:

§ 1910.54 Definitions.

* * * * *

(b) "Applicant," for other than Farmer Program loans, also includes co-applicant(s), co-signer(s), each individual in an association, and general partner(s) in a partnership. For Farmer Program loans, "applicant" also includes co-signer(s), member(s) of a cooperative, stockholder(s) in a corporation, partner(s) in a partnership, and joint operators of a joint operation.

* * * * *

(f) "Joint Report" is a report providing information on an applicant and spouse, if a co-applicant. It may be supplemented by "antecedent" and/or "supplemental credit reference" reports to provide all the information required by the 2-year report period.

* * * * *

5. Section 1910.59 is revised as follows:

§1910.59 Type of credit report to be ordered.

Pursuant to the Equal Credit Opportunity Act (ECOA), credit reporting companies will maintain credit information in three different forms on a married couple: Individual accounts on each spouse; joint accounts covering both spouses; and undesignated accounts (those accounts not designated by the credit grantor as either individual or joint account). A "joint" report will be ordered on the applicant and spouse, if the spouse is the co-applicant. If credit report information is needed on other persons to complete the credit investigation, separate "individual" report request, which will be paid by the applicant, prepared for each person as opposed to the more costly "special services" reports. See § 1910.53 (d) of this subpart for requirements concerning when two "individual" credit reports must be ordered.

6. Section 1910.61 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 1910.61 Collecting fees, invoicing, and payments.

(a) * * *

(2) * * *

(ii) By entering the date and amount of the credit report fee collected in column 9 of Form FmHA 1905–4, "Application and Processing Card-Individual."

* * * * *

Date: July 12, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-17614 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Proposed Interpretive Rule Relating To Classification of Motor Vehicles as Automobile Trucks; Extension of Comment Period

AGENCY: U.S. Customs Service, Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time for two weeks for interested members of the public to submit comments concerning the classification of motor vehicles as "automobile trucks" under item 692.02, Tariff Schedules of the United States.

DATE: Comments are requested on or before August 15, 1988.

ADDRESS: Comments may be submitted to or inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John L. Valentine, Commercial Rulings Division (202-566-8181).

SUPPLEMENTARY INFORMATION: On June 1, 1988, Customs published a notice in the **Federal Register** (53 FR 19933), stating that it is reconsidering the criteria it considers when it distinguishes, for tariff classification purposes, automobile trucks from other motor vehicles for the transport of persons or articles. Automobile trucks are classified in item 692.02, Tariff Schedules of the United States (TSUS), and other motor vehicles for the transport of persons and articles are classified in item 692.10, TSUS. Comments were requested from the public in the document on or before July 31, 1988. Customs has now determined that additional time is necessary for responsive comments to be prepared and submitted. Accordingly, this document extends the period of time with which interested members of the public may submit comments for another two weeks.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

Dated: August 1, 1988.

Richard R. Rosettie,

Deputy Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 88-17719 Filed 8-3-88; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[LR-83-87]

Income Taxes; Deductions in Excess of $5,000 Claimed for Charitable Contributions of Certain Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing on proposed regulations.

SUMMARY: This document contains corrections to a notice of a public hearing on proposed regulation relating to deductions in excess of $5,000 claimed for charitable contributions of certain property.

DATES: These corrections are effective July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1988, the **Federal Register** at 53 FR 27531 published a notice of public hearing on proposed regulations under section 170A of the Internal Revenue Code of 1986.

Need for Correction

As published, the notice of public hearing contains misinformation concerning the correct day of the week the outline of oral comments must be delivered or mailed.

Correction of Publication

Accordingly, the publication of the notice hearing in the **Federal Register** for Thursday, July 21, 1988, at page 27531, column 3, under the subheading "Dates", the paragraph is corrected to read: "The public hearing will be held on Friday, September 23, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, September 9, 1988."

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Technical Section, Legislation and Regulations Division.

[FR Doc. 88-17591 Filed 8-3-88; 8:45 am]

BILLING CODE 4810-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773 and 843

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Remedial Actions Regarding Improvidently Issued Permits

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

ACTION: Notice of reopening of public comment period and supplemental notice of proposed rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior is reopening the public comment period for a portion of a July 16, 1986, proposed rule concerning the requirements for permits and permit processing. The rule, among other things, would have added a new § 773.20 governing permit rescission and a new § 843.21 governing federal enforcement of improvidently issued permits. OSMRE seeks public review of and comment on alternative language for these new sections.

DATE: The comment period on the affected portion of the proposed rule is extended until 5 p.m., Eastern time on September 6, 1988.

ADDRESSES: Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-5954 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

IV. Discussion of Proposed Modifications

I. Public Comment Procedures

Written comments may be submitted on the proposed modifications. Such comments should be specific, confined to issues pertinent to the July 16, 1986 (51 FR 25822) proposed rules and proposed modifications contained in this notice, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") may not necessarily be considered or included in the Administrative Record for the final rule.

II. Background

On July 16, 1986 (51 FR 25822) OSMRE published in the **Federal Register** a proposed rule which would amend its regulations governing permits and permit processing. On September 24, 1986 (51 FR 33905) OSMRE extended the comment period for the proposed rule for 30 days. By this notice, OSMRE is reopening the public comment period for proposed § 773.20, a new section governing remedial measures for improvidently issued permits; proposed § 773.21, a new section governing permit rescission; and § 843.21, a new section governing federal enforcement concerning improvidently issued permits. OSMRE seeks public review of and comment on alternative language for these new sections. The comment period on the remainder of the proposed rule is not affected by this notice and remains closed.

The alternative procedures specified in this notice would modify the procedures specified in paragraph number 3 of the January 31, 1985 Court Order in the case of *Save Our Cumberland Mountains, Inc. et al. v. Clark*, Civil Action No. 81-2134 (D.D.C. 1985) (the "Parker order"), relating to enforcement measures that can be taken against operators with unabated Federal cessation orders and unpaid Federal civil penalties. Rules modifying the procedures of Paragraph 3 of the Parker Order are authorized pursuant to Paragraph 31 of the Parker Order.

III. Regulatory Text of Proposed Modifications

The major proposed regulatory changes from the July 16, 1986 proposal which OSMRE is considering are provided below. A discussion describing the changes follows the regulatory text. The textual changes would replace the language proposed in the corresponding sections published on July 16, 1986.

As an alternative to the previously proposed § 773.20, *Permit rescission*, and § 843.21, *Procedures on improperly or erroneously issued State permits*, OSMRE proposes to substitute the following provisions (§§ 773.20, 773.21, and 843.21):

§ 773.20 Procedures for improvidently issued permits.

(a) The regulatory authority shall require the implementation of the procedures of paragraph (b) of this section if, subsequent to issuance of a permit, it determines that:

(1) At the time of permit issuance, any surface coal mining operation owned or controlled by either the permittee or any person who owned or controlled the permittee—

(i) Was subject to an outstanding cessation order or to a notice of violation for which a cessation order was subsequently issued; or

(ii) Resulted in persons being liable to the Office or the regulatory authority for any civil penalty imposed under sections 518(a) or 518(h) of the Act or regulatory program counterpart for which payment is due, or for any Abandoned Mine Reclamation Fees due but not paid under Subchapter R of this chapter;

(2) The underlying violation, penalty, or fee—

(i) Remains uncorrected or unpaid; and

(ii) Is not the subject of a good faith appeal, or of a payment schedule or abatement plan which the permittee or other responsible person is complying with as approved by the authority which cited the violations, assesses the penalty, or is owed the fee in question;

(3) The link between the permittee or its owner or controller and the violator still exists so as to constitute ownership or control over the violator; and

(4) The existing permit was issued;

(i) As a result of fraud or misrepresentation; or

(ii) The information concerning the outstanding violation or unpaid money was known or should have been known by the regulatory authority, and, under the regulatory program, should have prevented permit issuance. For purposes of this section:

(A) Ownership and control relationships between a permit applicant and the following violators should have prevented permit issuance under the applicable regulatory program:

(*1*) At a minimum, in appropriate circumstances persons included in section 507(b)(4) of the Act, for permits issued prior to the applicability in the regulatory program of the term "owns or controls" in § 773.5 and a compliance review which applies to persons under common control with a permit applicant; and

(*2*) Persons under common ownership or control with the applicant, for permits issued subsequent to the applicability in the regulatory program of the definition of the term "owns or controls" and a revised compliance review; and

(B) Violations that should have been known are:

(*1*) For the period prior to October 1, 1987, Federal failure to abate cessation orders, penalties assessed under section 518(a) and 518(h) of the Act, and any abandoned mine reclamation fees due but not paid under Subchapter R of this chapter; and

(*2*) Subsequent to October 1, 1987, information in the OSMRE Applicant/Violator System.

(b) The regulatory authority shall employ one or more of the following remedial measures if the criteria of paragraph (a) of this section are met:

(1) Establish payment schedules or reclamation agreements agreed to by the permittee or other responsible persons;

(2) Impose a permit condition on the existing permit requiring correction of the outstanding violation or payment of the unpaid monies;

(3) Suspend the existing permit until the violation is abated or the monies are paid; or

(4) Rescind the existing permit in accordance with the procedures in § 773.21.

§ 773.21 Permit suspension and rescission.

If the regulatory authority elects to rescind a permit under § 773.20(b), then the following procedures shall apply:

(a) The regulatory authority shall serve on the permittee a notice of proposed suspension and rescission, and shall therein notify the permittee that following a specified period not to exceed 90 days its permit will be suspended, and 90 days thereafter automatically rescinded, unless within such periods the permittee submits to the regulatory authority satisfactory proof that:

(1) The regulatory authority's determinations under paragraph (a) of § 773.20 were erroneous;

(2) The permittee or other person responsible has corrected any violation, and paid any penalty or fee specified in § 773.20(a) to the satisfaction of the regulatory authority, department, or agency having jurisdiction over such violation, penalty, or fee; or

(3) The permittee or other person responsible has entered into and is

complying with a plan or schedule for the correction of any such violation, and the payment of any such penalty or fee to the satisfaction of the regulatory authority, department, or agency having jurisdiction over such violation, penalty, or fee.

(b) During the periods of suspension and rescission under this section, no surface coal mining and reclamation operations, other than required reclamation and abatement, shall take place.

(c) The notice of proposed suspension and rescission shall include a right to petition for administrative review in accordance with 43 CFR Part 4.1280–4.1286, or the State program equivalent. A petition for review of the proposed suspension and rescission of a Federal permit shall not be subject to 43 CFR 4.21(a).

§ 843.21 Procedures for improvidently issued State permits.

(a) If OSMRE has reason to believe that a State-issued permit falls within the category of permits covered by § 773.20(a) of this chapter, OSMRE shall notify in writing the State and the permittee.

(b) The State shall respond within thirty days to a notice described in paragraph (a) of this section and demonstrate that it has complied with the state program equivalent of § 773.20 of this chapter or show that the permit is not covered by § 773.20(a).

(c) If OSMRE determines that the State failed to demonstrate that it took action pursuant to the state program equivalent of § 773.20, OSMRE shall immediately issue a notice to the State, requesting the State act pursuant to that section.

(d) If OSMRE determines that within ten days of receipt of such notice described in paragraph (c) of this section, the State has failed to take appropriate action under the state program equivalent of § 773.20 or show good cause for such failure, OSMRE shall take appropriate remedial measures, which may include issuance to the permittee of a notice of violation requiring that unless all cessation orders are abated, all civil penalties and abandoned mine reclamation fees are paid, or an appropriate abatement plan or payment schedule is approved for all outstanding cessation orders, civil penalties, and reclamation fees within a specified time, all mining operations shall cease and reclamation of all areas for which a reclamation obligation exists shall commence or continue. Under this paragraph, good cause does not include lack of a state program counterpart to § 773.20.

(e) OSMRE shall vacate, under paragraph (e)(1), or terminate, under paragraph (e)(2) or (e)(3), a notice of violation issued under paragraph (d) of this section upon submission by the permittee or other person responsible, of proof that:

(1) OSMRE's determinations under paragraph (a) of this section were erroneous;

(2) The permittee or other person responsible has corrected any such violation, and paid any such penalty or fee to the satisfaction of the regulatory authority, department, or agency having jurisdication over such violation, penalty, or fee; or

(3) The permittee or other person responsible has entered into a plan or schedule for the correction of any such violation, and the payment of any such penalty or fee to the satisfaction of the regulatory authority, department, or agency having jurisdiction over such violation, penalty or fee.

(f) No civil penalty will be assessed under a notice of violation issued pursuant to this section.

IV. Discussion of Proposed Modifications

Section 773.20 Remedial measures for improvidently issued permits.

Under § 773.20 of the 1986 proposal, any outstanding cessation order or unpaid money owed would be a sufficient basis for the regulatory authority to invoke the permit rescission procedure. Under alternative proposed § 773.20(a), additional factors would be considered before remedial procedures would be required. These additional considerations derive in part from comments received on the earlier proposal.

Alternative proposed § 773.20(a)(3) would be added to require remedial action only if abatement or payment can be compelled. This would be accomplished by requiring a curent link between the permittee or its owner or controller and the violator sufficient to exert control over the violator. OSMRE specifically solicits comments on whether a current link to the violator is ordinarily needed to abate outstanding violations and whether current links should be required before action is taken against an existing permittee.

Several comments were received objecting to the retroactive effect that the proposal would have had upon existing permits. To account for this concern, alternative proposed § 773.20(a)(4) would provide that the regulatory authority need not apply remedial measures against existing permits unless such permits were issued as a result of fraud or misrepresentation or were issued when information concerning outstanding violations or unpaid monies, if known or should have been known by the regulatory authority, should have prevented permit issuance under the regulatory program. This provision would ensure that permits properly issued under a state or federal program would not be retroactively invalidated.

The alternative proposal would clarify how the suspension and rescission procedures would relate to OSMRE's expected new rules that will define ownership and control and that will specify that permit applicants under common control with violators will be denied new permits. Alternative proposed § 773.20(a)(4)(ii)(A) would specify which ownership and control relationships between a permit applicant and a violator should have prevented permit issuance under the applicable regulatory program.

Certain permits may have been issued properly under a state program, but no longer may be issuable when that program is amended to incorporate OSMRE's soon to be revised ownership and control definition in 30 CFR 773.5 and soon to be revised compliance review in 30 CFR 773.15(b)(1) which will extend to owners and controllers of a permit applicant. OSMRE does not intend that a state be required to rescind a permit correctly issued under its program. Thus the alternative proposal would specify that until a state program is amended to incorporate the new OSMRE provisions, the links to a violator that should have prevented permit issuance in most instances are, at a minimum, those set forth in section 507(b)(4) of the Act. Subsequent to the incorporation of the OSMRE provisions in a state program, the links that should prevent permit issuance would be those covered by the state program amendment.

Alternative proposed § 773.20(a)(4)(ii)(B) would define violations that should have been known as: (A) For the period prior to October 1, 1987: Federal failure to abate cessation orders and section 518(a) and section 518(h) penalties, and (B) For the period subsequent to October 1, 1987: information from OSMRE's Applicant Violator System.

Under the 1986 proposal, § 773.20 would have required regulatory authorities to rescind erroneously or improperly issued permits. The alternative § 773.20(b) would enable regulatory authorities to employ one of four different remedial measures to deal with an erroneously or improperly

issued permit. OSMRE believes regulatory authorities need flexibility in determining what type of remedial action should be employed in a particular case. Thus, proposed § 773.20(b) allows the establishment of a payment schedule, the imposition of a permit condition, and the suspension, as well as the rescission of a permit.

Section 773.21 Permit suspension and rescission.

Under the 1986 proposal, permit rescission procedures were grouped with other regulatory determination matters in § 773.20. Under the new alternative, once a regulatory authority determines that rescission is required, it would use the procedures of proposed § 773.21, which employs a staged approach of first suspension, then rescission.

Under the alternative proposed § 773.21, if the regulatory authority were to elect to rescind a permit, it would serve on the permittee a notice of proposed suspension and rescission. The notice would specify that following a specified period not to exceed 90 days its permit would be suspended, and 90 days thereafter automatically rescinded, unless within such periods the permittee submitted satisfactory proof that:

(1) The regulatory authority's determinations under paragraph (a) of alternative proposed § 773.20 were erroneous;

(2) The permittee or other person responsible has corrected any violation, and paid any penalty or fee specified in alternative proposed § 773.20(a); or

(3) The permittee or other person responsible has entered into and is complying with a plan or schedule for the correction of any such violation, and the payment of any such penalty or fee to the satisfaction of the regulatory authority, department, or agency having jurisdiction over such violation, penalty, or fee.

During the periods of suspension and rescission, no surface coal mining and reclamation operations, other than required reclamation and abatement, would take place. The notice of proposed suspension and rescission would also include a right to petition for administrative review in accordance with 43 CFR Part 4.1280–4.1286, or the State program equivalent. A petition for review of a Federal permit would not be subject to the automatic stay provisions of 43 CFR 4.21(a).

Alternative § 773.21 has been added in response to comments on the 1986 proposal suggesting the regulatory authority be able to suspend a permit prior to rescission to enable the permit to be reinstated without a former permittee having to initiate a new permit application process. Although a tiered approach, involving suspension as well as rescission, might lengthen the administrative process, it would provide additional opportunities to achieve abatement.

Section 843.21 Procedures for improvidently issued State permits.

Under § 843.21(a) of the 1986 proposal, which implemented the procedures of paragraph 3 of the Parker order, OSMRE would issue a notice of violation ceasing all mining operations and requiring immediate reclamation if a state failed to initiate rescission procedures after notification by OSMRE.

The proposed alternative to § 843.21 would recognize the primary state role in acting against improvidently issued permits and would incorporate an "appropriate action/good cause" standard in the rule. In other words, OSMRE would defer to the state response to a "ten day" notice if the state demonstrates that it acted reasonably in implementing its counterpart rule regarding improvidently issued permits. If the state did not act reasonably, OSMRE would take remedial action. Instead of having to issue a notice of violation in such circumstances, as was proposed, OSMRE would be able to tailor the remedial action to the nature of the problem.

In view of the recent amendment to 30 CFR 842.11(b)(1)(ii)(B) defining "good cause" (53 FR 26744), a provision has been added specifically to allow implementation of the rescission requirements of Paragraph No. 3 of the Parker Order in the interim until state programs are amended. Thus, good cause would not include the lack of a counterpart to § 773.20 in the state program, and the lack of such a provision would not preclude OSMRE from acting under § 843.21. This exception is proposed to assure that OSMRE can act immediately against permits improvidently issued under a state program.

If a notice of violation were issued under § 843.21, it would require that unless all cessation orders are abated, all civil penalties and abandoned mine reclamation fees are paid, or an appropriate abatement plan or payment schedule is approved for all outstanding cessation orders, civil penalties, and reclamation fees within a specified time, all mining operations shall cease and reclamation of all areas for which a reclamation obligation exists shall commence or continue. Paragraph (f) would provide that no civil penalty would be assessed under a notice of violation issued under § 843.21.

Additional Alternatives

OSMRE recognizes that the possibility of permit rescission can be a powerful inducement to have outstanding violations abated. Although the alternative regulatory language specified earlier in this notice would apply only to permits that should not have been issued under a regulatory program, OSMRE solicits comments on two more expansive alternatives which it is considering adopting.

The first, which is similar to the 1986 proposal, would apply the permit rescission procedures to permits which at the time of permit issuance were under common control with an operation with an outstanding violation, even if the permit could have properly issued under the regulatory program in effect at the time. Such a situation could have occurred if the regulatory program compliance review did not extend to owners and controllers of the permit applicant.

The second additional alternative would apply the permit rescission procedures to any permit under common control with a violator, regardless of whether such common control existed at the time of permit issuance. The legal theory underlying the latter alternative would not be that the existing permit was improvidently issued, but instead would rely upon the Secretary's discretionary authority under section 201 (c)(1) and (c)(2) of the Act.

Dated: August 1, 1988.

Robert Gentile,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88–17573 Filed 8–3–88; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, and 58

[AD FRL–3424–9]

Proposed Decision Not To Revise the National Ambient Air Quality Standard for Sulfur Oxides (Sulfur Dioxide)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of additions to rulemaking dockets.

SUMMARY: The proposed decision also included proposed revisions of 40 CFR Parts 51 and 58, appearing in 53 FR 14926 on April 26, 1988. Today's notice is to advise the public that materials

contained in Docket No. A–84–25, related to the proposed revision to the Significant Harm Level (40 CFR Part 51), have been incorporated by reference into Docket No. A–87–12.

Today's notice is also intended to advise the public that additional materials have been incorporated into Docket No. A–87–06 for the proposed revisions to the Ambient Air Quality Surveillance requirements. These materials include two contract reports on monitor siting, several memoranda regarding proposed modifications of 40 CFR Part 58 Appendices C, F and G, and one letter concerning the number and types of sulfur dioxide (SO_2) monitors reporting SO_2 concentrations to the National Air Data Bank.

ADDRESSES: Dockets No. A–87–06 and No. A–87–12 are located in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC. The dockets may be inspected between 8:00 a.m. and 3:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For matters related to the Significant Harm Level (40 CFR Part 51)—Mr. Eric O. Ginsburg, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–15, Research Triangle Park, NC 27711. The telephone number is (919) 541–0877 or (FTS) 629–0877. For matters related to Ambient Air Quality Surveillance (40 CFR Part 58) Mr. Dennis R. Shipman, Technical Support Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–14, Research Triangle Park, NC 27711. The telephone number is (919) 541–5477 or (FTS) 629–5477.

SUPPLEMENTARY INFORMATION: On April 26, 1988, EPA proposed its decision not to revise the National Ambient Air Quality Standard (NAAQS) for sulfur oxides (sulfur dioxide) (SO_2) and to revise the Significant Harm Level for SO_2 (40 CFR Part 51), as well as to revise the Ambient Air Quality Surveillance Requirements (40 CFR Part 58) 53 FR 14926, April 26, 1988. As part of the proposal, EPA announced the establishment of three rulemaking dockets (Dockets No. A–84–25, No. A–87–12 and Docket No. A–87–06), as required by Section 307(d) of the Clean Air Act. Docket No. A–84–25 was established for the proposed action on the NAAQS, while Docket No. A–87–12 is related to the Significant Harm Level (40 CFR Part 51) actions. Docket No. A–87–06 is for actions concerned with revisions of the Ambient Air Quality Surveillance requirements (40 CFR Part 58). In that notice, persons wishing to comment on the Significant Harm Level proposals were asked to submit comments to Docket No. A–87–12, separately from comments on the ambient air quality standards. Docket No. A–87–12 is intended to facilitate the organization of public comments into appropriate subject areas for review and response. All relevant information and materials in support of the April 26 proposed action on the Significant Harm Level and related emergency episode criteria are incorporated into Docket No. A–87–12 by reference to Docket No. A–84–25, where they may be found and examined.

In addition to the matters related to the Significant Harm Level, it has been determined that some materials related to the Ambient Air Quality Surveillance actions were inadvertently omitted from Docket No. A–87–06. These materials have recently been submitted to that docket. Comments related to the ambient surveillance revisions should be submitted to Docket No. A–87–06.

Since EPA has recently extended the comment period on the April 26, 1988, proposal through September 23, 1988, EPA believes the public should have ample opportunity to review and comment on these additional materials.

Date: July 28, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88–17570 Filed 8–3–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF DEFENSE

48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement; Work Measurement Systems

AGENCY: Department of Defense (DoD).

ACTION: Proposed Rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is proposing to revise the Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 215.8 to implement the Department of Defense's policy on Work Measurement Systems (WMS).

DATE: Comments on this proposed rule should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before October 3, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 87–123 in all correspondence relating to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(MRS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense has historically imposed MIL–STD 1567A on a program-by-program basis. This standard, when required, contains criteria by which a contractor would either be able to maintain its existing work measurement system, if acceptable, or would be required to develop an acceptable work measurement system. This proposed revision will implement DoD's policy to use WMS in all appropriate contracts, using MIL–STD 1567A or other appropriate criterial tailored for each specific contract or program.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because work measurement systems are only required on major weapon systems and subsystems production contracts in excess of $20 million annually or a total cost of $100 million, and full scale development contracts in excess of $100 million. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS CASE 88–610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501.

List of Subjects in 48 CFR Part 215

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Part 215 as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 215.807 is amended by adding to the end of paragraph (b) the following text:

215.807 Prenegotiation objectives.

(b) * * * Data resulting from the application of work measurement systems shall be considered in the development of pricing objectives and negotiations.

3. Section 215.876 is added to subpart 215.8 to read as follows:

215.876 Work measurement systems.

(a) *Definition.* "Work measurement systems (WMS)," as used in this section, are systems used to analyze the direct labor content of a manufacturing operation, establish standard labor performance factors for that operation, and measure variances from those standards.

(b) *Policy.* The policy of the Department of Defense is that WMS will be used to provide data for use in planning, cost estimating, and monitoring contract performance, on all appropriate contracts and will be tailored to be suitable for the program and contract. An example of an acceptable set of criteria for WMS is found in MIL–STD–1567A. The contracting officer, in coordination with the Program Manager, shall include provisions in the contract to implement the program's work measurement system requirements.

(c) *Applicability.* Solicitations and resulting production contracts in excess of $20 million annually or a total cost of $100 million for major weapons systems or subsystems should contain appropriately tailored provisions for WMS. WMS requirements may also be included in Full Scale Development (FSD) contracts exceeding $100 million. Work measurement systems should not be required on contracts which:

(1) Procure Non-Developmental Items (NDIs);

(2) Have low volume, non-repetitive production runs such as ship construction, ship system contracts, etc.;

(3) Do not require the submission and certification of cost or pricing data; or

(4) Will not gain a cost benefit from the imposition of these systems. This decision will be documented and approved in accordance with agency procedures.

[FR Doc. 88–17651 Filed 8–3–88; 8:45 am]

BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 53, No. 150
Thursday, August 4, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Copper Basin Land Exchange and Mine Plan; Prescott National Forest and Phoenix District (BLM) Yavapai County, AZ; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service as lead agency, with cooperation of the U.S. Department of Interior, Bureau of Land Management will prepare an environmental impact statement for a land exchange and mine plan proposed by Phelps Dodge Corporation of Phoeniz, Arizona. Lands in Yavapai County, Arizona which will be affected include areas on Bradshaw Ranger District Prescott National Forest, and the Lower Gila Resource Area, Phoenix District (BLM). In Coconino County both the Blue Ridge Ranger District, Coconino National Forest and the Chalender Ranger District, Kaibab National Forest will be affected.

The Phelps Dodge proposals presented to the Prescott National Forest indicate that the open pit copper mine, located on Corporation owned land surrounded by the Prescott National Forest, approximately 8 air miles southwest of Prescott, will require land administered by both the Forest Service and Bureau of Land Management for placement of ore processing facilities, roads, pipelines, waste rock and tailings dams. Phelps Dodge has requested the land exchange to facilitate the placement and operation of these facilities.

The Prescott National Forest Land and Resource Management Plan is being implemented. The plan states that the environmental impacts of the Copper Basin Land Exchange and Mine Plan Proposals will be evaluated in a separate environmental impact statement. It also states that the adjustment of land ownership to facilitate the administration and use of the National Forest was to be done on an opportunity basis. The land exchange proposal is not consistent with the Prescott National Forest Plan land disposal decisions and the Plan may have to be amended as a result of a decision on the proposed exchange.

The land acquisition decisions in both the Coconino and Kaibab National Forest Lands and Resource Management Plans indicate acquisition of the offered lands would be desirable.

Land disposal decisions in the BLM Lower Gila Resource Area, Management Framework Plan indicate that the Public Domain lands selected by Phelps Dodge are currently available for exchange.

A range of alternatives will be considered for the land exchange proposal. These alternatives will include the proposal, different acreages of offered and selected lands, different parcels of offered lands and a no action alternative. Other variations will evaluate the impacts of land acquisition under the mill site patent procedure and ore processing under an authorized operating plan. It may be necessary to evaluate ore processing alternatives along with the alternatives to the land exchange proposal.

Federal, State and local agencies, organizations and individuals who may be interested in, or affected by the decisions will be invited to participate in the scoping process. Scoping will be initiated during the fall of 1988. Specific locations and times will be announced when they are determined. The scoping process will include:

1. Identification of issue with public participation.

2. Identification of other potential cooperating agencies and assignment of responsibilities.

3. Development of public understanding of the project proposals.

4. Development of public understanding of the decisions to be made as a result of the evaluation process.

Sotero Muniz, Regional Forester, Southwestern Region, Albuquerque, New Mexico, is the responsible official for the Forest Service. Dean Bibles, Arizona State Director, Bureau of Land Management, Phoeniz, Arizona, is the responsible official for the Bureau of Land Management. Separate land exchange decisions by each official will be made on their respective jurisdiction.

The analysis is expected to take 18 to 24 months, and will be prepared by an independent environmental consultant who will be selected and controlled by the Forest Service. The draft environmental impact statement should be available by September 1989. The final environmental impact statement is scheduled to be completed by June 1990.

Written comment and suggestions concerning the analysis should be sent by November 30, 1988 to Mr. Coy G. Jemmett, Forest Supervisor, Prescott National Forest, 344 South Cortex, Prescott, Arizona 86303.

For your convenience questions about the land exchange and mine plan proposals and the environmental impact statement should be directed to Ray Thompson, Copper Basin Interdisciplinary Team Leader, Prescott National Forest, phone 602–445–1762.

Date: July 22, 1988.

Sotero Muniz,

Regional Forester.

[FR Doc. 88–17561 Filed 8–3–88; 8:45 am]
BILLING CODE 3410–11–M

Vegetation Management Activities Intermountain Region

AGENCY: Forest Service, USA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) covering vegetation management activities on National Forest System (NFS) lands within the Intermountain Region. Lands within all National Forests in the states of Utah and Nevada; the Caribou, Challis, Payette, Salmon, Sawtooth and Targhee National Forests in Idaho; the Bridger-Teton National Forest in Wyoming; the portion of the Manti-LaSal National Forest in Colorado; and the portion of the Toiyabe National Forest in California are included. The major emphasis of the NEPA process will be on development of economic, social and environmental risk criteria for choosing among the various types of alternative vegetation treatments to be used during implementation of Forest Plans.

SUPPLEMENTARY INFORMATION:

History

Vegetation management activities in the Intermountain Region included the unrestricted use of EPA registered herbicides until 1984. On march 14, 1984, the U.S. District Court for the District of Oregon ruled in the case of the Northwest Coalition for Alternatives to Pesticides, Oregon Environmental Council, and Audubon Society of Portland vs. J.R. Block, Secretary, USDA; J. Watt, Secretary, USDI; and W. Ruckelshaus, Administrator, EPA (Civil 83-6273-E), that "the defendants have not prepared an adequate Worst Case Analysis pursuant to their National Environmental Policy Act (NEPA) obligations under 40 CFR 1502.22." As a result of this decision, subsequently upheld by the Ninth Circuit Court, the use of herbicides on NFS lands was terminated in Oregon and Washington until NEPA compliance via the courts could be achieved. The use of herbicides on NFS lands in other states within the Ninth Circuit was also administratively curtailed considerably. No aerial applications have been permitted on NFS lands anywhere since that time.

The determination to prepare a regional Vegetative Management EIS was based on several factors:

1. The need to provide National Forests in the Intermountain region with criteria for choosing between vegetation management alternatives necessary to implement their Forest Plans.

2. The need to define the issues and meet NEPA requirements for public participation and disclosure in the decision process.

3. The need to evaluate incomplete or unavailable information associated with vegetation management activities to comply with 40 CFR 1502.22, as amended.

Objectives

All vegetative management activities, except noxious weeds and nurseries, that are required to carry out Forest Plan implementation will be analyzed. Methods to by analyzed will include, chemical, mechanical, manual, biological, and thermal techniques. Resource management activities that require some vegetation management include timber site preparation, timber stand release and improvement, range improvement, wildlife habitat improvement, fuels management, facilities maintenance, right-of-way maintenance (roads, trails, utilities, and railroads), recreation facilities maintenance, and research. These activities involve USDA Forest Service personnel, as well as numerous cooperators and agents.

Scoping

The scoping process will include public meetings established by the individual Forests, personal contacts with individuals and organizations, and requests for participation issued through the media and by mail. Federal, State, and local agencies, affected Indian Tribes, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Defining the scope of the analysis and nature of decisions to be made.

2. Indentifying the Regional and local issues and determining those issues ripe for consideration and analysis within the Vegetation Management EIS.

3. Eliminating insignificant issues—those covered by previous environmental analysis and those issues not within the scope of this decision.

4. Focusing on social issues, as well as technical and bilogical issues of human health and other possible non-target effects.

5. Identifying potential cooperating agencies and assignment of responsibilities.

6. Identifying groups or individuals interested in or affected by the decision.

Responsible Official and Schedule

Stan J. Tixier, Regional Forester, Intermountain Region, is the responsible official.

Public meetings and other scoping activities will be conducted in September through November, 1988. Each of the 16 administrative National Forests will establish and notify the public of scoping meetings. Analysis is expected to take about 12 months. The draft environmental impact statement should be available for public review in September 1989. The final environment impact statement is scheduled for completion and filing with EPA by July 1990.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. Comments received during the review period will be analyzed and considered by the Forest Service in preparing the Final EIS and decision

Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533, (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement, *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the agency at a time when it can meaningfully consider them and respond to them in the Final EIS.

FOR FURTHER INFORMATION: Written comments concerning the analysis, as well as questions about the proposed action and EIS, should be directed to Warren Ririe, Vegetative Management EIS Team Leader, USDA Forest Service, 324, 25th Street, Ogden, Utah, 84401, telephone (801) 625-5255.

Clair C. Beasley,

Deputy Regional Forester, Administration.

[FR Doc. 88-17562 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-11-M

Suitability Study for the Sopchoppy River Being Considered for National Wild and Scenic River Status

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to study the suitability or non-suitability of the Sopchoppy River on the Apalachicola National Forest in Wakulla County, Florida for inclusion in the National Wild and Scenic River System. The U.S. Fish and Wildlife Service, Department of Interior, and The Florida Department of Natural Resources, will participate as cooperating agencies. The Forest Service invites written comments and suggestions on the suitability of this river and the scope of this analysis. In addition, the Agency gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Preliminary comments concerning the suitability of this river should be received by September 6, 1988, in order to assure timely consideration.

ADDRESS: Submit written comments and suggestions concerning the suitability of the Sopchoppy River to Robert T. Jacobs, Forest Supervisor, National Forests in Florida, 227 N. Bronough St., Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Please direct questions about the

proposed action and environmental impact statement to Terry O. Tenold, Landscape Architect, National Forests in Florida, 227 N. Bronough St., Tallahassee, Florida 32301, telephone (904) 681–7337.

SUPPLEMENTARY INFORMATION: The National Forests in Florida Land and Resource Management Plan and final EIS, completed in 1986, documented the eligibility of the Sopchoppy River, which was initially identified in the 1982 Nationwide Rivers Inventory, and recommended that the suitability study be conducted later. The planned EIS is in response to this direction.

The suitability study and EIS will consider the Sopchoppy River in its entirety, from its headwaters (including both East and West Branches) to its mouth at Ochlockonee Bay, for a total of 47.6 miles. The area of consideration for the study is a minimum of ¼ mile from each stream bank for the entire length of the river corridor, whether within or outside the Apalachicola National Forest boundary.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for the river corridor. One of these alternatives will be no action, maintaining current management with no specific protection for potential wild and scenic corridors. Other alternatives will consider recommending national designation or nondesignation of all or portions of eligible segments, protection of eligible segments by means other than national designation, and different wild and scenic river classifications for eligible segments.

Richard E. Lyng, Secretary of Agriculture, Washington, DC, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is the scoping process (40 CFR 1501.7). Initial scoping will be conducted early in the study, beginning in July 1988. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input, which will be used in preparation of the draft environmental impact statement, will be sought through a letter addressed to all known interested and/or affected parties, and through a media release to all newspapers and radio stations serving the area under study. This solicitation will be issued by August 1 and will request replies be returned to the Forest Service by September 1, 1988. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

A public open house will be scheduled for late-October to describe the Wild and Scenic Rivers program and answer questions. This meeting will be announced by letter to all known interested individuals, groups, and agencies and by extensive media release. The Fish and Wildlife Service, Department of the Interior, will participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the river corridor. The Department of Natural Resources, State of Florida, will participate as a cooperating agency to evaluate potential impacts on state lands included in the study area.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency [EPA] and to be available for public review by January 1989. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period for this draft EIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important and necessary that those interested in the suitability of this river for inclusion in the National Wild and Scenic River System participate at this time. To be most meaningful and useful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement and the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation on the environmental review of the proposal so that it is meaningful and alerts an agency to the review's position and contentions, *Vermont Yankee Nuclear Power Corp. vs. NRDC*, 435 U.S. 519 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS, scheduled to be completed by June 1989. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The Secretary will consider the comments and responses, the environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making his recommendation to the President regarding the suitability of the Sopchoppy River for inclusion in the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Date: July 26, 1988.

George M. Leonard,

Associate Chief.

[FR Doc. 88–17503 Filed 8–3–88; 8:45 am]

BILLING CODE 3410–11–M

Pacific Crest National Scenic Trail Advisory Council; Meeting

The Pacific Crest National Scenic Trail (PCNST) Advisory Council will meet on September 16, 1987 in San Diego, California. The meeting will begin at 8:00 a.m. at the Seapoint Hotel, 4875 North Harbor Drive.

The Council provides recommendations for the Secretary of Agriculture on policy, programs, and procedures affecting the PCNST. The meeting will include a review of trail completion status, committee efforts, and other related matters about the trail. The meeting will be open to the public.

On September 17, the council will join the Cleveland National Forest and Desert Conservation District, Bureau of Land Management, in co-hosting the dedication of the California/Mexico border monument near Camp, CA as part of the PCNST 20th anniversary celebration.

Persons who wish additional information about the meeting or dedication should contact Dick Benjamin, Assistant Regional Forester, RW&CR, Pacific Southwest Region, Forest Service, 630 Sansome Street, San

Francisco, CA 94111, Phone (415) 556–6986.

Dated: July 6, 1988.

Richard O. Benjamin,

Assistant Regional Forester for Recreation, Wilderness and Cultural Resources.

[FR Doc. 88–17509 Filed 8–3–88; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Meeting of Commission

Notice is hereby given that the Arctic Research Commission will meet in Alaska, September 1–2, 1988.

Public meetings are scheduled for the Commission on September 1, from 9:00 AM to 4:00 PM in the Wilda Marston Auditorium, Loussac Library, Anchorage, Alaska.

Matters to be considered at this meeting include:

1. Opening remarks by Chairman Juan G. Roederer,
2. Approval of minutes of May 2, 1988,
3. Status of Commission initiatives,
4. Public comment on Arctic Research Policy, and
5. Schedule for revision of Five Year Arctic Research Plan.

The Commission will meet in Executive Session on August 31 starting at 7:30 p.m., on September 1 starting at 7:30 p.m., and on September 2, starting at 9:00 a.m., at the Golden Lion Hotel in Anchorage.

Matters to be discussed in Executive session include:

1. Commission budget for FY 88, FY 89, and FY 90;
2. Membership of the Commission;
3. Nominations for Group of Advisors;
4. Conflict of interest forms and related legal concerns; and
5. Future activities of the Commission.

In addition to the Commission Public Meetings and Executive Sessions, the Commission will also conduct a site visit to Dutch Harbor. On August 29, the Commission will visit commercial fishing facilities on the island of Unalaska. On August 30, the Commission will conduct a public hearing at the Unalaska School from 9:00 a.m. to 4:00 p.m. On August 31, the Commission will visit other facilities and institutions on Unalaska before departing for Anchorage.

Contact person for more information: Lyle Perrigo, Staff Officer, Arctic Research Commission, (907) 257–2738.

Philip L. Johnson

Executive Director, Arctic Research Commission.

[FR Doc. 88–17560 Filed 8–3–88; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 4654–01, 4654–02, 4654–03, 4654–04, 4654–05, 4654–06, 4654–07, and 4654–08]

Actions Affecting Export Privileges; Chipex, Inc. et al.

In the Matter Of: Chipex, Inc, Docket No. 4654–01; Hua Ko Electronics, Co., Docket No. 4654–02; Yu Chueng Lee, Docket No. 4654–03; Ying Min Li, Docket No. 4654–04; Yi Chung Nung, Docket No. 4654–05; Ji Wai Sun, Docket No. 4654–06; Elmer Yuen, Docket No. 4654–07; and Robert Yuen, Docket No. 4654–08; Respondents.

Pursuant to the June 30, 1988 Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed in principal part by me, the following Respondents:

Chipex, Inc., 2144 Bering Drive, San Jose, CA 94131;

Hua Ko Electronic, Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong;

Yu Chueng Lee, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T.;

Ying Min Li, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong;

Yi Chung Nung, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong;

Ji Wai Sun, a/k/a Ji Wei Sun, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong;

Elmer Yuen, c/o Tele-Art, Ltd. with locations at both, Central Industrial Building, 6th Floor, Block B, 57–61 Ta Chen Ping Street, Kwai Chung, N.T., Hong Kong;

Robert Yuen, c/o Tele-Art, Ltd. with locations at both, Central Industrial Building, 6th Floor, Block B, 57–61 Ta Chen Ping Street, Kwai Chung, N.T., Hong Kong.

are denied for a period of ten (10) years, from the date hereof, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368–369).

Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth in Paragraph I above, and shall be terminated at the end of such ten-year period, provided that the individual Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding.

Comment

From the record it is clear that the Respondents had set out upon a clear course to transfer both controlled commodities and technical data associated with semiconductor manufacturing without having first obtained the requisite export license to do so. Semiconductor manufacturing technology is well recognized in the world as especially strategic technology, and is, therefore, closely controlled. It is inappropriate and cavalier action on the part of the ALJ (Dolan) to characterize a case involving such sensitive technology, applicable to any number of strategic products, as "the 'great Chinese digital watch movement caper'." Such a characterization shows a lack of appreciation on the part of the ALJ of the thrust of the controls involved.

In addition to the above, the ALJ's *obiter dictum* that Agency Counsel had failed to set forth allegations in the charging letters in an appropriate and legally sufficient manner is both gratuitous and directly contrary to the record. The charging letters were subject to Motions to Dismiss for, *inter alia*, failure to state claims of action upon which relief could be granted and for more definite statements of charges. After consideration, the ALJ (Hoya), by Order dated April 23, 1986, denied both motions, finding that "the Department's charging letter does * * * comply with the Regulations * * *." In the face of such finding, the ALJ's "Comment" in the pending recommended Decision and Order is completely inappropriate.

Order

On June 30, 1988, the Administrative Law Judge entered his recommended Decision and Order in the above-referenced matter, that Decision and Order, a copy of which is attached hereto and made a part thereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge subject only to the comments set out above.

This constitutes the final administrative action in this case.

Dated: July 29, 1988

Paul Freedenberg,

Under Secretary for Export Administration.

Decision and Order

Appearance for Respondents: On behalf of Chipex, Inc., Hua Ko Electronics, Co., Yu Chueng Lee, Ying Min Li, Yi Chung Nung, Ji Wai Sun;

Eric L. Hirschhorn, Esq., Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth St., NW., Washington, DC 20036

On behalf of Elmer and Robert Yuen: Nicholas F. Coward, Esq., Baker & McKenzie, 815 Connecticut Ave., NW., Washington, DC 20006–4078.

Appearance for Agency: Daniel C. Hurley, Jr., Esq., Attorney-Advisor, U.S. Department of Commerce, Room H3845, Washington, DC 20230.

Preliminary Statement

By separate Charging Letters, the then Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce [1] (Agency), initiated administrative proceedings against Chipex Inc., Hua Ko Electronic Company Inc., Ying Min Li, Yi Chung Nung, and Yo Chueng Lee. Three other Respondents were subsequently named, Ji Wai Sun on July 31, 1984, and Robert and Elmer Yuen, on February 8, 1985, (hereinafter they are collectively referred to as Respondents). These charges were made pursuant to the authority of the Export Administration Act, (50 U.S.C. App. 2402 *et sec.*, (1982)), and the Export Adminstration Regulations (15 CFR Parts 368 *et seq.*, (1982)). A hearing was afforded to the parties, however, Counsel for Chipex, Inc., *et al.* chose not to appear and participate, though a representative did observe the proceedings. Counsel for the Yuens offered twelve exhibits which were admitted. Agency Counsel submitted a "paper" chase consisting of 101 exhibits, as is usually done in cases of default and adjudication upon written submissions, which was the appropriate course after Respondents withdrew their requests for a hearing on the record.

The charging letters allege that the Respondents conspired and acted in concert to export to the People's Republic of China (PRC) U.S.-origin commodities and technology, relating to semiconductor manufacturing, without the required export licenses. Further, it was alleged that all Respondents acted with knowledge that export control violations had occurred, or were intended to occur, and with misrepresenting or concealing material facts from Commerce and other agencies of the United States government. Respondents were also charged with exporting and attempting to export U.S.-origin commodities and technical data to the PRC without the required export licenses. It is appropriate to note that the technology involved is that relating to the manufacture of electronic watches.

Background

While the origins of the associations and agreements which lead to the charges here are somewhat obscure, the representations indicate that as early as 1979, Tele-Art Ltd., a Hong Kong manufacturer of electronic watches, had acquired a production site in the Taipo industrial estate in Hong Kong to manufacture integrated electronic micro circuits on silicon wafer chips for use in the production of electronic watches. In a distribution agreement executed in August 1979 between a major American manufacturer of semi-conductor manufacturing equipment and technology and an international distributor, the company, Tele-Art Ltd., was listed as a customer. In 1980, apparently before production commenced, in what is described as a joint venture with Hua Ko Electronic Company Ltd., purchase orders for various pieces of equipment were placed on behalf of Tele-Art with the American electronic equipment manufacturing company. It appears that the required export license inquiries and procedures were initiated by the distribution agent and the American manufacturer. Thereafter, initial exports of Ion implanters, photomask aligners, and a wafer track processing system were made to Hong Kong against license number A519519, which was issued in or about November 1980 under the sponsorship of Tele-Art Inc. From the correspondence and the fact that an export license to Hong Kong was required, it was clear and acknowledged that reexport to the PRC was not authorized. When the American manufacturer/supplier of the equipment became aware that the Hua Ko company was in receipt of and dealing with the equipment in Hong Kong, and that it was, in part, owned by the PRC, the supplier stopped exports under that license. Thereafter, in May 1981, representatives of the joint venture applied for a license to export technical information on semiconductor equipment (ion implanters and photo mask aligners). That application was returned with a request for specific information about plant activities and personnel. Such information was not provided, nor the applications resubmitted.

During the same time period Hua Ko was also developing a domestic manufacturing facility at San Jose, California. During 1980, that facility had been established as the Hua Ko Electronic Company, USA division. In August 1981, the name was changed and it was apparently reincorporated as Chipex, Inc.. In any case, it continued as a subsidiary of Hua Ko. It continued to operate until the facility ceased operation in July 1982.

Respondents

Chipex Inc. (Chipex), located in San Jose, California, was formed in August 1981, as a wholly-owned subsidiary of Hua Ko Electronic Company, Ltd. For the previous twelve month period, it had operated in san Jose as Hua Ko Electronic Company, U.S.A. Division. Hua Ko/Chipex provided training ror Hua Ko employees from Hong Kong and the PRC.

Hua Ko Electronic Company, Ltd. (Hua Ko), located in Hong Kong, was formed in August 1980, as a joint venture between Tele-Art, a Hong Kong-based manufacturer of electronic watches, and Hua Yaun, a Hong Kong company engaged in export/import trade that was owned and controlled by the PRC's Third Directorate (Light Industrial Import/Export Company).

Yu Chueng Lee (Lee), a Hua Ko manager and Chipex Vice President, had overall responsibility for the day to day operations at Chipex in San Jose and for coordination with Hua Ko and various PRC organizations.

Ying Min Li (Li), Chairman of the Hua Ko board of directors, was also on the board of directors of Hua Yuan, one of the joint venture partners that formed Hua Ko.

Yi Chuno Nung (Nung), served as a director on the Hua Ko and the Hua Yuan boards. Nung was also at one time chief of the Third Business Department of Hua Yuan. Additionally, Nung was the Vice President of Hua Ko and President of Chipex, though he generally remained in Hong Kong.

Ji Wai Sun (Sun), he had been a senior engineer with China Great Wall Industry Corporation, part of the PRC's Seventh Directorate (represented as

[1] Pursuant to the provisions of section 15 of the Export Administration Amendments Act of 1985 as amended (15 U.S.C. App. 2414), the position of Under Secretary for Export Administration was established effective October 1, 1987. Proceedings are now initiated on behalf of the Bureau of Export Administration within the Department of Commerce. The one year period for the processing of these cases fixed by those amendments appears to apply to these pre-1985 cases as well. The complexity of this record and the volume of other cases in combination constitutes good cause for the delay involved here.

being similar to the United States government's National Aeronautics and Space Administration). He traveled from Beijing, PRC, to San Jose, in early 1981, where he served as Chipex's senior engineer for seventeen months, responsible for technological developments. In July 1982, Sun left the United States for the PRC via Hong Kong. Thereafter, Sun served as Executive Vice President of Hua Ko.

Elmer Yuen, he was a *Hua Ko* board member and also served on the board of directors of Tele-Art, the other company that formed *Hua Ko* as a joint venture. He was the Managing Director of *Tele-Art*, and also the President of *Hua Ko*. *Elmer Yuen* was also President of Tele-Art's subsidiary, *Tele-Precision Electronics*, located in Canton, PRC, and a director of Tele-Art's New York subsidiary, *Tele-Art Watch Company, Ltd.*

Robert Yuen, father of Elmer Yuen, also served as a director on the Hua Ko and Tele-Art boards. He was also Vice Chairman of the Hua Ko board of directors.

Findings

1. Hua Ko Electronic Company, Ltd. (Hua Ko) of Hong Kong was a joint business venture of Tele-Art, Ltd. (Tele-Art) and Hua Yuan, Ltd. (Hua Yuan), a Hong Kong-based company controlled and financed by the People's Republic of China (PRC). During the period June 1979 to December 1982, Hua Yuan had direct managerial and financial ties to the PRC.

2. In 1980, Ji Wai Sun, then employed by the China Great Wall Industrial Corporation, Beijing, PRC, was hired by Hua Ko to obtain U.S.-origin commodities and technical data relating to the production, manufacture and construction of complementary metal-oxide-semiconductor (C–MOS) integrated circuit (IC) devices.

3. Hua Ko established an IC manufacturing facility in the United States, which was initially named Hua Ko Electronic Co., Ltd., U.S. Division, and subsequently incorporated in California as a subsidiary named Chipex, Inc. (Chipex) in August 1981.

4. In August 1980, the PRC Ministry of Light Industry, through the Hong Kong-based Hua Yuan, formed a joint venture with Tele-Art to develop and produce integrated circuits (IC) devices in Hong Kong.

5. Hua Yuan contributed $12,000,000 (U.S.) initial working capital to the Hua Ko venture in August 1980 while Tele-Art contributed marketing and technical expertise, as well as the factory that was then under construction at the Tai Po Industrial Estate in Hong Kong.

6. During the period January 1980 to July 1982, Tele-Art was sole owner of a subsidiary, Tele-Precision Electronics, in Canton, PRC.

7. Beginning in August 1980, Hua Ko attempted to establish a duplicate of its Hong Kong-based IC manufacturing facility in Canton, PRC.

8. Nung was actively involved in the construction of the Canton, PRC project between August 1980 and November 1981. His participation and actions were taken with the knowledge of Lee and Li.

9. In or about August 1980, Nung set up a wafer fabrication facility in San Jose, California, to use U.S.-origin IC manufacturing and testing equipment, and to train Hong Kong and PRC engineers in IC methodology. These actions were taken with the knowledge of Lee and Li.

10. Hua Ko established Chipex in San Jose, California, to train Hong Kong and PRC nationals in IC methodology and to purchase U.S.-origin IC manufacturing and testing equipment.

11. Between August 1980 and November 1981, Robert and Elmer Yuen were Directors of Tele-Art, Ltd., and helped form, manage and direct Hua Ko and Chipex.

12. Beginning approximately in August 1980, and continuing through 1981, Nung made representations to the American Consulate in Hong Kong in support of visa applications for three Hua Ko engineers and a technician to travel from Hong Kong to Chipex in San Jose, California. These actions were taken with the knowledge of Lee and Li.

13. On or about October 14, 1980, Hua Ko, through its director, Yi Chung Nung, provided Peter Stauffer, a U.S. consultant to Hua Ko, with a letter of assurance stating that the technical knowledge Mr. Stauffer provided to Hua Ko would not be transmitted to the PRC.

14. In December 1980, Hua Ko, by Nung, made the necessary visa arrangements through the American Embassy in Beijing for three PRC engineers from the China Great Wall Corporation to travel from Beijing to Tele-Art Watch Company, Ltd., in New York City, New York. These actions were taken with the knowledge of Lee and Li.

15. In December 1980, Sun, Yu Shan Liu, and Jing Quing Zhu, all of whom were employed by the China Great Wall Industry Corporation as engineers, applied to the American Embassy in Beijing for business visas to travel to Tele-Art Watch Company, Ltd., in New York City in January 1981 for a stay of six months.

16. The purported purpose of the trip was to make a technical inspection and have trade negotiations at the invitation of Elmer Yuen, Director, Tele-Art Watch Company, Ltd.

17. In December 1980, Hua Ko and/or Chipex officials, including Nung, Lee, Li, Robert Yuen, and Elmer Yuen, knew that three PRC engineers were to travel directly from Beijing to Hua Ko Electronic Company, Ltd., U.S. Division (Chipex) in San Jose, California, for training relating to the production, manufacture and construction of U.S.-origin complementary metal-oxide-semiconductor (C–MOS) IC devices.

18. In January 1981, Hua Ko made arrangements for the three PRC engineers to travel directly from Beijing, PRC to Chipex in San Jose, California.

19. In January 1981, Sun, Liu, and Zhu traveled from Beijing, PRC, to Hua Ko Electronic Company, Ltd., U.S. Division in San Jose, California, for training in C–MOS IC methodology.

20. In January 1981, Hua Ko placed Ji Wei Sun, a PRC national and an engineer from the China Great Wall Corporation, in charge of engineering projects at Hua Ko Electronic Company, Ltd., U.S. Division (Chipex) in San Jose, California.

21. Between January 1981 and July 1982, Sun, in his capacity as the project manager at Chipex, acted with others to set up an IC foundry facility in the United States.

22. Between January 1981 and July 1982, Sun, in his capacity as the project manager at Chipex of San Jose, California, acted with others to set up an IC foundry facility in the United States.

23. Between January 1981 and July 1982, Sun, in his capacity as the project manager at Chipex, acted with others to obtain U.S.-origin IC manufacturing and testing equipment and related technical data, such as C–MOS and N–MOS IC methodology, and to acquire, an unauthorized duplicate of a photomask set ("Gate Array" device) for the PRC.

24. Between January 1981 and July 1982, Hua Ko procured U.S.-origin IC manufacturing/testing equipment and IC technical data through its Chipex facility at San Jose.

25. Between January 1981 and July 1982, Hua Ko used its San Jose facility to train PRC engineers from the China Great Wall Corporation in IC methodology.

26. In February 1981, Hua Ko sent a letter to the American Consulate General in Hong Kong in support of visa applications enabling four engineers to travel to Hua Ko's "branch" facility (Chipex) in San Jose, California, to receive training in IC production processes and the maintenance and operation of U.S.-origin IC

manufacturing and testing equipment. This action was taken with the knowledge of Lee, Li and Nung.

27. In its February 1981 letter to the American Consulate General in Hong Kong in support of the visa applications, Hua Ko implied that the four engineers were Hong Kong citizens.

28. On or about March 30, 1981, Hua Ko provided Kasper Instruments/Eaton Corporation (Kasper Eaton) with a letter of assurance stating that no U.S.-origin technology, direct product or equipment purchased from Kasper Eaton would be transferred to the PRC and that training on and/or observation of the use of that equipment by foreign nationals was strictly prohibited without authorization from the United States Department of Commerce.

29. Hua Ko arranged, through the American Embassy in Beijing, for two PRC engineers and one PRC manager from the Beijing Quianmen Semiconductor Device Plant to travel purportedly from Beijing to the Tele-Art Watch Company, Ltd., in New York City, New York.

30. In May 1981, Xian Zhou Liu, Guozhong Xiao and Hua Sheng You, all of whom were employed by the Beijing Quanmen Semiconductor Device Plant, applied to the American Embassy in Beijing for business visas to travel to Tele-Art Watch Company, Ltd., in New York City for a stay of three months. The purported purpose for Liu's, Xiao's, and You's travel was to study electronic techniques at the invitation of Tele-Art Watch Company, Ltd.

31. In May 1981, Liu, Xiao and You traveled from Beijing, PRC, to Hua Ko Electronic Company, Ltd. (Chipex), U.S. Division in San Jose, California.

32. In May 1981, Hua Ko knew that two PRC engineers and one PRC manager from the Beijing Qianmen Semiconductor Device Plant were to travel from Beijing to Chipex in San Jose, California, to become familiar with U.S.-origin IC manufacturing and testing equipment and to receive training in U.S.-origin technical data relating to the production, manufacture and construction of complimentary metal-oxide-semiconductor (C–MOS) IC devices.

33. In May 1981, Hua Ko placed Xian Zhou Liu, managing director from the Beijing Qianmen Semiconductor Device Plant, in charge of the Hua Ko Electronic Company, Ltd., U.S. Division (Chipex), facilities in San Jose, California, as plant Vice Manager.

34. In August 1981, Yi Chung Nung (Nung) was the Chief of the Third Business Department of Hua Yuan.

35. In August 1981, Nung was Vice President of Hua Ko and President of Chipex.

36. In August 1981, Elmer Yuen was President of Hua Ko.

37. In August 1981, Yu Chueng Lee was a Project Manager of Hua Ko and Secretary of Chipex.

38. In August 1981, Ying Min Li (Li) was a partner in Hua Yuan.

39. In August 1981, Li was a Director of Hua Ko.

40. On October 29, 1981, the revised applications for photomask aligners and ion implanters were rejected for National Security reasons including the risk of illegal diversion.

41. In December 1981, Nung made the visa arrangements through the American Embassy in Beijing for four PRC technicians from the Xian Yen He Radio Factory to travel from Beijing to Chipex in San Jose, California. These actions were taken with the knowledge of Lee and Li.

42. In December 1981, Shizhong Xue, Xiuzhen Zhang, Zhilan Li and Nanyu Lu, employed by the Xian Yen He Radio Factory as technicians, applied to the American Embassy in Beijing for business visas to travel to Chipex, Inc., in San Jose, California, in December 1981 for a stay of six months.

43. In December 1981, Xue, Zhang, Li and Lu, travelled from Beijing, PRC, to Chipex in San Jose, California.

44. In December 1981, Hua Ko provided the American Manufacturer with a letter of assurance that no equipment or technology directly related to the use of the equipment procured by Hua Ko would be transferred to the PRC, and that training on, or observation of, that equipment by the PRC must be authorized by the United States Department of Commerce.

45. In December 1981, there were a manager, five engineers and four technicians of PRC citizenship working and training at Chipex in San Jose, California.

46. In 1982, Hua Ko, through its affiliate Chipex of San Jose, California, obtained and duplicated an LSI Computer, Inc., 3801 photomask set containing N–MOS silicon gate technology and transported it from the United States to Hua Ko in Hong Kong. These actions were taken by, or with the knowledge of, Nung, Lee and Li.

47. In 1982, Hua Ko, through its affiliate Chipex of San Jose, California, obtained and duplicated California Devices, Inc., 3000/4000 and HC 5400 photomask sets containing C–MOS silicon gate technology and transported them from the United States to Hua Ko in Hong Kong. These actions were taken by or with the knowledge of Nung, Lee and Li.

48. Between January 1982 and July 1982, Nung and Lee acquired gate array technology contained in the CDI 3000/4000 and HC 5400 IC photomask sets.

49. Between January 1982 and July 1982, PRC engineers and technicians had access to and used the LSI and the CDI photomask sets and related technology to produce C–MOS and N–MOS IC devices at Chipex in San Jose, California.

50. Between January 1982 and March 1982, Hua Ko, through its affiliate Chipex, transported from the United States, seventy five U.S.-origin (four-inch) silicon wafers with IC devices (dies) to Hua Ko in Hong Kong. These actions were taken with the knowledge of Lee, Li and Nung.

51. On or about May 1, 1982, Hua Ko, through its affiliate Chipex of San Jose, California, attempted to export seventy five U.S.-origin (four-inch) silicon wafers with IC devices (dies) from the United States to Hua Ko in Hong Kong. These actions were taken with the knowledge of Lee, Li and Nung.

52. In July 1982, Ji Wei Sun went to Hong Kong to become the Vice President of Engineering at Hua Ko in Hong Kong.

53. Since July 1982, Sun has had access to U.S.-origin IC manufacturing and testing equipment and technical data at the Hua Ko facility in Hong Kong.

54. Since July 1982, Ji Wei Sun, in his capacity as Vice President of Engineering, has been training PRC and Hong Kong engineers/technicians at Hua Ko in Hong Kong.

In his post-hearing brief, Agency counsel sets forth the details of the many transactions. Those proposed findings with modifications are adopted and appended as schedule II.

Summary

Though the record in these proceedings is massive, even as export enforcement proceedings go, many relevant details of what transpired among the named parties and others, particularly in the Peoples Republic of China and Hong Kong, are fragmentary. That is not untypical of such proceedings where the details of activities in other, particularly eastern bloc, countries are frequently not available. From what has been disclosed and the inferences drawn from the evidence presented, I conclude that in and before 1979, Elmer Yuen and his father Robert Yuen were principals of Tele-Art Ltd., a watch manufacturer in Hong Kong, with a subsidiary Tele-Art

Watch Company in New York. In that time period the Yuens had set up some watch making facility in Canton China, under the name of Tele Precision Electronics. The company had also acquired a site at the Tai Po industrial estate in Hong Kong. The activities of the Yuens and their company Tele-Art in the 1979–1980 period, indicate that they were involved in a substantial expansion both in product lines and facilities. The orders placed in the United States by Elmer Yuen on behalf of Tele-Art in July 1980, for wafer processing systems, wafer aligners and ion implanters for export to Hong Kong reflect the intention to engage in integrated circuit design, testing and production applicable to the manufacturer of digital watches. The usual statement of ultimate consignee and purchaser was executed by Elmer Yuen as a part of the export license application which was granted in November 1980. In August 1980, Tele-Art had entered into a joint business venture with Hua Yuan, Ltd., a company owned by the Peoples Republic of China. That association was, what I conclude to have been, a successful venture on the part of organizations and persons sponsored by the Peoples Republic of China to obtain equipment, technology and data from the United States without the required export licenses. The findings of fact detail the activities of the Chipex Respondents and the Yuens which admit of no conclusion other than that the officers and representatives of Hua Yuan, Inc., by conduct in Hong Kong and in San Jose, California, continuously acted to obtain a commodities and technical data from the United States, which would have been denied to them had their associations and intentions to export to the Peoples Republic of China been made known. The more than one hundred exhibits, received with the presentations, clearly show that the Chipex operation was conducted with a disregard for the export laws and regulations, in that, despite clear acknowledgement of export restrictions on technology and equipment, nationals of the Peoples Republic of China were brought to that facility, remained for extended periods of time and they, as well as the management of Chipex, exported technology in the form of technical data and equipment, without licenses or other authorization.

The Yuens representations that they terminated their relationship with Hua Ko by resignation (November 21, 1981) and that they were not knowing parties to any exports of commodities or technical data to the Peoples Republic of China, even if true, which I do not accept, do not relieve them of the responsibility that they must bear for the total diversions which occurred here. As legitimate businessmen in Hong Kong, they were licensed to receive commodities and related training which included licensable technical data. By not disclosing their association with Hua Yuan and it's ownership they became part of a web of deception which allowed ineligible individuals and companies to function under their aegis. All the acts involved were knowingly done. If the realization of the total possible consequences was not in their minds, that is no excuse, for by assisting in establishing the Hua Ko enterprises in Hong Kong and San Jose, California, they helped set up the mechanisms for diversion. That they, or either of them, did not perform each and every act up to the diversion does not alleviate personal responsibility. The pattern of conduct throughout the entire period was consistent with an extension of the Hua Ko/Tele-Art ventures. Having set it in motion, they, along with the other actors, are responsible for the initial and subsequent actions taken in furtherance of the scheme which they had not repudiated or even disclosed to the responsible licensing authorities. As I have previously observed, conspiracy is inherently secretive by nature, and is often proved only by circumstantial evidence. "Inferential proof may be controlling where the offense charged is so inherently secretive in nature as to permit the marshalling of only circumstantial evidence." *United States* v. *Pelfrey*, 822 F.2d 628, 632 (6th Cir. 1987). As another Circuit Court has stated:

> For it is most often true, especially in broad schemes calling of the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of others remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence, the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others.

United States v. *Donsky*, 825 F.2d 746, 753 (3d Cir. 1987), citing *Blumenthal* v. *United States*, 332 U.S. 539, 556–7 (1947). It is also well-settled that each conspirator does not have to know all of the details of the conspiracy or participate in every phase of the scheme. *See, e.g., United States* v. *Carter*, 760 F.2d 1568 (11th Cir. 1985).

Transactions involving arrangements to assist foreign enterprises, activities/or employees assist in the acquisition or use of technology and more precisely the transfer and export technical data in the course of such transactions constitutes communication made in the course of a conspiracy. *United States* v. *Elder Industries, Inc.* 579 F.2d 516 (9th Cir. 1978).

The assertions of inadequacy relating to technical data violations are deficient. The commodities involved to which the technical data relates, were controlled. Training nationals from the Peoples Republic of China in the myriad details and operations of such equipment without full disclosure and licenses clearly constituted violations. It is concluded from the facts and inferences that technical data requiring licenses was conveyed to PRC nationals in the employ of Chipex; that the activity at Hua Kuo/Chipex was aimed at gathering such data for export to the parent affiliates in Hong Kong and the Peoples Republic of China; that all of the Respondents cooperated in exporting such data and that during and at the end of the Chipex operation the data and commodities was exported to ineligible recipients in Hong Kong and Peoples Republic of China without benefit of export license.

Counsel for Respondents argues that the evidence does not establish knowing and intentional acts which constitute the violations charged. The thrust of their contentions appears to impose some requirement for a "mens rea" type state of mind. That is not the standard that is to be applied here. The "knowing or should have known" language in the Regulations relates to knowledge of the facts, not of the law. The type of verbiage used here is construed in the same manner as in *United States v. International Minerals and Chemical Corp.* 402 *U.S.* 588 (1971) and *United States v. Jonas Bros of Seattle Inc.* 368 F. Supp. 783 (D. Alaska 1974) where it was reiterated that an "ignorance of the law is no excuse." Each and every one of these Respondents should have known of the requirements of this regulated activity in which they were engaged.

The argument that others may have been equally responsible, who also had an obligation to disclose and who perhaps had a better understanding of the technical requirements, is no defense. All of the parties involved in export transactions are responsible for compliance with the law. The distributor and other representatives who, it is now suggested, were derelect, have not had

the opportunity to explain their actions. Whether the Agency has initiated a proceeding against these others, or even found a basis to do so, is not before me for consideration. It is obvious that the American manufacturer did "blow the whistle" on what appeared to be an unauthorized export, that there was no prompt follow-up is most unfortunate, but that is not an excuse or justification. As mentioned above, the actions and representations of the various Respondents were fraught with deception. That others, whom they would now accuse, did not recognize falsity, is more than a distinct possibility.

While much is made by Agency Counsel of the sponsorship by Tele-Art Inc., of NY, of the visit by three engineers who went directly to the Chipex, California facility and did not visit the New York office of the sponsor, I conclude that the emphasis is, at least, exaggerated. There were a number of other visits by PRC nationals to the Chipex facility with extended stays. The conclusion which I draw is that national security in this open scciety just wasn't very well preserved here. The inadequacies appear to exist from the embassy level., where the visas were issued, to the individual firms in the United States where they apparently had access to highly technical proprietary machinery, products and information. Their alleged successful efforts to borrow and copy proprietary systems certainly did not endear them to those high-tech vendors. However, what was done at the San Jose facility of Hua Ko/Chipex was rather open and known to United States authorities. The actions constituted the "great Chinese digital watch movement caper" which didn't even rate as a sting operation.

Conclusion

Based upon the foregoing findings, I conclude that with respect to Hua Ko Electronic Co., Ltd and Chipex, Inc.:

Between August 9, 1980 and July 1, 1982, with respect to Hua Ko, and between August 25, 1981 and July 1, 1982 with respect to Chipex Inc., in connection with each of the commodities listed as items No. 1 through No. 9 on schedule I, Hua Ko caused, aided and abetted the export and Chipex, for its part, exported U.S.-origin technical data relating to the production, manufacture and construction of complementary metal-oxide-semiconductor (C–MOS) integrated circuit (IC) devices from the United States to the People's Republic of China (PRC), knowing that the validated export licenses required by §§ 372.1(b), 379.2 and 379.5 of the Regulations had not been obtained. In so doing, Hua Ko violated §§ 387.2 and 387.4 and Chipex violated §§ 387.4 and 387.6 of the Regulations. .

Hua Ko set up an IC "foundry" facility in the U.S., initially named Hua Ko Electronic Co., Ltd., U.S. Division, and in August 1981 incorporated it as Chipex, Inc. (Chipex). Chipex was established as a subsidiary of Hua Ko to provide PRC engineers and technicians "hands on" experience with, and access to technical data concerning, high technolcgy equipment within the United States. The release of such technical data to foreign nationals in the United States constituted an export under § 379.1 of the Regulations and required a validated export license for export to the PRC under §§ 379.2 and 379.5 of the Regulations.

Between January 1981 and July 1982, with respect to Huo Ko, and from August 1981 to July 1982, with respect to Chipex, in connection with each of the commodities listed as items No. 1 through No. 9 on schedule I, Hua Ko and Chipex caused, aided, and abetted the placement within Chipex of five engineers, four technicians, and one administrator, all from the PRC, for training in C–MOS IC methodology and acquiring photomasks and related C–MOS IC devices, without obtaining the validated export license required by §§ 379.2 and 379.5 of the Regulations. In so doing, Hua Ko violated § 387.2 and Chipex violated § 387.6 of the Regulations.

Between August 1980 and December 1981, with respect to Hua Ko, and between October 1981 and December 1981 with respect to Chipex, in connection with each of the transactions listed as items No. 10 through No. 13 on schedule I, Hua Ko and Chipex misrepresented and concealed from U.S. government agencies the fact that PRC personnel under the sponsorship of Hua Ko would have access through the Chipex facility to the U.S.-origin commodities and technical data described in the attached schedule. In so doing, Hua Ko and Chipex each violated § 387.5 of the Regulations. Between January 1982 and March 1982, in connection with each of the transactions listed as items No. 6 and No. 8.on schedule I, Hua Ko caused, aided and abetted to Hong Kong a photomask set and approximately seventy five U.S.-origin four-inch silicon wafers containing C–MOS IC devices, knowing that the validated export license required by § 372.1(b) of the Regulations had not been obtained. In May 1982, in connection with the transaction listed as item No. 9 on the schedule I, Hua Ko and Chipex caused, aided, abetted and attempted to export to Hong Kong an additional seventy five such silicon wafers, knowing that the validated export license required by § 372.1(b) of the Regulations had not been obtained. In so doing, Hua Ko violated §§ 387.2 and 387.4 of the Regulations and Chipex violated § 387.4 and 387.6 of the Regulations.

2. With respect to Yu Chueng Lee, Ying Min Li, Yi Chung Nung, and Ji Wai Sun:

On or about November 1, 1979 and continuing through July 1, 1982, in connection with each of the commodities listed as items No. 1 through No. 9 on schedule I, Respondents Yo Chung Lee (Lee), Ying Min Li (Li), Yi Chung Nung (Nung) and Ji Wai Sun (Sun) conspired and acted in concert with Elmer Yuen, a director of both Hua Ko Electronic Co. and Tele-Art, Ltd., and others to export, and did in fact export, U.S.-origin technical data relating to the production, manufacture and construction of complementary metal-oxide-semiconductor (C–MOS) integrated circuit (IC) devices from the United States to the People's Republic of China (PRC), knowing that the validated export licenses required by §§ 372.1(b), 379.2 and 379.5 of the Regulations had not been obtained. In so doing, Respondents violated §§ 387.3, 387.4 and 387.6 of the Regulations.

To implement the conspiracy and to facilitate the unlawful export of not only technical data relating to C–MOS IC devices but also the actual devices themselves, Respondents Elmer Yuen and others formed the Hong Kong-based company, Hua Ko, on August 27, 1980, as a joint venture between Tele-Art, Ltd., a Hong Kong manufacturer of electronic watches, and Hua Yuan, Ltd., a Hong Kong-based import/export company controlled and financed by the PRC. Pursuing the conspiracy's purpose to obtain U.S.-origin commodities and technical data relating to the production, manufacture and construction of C–MOS ICs, Respondents acted with others to set up an IC "foundry" facility in the U.S., initially named Hua Ko Electronic Co., Ltd., U.S. Division, and in August 1983 incorporated as Chipex, Inc. (Chipex).

Chipex was established as a subsidiary of Hua Ko to provide PRC engineers and technicians "hands on" experience with, and access to technical data concerning, high technology equipment within the United States. The release of such technical data to foreign nationals in the United States constituted an export under § 379.1 of the Regulations and required a validated

export license for export to the PRC under §§ 379.2 and 379.5 of the Regulations.

In furtherance of their conspiracy, between January 1981 and July 1982, in connection with each of the commodities listed as items No. 1 through No. 9 on schedule I, Respondents Elmer Yuen and others placed within Chipex five engineers, four technicians, and one administrator, all from the PRC, for training in C–MOS IC methodology and acquiring photomasks and related C–MOS IC devices, without obtaining the validated export license required by §§ 379.2 and 379.5 of the Regulations.

Between August 1980 and December 1981, in connection with each of the transactions listed as items No. 10 through No. 13 on schedule I, Respondents individually and collectively misrepresented and concealed from U.S. government agencies the fact that PRC personnel under the sponsorship of Hua Ko would have access, through the Chipex facility to the U.S.-origin commodities and technical data described in the attached schedule. In so doing, Respondents violated § 387.5 of the Regulations.

Between January 1982 and March 1982, in connection with each of the transactions listed as items No. 6 and No. 8 on schedule I, Respondents exported to Hong Kong a photomask set and approximately seventy five U.S.-origin four-inch silicon wafers containing C–MOS IC devices, knowing that the validated export license required by § 372.1(b) of the Regulations had not been obtained. In May 1982, in connection with the transaction listed as item No. 9 on schedule I, Respondents attempted to export to Hong Kong an additional seventy five such silicon wafers, knowing that validated exported license required by § 372.1(b) of the Regulations had not been obtained. In so doing, Respondents violated §§ 387.3, 387.4 and 387.6 of the Regulations.

3. With respect to Robert Bu Yuen and Elmer Yuen:

From on or about November 1, 1979 and continuing through November 2, 1981, in connection with each of the commodities listed as items No. 1 through No. 5 on schedule I, Respondents conspired and acted in concert with each other, as directors of both Chipex, Inc. and Tele-Art, Ltd., and others to export, and did in fact export, U.S.-origin technical data relating to the production, manufacture and construction of complementary metaloxide-semiconductor (C–MOS) integrated circuit (IC) devices from the United States to the People's Republic of China (PRC), knowing that the validated export licenses required by §§ 372.1(b), 379.2 and 379.5 of the Regulations had not been obtained. In so doing, Yuen violated §§ 387.3, 387.4 and 387.6 of the Regulations.

To implement the conspiracy and to facilitate the unlawful export of, not only technical data relating to C–MOS IC devices, but also the actual devices themselves, Respondents and others formed the Hong Kong-based company, Hua Ko Electronic Company, Ltd., (Hua Ko), on August 27, 1980, as a joint venture between Tele-Art, Ltd., a Hong-Kong manufacturer of electronic watches, and Hua Yuan, Ltd., a Hong Kong-based import/export company controlled and financed by the PRC. Pursuing the conspiracy's purpose to obtain U.S.-origin commodities and technical data relating to the production, manufacture and construction of C–MOS ICs, Respondents acted with others to set up an IC "foundry" facility in the U.S., initially named Hua Ko Electronic Co., Ltd., U.S. Division, and in August 1983 incorporated as Chipex, Inc. (Chipex).

Chipex was established as a subsidiary of Hua Ko to provide PRC engineers and technicians "hands on" experience with, and access to technical data concerning, high technology equipment within the United States. The release of such technical data to foreign nationals in the United States constitutes an export under § 379.1 of the Regulations and requires a validated export license for export to the PRC under §§ 379.2 and 379.5 of the Regulations.

In furtherance of their conspiracy, between January 1981 and November 1981, in connection with each of the commodities listed as items No. 1 through No. 5 on schedule I, Respondents and others placed within Chipex five engineers and one administrator, all from the PRC, for training in C–MOS IC devices, without obtaining the validated export license required by §§ 379.2 and 379.5 of the Regulations.

Between August 1980 and November 1981, in connection with each of the transactions listed as items No. 6 through No. 8 on schedule I, Respondents misrepresented and concealed from U.S. government agencies the fact that PRC personnel under the sponsorship of Hua Ko would have access through the Chipex facility to the U.S.-origin commodities and technical data described in schedule I. In so doing, Respondents violated § 387.5 of the Regulations.

Comment

The defective manner of pleading and proof fails to state the essential facts and the applicable Regulations with respect to each of the many separate violations charged. Agency Counsel, who is also the scrivener of the Regulations, which he does not follow, tends to accumulate large collections of documents which succeed only in making for a "garbage can" record. Despite repeated admonitions, he and the scriveners of the charging letters refuse to set forth each violation in a separate, clear and concise fashion with citations to the applicable regulatory provision. Because of the failure to arrange the charging document, the effort at proof takes on a scattershot appearance which makes it impossible to arrange findings to each, as asserted, violation as is appropriate.[2]

The facts presented also appear to indicate that Chipex, Inc., of California, terminated operation in August 1982. The sanctions appear to amount to little more than kicking a dead horse. This entire proceeding is an exercise in overkill. No reason has been shown why the initial negotiated compromise with Chipex was not in the proper ball park. The unexplained massive increase in sanctions simply is not warranted.[3] It fortifies my impression that the Agency continues to withhold the required statement of penalties at the outset (including in pre-charging letters) so that it can chasten those who have the temerity to exercise their statutory right to an independent adjudication.

Any issue not specifically addressed has been resolved contrary to the interest of Respondents.

Order

I. For a period of 10 years from the date of the final Agency action, Respondents:

Chipex, Inc., 2144 Bering Drive, San Jose, CA 94131

Hua Ko Electronic, Co, Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong

Yu Chueng Lee, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong

Ying Min Li, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong

[2] From and after July 1, 1988, charging letters which do not set forth each alleged violation and the applicable individual section of the Regulations or law will be subject to dismissal.

[3] In rendering this decision and disposition, I have not altered my judgment respecting limitations, notice of penalties, specialty of allegations, etc. The Agency policy is entitled to some deference.

Yi Chung Nung, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.J., Hong Kong
Ji Wai Sun, a/k/a Ji Wei Sun, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong
Elmer Yuen, c/o Tele-Art, Ltd., with locations at both Central Industrial Building, 6th Floor, Block B, 57–61 Ta Chen Ping Street, Kwai Chung, N.T., Hong Kong
Robert Yuen, c/o Tele-Art, Ltd., with locations at both Central Industrial Building, 6th Floor, Block B, 57–61 Ta Chen Ping Street, Kwai Chung, N.T., Hong Kong

and all successors, 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 from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth in Paragraph I above, and shall be terminated at the end of such ten-year period, provided that the individual Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the five-year suspension period, Respondents may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of this Order shall also be suspended during the five-year suspension period set forth above.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) 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

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related service.

V. All outstanding individual validated export licenses in which Respondent(s) 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 Respondent(s) privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure 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 person, or whereby any Respondent or any related person 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 related person 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.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Date: June 30, 1988.

Hugh J. Dolan,

Administrative Law Judge.

Appendix Schedule I

Additional Findings

1. On August 15, 1979, a major United States manufacturing company (hereinafter the American supplier), entered into a distribution agreement with Tritek International Company, headed by Albert Chiang, president. The Distribution Agreement, among other things, refers to Tele-Art, Ltd. (Tele-Art) as a customer.

2. On July 5, 1980, Elmer Yuen signed and placed purchase orders on behalf of Tele-Art with the American supplier for four Model 4000A Wafer Process systems, six Model 3001P–4 wafer aligners, and two challenger Model 200MC–A ion implanters.

3. On August 27, 1980, Tele-Art and Hua Yuan, Ltd., a Hong Kong-based import/export company controlled and financed by the People's Republic of China (PRC), formed Hua Ko as a joint venture.

4. On August 31, 1980, Elmer Yuen signed a statement by Ultimate Consignee and Purchaser, Form DIB–629P, which was included with the American supplier's October 12, 1980 application for an individual validated license (A519519) to export the equipment Tele-Art had purchased to Hong Kong. The license application also included three Hong Kong Government import license applications for this equipment which Yi Chung Nung (Nung) had signed for Tele Art on September 30, 1980. The validated export license was issued in November 1980.

5. On October 14, 1980, Nung signed, on Hua Ko's behalf, a certification stating that Peter Stauffer "is employed by our company to help process the design of Integrated Circuits productions and equipments testing," and confirming that the "technological knowledge (sic) Mr. Stauffer applies shall not be transmitted to Mainland China (The People's Republic of China)."

6. On October 15, 1980, Tritek's Mr. Chiang sent a status report to the American supplier, stating that Tele-Art had leased a processing facility in San Jose to do process training, asking that company to ship one aligner and two track systems to the San Jose facility in December 1980, and noting that the "potential problem of Tele-Art order is export license."

7. By telex, dated November 3, 1980, Chiang notified Elmer Yuen and Nung that the aligner and wafer track

equipment was scheduled for shipment in the week of December 15–19, 1980.

8. On December 4, 1980, Tritek's Chiang confirmed by telex, Nung's agreement to accept shipment of one half of Tele-Art's order in December 1980, and specified the number and amounts of letters of credit required for payment. On December 12, 1980, Chiang sent a telex to Nung, again asking that the letters of credit be opened, inquiring whether Nung had yet received an invitation "thru Teleart for training our engineers," and asking when Mr. Y.C. Lee will arrive in the U.S.A. The following day, Chiang sent Nung a telex saying that the Hua Ko letter of credit was acceptable, asking that two letters of credit be opened, one for the equipment to be delivered to Hua Ko's San Jose facility and the other for the equipment to be shipped to Tele-Art in Hong Kong.

9. By cable dated December 17, 1980, the American Embassy in Beijing advised the United States Department of State (State Department) that three PRC nationals, identified as Ji Wai Sun, Yu Shan Liu, and Jing Qing Zhu, had applied for business visas. The cable stated: Applicants plan to leave Beijing for New York on January 10, 1981, to make a technical inspection and have trade negotiations at the invitation of Elmer Yuen, Director, Tele-Art Watch Co., Ltd., No. 32, West 44th St., 3–D, New York, NY 10018 Tel: (212) 354–2133–4, for a stay of six months.

10. Tele-Art's Elmer Yuen acknowledged that in December 1980, he had arranged for Tele-Art's United States distributor to act as the sponsor in the United States in connection with visa applications for technicians from the People's Republic of China, in order to facilitate their dispatch to the United States. These three PRC nationals arrived in San Francisco and went directly to Hua Ko's San Jose facility.

11. On January 9, 1981, Hua Ko sent a letter to "Immigration Officer, Immigration Department, USA" requesting business visas for five engineers from Hong Kong to Hua Ko's branch plant in San Jose to train personnel in machinery operation and maintenance, and attend compulsory training courses offered by its machine suppliers, and stating that "[a]ll of them are Hong Kong legal resident. (*sic*), they have signed contract with us for at least 2 years."

12. At about the same time, Nung confirmed Hua Ko's purchase order for one Nanoline IIIA Critical Dimension Computer Line Width Measurement System, for delivery initially to Hua Ko's San Jose facility and to be exported to Hong Kong approximately six months later.

13. On January 21, 1981, Nung advised Peter Stauffer that "[f]ive persons, two from Hong Kong and three from Beijing will arrive California on 28th Jan. 81. Later I will inform you exact time the particulars of their arrivals. Please hire a house in advance and help solve their future messing [i.e., meals] and transportation problems, etc."

14. On January 27, 1981, two and one-half months after the Agency had approved the license application to export to Tele-Art, the American supplier received Chiang's memorandum advising: that Hua Ko was the new ultimate consignee for the equipment originally ordered by Tele-Art; that because of the high possibility that some of the equipment, particularly the ion implanter, may be transshipped from Hong Kong to China, the American supplier should make a report to the Department of Commerce, that Hua Ko would be sending some engineers directly from China to the Hua Ko facility in San Jose, for training at Kasper/Eaton on the aligner, wafer track and ion implanter, and stating that "Elmer Yuen, Nung and their engineers have made several visits to Kasper/Eason." Six wafer track systems and three aligners were shipped to Hua Ko's San Jose facility on February 7, 1981.

15. On February 10, 1981, Hua Ko sent a letter to the American Consulate in Hong Kong requesting training visas to the United States for four engineers, Messrs. Won Sing Siu, Pui Wa Lee, Sze Hub Li, and Lui Shing Chiu.

16. By letter dated March 2, 1981, Hua Ko's Nung told the American supplier that all of the equipment ordered previously by Tele-Art is half owned by Hua Ko, that Hua Ko intends to produce integrated circuits and to supply those complementary metal-oxide-semiconductor (C–MOS) chips only for the domestic market in Hong Kong, and that the Hua Ko board of directors then consisted of Robert Yuen, Elmer Yuen, Li and Nung.

17. On March 14, 1981, two articles appeared in the *Business Standard*, a Hong Kong newspaper. In one article, Robert Yuen identified as a "director of the joint venture" formed by Hua Yuan and Tele-Art, is reported saying the previous day that China stands to gain considerable expertise in microcircuit technology, that three technicians from Beijing, together with three Hong Kong-based experts had already been sent to the United States for training, and that Tele-Art has already started manufacturing electronic watches in Guangzhou (Canton) under an earlier agreement with Hua Yuen. The other article refers to the joint venture between Hua Yuan and Tele-Art, commenting that this is the first time that China has invested in local light industry. The article continues:

The project dates back to 1979 when Tele-Art was granted a site at Taipo Industrial Estate to produce integrated electronic microcircuits on silicon wafer chips using the "Complementary metal oxide silicon" process.

But *Tele-Art* later changed its mind and *invited Hua Yuan to form a joint venture last August.*

The joint venture, Hua Ko Electronic, has an initial capital of $60 million and equity is split equally between Hua Yuan and Tele-Art.

The factory will be in production by November and can produce one million circuit components a month in full production capacity, a Hua Ko executive said.

These press reports are consistent with and confirm the relationship and progress of the ventures and implantation.

18. The American supplier thereafter, on March 20, 1981, applied for two validated licenses (A545746, concerning Tele-Art/Hua Ko purchase order KSPH003 for photomask aligners, and A545747, concerning Tele-Art/Hua Ko purchase order KSPH001 for ion implanters) to export this equipment to Hua Ko's Hong Kong facility.

19. In early April 1981, the Department returned both applications to Kasper Eaton without action, requesting specific additional information. On July 10, 1981, the American supplier submitted revised applications, both of which the Department rejected on October 29, 1981, for national security reasons, stating that "[t]he risk * * * of illegal diversion of your order to unauthorized destinations is considered strong."

20. By letter dated March 30, 1981, Hua Ko's Nung provided the American supplier with the following requested assurances, concerning Tele-Art/Hua Ko's purchase orders KSPH001 (ion implanters) and KSPH003 (mask aligners):

(1) We certify that no technology, direct product of subject technology, or equipment purchased under our above-referenced orders will be transferred to any foreign nationals (i.e. The People's Republic of China) without prior authorization from the U.S. Department of Commerce;

(2) We further agree to abide by all U.S. Export Regulations governing U.S. Export Commodity Code 1355A which applies to the equipment purchased under the above-referenced orders;

(3) We understand and agree that training and/or observation of subject equipment's use by foreign nationals from Country Groups P, Q, W, Y, and Z, as defined by U.S. Export Regulations, is strictly prohibited without prior authorization by the U.S. Department of Commerce.

21. On May 4, 1981, Hua Ko consultants Peter Stauffer and Henry Lee, listing Hua Ko's San Jose address, applied for an individual validated license (A555458) to export "technical information on semiconductor equipment" to Hua Ko. On or about June 6, 1981, OEE returned the license application without action, requesting specific additional information. There is no record of any subsequent submission by or on behalf of Hua Ko for the export of the technical data in question.

22. By cable dated May 9, 1981, the American Embassy in Beijing advised the State Department that three additional PRC nationals, identified as Xian Zhou Liu, Guo Zhong Xiao and Hua Sheng You, had applied for business visas, representing to the Embassy that they were going to the United States at the invitation of Tele-Art Watch Co., Ltd., in New York for a stay of three months.

23. On June 12, 1981, Nung, Lee and other Hua Ko employees met to discuss the prospective product lines and plant layout for the first floor of Hua Ko's Tai Po facility in Hong Kong. The minutes of that meeting reflect that Lee was to start approaching mask design sources in the United States as soon as possible and that Lee would make a trip to Changzhow, China on June 13, 1981, in order to obtain the C-MOS mask design on five-function watch chip so that he can bring it back to the United States.

24. On July 5, 1981, Lee, Sun, S.C. Liu and Walter Chiu met to discuss Hua Ko's U.S.A. Division. The minutes of that meeting show that Lee was to be in overall charge of the San Jose facility, while Liu was to handle internal management and Sun was in charge of technical works.

25. On August 28, 1981, Hua Ko's U.S.A. Division was incorporated as Chipex, Inc. The organization minutes of the Chipex Board of Directors show that Nung and Lee were appointed respectively as President and Vice President/Secretary and that Li, Elmer Yuen and Robert Yuen were elected to serve as directors of Chipex along with Nung.

26. On October 17, 1981, Chipex entered into a contract with the China National Light Industrial Products Import and Export Corporation, Peking Branch, to supply 100,000 integrated circuits for electronic watches.

27. By letters dated November 2, 1981, Elmer Yuen and Robert Yuen tendered their resignations as directors of Hua Ko.

28. By cable dated December 14, 1981, the American Embassy in Beijing requested business visas for four PRC nationals from the Xian Yen He Radio Factory, identified as Shu Zhang Xue, Xiu Zhen Zhang, Zhi Lan Li and Nanyu Lu, to go to San Jose at Chipex's invitation for a visit of six months beginning December 26, 1981. The China Great Wall Industry Corporation had earlier sent a telex to Sun's attention asking that he meet the four persons arriving from the PRC.

29. On December 16, 1981, Hua Ko's Nung sent a letter to the American supplier, referencing its export license applications A54746 (concerning Tele-Art/Hua Ko purchase order KSPH003 for photomask aligners) and A545747 (concerning Tele-Art/Hua Ko purchase KSPH001 for ion implanters) and repeating nearly verbatim the same assurances given to Kasper/Eaton on March 30, 1981.

30. By telex dated February 8, 1982, Nung authorized Chipex to begin production of integrated circuits for California Devices Inc. (CDI). Nung's telex originated, not from Hua Ko in Hong Kong, but rather from the Qianmen Semiconductor Device Factory (QSDFB) in Beijing.

31. By letter of May 14, 1982, Chipex provided the Agency investigator with a listing of the Hua Ko employees sent to Chipex and the training they received on the same equipment specified.

32. On July 1, 1982, the Special Agent from the Office of Export Enforcement accompanied special agents from the United States Customs Service and the Federal Bureau of Investigations during a search of the Chipex premises.

33. On July 5, 1982, the PRC personnel employed by Chipex flew from San Francisco International Airport enroute to Shanghai, PRC, via Hong Kong.

[FR Doc. 88-17538 Filed 8-3-87; 8:45 am]
BILLING CODE 3510-DT-M

[Docket Nos. 8101-01, 8101-02]

Actions Affecting Export Privileges; Ivor Edwards, Individually and d/b/a Datagon, GMBH

Summary

In the matter of: Ivor Edwards, individually and doing business as Datagon GMBH, Respondent; Docket No. 8101-01, Docket No. 8101-02.

Pursuant to the June 29, 1988 Default Decision and Order of the Administrative Law Judge, which Default Decision and Order is attached hereto and affirmed by me, Ivor Edwards, individually and doing business as Datagon GmbH, with an address at 33 Stucton Road, Newport Givent, Wales, United Kingdom, is denied for a period of twenty (20) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368-369).

Order

On June 29, 1988, the Administrative Law Judge entered his recommended Default Decision and Order in the above-referenced matter. That Default Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Date: July 28, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

Appearance for Respondent: Ivor Edwards, 33 Stucton Road, Newport Givent, Wales, United Kingdom.

Appearance for Agency: Daniel C. Hurley, Jr., Attorney-Advisor, Office of Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th and Constitution Avenue NW., Washington, DC 20230.

Default Decision and Order

Preliminary Statement

On September 21, 1987, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Agency), issued a charging letter to Ivor Edwards, individually and doing business as Datagon GmbH (Respondent). This letter was issued under the authority of the Export Administration Act (50 U.S.C. App. 2412(c)(1) ("the Act") and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1977)) ("the Regulations"). Respondent was charged with violating the Act and the Regulations by aiding and abetting the reexport of U.S.-origin computer technology from the Federal Republic of Germany (FRG) through the United

Kingdom to Bulgaria, without the required authorization from the Office of Export Licensing. Further, Respondent is charged with dealing with a denied party in the course of these transactions, and not disclosing material information to the Office of Export Licensing, acts violating §§ 387.2 and 387.12 of the Regulations.

The record reflects that the charging letter was served upon Respondent on September 29, 1987. No answer from Respondent was received. Thereafter, on January 15, 1988 an Order to Show Cause why a Default Order should not be entered was issued, to which no response has been made.

By memorandum dated January 22, 1988, the Agency opposed going forward with a default proceeding, stating that it was not satisfied that proper service on Respondent had been completed. In a submission dated April 29, 1988, Agency Counsel stated assurances affirming that the requirements of § 388.4 of the Regulations, governing service of a charging letter on a nonresident, had been met.

Because no answer has been filed, an Order, dated May 16, 1988, ruled Respondent in default and directed the Agency to file its evidentiary submission by June 15, 1988. Agency Counsel has moved that a Default Order be entered in these proceedings pursuant to § 388.8 of the Regulations.

Section 388.8 of the Regulations provides:

Default (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

Agency counsel also submitted documentary evidence to support the allegations made in the charging letter. A copy of the above mentioned Motion for Default Judgment was also sent to the Respondent on June 15, 1988 to which there has been no response.

Findings and Discussion

The evidence shows that these alleged unlawful exports and false statements took place.

The charging letter alleged that the Respondent violated the provisions of §§ 387.2 and 387.12 of the Regulations. Specifically, Agency submits that, between approximately August 29, 1982 and mid-October 1982, the Respondent aided and abetted the reexport of a U.S.-origin Digital Equipment Corporation (DEC) VAX 11/780 computer system from the Federal Republic of Germany (FRG) through the United Kingdom to Bulgaria, without the required authorization from the Office of Export Licensing, by assisting in the shipment of the computer system from the FRG to the United Kingdom, by installing that computer system in Bulgaria and by training Bulgarian technicians and engineers in the use of the system. In doing so, the Respondent violated § 387.2 of the Regulations.

In connection with this shipment, in particular the training and installation described above, Respondent also engaged in export or reexport transactions involving U.S.-origin goods with Bryan V. Williamson (also know as Byron Williams) who was, at the time of these activities, denied all U.S.-export privileges.[1] Edwards dealt with Williamson, a denied party, in U.S.-origin goods, without prior disclosure of the facts to and specific authorization from the Office of Export Licensing. In doing so, the Respondent violated § 387.12 of the Regulations.

The Agency presented documentary evidence showing that Edwards, on behalf of Datagon, placed an order with Computer Maintenance of Minneapolis, Inc. for a VAX 11/780 computer system. The evidence further demonstrated that, in connection with an application for a validated license to export the VAX 11/780 computer to Datagon in the FRG, Datagon indicated, in a Statement of Ultimate Consignee and Purchaser submitted with the license application, that the computer would most likely be used in the FRG. This was done even though, Respondent, and others he was dealing with, knew at the time of application that the computer was intended to be reexported from the FRG.

The Agency additionally submitted evidence showing that, for reasons of national security, the Office of Export Licensing would not have approved any request for authorization to reexport the VAX 11/780 computer to Bulgaria. The evidence detailed Edwards' activities from the time the VAX 11/780 computer arrived in Cologne, FRG, to the time the computer was installed in Sofia, Bulgaria.

This proceeding derives from an earlier administrative proceeding involving Bryan Williamson, individually and doing business as Datalec Ltd. In the earlier proceeding, Edwards was found to be a related party. In this proceedings, Edwards is named as a Respondent with respect to certain activities he engaged in which are alleged to be in violation of the Regulations.

After Williamson and Datalec were placed on the denial list, Williamson began looking for a way by which he could continue to acquire U.S.-origin goods. Williamson decided to order U.S.-origin computers from Computer Maintenance of Minneapolis, Inc. Shortly after the VAX computer arrived in the FRG, it was shipped to Williamson's facility in the United Kingdom for assembly and testing. While at Datalec, the computer was also used for training the Bulgarian technicians and engineers who would eventually use and maintain it following installation in Bulgaria.

The evidence shows that throughout this period there was a continual flow of communications between Williamson and Datagon's principals, including Edwards, through meetings, telexes and letters. A former Datagon employee testified in a sworn statement made to FRG authorities that Edwards went to England to assemble and test a U.S.-origin computer that Williamson obtained from Datagon. The employee also testified that Bulgarians were present when the computer was tested in England and that the computer was subsequently delivered to Bulgaria. Another former Datagon employee made a sworn statement to FRG authorities in which he remembered receiving a telephone call made jointly by Williamson and Respondent asking that he to come to Datalec's facility in England in order to help resolve a problem they were having with the VAX 11/780 computer. Finally, a Dun & Bradstreet report concerning Datagon shows that Williamson and Respondent were both shareholders in Datagon. This report corroborates the statement that Williamson was a "partner" in Datagon.

The evidence clearly establishes that Edwards engaged in transactions involving U.S.-origin goods with Datalec, while both Williamson and Datalec were denied all U.S. export privileges, in violation of § 387.12 of the Regulations.

The evidence provides a "paper trail" from the time Edwards placed an order for the VAX 11/780 computer with Computer Maintenance of Minneapolis through Edwards' installation of this particular computer in Bulgaria, establishing Edwards' assistance at various points along the way. In addition to his involvement in the

[1] Williamson is still denied all U.S. export privileges. Pursuant to the Order of then-Assistant Secretary for Trade Administration Paul Freedenberg, dated June 16, 1986 (51 FR 22324, June 19, 1986). Williamson was denied all U.S. export privileges for a period of 20 years beginning June 16, 1986. *See In the Matter of Byran V. Williamson, et. al.*, Docket Nos. 1617–01 and 1618–01.

ordering and licensing of the VAX computer, Respondent Edwards participated in the shipment as well, by inspecting the VAX 11/780 computer upon arrival from the U.S. at the Cologne, FRG airport, just before it was forwarded to Datalec. The VAX 11/780 computer was never authorized for reexport from the FRG. Computer Maintenance of Minneapolis obtained a validated license, A637343, authorizing the export of this computer to Datagon for distribution or resale in West Germany only. The computer was controlled for reasons of national security under the Commodity Control List number 1565A. The Office of Export Licensing determined that, for reasons of national security, the VAX 11/780 computer would not be authorized for reexport to Bulgaria.

Conclusion

The exhibits and explanation by Agency Counsel support the charges made by the Agency in the September 21, 1987 charging letter. The pattern of conduct demonstrated by the violations show a deliberate and willful intent to violate United States export laws and regulations. The goods unlawfully exported to Bulgaria by the Respondent were controlled for national security purposes. I find that an Order denying export privileges for twenty years from the date that a final order is entered in this proceeding is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act and the Regulations.

Order

I. For a period of twenty years from the date of the final Agency action, Respondent Ivor Edwards, individually and doing business as Datagon GmbH, Stucton Road, Newport Givent, Wales, United Kingdom, and all successors, 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 from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) 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

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent(s) 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 Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure 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 person, or whereby any Respondent or any related person 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 related person 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.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Hugh J. Dolan,

Administrative Law Judge.

Date: June 29, 1988.

[FR Doc. 88-17544 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

[Docket No. 7113-02]

Actions Affecting Export Privileges; Gilles Gouzene

Summary

Pursuant to the June 30, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Gilles Gouzene, with an address at 60 bis Rue Victor Hug. 94700, Maison-Alfort, France, is denied for a period of ten (10) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368–369).

Commencing five (5) years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth above, and shall be terminated at the end of such ten-year period, provided that the Respondent has committed no further violations of the Act, the Regulations, or this Order.

Order

On June 30, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above-referenced matter. That Decision and Order, a copy of which is attached hereto and made a part thereof, has been referred to me for final action. The basis of the ALJ's recommended Decision and Order was an agreement of the parties concerning not only the

period of denial, but certain language to be contained in the final Order. The ALJ omitted portions of agreed upon language, to which action the parties ahve taken exception. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge, with the following modifications in accordance with the agreement of the parties (modifications are underlined):

(1) Page 4, paragraph III, part (i) should read, "as a party or as a representative of a party to a validated export license application *to the Department.*"

(2) Part (ii) should read, "in preparing or filing *with the Department* any export license application or reexport authorization, or any document to be submitted therewith; * * *"

(3) Part (iii) should read, "in obtaining *from the Department* or using any validated or general export license or other export control document; * * *"

(4) Page 5, the second sentence should read, "Such denial of export privileges shall extend *only* to *those commodities and technical data* which are subject to the Act and the Regulations."

(5) Page 5, paragraph IV, the last phrase should read, "or other connection in the conduct of export trade or related services *(hereafter 'related person')*."

This constitutes final agency action in this matter.

Date: July 30, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

Decision and Order

Decision

In the matter of: Gilles Gouzene, Respondent, Docket No. 7113–02.

Appearance for Respondent: Stanley N. Lupkin, Esq., Litman, Asche, Lupkin & Gioiella, 45 Broadway Atrium, New York, New York 10006.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave., NW., Washington, DC 20230.

This proceeding against Respondent Gilles Gouzene began with the issuance April 10, 1987 of a charging letter by the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce.[1] This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. App. 2401–2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the "Act"), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1988)) (the "Regulations"). The letter charged that Respondent, from above November 29, 1983 to about February 23, 1984, had violated § 387.3 and 387.4 of the Regulations. The alleged violations were: conspiring with Pierre Gouzene, and others, to export U.S.-origin goods from the United States without the required validated export license; and attempting to export a drafting table from the United States to France without the validated export license that Respondent knew or had reason to know was required by § 372.1 of the Regulations.

To settle this matter, Respondent and the Agency, under § 388.17 of the Regulations, have entered into a consent agreement that imposes upon Respondent a denial of U.S. export privileges for ten years, the last five years of which will be suspended. The undersigned approves the terms of the consent agreement. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, *It Is Ordered That:*

Order

I. For a period of ten years from the date of the final Agency action, as modified by the suspension set forth in Paragraph II below, Respondent

Gilles Gouzene,
60 bis Rue Victor Hugo,
94700, Maison-Alfort, France

and all successors, 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 from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth in Paragraph I above, and shall be terminated at the end of such ten-year period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the five-year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of this Order shall also be suspended during the five-year suspension period set forth above.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) 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

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. All outstanding individual validated export licenses in which 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 Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure 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

[1] When the Office of Export Enforcement issued the charging letter April 10, 1987, the office was part of an organization within the U.S. Department of Commerce, titled the "International Trade Administration." As of October 1, 1987, however, it became part of an organization within the Department not titled the "Bureau of Export Administration"

indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person 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 Respondent or any related person 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.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Date: June 30, 1988.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 88-17600 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 7113-03]

Actions Affecting Export Privileges; Pierre Gouzene

Summary

Pursuant to the June 30, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Pierre Gouzene, with an address at 4 Rue des Parclairs, 94000, LePerreux, France, is denied for a period of ten (10) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368-369).

Commencing five (5) years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth above, and shall be terminated at the end of such ten-year period, provided that the Respondent has committed no further violations of the Act, the Regulations, or this Order.

Order

On June 30, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above-referenced matter. That Decision and Order, a copy of which is attached hereto and made a part thereof, has been referred to me for final action. The basis of the ALJ's recommended Decision and Order was an agreement of the parties concerning not only the period of denial, but certain language to be contained in the final Order. The ALJ omitted portions of agreed upon language, to which action the parties have taken exception. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge, with the following modifications in accordance with the agreement of the parties (modifications are underlined):

(1) Page 4, paragraph III, part (i) should read, "as a party or as a representative of a party to a validated export license application *to the Department.*"

(2) Part (ii) should read, "in preparing or filing *with the Department* any export license application or reexport authorization, or any document to be submitted therewith; * * *"

(3) Part (iii) should read, "in obtaining *from the Department* or using any validated or general export license or other export control document; * * *"

(4) Page 5, the second sentence should read, "Such denial of export privileges shall extend *only* to *those commodities and technical data* which are subject to the Act and the Regulations."

(5) Page 5, paragraph IV, the last phrase should read, "or other connection in the conduct of export trade or related services (*hereafter 'related person'*)."

This constitutes final agency action in this matter.

Date: July 30, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

Decision and Order

In the matter of: Pierre Gouzene, Respondent; Docket No. 7113-03.

Appearance for Respondent: Stanley N. Lupkin, Esq., Litman, Asche, Lupkin & Gioiella, 45 Broadway Atrium, New York, New York 10006.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Ave., NW., Washington, DC 20230.

Decision

This proceeding against Respondent Pierre Gouzene [1] began with the issuance April 10, 1987 of a charging letter by the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce.[2] This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the "Act"), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1988)) (the "Regulations"). The letter charged that Respondent, from about November 29, 1983 to about February 23, 1984, had violated §§ 387.3, 387.4, and 387.5 of the Regulations. The alleged violations were: conspiring with Gilles Gouzene, and others, to export U.S.-origin goods from the United States without the required validated export license; attempting to export a drafting table from the United States to France without the validated export license that Respondent knew or had reason to know was required by § 372.1 of the Regulations; and making or causing to be made to the U.S. Department of Commerce false and misleading statements on an export control document.

To settle this matter, Respondent and the Agency, under § 388.17 of the Regulations, have entered into a consent agreement that imposes upon Respondent a denial of U.S. export privileges for ten years, the last five years of which will be suspended. The undersigned approves the terms of the consent agreement. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, *It Is Ordered That:*

Order

I. For a period of ten years from the date of the final Agency action, as

---

[1] At the time of the 1983-84 incidents that are the subject matter of this proceeding, Respondent was the manager of a French company, Societe D'Exportations Agricoles. In the time period between the occurrence of these incidents and the execution of the Consent Agreement described below in this Order, this company has been dissolved.

[2] When the Office of Export Enforcement issued the charging letter on April 10, 1987, the office was part of an organization within the U.S. Department of Commerce, titled the "International Trade Administration." As of October 1, 1987, however, it became part of an organization within the Department now titled the "Bureau of Export Administration"

modified by the suspension set forth in Paragraph II below, Respondent

Pierre Gouzene,
4 Rue des Parclairs,
94000, LePerreux, France

and all successors, 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 from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth in Paragraph I above, and shall be terminated at the end of such ten-year period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the five-year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of this Order shall also be suspended during the five-year suspension period set forth above.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) 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

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. All outstanding individual validated export licenses in which 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 Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure 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 Respondent or any related person, or whereby Respondent or any related person 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 Respondent or any related person 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.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Date: June 30, 1988.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 88-17601 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-588-807]

Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Republication

Editorial Note: FR Doc. 88-16802 was originally published at page 28036 in the issue of Tuesday, July 26, 1988. In that publication some paragraphs were printed out of order. The corrected document is republished below in its entirety.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioner considers the prices it must use to meet the competition as its best evidence of Japanese selling prices in the United States. United States price was based on the distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. The resulting price in local currency is then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 11.3% to 176.5%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Japan.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, from Japan currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-16802 Filed 7-25-88; 8:45 am]

BILLING CODE 1505-01-M

[A-475-031]

Final Results of Antidumping Duty Administrative Review; Large Power Transformers From Italy

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 21, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from Italy. We received written comments from the petitioner and two exporters. Based on our analysis of the issues raised in the comments, the final results of review are changed from those presented in the preliminary results with respect to one company.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 13141) the preliminary results of antidumping duty administrative review of the antidumping finding on large power transformers from Italy (37 FR

11773, June 14, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of large power transformers ("transformers"); that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination rectifier-transformer units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. Transformers covered by this finding are currently classifiable under items 682.0755, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under Harmonized System item numbers 8504.22.00, 8504.23.00, 8504.34.00, 8504.40.00, 8504.50.00, and 8505.50.00.

The review covers three firms, Nuova Industrie Elettriche di Legnano ("N.I.E.L."), Ansaldo Componenti ("Ansaldo"), and Officine Elettromeccaniche Lombarde ("O.E.L."), and the period June 1, 1986 through May 31, 1987.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from Westinghouse Electric Corporation (petitioner), O.E.L., and Ansaldo.

Comment 1: Westinghouse requests that the Department amend the notice of final results of review which was published December 10, 1987 (52 FR 46806) to reflect the results of this review. Petitioner bases its claim on the fact that the units under consideration in the June 1986 through May 1987 review (the current review) were actually sold to the U.S. customer on the same date as those units we considered in the previous review for the period June 1985 through May 1986. Westinghouse interprets the antidumping law to require the Department to analyze each "sale" of merchandise during the period. Therefore, the separation of units of one sale into different review periods is contrary to the requirements of the statute.

Department's Position: We are not amending the final results of review for the period June 1, 1985 through May 31, 1986. In this Italian transformer case, as well as in the Japanese and French cases, we have completed reviews of units for which the shipment of the unit occurred in a review period which differed from the review period of the sale. This is not unusual, given the long period of time which can pass between the date of sale and shipment of these technically complex units.

Such is the case with this sale by O.E.L. of several units to the United States. The sale and expense information for the units currently under review was not complete before our earlier determination. However, it was unnecessary to delay the review of the first U.S. units, for which we had information, until all units in the contract had entered the United States. Therefore, we maintain our position that review of the current units is distinct from the previous review and we are not amending the earlier final results of review.

Comment 2: Westinghouse disagrees with the Department's choice of home market unit 7559 for comparison to U.S. unit 7623. Unit 7559 has a load tap changer and unit 7623 is without load tap changing equipment. As Westinghouse has long argued, the 1968 Westinghouse Price Rules ("WPR"), which the Department uses in its analysis of physical differences in the transformer cases, do not provide adequate information to make an appropriate adjustment for this difference. In addition, the HV and HV BIL of the two units are sufficiently different to cause further inaccuracies in the theoretical WPR calculation.

Department's Position: In its determination of the best home market unit to compare to the U.S. unit under review the Department considered several technical characteristics of the U.S. unit and the units shipped to home market customers during the period, as well as those which O.E.L. and Westinghouse recommended. Such characteristics include MVA, BIL, existence of load tap changing equipment, and relationship of the size between the U.S. unit and potential home market units. We disagree with Westinghouse's home market recommendation due to the combination of its small size (it was only half the kVA size of the U.S. unit) and the two step difference in BIL. In our review we determined that this combination of differences was more distortive than the presence of load tap changing equipment on the home market unit. We also maintain that the WPR adequately addresses the load tap changing equipment difference for our calculations.

Comment 3: Westinghouse argues that the Department should not have included a 15% adder in the theoretical WPR calculations of O.E.L.'s home market units 7539 and 7559. O.E.L. did not indicate any special design characteristics in its detailed specification sheets for each unit. Westinghouse also asserts that the administrative record does not provide technical information to support application of the adjustment and all parties have not had an opportunity to comment on the appropriateness of the adder. In addition, the Department's technical expert did not view the actual units for which the 15% adjustment was made.

Petitioner also objects to the application of the special design adjustment because the units to which the Department added 15% for its characteristics are actually part of a series of "cookie cutter" units which O.E.L. designed for a specific customer. If the Department really examined what a "special design" by O.E.L. would entail, the appropriate 15% adjustment would be to the theoretical price of the U.S. units.

Department's Position: The Department's technical expert uses detailed specification sheets, outline and nameplate drawings, and customer specifications in the determination of the theoretical WPR price. Details in these documents provide the information on which we rely to make calculations. A visit to a producer's factory often provides additional facts for the technical expert. In this review the Department received factual information and visited O.E.L.'s factory. It is on the basis of all information we gathered that we determine that the 15% special design adjustment is appropriate.

It is not practical for the Department to visually inspect the actual units under consideration because they are already at the customer's site and in operation. Many of the units' special characteristics are internal and not visible once the producer has shipped the merchandise. In lieu of that, the Department's technical expert examined four units (with the same specifications) which were in various stages of completion. During that inspection we determined that special features such as very short and squat windings, a massive yoke, and extensive blocking were a few of the characteristics which made the design of these units different

from the assumptions on design in the WPR.

We note that Westinghouse's assertion that these units are not especially unique (since O.E.L. produced several units from the same specifications) is not relevant to the determination whether the 15% adjustment is appropriate. The 15% adjustment is for designs substantially different from those contemplated in the WPR. However, we note that, even for O.E.L., the design of these units differs from the usual units it manufactures for its home market customers. The fact that O.E.L. produced more than one unit from the specifications does not make the design other than special and, therefore, ineligible for the 15% adjustment.

We also disagree with Westinghouse's assertion that the administrative record does not support this adjustment. In its verification report the Department remarked on the special features of the visually-inspected units and the relationship between the specifications of those units with the units under consideration. The technical expert had also placed his opinion of these units in the record.

Comment 4: O.E.L. disagrees with the Department's calculation of credit income and expense for the home market units. O.E.L. asserts that, in its preliminary analysis, the Department inappropriately disregarded the time at which the units were completed, tested, and ready for delivery to the customer ("ex-works date"). Instead, the preliminary figures are based on the date of shipment to the customer which, for one unit, was 18 months after notification that the unit was ready for delivery.

O.E.L. maintains that title had transferred to the buyer at the ex-works date, O.E.L. had forwarded the invoice to the customer for the remainder due, and O.E.L.'s records reflected the amount as a receivable. According to Department and Court of International Trade precedent, as well as the Uniform Commercial Code, the ex-works date is the appropriate date from which the Department should calculate credit costs. Reliance on the date of shipment does not reflect O.E.L.'s expense due to the customer's deferral of delivery. O.E.L. also asserts that the verification documents support the determination of the ex-works date for its units. O.E.L. also notes that the Department's original credit calculations had some minor clerical errors.

Department's Position: We agree with O.E.L. Our usual practice is to use the date of shipment as the date from which we measure credit costs because this is the point at which goods typically become associated with a particular sale and the credit costs become directly related to the particular transaction. In this instance, the actual date of delivery to the customer was eighteen months after the "ex-works" date. As of the "ex-works" date the unit at issue was ready for shipment and awaiting the customer's shipment instructions, O.E.L. forwarded the final invoice for the unit to the customer, the receivable was recorded on O.E.L.'s books, and the customer was required to pay for storage at O.E.L.'s facility. For these reasons, we have treated the credit expense period as beginning on the "ex-works" date. Clerical corrections are no longer necessary after this change in our calculations.

Comment 5: O.E.L. asserts that the documents which the Department received at verification on home market units 7539 and 7559 do not support the calculation of storage charges which were part of the Department's preliminary analysis. Respondent does not disagree that the contract between O.E.L. and the customer included a storage charge if the customer did not accept the unit within a certain period of time after notification of completion of manufacture and testing. However, the adjustment was improper because the Department did not find evidence of such payment while conducting verification at the factory.

Department's Position: These final results reflect the additional provision in the contract. We regard the contract itself, absent any indication that it was not honored, as sufficient evidence that a charge for storage was made. Verification of payment documents is not necessary, particularly as O.E.L. has never claimed the terms of the contract were not enforced. Therefore, it is appropriate for the Department to presume the customer paid for storage according to the terms of the contract.

Comment 6: O.E.L. reiterates its objection from the last administrative review on the Department's decision to use the exchange rate in effect on the date of the U.S. contract award instead of the irrevocable bid date. The manufacturer undertook the risk of exchange rate fluctuation on that date and so that is the date the Department should use for currency conversion.

Department's Position: We maintain our position in the previous review that there was no contract between O.E.L. and the U.S. customer until the date of acceptance by the U.S. customer. Therefore, we consider the date of acceptance of O.E.L.'s offer to be the date of purchase and, therefore, the date on which to make our currency conversion according to the requirements of the Commerce Regulations (19 CFR 353.56).

Comment 7: O.E.L. disagrees with three aspects of the Department's WPR theoretical calculations for U.S. unit 7620. First, O.E.L. argues that the Department inappropriately used a 6% adder for special impedances. The Department's adjustment of the impedance for this unit, a 65 °C transformer, to a 55 °C base by dividing by 1.333 was incorrect. The appropriate adjustment is conversion of the impedance by a factor of 1.12 to reach a 55 °C base. After correction of this error, the 6% special impedances adder is no longer necessary because the adjusted impedances are within the standard ranges in this section of the WPR.

Second, O.E.L. disagrees with the Department's use of a 9% adder for a series-multiple connection. O.E.L. maintains that the contract does not specify a series-multiple connection and the unit is only dual voltage. In addition, the nameplate does not mention a series-multiple connection.

Finally, O.E.L. asserts that the Department developed the most disadvantageous pricing kVA for U.S. unit 7620 by using the simultaneous loading rate of 115/34.5/13.2 kVA, determining a BIL of 200 due to the common winding of 34.5kv. In addition, the Department inconsistently included an adder for 350 BIL pursuant to the WPR, Section 7, rule 8. The correct BIL for the WPR calculation of this unit is 200 BIL which corresponds to the 34.5 XV winding.

Department's Position: We agree with O.E.L. that the correct adjustment for impedance is by a factor of 1.12 and have changed our calculation for U.S. unit 7620 accordingly.

The technical characteristics of U.S. unit 7620 indicate that our adjustment for a series-multiple connection is correct. There is only one set of secondary bushings on this transformer. The XV winding has a kilovolt rating of 34.5/69. We have assumed that the bushings are for use at either 69kv or 34.5kv. To accomplish this, two windings of 34.5kv rating each could be connected in series for 69kv or in parallel for 34.5kv. Therefore, our final WPR calculation includes the adjustment for series-multiple connection.

Our method of pricing kVA for this unit remains the same as that which we used in the preliminary results. The BIL of a winding is a function of the construction of the winding. Rule 8 provides a cost for the winding's insulation materials and spacing in the winding. The winding connection at any

given time does not affect these materials once the materials are in the winding.

Comment 8: O.E.L. argues that the Department's efficiency adjustment for U.S. unit 7620 and home market unit 7539 does not make the appropriate adjustment for the difference between an autotransformer and a 2-winding transformer. To accomplish this the calculation should use the 2-winding kVA figure to determine percent no load loss and percent load loss, as well as the adjustment of no load loss and load loss to a common kVA base. O.E.L. notes that petitioner has made the same calculations in its submissions during the course of the review.

Department's Position: We agree and have recalculated our efficiency adjustment accordingly.

Comment 9: O.E.L. disagrees with the Department's calculation of ex-factory price for use in the core and coil cost portion of the efficiency adjustment. To include separately invoiced amounts for transportation and commissioning distorts the calculation for physical differences between the U.S. and home market units. O.E.L. argues that only the invoiced price of the transformer plus the escalation figure is appropriate for use in the efficiency adjustment between units 7620 and 7539.

Department's Position: We maintain our position that the home market price we use in our efficiency adjustment should reflect the delivered price, less O.E.L.'s actual cost for transportation and commissioning. We derived the delivered price from the customer's payments for separate invoices for the transformer, escalation, transportation, and commissioning. If the Department were to use the invoiced amounts for transportation and commissioning to determine the value of the services, rather than O.E.L.'s actual costs, the ex-factory price of the transformer could be manipulated at will to achieve whatever results respondent desired. Therefore, for these final results we have included the amounts of O.E.L.'s invoices to the Italian customer for transportation and commissioning in the home market price and then deducted the actual cost to O.E.L. of providing these services.

Comment 10: Ansaldo asserts that the Department's denial of revocation is inappropriate because Ansaldo's past practice in the U.S. transformer market clearly meets the standard for revocations in the Commerce Regulations. For the period June 1983 through May 1984 the Department determined that Ansaldo had sold two units with no dumping duty margin. Since May 1984 Ansaldo has made no shipments to the United States. In addition, it has not bid on any U.S. contracts during this period. Departmental precedent for revocations of other dumping duty orders or findings due to cessation of shipments supports Ansaldo's request. Ansaldo has also signed the Department's standard revocation agreement.

Department's Position: We have not altered our position from that which we stated in the last administrative review of the antidumping finding on Italian transformers. The decision to revoke an antidumping finding with respect to one company does not rely solely on the absence of sales at less than fair value or lack of shipments. In addition, the Department must be satisfied that there is no likelihood of resumption of sales at less than fair value within the meaning of 19 CFR 353.54(a). In making such a determination, we must consider the merchandise and its market. We note that the transformer market in the United States is limited and there may be many years between shipments from foreign manufacturers. In addition, while we determined no dumping margin for Ansaldo for the May 1984 shipment of two units, an earlier review demonstrated a dumping margin of 92.74 percent. It is not appropriate for the Department to revoke an antidumping duty order or finding after reviewing only one sale at not less than fair value. Because there have been no additional sales by Ansaldo in several years, we have decided that we lack information to determine whether there is no likelihood of resumption of sales at less than fair value. Therefore, any future shipment by Ansaldo will remain subject to the antidumping finding.

Final Results of Review

Based on our analysis of the comments received we have determined that the following margins exist for the firms for the period June 1, 1986 through May 31, 1987:

Manufacturer/exporter	Margin (percent)
N.I.E.L.	[1] 71.40
Ansaldo	[1] 0.00
O.E.L.	0.00

[1] No shipments during the period.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required on shipments by the companies under review of large power transformers from Italy.

For any future shipments of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1987 and who is unrelated to any previously reviewed firm, a cash deposit of 0.0 percent shall be required. These deposit requirements are effective for all shipments of Italian transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: July 26, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-17534 Filed 8-3-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-602]

Amended Antidumping Duty Order; Oil Country Tubular Goods From Israel

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: As a result of an error in the Department's antidumping duty order on Oil Country Tubular Goods (OCTG) from Israel, (52 FR 7000, March 6, 1987), we are hereby amending the antidumping duty order to exclude drill pipe.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Charles Wilson (202) 377-5288 or James Riggs (202) 377-1766, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On March 6, 1987, the Department published an antidumping duty order with respect to OCTG from Israel (52 FR 7000), which erroneously included the term "drill pipe" in the scope of the order.

The products covered by this investigation were "OCTG", which are hollow steel products of circular cross section intended for use in the drilling for oil or gas. These products include oil well casing and tubing of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the Tariff

Schedules of the United States Annotated Items 610.3216, 610.3219, 610.3233, 610.3234, 601.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4230, 610.4240, 610.4310, 610.4320, 610.4335, 610.4942, 610.4944, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244. This investigation included OCTG in both finished and unfinished condition. However, drill pipe was not subject to this investigation because the Department previously determined that petitioners were not "interested parties" with respect to drill pipe, within the meaning of section 771(9)(C) of the Act. Therefore, the Department should not have included drill pipe within the scope of the March 6, 1987 antidumping order.

On and after the date of publication of this notice, United States Customs officers, must refund any cash deposits or bonds collected in conjunction with imports of Israeli drill pipe.

This determination constitutes an amended antidumping duty order with respect to OCTG from Israel, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48.

July 25, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-17530 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-803]

Postponement of Preliminary Countervailing Duty Determination; Certain Welded Carbon Steel Pipe and Tube Products from Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the Subcommittee on Standard Pipe, the Subcommittee on Line Pipe, the Subcommittee on Structural Tubing and the Subcommittee on Mechanical Tubing of the Committee on Pipe and Tube Imports and the individual producer members of each subcommittee, the Department of Commerce (the Department) is postponing its preliminary determination in the countervailing duty investigations of certain welded carbon steel pipe and tube products from Malaysia. The preliminary determination will be made on or before August 31, 1988.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Herring Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0187.

SUPPLEMENTARY INFORMATION: On June 13, 1988, the Department initiated countervailing duty investigations on certain welded carbon steel pipe and tube products from Malaysia. In our notice of initiation we stated that we would issue our preliminary determination on or before August 17, 1988 (53 FR 22682, June 17, 1988).

On July 22, 1988, the petitioners filed a request that the preliminary determination in this investigation be postponed for 14 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that a preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioners in these investigations, the Department is postponing its preliminary determination until no later than August 31, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

July 27, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-17531 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00013." A summary of the application follows.

Applicant: CISA Export Trade Group, Inc. ("CISA ETG"), 6990 Rieber Street, Worthington, Ohio 43085.

Contact: Bruce Harrison, Jr., CISA ETG Legal Counsel.

Telephone: (412) 281-6501.

Application #: 88-00013.

Date Deemed Submitted: July 21, 1988.

Members (in addition to applicant): Applied Industrial Materials Corporation of Mundelein, IL, and its controlling entity Aimcor Holdings, Inc. of Mundelein, IL; Asbury Carbons, Inc. of Asbury, NJ, and its controlling entity Asbury Graphite Mills, Inc. of Asbury, NJ; Beardsley & Piper Division of Chicago, IL, and its controlling entity Pettibone Corporation of Des Plaines, IL; Carrier Vibrating Equipment, Inc. of Louisville, KY; C-E Cast Equipment of Cleveland, OH, and its controlling entity Combustion Engineering, Inc. of Stamford, CT; The Centrifugal Casting Machine Company of Tulsa, OK; Dependable Foundry Equipment Co.; Inc./Redford-Carver Foundry Products of Sherwood, OR, and its controlling entity Tromley Industrial Holdings, Inc. of Portland, OR; General Kinematics Corporation of Barrington, IL; George Fischer Foundry Systems, Inc. of Holly, MI, and its controlling entity Georg

Fischer, Ltd. of Switzerland; Georgia-Pacific Resins, Inc. of Newark, OH, and its controlling entity Georgia-Pacific Corporation of Atlanta, GA; Graphite Sales, Inc. of Chagrin Falls, OH; The Herman Corporation of Zeliennople, PA; Hunter Automated Machinery Corporation of Schaumburg, IL; Lester B. Knight & Associates, Inc. of Chicago, IL; Metaullics Systems Division, Standard Oil Engineered Materials Company of Solon, OH, and its controlling entities B P America of Cleveland, OH, and The British Petroleum Company p.l.c. of London, UK; Roberts Corporation of Lansing, MI, and its controlling entity Cross & Trecker Corporation of Bloomfield Hills, MI; Superior Graphite Company of Chicago, IL; Wedron Silica Company of Wedron, IL; The Wheelabrator Corporation of Peachtree City, GA, and its controlling entity Wheelabrator Technologies, Inc. of Danvers, MA; and Whiting Corporation of Harvey, IL.

Summary of the Application

Export Trade

Products

Metalcasting equipment and supplies (including consumable supplies), construction machinery, agricultural equipment, fabricated metal products, instruments, and electrical goods.

Related Services

Metalcasting services; engineering, construction architectural and surveying services related to Products and to turn-key contracts that substantially incorporate Products, including, but not limited to, the construction of foundries and other industrial plants; servicing and testing of Products; and training with respect to Products, including, but not limited to, their use and servicing.

Export Trade Facilitation Services (as they relate to the Export of Products and Related Services)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; and liaison with U.S. and foreign government agencies, trade associations, and banking institutions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. CISA ETG on behalf of its Members may:

a. Act as a clearinghouse in receiving sales leads and orders for Products and Related Services that may be required by the metalcasting industry in the Export Markets.

b. Aid in the preparation of bids and contracts in the Export Markets, including making arrangements for barter trade.

c. Assist Member companies in setting up joint bids for export projects by making distribution to Member companies of bid requirements, bidding dates, and purchase specifications as received from Export Markets.

d. Provide its Members or other suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products and Related Services to Export Markets. This may be accomplished by CISA ETG itself, or by agreement with its Members or other parties.

2. CISA ETG and/or its Members may:

a. Engage in joint bidding or other joint selling arrangements, including barter arrangements, for Products and Related Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Related Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to standardization of Products and Related Services for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Related Services;

e. Solicit non-member suppliers to sell their Products and Related Services or offer their Export Trade Facilitation Services through the certified activities of CISA ETG and/or its Members;

f. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Related Service requirements of specific export customers or Export Markets.

3. CISA ETG and one or more of its Members may meet to exchange and discuss the following types of information:

a. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Related Services in the Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; prices and availability of Products and Related Services from competitors for sales in Export Markets; and specifications for Products and Related Services by customers in Export Markets;

b. Information about the export prices, terms, quality, quantity, source, and delivery dates of Products and Related Services available from Members for export or from non-members for use in barter transactions.

c. Information about terms and conditions of contracts of sales (including barter transactions) in Export Markets to be considered and/or bid on by CISA ETG and its Members;

d. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

g. Information about CISA ETG's or its Members' export operations, including without limitation sales and distribution networks established by CISA ETG or its Members in Export Markets, and prior export sales by Members (including export price information).

4. CISA ETG and/or its Members may enter into agreements wherein CISA ETG and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive export intermediary for Products or Related Services in that country or market. In such agreements, (i) CISA ETG or the Member(s) acting as an exclusive export intermediary may agree not to represent any other Supplier for sale in the relevant country

or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through CISA ETG or the Member(s) acting as exclusive export intermediary, and that they will not export independently to the relevant country or market, either directly or through any other export intermediary. CISA ETG, when acting as an export intermediary, will make its services available to any member on non-discriminatory terms.

Date: August 1, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-17599 Filed 8-3-88 8:45 am]

BILLING CODE 3510-DR-M

Decision on Application for Duty-Free Entry of Scientific Accessories; University of Nebraska

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 88-195

Applicant: University of Nebraska, Lincoln, NE 68588-0111.

Instrument: Slevin Atomic Hydrogen Source.

Manufacturer: Leisk Engineering Ltd., United Kingdom.

Intended Use: See notice at 53 FR 19983, June 1, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-17532 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Woods Hole Oceanographic Institution

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 88-119

Applicant: Woods Hole Oceanographic Institution, Woods Hole, MA 02543.

Instrument: Ultrasonic Flow Meter, Model DS-102 X-Y.

Manufacturer: Denshi Kogyo Co. Ltd., Japan.

Intended Use: See notice at 53 FR 15102, April 27, 1988.

Reasons for this Decision: The foreign instrument provides spatial and temporal averaging scales of 9.0 cm and 2.0 Hz respectively, and is small and light enough for above-surface mounting.

Advice Submitted By: The National Oceanic and Atmospheric Administration, June 27, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. The National Oceanic and Atmospheric Administration advises that (1) the capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of the instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-17533 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C., 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB's). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The appointment of these members to the NOAA PRB's will be for periods of 24 months service beginning August 31, 1988.

DATE: The effective date of service of appointees to the NOAA Performance Review Board is August 31, 1988.

FOR FURTHER INFORMATION CONTACT: John Innocenti, Acting Chief, Personnel Division, Office of Administration, NOAA, 6010 Executive Blvd., Rockville, Maryland 20852, (301) 443-8811.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRB's (NOAA officials unless otherwise identified) are set forth below:

Dennis F. Geer, Director, Office of Administration
Curtis T. Hill, Director, Mountain Administrative Support Center
Kelly C. Sandy, Director, Western Administrative Support Center
Robert S. Smith, Director, Eastern Administrative Support Center
B. Kent Burton, Director, Office of Legislative Affairs
Timothy R. Keeney, General Counsel
Augustine J. LaCovey, Director, Office of Public Affairs
William Matuszeski, Executive Director, National Marine Fisheries Service
Shirley J. Hays, Deputy Under Secretary for Oceans and Atmosphere
J. Roy Spradley, Jr., Special Advisor, Office of Assistant Secretary for Oceans and Atmosphere
Bill A Powell, Chief of Staff, Office of the Under Secretary
Joseph W. Angelovic, Director, Office of Research and Environmental Information, National Marine Fisheries Service
Izadore Barrett, Science and Research Director, Southwest Region, National Marine Fisheries Service
Henry R. Beasley, Director, Office of International Affairs, National Marine Fisheries Service
Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service
Ellsworth C. Fullerton, Director, Southwest Region, National Marine Fisheries Service

Richard B. Roe, Director, Northeast Region, National Marine Fisheries Service
Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service
John J. Carey, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management
Bruce C. Douglas, Chief, Geodetic Research and Development Laboratory, National Ocean Service
Charles N. Ehler, Director, Office of Oceanography and Marine Assessment, National Ocean Service
Frank W. Maloney, Chief, Aeronautical Charting Division, National Ocean Service
Andrew Robertson, Chief, Ocean Resources Assessment Division, National Ocean Service
Michael A. Chinnery, Director, National Geophysical Data Center, National Environmental Satellite, Data, and Information Service
Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service
Russell Koffler, Deputy Assistant Administrator for Satellite and Information Services, National Environmental Satellite, Data, and Information Service
Gregory W. Withee, Director, National Oceanographic Data Center, National Environmental Satellite, Data, and Information Service
Richard P. Augulis, Director, Central Region, National Weather Service
Louis J. Boezi, Director, Transition Program Office, National Weather Service
William D. Bonner, Director, National Meteorological Center, National Weather Service
Michael D. Hudlow, Director, Office of Hydrology, National Weather Service
Richard. A. Wagoner, Chief, Operations Division, National Weather Service
Frederick P. Ostby, Director, National Severe Storms Forecast Center, National Weather Service
Douglas H. Sargeant, Director, Office of Systems Development, National Weather Service
Walter Telesetsky, Director, Office of Systems Operations, National Weather Service
Eddie Bernard, Director, Pacific Marine Environmental Laboratory, Office of Oceanic and Atmospheric Research
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research
Kirk Bryan, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratory, Office of Oceanic and Atmospheric Research
Vernon E. Derr, Director, Environmental Research Laboratories, Office of Oceanic and Atmospheric Research
J. Michael Hall, Director, Office of Climatic and Atmospheric Research, Office of Oceanic and Atmospheric Research
Jerry D. Mahlman, Director, Geophysical Fluid Dynamics Laboratories, Office of Oceanic and Atmospheric Research
Syukuro Manabe, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratory, Office of Oceanic and Atmospheric Research
Ned A. Ostenso, Director, Sea Grant and Extramural Programs, Office of Oceanic and Atmospheric Research
Alan R. Thomas, Deputy Assistant Administrator for Oceanic and Atmospheric Research
Richard J. Caldwell, Manager of the Office of Facilities, United States Information Service
Joseph E. Clark, Deputy Director, National Technical Information Service
Harriet G. Jenkins, Assistant Administrator for Equal Opportunity Programs, National Aeronautics & Space Administration
Roy R. Mullen, Associate Chief, National Mapping Division, United States Geological Survey
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Bureau of Standards
Glen Spalding, Director, Office of Naval Technology, Department of the Navy
John D. Hightower, Director, Marine Sciences and Technology, Naval Ocean Systems Center

Date: July 22, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 88-17506 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-NS-M

Patent and Trademark Office

Advisory Committee for Patents and Trademarks; Open Meeting

Agency: Patent and Trademark Office; Commerce.

Summary: The Committee was established on December 17, 1986, to advise the Patent and Trademark Office on domestic and foreign patent issues, international trademark matters, the Administration of the Office, and its office-wide automation program.

Time and Place: September 14, 1988, from 9:00 a.m. to 4:30 p.m. The Committee will meet in the Commissioner's Conference Room at the Patent and Trademark Office, Crystal Park 2, Room 912, in Crystal City, Arlington, VA.

Agenda: (1) Technology Transfer. (2) PTO In The Year 2000.

Public Observation: The meeting will be open to public observation; approximately 12 seats will be available for the public on a first-come, first-served basis. If time permits, oral comments by the public of no more than three minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

For further information contact: E.R. Kazenske, Executive Assistant to the Assistant Secretary, Crystal Park 2, Suite 906, Patent and Trademark Office, Washington, DC 20231. Telephone: 703/557-3071.

Dated: July 28, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-17559 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Hurricane Protection and Beach Erosion Control of West Onslow Beach and New River Inlet (Topsail Beach), Pender County, NC

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

ACTION: Notice of intent.

SUMMARY:

Proposed Action

The selected plan for Topsail Beach is a berm and dune project with a total length of fill of approximately 17,400 feet and a terminal groin of 1,010 feet at the south end of the fill. The action is necessary because of hurricane and storm damage at Topsail Beach. The project is intended to reduce hurricane and storm damage to Topsail Beach.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and DEIS can be answered by: Mr. John A. Baden, Environmental Resources Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402-1890, telephone: (919) 343-4754.

SUPPLEMENTARY INFORMATION: 1. The study is being conducted pursuant to four congressional resolutions pertaining to West Onslow Beach, New River Inlet, Topsail Beach, and Surf City: Resolution adopted June 24, 1970 by United States Senate; Resolution adopted December 2, 1970 by United States House of Representatives; Resolution adopted June 23, 1971 by United States House of Representatives; and Resolution adopted November 14, 1979 by United States House of Representatives. The primary study emphasis was directed toward Topsail Beach.

2. Alternatives considered were lower or higher levels of protection with a terminal groin at the south end of each fill. Also being considered is the no action alternative.

3a. All private interests and Federal, State, and local agencies having an

interest in the project are hereby notified of the project and are invited to comment at this time. The scopinig process for the project has been initiated and has involved all known interested parties.

3b. The significant issue to be analyzed in the DEIS is the timing of beach nourishment operations because of possible impact to the nesting loggerhead sea turtle.

3c. The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, or requested by, any other agency.

3d. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders.

4. No formal scoping meeting have been or are currently planned; however, the identification of any significant issues relating to the project by others will result in coordination with appropriate interests as needed. The Wilmington District has already coordinated this study with various Federal, State, and local agencies having concerns about hurricane protection, beach erosion control, and the environmental impacts of any potential improvements.

5. The DEIS for the project is currently scheduled for distribution to the public in September 1988.

Dated: July 15, 1989.

Paul W. Woodbury,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-17563 Filed 8-3-88; 8:45 am]

BILLING CODE 3710-GN-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Next Generation Computer Resources will meet on August 29–31, 1988. The meeting will be held at the Naval Ocean Systems Center, the USS Valley Forge in San Diego, CA. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on August 29–31, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on computer resources. The agenda will include discussions on ship embedded computers, interoperability, avionics standards, joint integrated avionics and open architectures. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4879.

Date: July 29, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 88-17536 Filed 8-3-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent To Repay to the California State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the California State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of Hayward Unified School District, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All Written comments must be received on or before September 6, 1988.

ADDRESS: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, MS–6276), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732–4692.

SUPPLEMENTARY INFORMATION:

A. Background

In July 1986, the Department recovered $108,701, plus $6,986.92 in accrued interest, from the California SEA relating to claims arising from an audit of the Hayward Unified School District covering fiscal years 1969–73. The claims involved the LEA's administration of Title I of the Elementary and Secondary Education Act of 1965, a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families.

Specifically, the LEA used $83,721 in Title I funds for nurses and librarians who served the entire school population, rather than concentrating their efforts on Title I students. This was a violation of 20 U.S.C. 241e(a)(1)(A)(1976) and 45 CFR 116.17(g)(1971), which required that Title I projects must be tailored to contribute particularly toward meeting one or more of the special educational needs of educationally deprived children and should not be designed merely to meet the needs of schools or the student body at large in a school. The LEA also used $24,980 in Title I funds for administrative salaries without documenting that these costs were incurred as a result of the Title I program or were supplemental to the LEA's normal operations. This was a violation of 20 U.S.C. 241e(a)(3)(B)(1976) and 45 CFR 116.17(h) and 116.53(c)(1971).

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $81,525 and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981. 20 U.S.C. 3801 *et seq.* The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 has superseded Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, that is designed to serve educationally deprived children in low-income areas.

Under the SEA's plan, a summer school program in mathematics would be provided by the LEA for approximately 360 eligible Chapter 1 children at a cost of $36,598. The mathematics program would focus on manipulative activities, problem solving, and critical thinking. Services would be provided at four elementary schools, one intermediate school, and one secondary school. There would be at least one teacher and one instructional assistant at each site. Eligible Chapter 1 students from nonpublic schools would be provided the opportunity to participate in the summer school program.

According to the plan, the LEA would also utilize $44,927 for staff development to benefit Chapter 1 children. Approximately 278 classroom and support teachers, public and nonpublic, and 54 classified staff members would be provided inservice in the area of mathematics. This staff development will be directly related to the summer school program and the mathematics component of the LEA's 1988–89 Chapter 1 program.

Grantback funds will be used to provide training for parents of Chapter 1 participants, public and nonpublic, to enable them to encourage and assist their children at home, and afford more continuity and expansion of learning between home and school. Prior to the beginning of the 1988–89 school year, parents would be invited to attend up to two three-hour sessions at the Chapter 1 school sites. Each parent would receive written materials to augment the information presented.

Materials and supplies necessary for implementation of the summer school program and the planned staff development would be purchased from grantback funds.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon the review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the California SEA under a grantback arrangement. The grantback award would be in the amount of $81,525, which is 75 percent of the principal debt of $108,701 recovered by the Department as a result of the final audit determination.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1988, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1989, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department all overdue debts, or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: July 27, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–17622 Filed 8–3–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88–27–NG]

CU Energy Marketing Inc., Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting CU Energy Marketing Inc. (CUEM) blanket authorization to export natural gas to Canada. The order issued in ERA Docket No. 88–27–NG authorizes CUEM to export up to 50 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural

Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–17615 Filed 8–3–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–22–NG]

Phillips 66 Natural Gas Co. and Marathon Oil Co.; Order Extending Authorization To Export Liquefied Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending authorization to export liquefied natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending authorization to Phillips 66 Natural Gas Company and Marathon Oil Company to export liquefied natural gas from May 31, 1989, to March 31, 2004. The order also increases volumes from 52.0 trillion Btu's up to 57.5 trillion Btu's.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 29, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–17616 Filed 8–3–88; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the Collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of response annually; (11) an estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) a brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed on or before September 6, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (E1–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–800–804, 806, 810–814, 816–818, 820 and 825.
3. 1905–0165.
4. Petroleum Supply Reporting System.
5. Revision.
6. Weekly, Montly, Annually, Triennially.
7. Mandatory for all except EIA–806 which is voluntary.
8. Businesses or other for profit.
9. 3,264 respondents annually (total).
10. 48,000 responses annually (total).
11. The estimated average hours per response for the forms in the Petroleum Supply Reporting System are: EIA–800, 1 hour; EIA–801, .52 hours; EIA–802, .5 hours; EIA–803, .5 hours; EIA–804, 1 hour; EIA–806, 1 hour; EIA–810, 3.25 hours; EIA–811, 1.5 hours; EIA–812, 2 hours; EIA–813, 1.5 hours; EIA–814, 2 hours; EIA–816, .75 hours; EIA–817, 1.5 hours; EIA–818, 3 hours; EIA–820, 2 hours; and EIA–825, .5 hours.
12. 55,760 hours annually (total).
13. The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude petroleum, petroleum products, and natural gas liquids. These data are published by the EIA. Respondents are operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers and barges, and oil importers.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC., July 29, 1988.

Yvonne M. Bishop,

Director Statistical Standards, Energy Information Administration.

[FR Doc. 88–17617 Filed 8–3–88; 8:45 am]

BILLING CODE 6450–01–MM

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–814–DR]

Major Disaster and Related Determinations; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–814–DR), dated July 28, 1988, and related determinations.

DATED: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice

Notice is hereby given that, in a letter dated July 28, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from tornadoes, rains, and high winds, which occurred on July 15–16, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288. I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Paul Ward of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster: Pottawattamie County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Deputy Director, Federal Emergency Management Agency.

[FR Doc. 88–17535 Filed 8–3–87; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement Name: 232–011204

Title: EMC/JSS Cross Space Charter and Sailing Agreement.

Parties: Evergreen Merchant Marine Corporation (Taiwan) Ltd.; Johnson Scanstar.

Synopsis: The proposed agreement would authorize the parties to charter space from one another and coordinate vessel operations between ports on the West Coast of the United States and Northern Europe.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 1, 1988.

[FR Doc. 88–17537 Filed 8–3–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Barclays Bank PLC, 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 August 22, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC*, London, England; Barclays PLC, London, England; Barclays USA Inc., Wilmington, Delaware; to engage *de novo* through its subsidiary Barclays de Zoete Wedd Government Securities, Inc., New York, New York, in acting as a futures commission merchant with respect to futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments pursuant to § 225.25(b)(18); and providing investment and financial advice as a futures merchant commission solely with respect to futures contracts and options of futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments pursuant to § 225.25(b)(19) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–17555 Filed 8–3–88; 8:45 am]

BILLING CODE 6210–01–M

First National 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 August 26, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. First National Bancorp, Inc., Norfolk, New York; to become a bank holding company by acquiring 15.5 percent of the voting shares of First National Bank of Lisbon, Lisbon, New York.

B. **Federal Reserve Bank of Richmond** (Loyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Citizens Bancshares Corporation, Olanta, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank, Olanta, South Carolina.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. SouthTrust of South Carolina, Inc., Latta, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Latta Bank & Trust Company, Latta, South Carolina.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Republic Bancorp, Inc., Ann Arbor, Michigan; to acquire 71.4 percent of the voting shares of Premier Bancorporation, Inc., Jackson, Michigan; and thereby indirectly acquire Michigan Bank-Midwest, Jackson, Michigan, and Michigan Bank-Mid South, Litchfield, Michigan.

Board of Governors of the Federal Reserve System, July 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-17556 Filed 8-3-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority; Chapter AML; Office of Budget

Part A, of the Office of the Secretary of the Statement of Organizational Functional Statement and Delegation of Authority for the Department of Health and Human Services is amended as follows: (1) Chapter AML, Office of Budget, as last amended at 52 FR 28193 (7/28/87); and (2) Chapter AMN, Office of Finance at 52 FR 25916 (7/9/87). This amendment will transfer the Working Capital Fund function from the Office of Finance to the Office of Budget. The changes are as follows:

1. Section AMN.00 Mission delete the last sentence, beginning with "In addition, the Office * * * Board of Governors."

2. Section AMN.10 Organization, delete the "Working Capital Fund Financial Management Staff."

3. Section AMN.20 Function, delete paragraph "5 Working Capital Fund Financial Management Staff" in its entirety.

4. Section AML.00 Mission, delete the word "and" before Item No. 5 and "Item 5" in its entirety and replace with the following:

(5) Management and productivity improvements in program operations;" (6) management and policy for the Working Capital Fund; and (7) audit resolutions.

6. Section AML.00 Organization, change "Division of OS Budget Services," to "Division of OS Budget Analysis."

7. Section AML.20 Functions, paragraph number 1 "Office of Budget," insert the following after Item (K);

(L) Provides policy, management, and financial integrity for the Working Capital Fund. (M) Monitors implementation of cleared Office of Inspector General and General Accounting Office audit and provides status reports to the Assistant Secretary for Management and Budget and key Department officials. (N) Provides policy and technical support to the Assistant Secretary for Management and Budget and other senior officials within the Office of the Assistant Secretary for Management and Budget on regional functions.

6. Section AML.20 Functions, delete paragraph No. 5 "Division of OS Budget Services in its entirety and replace with the following:

5. Division of OS Budget Analysis. The Director, Division of OS Budget Analysis serves as budget officer and financial management adviser for the Office of the Secretary. The Division: (a) Provides staff assistance to the Secretary, the Assistant Secretary for Management and Budget, OPDIV Budget Officers, and STAFFDIV heads in the budgetary management of the Office of the Secretary and the Working Capital Fund. (b) Provides for the policy, management, and financial integrity of departmentwide common services through the WCF. (c) Monitors a central tracking system of cleared OIG and GAO audits and serves as the Department's liaison on follow-up actions between OPDIVs, OIG and GAO. (d) Identifies productivity and management improvements for implementation. (e) Provides budget policy and technical support to the Deputy Assistant Secretaries and the Assistant Secretary for Management and Budget on regional functions. (f) Participates in planning, directing, and coordinating financial and budgetary programs of the Office of the Secretary. (g) Directs and provides technical guidance to administrative officers in preparing budgets. Assists in the planning and preparation of the Office of the Secretary budget for presentation to top HHS management officials, the Office of Management and Budget, and the Congress. (h) Develops materials for key members of the Office of the Secretary who testify at hearings before the Office of Management and Budget and the Congress. (i) Prepares requests for an apportionment of appropriated funds. Maintains and monitors subsidiary expenditure controls appropriations in the Office of the Secretary. (j) Develops financial operating procedures and manuals. Maintains budgetary controls to ensure observance of established ceilings both on funds and personnel. Assures implementation within the Office of the Secretary of Departmental and Federal fiscal policies and procedures.

Date: July 29, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88-17543 Filed 8-3-88; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 88M-0261]

Hanita Lenses; Premarket Approval of ADYPI (Etafilcon A) Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Hanita Lenses, Kibbutz Hanita, 22885 Israel, for premarket approval under the Medical Device Amendments of 1976, of the ADYPI (etafilcon A) Contact Lens. The lens is to be manufactured under an agreement with Vistakon, Inc., Jacksonville, FL, which has authorized Hanita Lenses to incorporate information contained in its approved premarket approval application for the VISTAMARC™ (etafilcon A) Hydrophilic Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 30, 1988, of the approval of the application.

DATE: Petitions for administrative review by September 6, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On May 5, 1987, Hanita Lenses, Kibbutz Hanita, 22885 Israel, submitted to CDRH an application for premarket approval of the ADYPI (etafilcon A) Contact Lens in spherical and toric configurations. The spherical ADYPI (etafilcon A) Contact Lens for daily wear is indicated for the correction of visual acuity in aphakic or not-aphakic persons with nondiseased eyes that are myopic or hyperopic and may have 1.00 diopter (D) or less of astigmatism that does not interfere with visual acuity. The lens ranges in power from −20.00 D to +20.00 D. The toric lens is indicated for daily wear for the improvement of visual acuity in individuals with nondiseased not-aphakic eyes that are myopic or hyperopic that require refractive astigmatism correction of up to 5.00 D. This lens ranges in power from −20.00 D to +10.00 D. The spherical lens is also indicated for extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in non-aphakic persons with nondiseased eyes that are myopic or hyperopic and have 1.00 D or less of astigmatism that does not interfere with visual acuity. This lens ranges in power from −20.00 D to +14.00 D. The lens is to be disinfected using either a heat or chemical lens care system. The application includes authorization from Vistakon, Inc., Jacksonville, FL 32207, to incorporate information contained in its approved premarket approval applications for the VISTAMARC™ (etafilcon A) Hydrophilic Contact Lens (Docket No. 84M-0288).

On June 30, 1988, CDRH approved the application by Hanita Lenses by letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the ADYPI (etafilcon A) Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylemethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 6, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data on information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 26, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-17590 Filed 8-3-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0255]

3M/Vision Care; Premarket Approval of 3M Fluoropolymer (Flurofocon A) Contact Lens for Extended Wear

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its

approval of the supplemental application by 3M/Vision Care, St. Paul, MN, for premarket approval, under the Medical Device Amendments of 1976, of the spherical 3M Fluoropolymer (flurofocon A) Contact Lens for extended wear. After reviewing the recommendations of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 21, 1988, of the approval of the supplemental application.

DATE: Petitions for administrative review by September 6, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On September 23, 1987, 3M/Vision Care, St. Paul, MN 55144, submitted to CDRH a supplemental application for premarket approval of the 3M Fluoropolymer (flurofocon A) Contact Lens for extended wear. The lens is indicated for daily wear (during waking hours) and extended wear (overnight wear, from 1 to 7 days between removals for cleaning and disinfection) as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic and for the correction of astigmatism of 2.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from plano to −7.00 D and is to be disinfected using the chemical lens care system specified in the approved labeling.

On April 22, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On June 21, 1988, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved final labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the 3M Fluoropolymer (flurofocon A) Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58, as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 6, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 510(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 26, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–17589 Filed 8–3–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of a Louisiana State Plan Amendment

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on September 21, 1988 in Dallas, Texas to reconsider our decision to disapprove Louisiana State Plan Amendment 87–33.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk August 19, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4470.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Louisiana State Plan Amendment 87–33.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the

hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issues in this matter are whether Louisiana SPA 87–33 violates section 1902(a)(30) of the Social Security Act and regulations at 42 CFR 447.301 and 447.332.

Louisiana SPA 87–33 implements the drug reimbursement regulations published July 31, 1987. The State's plan amendment indicates that the State will use the Average Wholesale Price (AWP) from drug Topics, *Blue Book*, for the purpose of establishing the estimated acquisition cost (EAC) levels. SPA 87–33 also provides that the State agency will be the only one to determine which AWP price best reflects availablility to providers and that "the State agency's determination of availability shall not be subjugated by any other group."

The current rules and the former Maximum Allowable Cost (MAC) regulations require the State agencies to establish EAC levels at "the agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of the drug most frequently purchased by providers." This is necessary because, in general, the State payments for drugs may not exceed, in the aggregate, payment levels derived by applying the lower of: The cost of the drug plus a reasonable dispensing fee or the provider's usual and customary charge to the general public. HCFA believes that use of the AWP without modification does not comport with the definition of "estimated acquisition cost" (EAC) in 42 CFR 447.301 because of a preponderance of evidence which demonstrates that the AWP overstates the price that providers actually pay for drug products. Thus, use of an unmodified AWP cannot constitute an agency's "best estimate" of current price. It also does not comport with section 1902(a)(30) of the Act requiring the State plan to assure that payments are consistent with efficiency, economy, and quality of care.

The State also indicates in SPA 87–33 that the State agency will be the only one to determine which AWP price list reflects availability to providers and that "the State agency's determination of availability shall not be subjugated by any other group." The State has indicated that this preemptive language is intended to preclude groups such as the pharmaceutical groups from making a determination about availability, not to preclude HCFA from discharging its rightful activities. However, this language conflicts with 42 CFR 447.332 and could technically bar HCFA from applying to the State its determination of availability.

The notice to Louisana announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Howard L. Prejean,
Deputy Assistant Secretary, Louisiana Department of Health and Human Resources, Office of Family Security, P.O. Box 94055, Baton Rouge, Louisiana 70804–4055

Dear Mr. Prejean: I am advising you that your request for reconsideration of the decision to disapprove Louisiana 87–33 was received on July 1, 1988.

Louisiana 87–33 implements the drug reimbursement regulations published on July 31, 1987. The State's plan amendment indicates that the State will use the Average Wholesale Price (AWP) from Drug Topics, *Blue Book*, for the purpose of establishing the estimated acquisition (EAC) levels. The amendment also provides that only the State agency will determine which AWP price best reflects availability to providers and that "the State agency's determination of availability shall not be subjugated by any other group."

The issues in this matter are: (1) whether use of an unmodified AWP constitutes the agencies "best estimate" of current prices as required by 42 CFR 447.310 and, therefore, whether payments resulting from the use of the unmodified AWP are consistent with efficiency, economy, and quality of care as required by section 1902(a)(30) of the Social Security Act; and (2) whether the preemptive language in section II.E.1 of item 12.a (pages 2 and 3) of attachment 4.19–B conflicts with 42 CFR 447.332 and could bar the Health Care Financing Administration from applying its determination of drug availability to the State.

I am scheduling a hearing on your request to be held on September 21, 1988 at 10:00 a.m. in Room 1950, 1200 Main Tower, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 45 CFR 201.4 and Part 213.

I am designating Mr. Albert Miller as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4470.

Sincerely,

William L. Roper,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 45 CFR 201.4)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: July 27, 1988.

William L. Roper,
Administrator, Health Care Financing Administation.

[FR Doc. 88–17542 Filed 8–3–88; 8:45 am]

BILLING CODE 4120–03–M

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), (FR, Vol. 52, No. 163, pp. 31818–31819, dated Monday, August 24, 1987, and FR, Vol. 51, No. 201, pp. 37076–37077, dated Friday, October 17, 1986) is amended to reflect changes within the Office of the Associate Administrator for Management and Support Services (AAMSS). The changes reflect a reorganization of the Division of Coding and Standardization Policy (DCSP), Office of Statistics and Data Management (OSDM), Bureau of Data Management and Strategy.

The specific changes to Part F. are as follows:

• Section FH.20.4. is deleted in its entirety and replaced by an updated functional statement to read as follows:

4. Office of Statistics and Data Management (FHE7).

Develops and implements plans and policies for the identification, classification coding, standardization, development, and security of data, procedures, and standards to meet HCFA's information requirements. Formulates policy necessary for developing strategies to identify, organize, store (inventory), and maintain security over the Agency's program data resources. Performs strategic data resource planning to develop long-range plans to meet future data requirements. Establishes and maintains a data dictionary system to store documentation on all systems, programs, and data bases. Develops and maintains the Agency program information strategy and plan for

applying data planning and management techniques to support the redesign and functioning of Agency systems. Designs, implements, maintains, and ensures the continuing operation of current and revised national health care information and program design support systems. Extracts health care data necessary to support HCFA activities from HCFA components, the Social Security Administration, and other health-related sources using large-scale computer systems and/or personal computers, as necessary. Provides sophisticated computational and statistical services, mathematical modeling, simulations, systems analysis, and statistical programming. Designs information systems, data bases, and software applications for research and development. Conducts special purpose information retrieval and processing activities in support of projects undertaken by HCFA. Develops programs to array data in accordance with general specifications developed within HCFA. Develops standards for and monitors the quality of program management and statistical data. Develops policy and procedures concerning the release of program data. Provides direction to HCFA staff, other agencies and the private sector on the implementation and administration of these policies. Coordinates and provides liaison on data standards activities, the release of data, matters dealing with program data confidentiality, and research plans within HCFA and between HCFA and other governmental agencies and non-governmental groups. Coordinates and provides liaison with HCFA's Privacy Officer and Freedom of Information Officer on all matters pertaining to the Privacy Act or the Freedom of Information Act.

Serves as the focal point for the planning and evaluation of HCFA's data standards development. Disseminates statistical data, estimates, analyses, and other information on health-related programs in response to questions from legislators, program administrators, policymakers, researchers, and health planners in the public and private sectors. Screens, evaluates, and responds to requests for publicly available data including the development of guidelines and initiating data release agreements. Prepares statistical reports for external publications and management reports on HCFA programs and related areas. Provides support for program analysis, policy development, and epidemiological research for the Federal End-Stage Renal Disease (ESRD) program and disseminates ESRD program information in publications, management reports, and responses to ad hoc requests.

• Section FH.20.D.4.d., Division of Coding and Standardization Policy is deleted in its entirety and replaced by a new division whose functional statement reads as follows:

d. Division of Data Documentation and Release (FHE75).

Develops policy to measure the quality of data to improve the efficiency and effectiveness of information management in HCFA. Develops and implements procedures to ensure the integrity and proper usage of statistical data. Develops, maintains, and coordinates documentation of the sources, uses, and data limitations on files produced from HCFA statistical systems. Participates in the development and establishment of data standards used for areas such as uniform billing, uniform reporting, and uniform coding systems. Develops, maintains, and coordinates the publication and dissemination of manuals such as the Statistical Files Manual and HCFA Data Profiles to inform other government agencies and non-government organizations of the data maintained in HCFA's statistical systems. Provides advice and consultation on the availability and use of HCFA's data. Develops and implements data release policies and costing methodologies to be used when releasing information to the public. Serves as the Agency focal point, and provides staff support for the Director, BDMS, for data policy task forces and advisory groups such as the National Committee on Vital and Health Statistics. Develops policy and procedures concerning the release of program data. Develops and implements confidentiality policies applying to the generation, collection, analysis, interpretation, and release of Medicare program and enrollment data. Coordinates with HCFA's Privacy Officer and Freedom of Information Officer in developing and applying Privacy Act and Freedom of Information Act policies and procedures to HCFA program data released to other Federal components, research organizations, HCFA contractors, and to the public.

Date: July 13, 1988.

William L. Roper,

Administrator.

[FR Doc. 88-17541 Filed 8-3-88; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees of the National Kidney and Urologic Diseases Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of subcommittees of the National Kidney and Urologic Diseases Advisory Board, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). The primary purpose for the meetings is to develop a national long-range plan to combat kidney and urologic diseases. Although the meetings will be open to the public, attendance will be limited to space available. Notice of the meeting rooms will be posted.

This notice is being published less than fifteen (15) days prior to the meeting date because of difficulty with coordinating attendance in order to assure a quorum.

For any further information, please contact Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045. His office will provide, for example, a membership roster of the Committee and an agenda and summaries of the actual meetings.

Name of Subcommittee: Access to and Delivery of Care Subcommittee

Dates of Meeting: August 7-8, 1988.
Time of Meeting: 8:00 a.m.-5:00 p.m.
Place of Meeting: Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852.
Purpose of Meeting: To develop a report and make preliminary recommendations related to patient access to care and the delivery of that care.

Name of Subcommittee: Scope and Impact [Data Subcommittee]

Date of Meeting: August 12, 1988.
Time of Meeting: 8:00 a.m.-5:00 p.m.
Place of Meeting: Kansas City Airport Marriott, 775 Brasilia, Kansas City, Missouri 64153.
Purpose of Meeting: To review the incidence and prevalence of kidney and urologic diseases and develop preliminary recommendations for future data needs.

Name of Subcommittee: Meeting of Research Subcommittee Chairmen

Date of Meeting: August 15, 1988.
Time of Meeting: 8:00 a.m.-5:00 p.m.
Place of Meeting: American Airlines Admiral Club, Hartsfield Atlanta

International Airport, Atlanta, Georgia 30320.

Purpose of Meeting: To review research accomplishments and research opportunities and to develop a report and recommendations to develop a national long-range plan to combat kidney and urologic diseases.

Dated: July 29, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-17575 Filed 8-3-88; 8:45 am]

BILLING CODE 4140-01-M

Office of Child Support Enforcement

Conformity of Child Support Enforcement Plan of the State of Maryland with Federal Requirements; Hearing

Notice of hearing is hereby given as set forth in a letter that has been sent to the State of Maryland's Department of Human Resources.

The letter is in response to the letter of May 18 from Ms. Ruth Massinga, Secretary of the Maryland Department of Human Resources, requesting a hearing prior to my final decision to approve or disapprove Maryland's State IV-D plan in accordance with the procedures set forth in OCSE-AT-86-21.

Pursuant to 45 CFR 213.12, I am scheduling a hearing to be held on the 27th day of September 1988 in Washington, DC, at 9:30 a.m. in Room 2155 of the Board of Contract Appeals, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

In accordance with 45 CFR 213.21, I have designated Norval D. Settle, Chair of the Departmental Grant Appeals Board, as the presiding officer for State plan disapproval hearings, and he has redesignated Donald F. Garrett as the presiding officer for Maryland's hearing. The hearing will be conducted under the provisions of 45 CFR Part 213.

The issues which will be considered at the hearing concern whether Maryland's State IV-D plan is in conformance with State plan requirements, as specified in my notices of December 8, 1987 and March 10, 1988. Specifically, the issues are whether:

1. The State has failed to submit an amendment to its State plan at section 2.12-9 providing for the prohibition of retroactive modification of child support arrears, in accordance with the requirements at 42 U.S.C. 666(a)(9).

2. The State has failed to submit an amendment to its State plan at section 3.11-1 providing for the establishment of guidelines for setting child support awards, in accordance with requirements at 45 CFR 302.56.

Any further inquiries, submissions or correspondence regarding this hearing should be filed in an original and two copies with Mr. Garrett at the Departmental Grant Appeals Board, Room 451, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, where the record of this hearing will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience, please refer to Docket No. 88-123 assigned to these proceedings.

Dated: July 29, 1988.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

[FR Doc. 88-17470 Filed 8-3-88; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1840]

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 required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the 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 number 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: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 28, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Urban Development Action Grant Program—Applications from Consortia of Small Cities (FR-2381)

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: This rule proposes to permit consortia of geographically proximate cities of less than 50,000 to apply for grants on behalf of a member city that is otherwise eligible for assistance but unable to handle independently the administrative or financial burden of a desired project. This information will be needed to evaluate funding requests from consortia of small cities.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Application	5		1		8		40

Total Estimated Burden Hours: 40.
Status: New.
Contact: Michael J. McMahon, HUD, (202) 755-8227, John Allison, OMB, (202) 395-6880.
Date: July 28, 1988.

Proposal: Single Family Mortgage Insurance on Allegany Reservation of Seneca Indians (FR-2382)

Office: Housing.
Description of the Need for the Information and its Proposed Use: This rule implements Section 203(q) of the National Housing Act. The information is necessary to assure that borrowers fully realize their risks, and to document that remedies, other than assignment and foreclosure, have been exhausted.
Form Number: None.
Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Assignment request	10		5		.55		27.5

Total Estimated Burden Hours: 27.5
Status: Extension.
Contact: Richard E. Harrington, HUD, (202) 755-5676, John Allison, OMB, (202) 395-6880.
Date: July 21, 1988.

Proposal: Survey of Market Absorption (SOMA) of New Apartment Buildings

Office: Policy Development and Research.
Description of the Need for the Information and its Proposed Use: The survey measures the rate at which different types of new rental and condominium apartments are absorbed, i.e., taken off the market. It provides a basis for analyzing the degree to which apartment building activity is meeting present and future needs.
Form Number: H-31.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: On Occasion and Quarterly.
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
H-31	12,000		1		.3		3,600

Total Estimated Burden Hours: 3,600.
Status: Extension.
Contact: Connie H. Casey, HUD, (202) 755-5060, John Allison, OMB, (202) 395-6880.
Date: July 26, 1988.

[FR Doc. 88-17598 Filed 8-3-88; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Protection Island National Wildlife Refuge; County of Jefferson, WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that sufficient lands, waters and interests therein have been acquired to establish the Protection Island National Wildlife Refuge located in the County of Jefferson, State of Washington.

DATE: This action is effective as of August 26, 1988.

ADDRESS: Copies of a map showing the refuge boundary are available upon request at the following location: U.S. Fish and Wildlife Service (ARW/RE), Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Georgia Shirilla of the USFWS Division of Realty at the Portland address given above; telephone 503/231-2236, (FTS) 429-2236.

SUPPLEMENTARY INFORMATION: The Act to authorize the Protection Island National Wildlife Refuge was enacted by Congress on October 15, 1982 (Pub. L. 97-333). This Act directed the Secretary of the Interior to establish the refuge by publication in the **Federal Register.**

Date: July 26, 1988.

Wally Steucker,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 88-17593 Filed 8-3-88; 8:45 am]
BILLING CODE 4310-AN-M

Bureau of Land Management

[AZ-050-08-4333-12]

Revision of Regulations Governing Public Use; Betty's Kitchen Wildlife and Interpretation Area; Yuma Resource Area, AZ

AGENCY: Bureau of Land Management; Interior.

ACTION: Establish additional regulations governing public use at Betty's Kitchen Wildlife and Interpretation Area in the Yuma Resource Area.

SUMMARY: In addition to the regulations which apply to all public lands, in the following area there will be no

discharge of firearms and no open fires. Fires will be allowed only in the enclosed fireplaces. Vehicles must be kept on the established roads and within the graveled areas delineated by post-and-cable fence. Pets must be kept on a leash. There will be no cutting or damaging of plants or any other natural features.

Area and Activity: Betty's Kitchen, Regulations.

Location:

Portion of G&SRM

T. 7 S., R. 22 W., (partially unsurveyed)
Sec. 14, SW¼NW¼SE¼, SE¼NE¼SW¼, SW¼NE¼NE¼SW¼, SE¼NW¼NE¼SW¼.

Containing 10 acres, more or less.

DATE: Effective August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Sue E. Richardson, Area Manager; Yuma Resource Area; 3150 Winsor Avenue; Yuma, Arizona 85365; 602–726–6300.

SUPPLEMENTARY INFORMATION: Authority for this action is contained in 43 CFR 8364.1. These regulations are being established to protect wildlife and wildlife habitat at the 10-acre Betty's Kitchen Wildlife and Interpretation Area. This area is within the security zone of Laguna Dam, so it is already closed to overnight camping and to swimming. The use of fireworks is also already prohibited by State law.

Date: July 26, 1988.

Robert V. Abbey,

Acting District Manager.

[FR Doc. 88–17523 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-08-4352-12]

Use Restriction Order; San Bernardino County, CA

Use Restriction Order

The following order, affecting the lands captioned below, was issued on July 29, 1988.

T. 1 S., R. 2 W., SBM,
Sec. 8, S½NW¼, NW¼SE¼, SW¼.
T. 1 S., R. 3 W., SBM,
Sec. 2, SE¼SE¼;
Sec. 10, S½NW¼, NE¼NE¼, S½NE¼, S½SE¼, SW¼;
SEc. 12, N½SE¼, SW¼SE¼, N½SW¼, SW¼SW¼.

I have determined that vehicular use of the above captioned lands is causing environmental degradation and damage to the habitat of two plant species (*Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras*) which are Federally listed as endangered. In order to rectify this situation, I hereby order the above captioned public land closed to all vehicular use pursuant to 43 CFR 8364.1, with the exception of state, county and city roads and the road adjacent to the southern boundary of section 10.

Any person who knowingly and willfully violates this order may be subject to $1000 fine and/or one year imprisonment.

Persons exempt from this order shall include law enforcement personnel, persons performing the official administrative functions of the Bureau of Land Management, persons performing the official administrative functions of the San Bernardino Valley Water Conservation District, and persons acting under specific authorizations granted by the Bureau of Land Management.

This order shall remain in effect until further notice.

Date: July 29, 1988.

Leslie M. Cone,

Area Manager.

[FR Doc. 88–17522 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-40-M

[UT-040-08-4333-09]

Environmental Assessments; Actions Within Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of three draft environmental assessments for activities within wilderness study areas.

ADDRESS: To obtain a copy of the horse endurance ride Environmental Assessment contact George Peternel, Area Manager, Escalante Resource Area, P.O. Box 225, Escalante, UT 84726, or telephone 801/826–4291.

To obtain a copy of the Commercial Guide Service Environmental Assessment, or the Environmental Assessment on the Agricultural Trespass contact Martha Hahn, Area Manager, Kanab Resource Area, P.O. Box 459, Kanab, UT 84741 or telephone 801/644-2672.

SUMMARY: The Bureau of Land Management, Cedar City City District, is proposing to authorize a recreation permit for a horseback endurance ride, a commercial permit for a big game guiding service, and a reclamation plan for the rehabilitation of an agricultural trespass. These activities are to take place within several wilderness study areas located in southwestern Utah. These documents are now available for public review and comment. Comments should be submitted on or before September 6, 1988.

Date: July 27, 1988.

Arthur L. Tait,

Acting District Manager.

[FR Doc. 88–17520 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-060-08-4410-08]

Coeur d'Alene District; Planning Activity

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent; amendment to the Emerald Empire Management Framework Plan and Chief Joseph Management Framework Plan.

SUMMARY: The Couer d'Alene District, Bureau of Land Management proposes to amend the Emerald Empire and Chief Joseph Management Framework Plans to categorize all district administered lands into the following land tenure areas:

A. Management Areas—lands which will remain in public ownership for the long-term;

B. Adjustment Areas—lands which are not considered necessary for long-term public ownership.

The planning amendments will involve approximately 250,000 acres of public lands scattered throughout the eleven northernmost counties of Idaho.

The anticipated issues involve timber management, wildlife, livestock grazing, rights-of-way, and those realty actions necessary to implement land tenure adjustments (acquisitions, exchange, and/or disposal of lands).

An interdisciplinary team consisting of wildlife, hydrology, soils, recreation, minerals, forestry, range, archeology, and realty specialists will prepare the amendment and environmental analysis.

Public participation will occur throughout the amendment process and affected publics are invited to participate. Activities will include letters, comment response sheets, public meetings, and District Advisory Council meetings. It is anticipated that a draft proposal will be available for public review in January, 1989 and that public meetings will be held in late February, 1989. These activities will be announced through local newspapers, radio stations, and individual letters.

ADDRESS: Persons interested in participating in this plan amendment process or those desiring further information should contact: Ted Graf, Planning Team Leader, Bureau of Land Management, Couer d'Alene District Office, 1808 North Third Street, Couer d'Alene, Idaho 83814.

Date: July 29, 1988.

Mert Lombard,

Acting District Manager.

[FR Doc. 88-17611 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-GG-M

[CO-010-08-4322-02]

Craig District Grazing Advisory Board; Meeting

Time and Date: September 8, 1988, at 10 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public, interested persons may make oral statements between 10 a.m. and 11 a.m., or may file written statements.

Matters to be Considered:

1. Election of officers.
2. New Grazing Regulations.
3. Status report on FY '88 range improvement projects.
4. Area reports including updates on land use and activity planning.
5. Expenditure of Grazing Advisory Board Funds.

Contact Person for More Information: John Denker, Craig District Office, 455 Emerson Street, Craig, Colorado 81625, Phone: (303) 824-8261.

Dated: July 28, 1988.

Jerry L. Kidd,

Associate District Manager.

[FR Doc. 88-17604 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-JB-M

[NV-040-08-4322-12]

Ely District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Ely District Grazing Advisory Board will be held on Friday, September 16, 1988.

The meeting will convene at 9:30 a.m. in the Conference Room of the Ely District Office located on the Pioche Highway one mile south of Ely, Nevada.

The main agenda items will be the status of activity planning efforts in the district and projects programmed for construction of feasibility and survey and design studies next fiscal year.

Public comment time is scheduled for 11:00 a.m. The public is invited to attend this meeting and may, at the designated time, submit written or oral statements for the advisory board's consideration.

Minutes of the meeting will be available for public inspection and reproduction during regular office hours within 30 days following the meeting.

ADDRESS: Comments and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Kathy Lindsey, (702) 289-4865.

Dated: July 25, 1988.

Kenneth G. Walker,

District Manager.

[FR Doc. 88-17606 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-HC-M

[CO-070-08-4212-01]

Grand Junction District Multiple Use Advisory Council; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Grand Junction District Multiple Use Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 that a meeting of the Grand Junction District Advisory Council will be held on Friday, September 9, 1988.

SUPPLEMENTARY INFORMATION: The meeting on Friday, September 9, will be held at the Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506 from 9 a.m.-5 p.m. A public comment period is scheduled for 4 p.m.

The meeting will include a tour of the wildhorse roundup in the Little Bookcliffs Wildhorse Area.

The tour is open to the public; however, transportation will be provided for Council members only.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 88-17526 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-84-M

[NM-030-08-4322-14]

Las Cruces District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The meeting will be a field trip to view various range improvement projects. The itinerary and agenda are:

1. 8:00 a.m.—Leave the Las Cruces District Office.
2. 9:15 a.m.—Review Prisor Pasture Brush Control Project.
3. 10:15 a.m.—Review Renick Fence.
4. 10:45 a.m.—Review Johnson Pasture Brush Control.
5. 11:15 a.m.—1:00 p.m.—Dutch Treat Lunch, Ben Cain's Aleman (Bar Cross) Ranch.
6. 1:00 p.m.—Review of Minutes.
7. 1:15 p.m.—Public Comment Period.
8. 1:30 p.m.—Update on 8100 Program.
9. 1:45 p.m.—Discussion of Future Agenda Items.
10. 2:00 p.m.—Adjourn.

DATE: Board members and interested parties should meet at the Las Cruces District Bureau of Land Management Office, 1800 Marquess, Las Cruces, New Mexico at 7:30 a.m., September 8, 1988. The group will leave the Las Cruces District Office at 8:00 a.m. to proceed to the Lewis Cain allotment.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District Office, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005 or at (505) 525-8228.

July 28, 1988.

Robert R. Calkins,

Acting District Manager.

[FR Doc. 88-17527 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-PB-M

[OR-100-84-6310-02; GP8-215]

Meeting; Roseburg District Advisory Council

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of Meeting—July 29, 1988.

SUMMARY: The Roseburg District Advisory Council for the Bureau of Land Management will tour recreation areas within the North Umpqua Resource Area, September 13, 1988. The Council will be briefed on existing recreation opportunities and facilities and progress made on the North Umpqua Trail.

ADDRESS: The tour will begin in the west parking lot of the BLM Roseburg District Office, 777 NW. Garden Valley Blvd., Roseburg, OR.

FOR FURTHER INFORMATION CONTACT: Mel Ingeroi, Public Affairs Specialist, BLM Roseburg District (503) 672-4491.

SUPPLEMENTAL INFORMATION: The tour will leave the west parking lot of the District Office at 8:15 a.m. The tour is open to the public, and an opportunity for public comment will be provided at 9:45 a.m. Anyone wishing to address the Council should contact the District Public Affairs Specialist at least one day in advance of the tour. Members of the public are responsible for their own transportation. Summary minutes will be prepared and made available for

public inspection within 30 days of the tour.

Date: July 29, 1988.

Richard G. Burch,

Acting District Manager.

[FR Doc. 88-17605 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-33-M

[OR-130-08-4830-12-ADVB: GP8-213]

Spokane District Advisory Council; Meeting

AGENCY Bureau of Land Management, Interior.

ACTION: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR, Part 1780, that a meeting of the Spokane District Advisory Council will be held on September 7, 1988. The meeting will begin at 9:30 a.m. in the conference room of the BLM Spokane District Office, East 4217 Main Avenue, Spokane, Washington.

The Agenda for the meeting is as follows:

1. Opening remarks and general business.
2. Yakima Canyon Plan.
3. Iceberg Point and Point Colville Areas of Critical Environmental Concern.
4. Uranium mines status.
5. Land exchanges.
6. Oroville hazardous material site.
7. Lambert Creek recreation proposal.
8. Fiscal year 1988 work plan.

Any responsible person wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spoxane, Washington 99202, or telephone (509) 456-2570 by the close of business, 4:30 p.m., Friday, September 2, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A written report of the Council Meeting will be maintained at the BLM Spokane District Office an will be made available for public inspection. Reproduction of the meeting report will be made available to the public at the cost of duplication.

The meeting is open to the public and news media.

Dated: July 29, 1988.

Joseph K. Buesing,

District Manager.

[FR Doc. 88-17528 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-33-M

[CA-050-4410-02]

Ukiah, CA; District Advisory Council Meeting

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94-579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Redding, California, September 8-9, 1988, to discuss issues and alternatives to be addressed in a resource management plan for public lands in the Bureau's Redding Resource Area.

DATES: The meeting will begin at 10:00 a.m. Thursday, September 8, 1988, and adjourn at 3:00 p.m. Friday, September 9, 1988.

ADDRESS: The meeting will be held at the Bureau of Land Management Office, 355 Hemsted Drive, Redding, California. A portion of Thursday and Friday will be spent visiting some of the public land parcels to be considered in the resource management plan.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

SUPPLEMENTARY INFORMATION: The Redding Resource Area is responsible for the management of approximately 230,000 acres of public land scattered throughout the five-county area of Siskiyou, Trinity, Shasta, Tehema, and Butte. Predominant uses of the public lands are timber harvesting, grazing, mining, wildlife habitat, recreation, and rights-of-way.

The meeting is open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 1:00 p.m. Thursday, September 8, 1988. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Date: July 25, 1988.

Alfred W. Wright,

District Manager.

[FR Doc. 88-17529 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-33-M

[AZ-040-08-4212-14-A042, A 17892]

Receipt of Conveyance of Mineral Interest Application in Cochise County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of receipt of conveyance of Mineral Interest Application A 17892 in Cochise County, AZ.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Jimmie L. Jackson has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 19 S., R. 21 E.,
Sec. 31, SW¼NE¼.
Containing 40.00 acres, more or less.

Upon publication of the notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application or two years from the date of publication of this notice.

SUPPLEMENTARY INFORMATION: Additional information concerning this application may be obtained from the San Simon Resource Area Manager, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Ray A. Brady,

District Manager.

Date: July 27, 1988.

[FR Doc. 88-17517 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-32-M

[MT-930-08-4920-10-7885; SDM 72425]

Conveyance of Mineral Estate in Custer County, SD

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public and interested state and local governmental officials of the issuance of a conveyance document to complete the exchange of mineral estates between the State of South Dakota and the Bureau of Land Management pursuant to the Act of October 21, 1976, 43 U.S.C. 1716, (FLPMA). The mineral estate acquired by the United States in this exchange is within the boundary of the Wind Cave National Park Withdrawal created by

Act of Congress dated August 9, 1946. Therefore, the minerals are not available for mineral leasing or mineral location.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, (406) 657–6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described mineral estate was transferred to the State of South Dakota:

Black Hills Meridian, South Dakota

T. 5 S., R. 6 E.,
Sec. 25, all.

Containing 640 acres.

2. In exchange for the above selected mineral estate, the United States acquired the following described mineral estate in Custer County, South Dakota:

Black Hills Meridian, South Dakota

T. 5 S., R. 6 E.,
Sec. 16, all.

Containing 640 acres.

3. The values of the Federal and State mineral estates were both appraised at $3,200 each.

July 28, 1988.

Edward H. Croteau,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 88–17518 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-DN-M

[CO-940-88-4111-15; COC 45129]

Proposed Reinstatement of Oil and Gas Lease; Rio Blanco County, CO

Notice is hereby given that a petition for reinstatement of oil and gas lease COC 45129 for lands in Rio Blanco County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from March 1, 1988, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236–1772.

Evelyn W. Axelson,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 88–17565 Filed 8–3–88 8:45 am]

BILLING CODE 4310-JB-M

[WY-920-08-4111-15; W-105158]

Proposed Reinstatement of Terminated Oil and Gas Lease; Weston County, WY

July 28, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–105158 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–105158 effective March 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88–17566 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-22-M

[AZ-940-08-4212-13; A-22764]

Arizona, Exchange of Public and Private Lands in Mohave County

July 28, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and James E. Briggs and Lois M. Briggs. The United States transferred 1,920.00 acres in Mohave County and James E. Briggs and Lois M. Briggs conveyed 3,949.68 acres in Mohave County.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: On July 12, 1988, the Bureau of Land Management transferred the following described land by Patent No. 02–88–0038 and Deed No. AZ–88–010, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 22 N., R. 19 W.,
Sec. 24, all;
Sec. 26, all;
Sec. 36, all.

The area described comprises 1,920.00 acres in Mohave County.

In exchange the surface in the following described land was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 22 N., R. 19 W.,
Sec. 5, N½N½;
Sec. 7, W½W½, N½NE¼, NE¼NW¼, W½SE¼NW¼, W½E½SE¼NW¼, E½SW¼;
Sec. 17, all.
T. 22 N., R. 20 W.,
Sec. 13, SE¼ (includes the mineral estate);
Sec. 25, all.
T. 23 N., R. 19 W.,
Sec. 29, all;
Sec. 31, all;
Sec. 33, all.

The area described comprises 3,949.68 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–17519 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-32-M

[MTM-73152; MT-020-08-4212-13]

Realty Action; Exchange of Public and Private Lands; McCone, Prairie, Custer, Sheridan, Dawson, Wibaux, Garfield and Richland Counties, Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action MTM–73152, Exchange of public and private lands in McCone, Prairie, Custer, Sheridan, Dawson, Wibaux, Garfield and Richland Counties.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian

T. 15 N., R. 41 E.,
Sec. 20, SW¼.
T. 20 N., R. 44 E.,
Sec. 14, ALL;
Sec. 22, S½NW¼, E½SE¼.
T. 20 N., R. 45 E.,
Sec. 4, Lot 1;
Sec. 8, S½;
Sec. 18, Lots 1–4, E½, E½W½.
T. 21 N., R. 45 E.,
Sec. 30, Lots 3, 4, E½SW¼, SE¼;
Sec. 32, NW¼NW¼.
T. 20 N., R. 60 E.,
Sec. 10, Lot 4.
T. 36 N., R. 54 E.,
Sec. 31, NE¼SE¼.
T. 14 N., R. 58 E.,
Sec. 22, SW¼NE¼, NW¼.
T. 14 N., R. 59 E.,
Sec. 20, NW¼NW¼.

Containing 2,650.35 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Glacier Park Company.

Principal Meridian

T. 9 N., R. 51 E.,
Sec. 27, ALL.
T. 20 N., R. 44 E.,
Sec. 3, SE¼;
Sec. 11, ALL;
Sec. 19, That portion lying west of State Highway 24 Centerline.
T. 12 N., R. 50 E.,
Sec. 27, Lot 5–7;
Sec. 33, Lot 5–7.
T. 13 N., R. 47 E.,
Sec. 13, ALL.

Containing 2,372.71 acres of private land.

DATES: For a period of up to and including September 19, 1988, interested parties may submit comments to the Bureau of Land Management, at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report, is available for review at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the Federal lands being transferred.

3. All valid existing rights (e.g., rights-of-way, easements, and leases of record).

4. Value equalization by cash payments or acreage adjustments.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with the Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated time of the exchange is September of 1988. The public interest will be served by completion of this exchange as it will enhance legal access and increase management efficiency of public lands in the area.

Date: July 27, 1988.

Mat Millenbach,

District Manager.

[FR Doc. 88–17612 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-08-4212-13; N-46545]

Realty Action: Exchange of Public Land; Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action of exchange of public lands in Douglas County, Nevada.

SUMMARY: The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian

T. 12 N., R. 21 E.,
Sec. 14, W½SE¼;
Sec. 23, NE¼NE¼.
T. 13 N., R. 21 E.,
Sec. 19, Lots 3, 4;
Sec. 30, Lots 6, 7, 10, 11.

The area described contains 329.94 acres.

In exchange for these lands, the federal government will acquire non-federal lands in Carson City, Nevada, from Bently, Nevada, P.O. Box 157, Minden, NV 89423, described as follows:

Mount Diablo Meridian

T. 15 N., R. 21 E.,
Sec. 5, SW¼;
Sec. 6, E½SE¼;
Sec. 7, S½ Lot 1 NW¼, NE¼;
Sec. 8, W½NW¼.

The area described contains 520 acres.

The purpose of the exchange is to acquire river frontage lands with high recreational and historical values. The exchange is consistent with Bureau of Land Management planning and is supported by Carson City. The public interest will be well served by making the exchange.

The exact acreage of Federal lands to be transferred or private lands to be acquired will be dependent upon a final fair market appraisal. Both the surface and mineral estates will be exchanged.

In accordance with regulations contained in 43 CFR 2201.11(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws including the mining laws. This segregation shall terminate upon issuance of patent to the above-described public lands, upon publication in the **Federal Register** of a termination of the segregation, or upon expiration of 2 years from the date of this publication, whichever occurs first. Patent to lands to be transferred from Federal ownership will contain the following reservation:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

The patent will be issued subject to:

1. Those rights for electric powerline purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by right-of-way grant NEV–065885, under the Act of March 4, 1911, (36 Stat. 1253; 43 U.S.C. 961).

2. Those rights for telephone line purposes which have been granted to Continental Telephone Company of California, its successors or assigns, by right-of-way grant N–35189, under the Act of October 21, 1976, 90 Stat. 2793, 43 U.S.C.

3. Those rights for access road purposes which have been granted to Ed Graham, Louise Graham, Terri K. Clark, and Sandra J. Lawrence, their successors or assigns, by right-of-way grant N–47291, under the Act of October 21, 1976, 90 Stat. 2793, 43 U.S.C. 1761–1771.

4. Those rights for public road purposes for Pine Nut Road, held by Douglas County under the authority of R. S. 2477 (43 U.S.C. 932).

Detailed information concerning the exchange, including the environmental assessment, is available for review at the Carson City District Office.

For a period of 45 days of up to and including September 19, 1988, interested parties may submit comments to the District Manager, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.

Dated this 26th day of July 1988.

James W. Elliott,

District Manager.

[FR Doc. 88-17613 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-HC-M

[OR 954-08-4830-11; GP-08-196]

Realty Action; Transfer of Administrative Jurisdiction, Klamath County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the transfer of certain public lands and interests in lands in Klamath County, Oregon from the Medford District to the Lakeview District.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Steve Leroux; BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208; (503) 230-5735.

SUPPLEMENTARY INFORMATION: All lands and interest in lands in Klamath County, Oregon currently administered by the Medford District are transferred to the Lakeview District. Lands transferred include all BLM lands in Klamath County south of State Highway 140 and west of U.S. Highway 97. Inquiries concerning these lands should be addressed to the Lakeview District, P.O. Box 151, Lakeview, Oregon 97630, or to the Klamath Falls Resource Area.

Charles W. Luscher,

State Director.

[FR Doc. 88-17520 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-33-M

[UT-080-08-4212-13]

Realty Action; Utah Vernal District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Northwest Pipeline Corporation has submitted a permit to the Utah Vernal District for use of public lands under the Federal Land Policy and Management Act (FLPMA) of 1976. (43 U.S.C., 1701, 1740, 1761-1771). The company operates 10.3 miles of pipeline and related facilities which are constructed to collect and transport natural gas from seven wells, six of which are located on pre-FLPMA leases within the Winter Ridge Wilderness Study Area, Uintah County, Utah.

Northwest is experiencing an accumulation of liquids at low points along the 4½ inch pipeline which freezes during cold weather and causes an interruption in the flow of gas. The interruption is costly to the company and could cause the line to expand or rupture.

To rectify the problem, the company is proposing a facility which would consist of a 20-inch by 20 foot drip, a 100 barrel tank and a 10 ft. x 10 ft. drain pit. The pit would function as both a drain for water from the tank and containment should the tank leak or be ruptured. A one foot high containment dike would be constructed around the tank and pit as an extra safety precaution.

The proposed facility would be located on an existing grandfather right-of-way (U-53945) and would be located on: T.14S., R.22E., Salt Lake Meridian, Section 21 SW¼. Access to the site would be along an existing road which is also within the right-of-way.

An Environmental Assessment pertaining to the proposed project has been prepared for public review. A copy may be obtained by contacting the: Vernal District Office-BLM, 170 South 500 East, Vernal, UT 84078.

Written public comment will be received until September 15, 1988 and should be directed to the Vernal District Office at the above address.

No decision concerning this matter will be made until after the comment period.

FOR FURTHER INFORMATION CONTACT: Paul Andrews, Bookcliffs Resource Area Manager, 170 South 500 East, Vernal, UT 84078, (801) 789-1362.

David E. Little,

District Manager.

[FR Doc. 88-17516 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-060-08-4212-11; WYW-80297]

Realty Actions; Sales, Leases, etc.; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, Recreation and Public Purposes Classification, and Application for Sale in Crook County, Wyoming.

SUMMARY: The following public lands have been identified and examined and were classified on April 12, 1984 as suitable for lease and sale under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 *et seq.*

Sixth Principal Meridian, Wyoming

T. 50 N., R. 66 W.,

Sec. 5, NW¼SW¼SE¼.

The above land aggregates 10 acres.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Area Manager, Newcastle Resource Area, Bureau of Land Management, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701, 307-746-4453.

SUPPLEMENTARY INFORMATION: The purpose of the classification and application for sale of these lands is for the Town of Pine Haven to use the lands for a cemetery.

Conveyance of the above public lands will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. A reservation to the United States of all mineral deposits and the right to prospect for, mine and remove such deposits under applicable law and regulations (43 U.S.C. 869 *et seq.*)

3. Oil and Gas lease W-96842 and other existing rights of record.

4. A reversionary clause providing that the conveyed lands shall return and revest on the United States if the conveyed lands are transferred to another, or the lands have been devoted to a use other than that for which lands were conveyed (43 U.S.C. 869 *et seq.*).

The proposed sale is consistent with the Newcastle Resource Area Management Framework Plan. The land is not required for any Federal purpose.

The above-described lands were segregated on April 12, 1984 from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

The lands will not be conveyed until at least 60 days after the date of publication of this notice in the **Federal Register**.

The proposed sale to the Town of Pine Haven would be made at fair market value, less 50 percent, in accordance with 43 CFR Subpart 2471.8.

For a period of 45 days from the date this notice is published in the **Federal Register**, interested parties may submit comments on this lease or sale action to the District Manager, Casper District Office, Bureau of Land Management, 1701 East E Street, Casper, Wyoming 82601. Any adverse comments to the lease or sale action will be evaluated by the State Director, who may vacate or

modify the realty action and issue a final determination. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

July 28, 1988.

James T. Monroe,

District Manager.

[FR Doc. 88-17567 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-22-M

[NM-940-08-4220-11; NM NM 056534, NM NM 016634, NM NM 0556981, NM NM 10388, NM NM 12780, NM NM 46827]

Proposed Continuation of Withdrawals; Baca Recreation Area et al., New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of withdrawals for the Baca Recreation Area, Elder Canyon Administrative Site, Mesa Ranger Station, Monjeau Lookout, Oak Grove Picnic Ground, Oak Grove Picnic Ground Addition, Ruidoso Administrative Site, Ruidoso Lookout, Skyline Recreation Area, Smokey Bear Administrative Site (formerly Block Lookout), and South Fork Campground continue for an additional 20 years, and White Mountain Recreation Area continue for an additional 30 years, which is the anticipated life of the projects. The lands will remain closed to mining and where closed be opened to surface entry. All of the lands have been and remain open to mineral leasing.

DATE: Comments should be received by November 2, 1988.

ADDRESS: Comments should be sent to: BLM, New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Forest Service proposes that all or portions of the existing land withdrawals made by the Secretarial Order of November 28, 1906, and Public Land Order Nos. 1074, 4643, 4799, and 5339 be continued for a period of 20 years, and Public Land Order No. 2368 be continued for a period of 30 years, pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

NEW MEXICO PRINCIPAL MERIDIAN

Lincoln National Forest

1. NM NM 46827—Secretarial Order of November 28, 1906.

Smokey Bear Administrative Site (formerly Station No. 19—Block Lookout/Smokey Bear Lookout Administrative Sites).

T. 7 S., R. 16 E.,
Sec. 20, NE¼NE¼NE¼.

Mesa Ranger Station (formerly Station No. 2—Mesa Ranger Station)

T. 9 S., R. 13 E.,
Sec. 21, NW¼NW¼.

2. NM NM 016634—Public Land Order No. 1074.

Monjeau Lookout

T. 10 S., R. 12 E.,
Sec. 24, that portion of the NE¼ lying outside of the White Mountain Wilderness Area (Pub. L. 96-550).

Ruidoso Administrative Site

T. 11 S., R. 13 E.,
Sec. 16.

Ruidoso Lookout

T. 11 S., R. 13 E.,
Sec. 27, S½NE¼NW¼NE¼,N½SE¼NW¼NE¼.

3. NM NM 056534—Public Land Order No. 2368.

White Mountain Recreation Area

T. 10 S., R. 11 E.,
Secs. 33 and 34 (unsurveyed).

4. NM NM 0556981—Public Land Order No. 4643; NM NM 12780—Public Land Order No. 5339.

Elder Canyon Administrative Site

T. 9 S., R. 10 E.,
Sec. 35, NW¼NE¼NW¼.

Oak Grove Picnic Ground and Oak Grove Picnic Ground Addition

T. 10 S., R. 11 E. (unsurveyed),
Sec. 36, NE¼NE¼SE¼, SE¼NW¼NE¼SE¼, S½NE¼SE¼, SE¼SE¼NW¼SE¼, E½NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼, NW¼SE¼SE¼.
T. 10 S., R. 12 E. (unsurveyed),
Sec. 35, SE¼NE¼SE¼, NW¼NE¼SE¼SE¼.

South Fork Campground

T. 10 S., R. 11 E. (partially unsurveyed),
Sec. 12, E½, of lot 21, lots 22 and 23;
Sec. 13, NW¼NW¼NE¼, NE¼NE¼NW¼ exclusive of lands in HES 244.

5. NM NM 10388—Public Land Order No. 4799.

Baca Recreation Area

T. 9 S., R. 16 E.,
Sec. 10, SW¼NE¼, N½NW¼SE¼.

Skyline Recreation Area

T. 10 S., R. 12 E.,
Sec. 24, that portion of the W½SE¼ lying outside the White Mountain Wilderness Area (Pub. L. 96-550).

The area described aggregate 2,366.67 acres in Lincoln County.

These withdrawals are essential for protection of substantial capital improvements on these sites. The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals excpet that the lands will be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress; who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: July 25, 1988.

Monte G. Jordan,

State Director, Associate.

[FR Doc. 88-17607 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-08-4220-11; NM NM 9508]

Proposed Continuation of Withdrawal; Pecos River Basin Water Salvage Project, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes a 10-acre withdrawal for the Pecos River Basin Water Salvage Project continue for an additional 20 years. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

DATE: Comments should be received by November 2, 1988.

ADDRESS: Comments should be sent to: BLM, New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Bureau of Reclamation proposes that the existing land withdrawal made

by Public Land Order No. 4950 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 21 S., R. 27 E.,
Sec. 33, SW¼SE¼NE¼.

The area described contains 10 acres in Eddy County.

The purpose of the withdrawal is for protection of the warehouse and work yard used by the Bureau of Reclamation for the storage and maintenance of equipment used in a slat cedar eradication project. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: July 25, 1988.

Monte G. Jordan,

State Director, Associate.

[FR Doc. 88-17608 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-08-4220-11; NM NM 52333]

Proposed Continuation of Withdrawal; Target Range (National Guard), New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that a 720.96 acre-withdrawal for the National Guard Target Range continue for an additional 20 years. The land will remain closed to surface entry and mining and has been and will remain open to mineral leasing.

DATE: Comments should be received by November 2, 1988.

ADDRESS: Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Sante Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Corps of Engineers proposes that the existing land withdrawal made by the Executive Order of October 6, 1917, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 21 S., R. 26 E.,
Sec. 20, lots 5, 6, 11, 12;
Sec. 21, lots 1, 2, 3, 4;
Sec. 28, lots 1 to 6 inclusive 8;
Sec. 29, lots 1, 2;
Sec. 33, lot 1.

The area described contains 720.96 acres in Eddy County.

The purpose of the withdrawal is to protect the National Guard Target Range. The withdrawal segregates the lands from operation of the public land laws generally including the mining laws, but not the mineral leasing laws. No change is proposed in the segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: July 25, 1988.

Monte G. Jordan,

State Director, Associate.

[FR Doc. 88-17609 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-08-4220-11; NM NM 6844]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a portion of a withdrawal continue for an additional 20 years. The land will remain closed to mining, but has been and will remain open to mineral leasing.

DATE: Comments should be received by November 2, 1988.

ADDRESS: Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Forest Service proposes that a portion of the existing land withdrawal made by Public Land Order No. 4591 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Santa Fe National Forest, Black Canyon Campground

T. 17 N., R. 10 E.,
Sec. 1, lots 12 and 13;
Sec. 12, NW¼NE¼NW¼ and NE¼NW¼NW¼.

Little Tesuque Picnic Area

T. 17 N., R. 10 E.,
Sec. 2, NE¼SE¼SE¼.

Borrego Mesa Campground

T. 20 N., R. 11 E.,
Sec. 9, SE¼ of lot 5, SW¼SE¼NE¼, NW¼NE¼SE¼, and NE¼NW¼SE¼.

The areas described aggregate 78.27 acres in Santa Fe County.

The purpose of the withdrawal is to protect the substantial capital investments on the recreation sites. The withdrawal segregates the land from location and entry under the mining laws. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to

determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: July 25, 1988.

Monte G. Jordan,

State Director, Associate.

[FR Doc. 88-17610 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division, Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf, 30 CFR Part 281.

OMB Number: N/A.

Abstract: Respondents provide certain information to the Minerals Management Service as participants in the leasing process. This information is used to determine if lessees are in compliance with leasing requirements, to specify lease areas, and to evaluate bids.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Respondents are OCS lessees, prospective bidders, States, and interested members of the public.

Estimated Completion Time: 23.1 hours.

Annual Responses: 54.

Annual Burden Hours: FY 1988-1; FY 1989-1,248.

Bureau Clearnce Officer: Dorothy Christopher, (703) 435-6213.

Date: July 12, 1988.

Richard B. Krahl,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88-17525 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil and Gas Corp.

AGENCY: Minerals management Service; Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil & Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9047, Block 351, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on July 28, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 29, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-17524 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-379 and 380 (Final)]

Certain Brass Sheet and Strip From Japan and the Netherlands

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2, 3] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports from Japan and the Netherlands of certain brass sheet and strip,[4] provided for in item 612.39 of the

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Eckes and Lodwick determine that an industry in the United States is materially injured by reason of the subject imports. Commissioner Rohr determines that an industry in the United States is threatened with material injury by reason of the subject imports. Commissioner Rohr further determines, pursuant to 19 U.S.C. 1673d(b)(4)(B), that he would have found material injury by reason of the subject imports but for the suspension of liquidation of entries of the merchandise under investigation.

[3] Vice Chairman Brunsdale and Commissioners Liebeler and Cass determine that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan and the Netherlands of the subject merchandise.

[4] For purposes of these investigations the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3988 of the Tariff Schedules of the United States Annotated (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (CDA) 200 series or the Unified Numbering System (UNS) C20000 series. Products whose chemical compositions are defined by other CDA or UNS series are not covered by these investigations.

Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective February 1, 1988 (Japan), and February 8, 1988 (Netherlands), following prelminary determinations by the Department of Commerce that imports of certain brass sheet and strip from Japan and the Netherlands were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 24, 1988 (53 FR 5474).

On February 22, 1988, Commerce published a notice in the **Federal Register** (53 FR 5207) postponing its final LTFV determination for Japan until June 15, 1988; and on March 10, 1988, Commerce published a notice in the **Federal Register** (53 FR 7771) postponing its final LTFV determination for the Netherlands until June 15, 1988. Accordingly, the Commission published a notice in the **Federal Register** of March 30, 1988 (53 FR 10301), revising its schedule for the conduct of the investigations. The hearing was held in Washington, DC, on June 28, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on July 29, 1988. The views of the Commission are contained in USITC Publication 2099 (July 1988), entitled "Certain Brass Sheet and Strip from Japan and the Netherlands: Determinations of the Commission in Investigations Nos. 731–TA–379 and 380 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: July 29, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–17501 Filed 8–3–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–411 (Preliminary)]

Calcined Bauxite Proppants from Australia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Australia of calcined bauxite proppants, provided for in item 521.17 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 14, 1988, a petition was filed with the Commission and the Department of Commerce by Carbo Ceramics, Inc., Irving, TX, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of calcined bauxite proppants from Australia. Accordingly, effective June 14, 1988, the Commission instituted preliminary antidumping investigation No. 731–TA–411 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 24, 1988 (53 FR 23808). The conference was held in Washington, DC, on July 5, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 29, 1988. the views of the Commission are contained in USITC Publication 2100 (July 1988), entitled "Calcined Bauxite proppants from Australia: Determination of the Commission in Investigation No. 731–TA–411 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 29, 1988.

[FR Doc. 88–17498 Filed 8–3–88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of a Stipulation of Dismissal Pursuant to the National Emission Standard for Hazardous Air Pollutants and the Clean Air Act; Carl Burkhart

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 5, 1988, a proposed Consent Decree in *United States* v. *Burkhart*, Civil Action No. 86–70–W, was lodged with the United States District Court for the Southern District of Iowa, Western Division.

The complaint filed by the United States alleged that the defendants had violated the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos, 40 CFR Part 61, and the Clean Air Act, 42 U.S.C. 7401, and requested permanent injunctive relief and imposition of civil penalties. The proposed Consent Decree requires defendants to comply with notification provisions of the Asbestos NESHAP and to pay a civil penalty of $1,500. Defendant Carl Burkhart must notify EPA before he engages in any future asbestos demolition or renovation activities.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Burkhart*, DOJ# Ref. 90–5–2–1–997. The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, East First and Walnut, Des Moines, Iowa 50309. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $.90 (10 cents per page

reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-17512 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under Resource Conservation and Recovery Act; United States Ceramic Tile Co. et al.

In accordance with Departmental policy, notice is hereby given that on June 27, 1988 a proposed Consent Decree in *United States* v. *United States Ceramic Tile Company et al.*, Civil Action No. 86-5152A, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree requires defendants to close the surface impoundment and waste pile at their facility in East Sparta, Ohio, in compliance with the approved closure plan, to comply with interim status standards concerning groundwater monitoring, under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, and to pay a civil penalty of $98,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *United States Ceramic Tile Company et al.*, D.J. reference 90-7-1-376.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114-1748, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 for reproduction cost, payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-17513 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

The National Cooperative Research Act of 1984; Automotive Polymer-Based Composites Joint Research and Development Partnership

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Automotive Polymer-Based Composites Joint Research and Development Partnership ("Partnership"), has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Partnership and (2) the nature and objectives of the Partnership. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Partnership and its general areas of planned activity are given below.

The parties to the Partnership are Chrysler Corporation, Ford Motor Company, and General Motors Corporation. The purpose of the Partnership is to engage in the development of cost-effective advanced uses of Polymer-based composites to promote improved precision, superior appearance, increased strength-to-weight ratios, and reduced weight for use in automotive vehicles and components. The Partnership will undertake: (1) The theoretical analysis, experimentation, and systematic study of phenomena and observable facts connected with polymer-based composites; (2) the development and testing of basic engineering techniques relating to the application of polymer-based composites; (3) the scientific investigation into practical applications of polymer-based composites including the experimental production and testing of models, prototypes, equipment, materials, and processes; (4) the collection, exchange, and analysis of research information; (5) the eventual establishment and operation of facilities for conducting research; (6) the protection of intellectual property created by the Partnership, through the prosecution of patents and other methods to establish a proprietary position; and (7) the granting of licenses. The partners will agree upon and determine specific projects to be undertaken on an annual basis.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-17515 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Development of Reliability-Based Wood Design Specification; National Forest Products Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by the National Forest Products Association simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The notifications were filed on July 7, 1988. Pursuant to section 6(b) of the Act, the identities of the Parties and general area of planned activities are given below.

The parties are the American Institute of Timber Construction, American Plywood Association, California Lumber Inspection Service, California Redwood Association, Canadian Wood Council, MSR Lumber Producers Council, National Forest Products Association, Northeastern Lumber Manufacturers Association, Pacific Lumber Inspection Bureau, Southeastern Lumber Manufacturers Association, Southern Forest Products Association, Southern Pine Inspection Bureau, Timber Products Inspection, Inc., Trus Joist Corporation, Truss Plate Institute, West Coast Lumber Inspection Bureau, and Western Wood Products Association.

The nature of the planned activity is to produce a Reliability-Based Design Specification for Wood incorporating load resistance factor design. The objective of the planned activity is to provide engineers and architects with an alternative to the currently used allowable stress design method and to present the new design methodology in an easy to use published format.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-17514 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

The National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on July 7, 1988 disclosing that the following firms have joined PCA as "Affiliate Members":

Northwest Concrete Promotion Group (effective May 1, 1988) Rocky Mountain Cement Promotion Council (effective July 1, 1988)

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Capitol Cement Corporation
Continental Cement Company Inc.
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Hawaiian Cement
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation
Lehigh Portland Cement Company
LoneStar-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
Rinker Materials Corporation
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

Canada

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporatior
Tilbury Cement Limited

Mexico

Instituto Mexicano del Cemento y del Concreto (IMCYC)
Cementos Acapulco, S.A.
Cementos Apasco, S.A.
Cementos de Chihuahua, S.A.
Cementos Mexicanos, S.A.
Cementos Moctezuma, S.A.
Cooperative de Cementos Cruz Azul
Cooperative de Cementos Hidalgo

Affiliate Members

Cement and Concrete Promotion Council of Texas
Florida Concrete and Products Association
Mississippi Concrete Industries Association
North Central Cement Promotion Association
Northern California Cement Promotion Group
Northwest Concrete Promotion Group
Rocky Mountain Cement Promotion Council
South Central Cement Promotion Association

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
F.L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company
W.R. Grace & Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, and March 11, 1988, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 28183), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-17510 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-71]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting; revised agenda.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: August 9, 1988, 9 a.m. to 5:15 p.m., August 10, 1988, 8:30 a.m. to 3:15 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code ADI-1, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: NASA published in the **Federal Register** notice number 88-65 (53 FR 27413) on July 20, 1988. The agenda for this meeting has been revised to read as follows:

Agenda

August 9, 1988

9 a.m.—Introductory Remarks.
9:15 a.m.—Science Update—Recent Observations of Pluto/Charon System.
9:45 a.m.—NASA Agency-Level Planning.
10:30 a.m.—Program and Budget Overview.

11 a.m.—Exploration Planning.
1 p.m.—Space Science and Applications.
2:45 p.m.—Space Station Planning.
3:45 p.m.—Space Operations Planning.
4:15 p.m.—Space Technology Planning.
5:15 p.m.—Adjourn.

August 10, 1988

8:30 a.m.—Space Flight Planning.
9:15 a.m.—Commercial Programs Planning.
9:45 a.m.—Aeronautics Planning.
11:15 a.m.—NASA Institutional Planning.
11:45 a.m.—Closing Discussion of Budget Issues.
1:15 p.m.—Space Applications Board.
1:30 p.m.—Space Science Board.
1:45 p.m.—STS–26 Readiness.
2:15 p.m.—Science Update.
3:15 p.m.—Adjourn.

July 28, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–17500 Filed 8–3–88; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Arkansas Power and Light Co., Arkansas Nuclear One, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to the Arkansas Power and Light Company (the licensee), for Arkansas Nuclear One, Unit 2 (ANO–2) located in Pope County, Arkansas.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant exemptions from certain requirements of sections III.G and III.O of Appendix R to 10 CFR Part 50, which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free to fire damage, and to the provision for the oil collection system for reactor coolant pumps (RCPs). The exemptions are technical since the licensee must demonstrate that fire protection, and RCP oil collection configurations meet the specific requirements of section III.G and III.O, or that alternate configurations can be justified by an acceptable analysis.

The Need for Proposed Action

The proposed exemptions are needed because the features described in the licensee's exemption request regarding the existing and proposed fire protection at the plant would result in a net benefit to the public health and safety.

Environmental Impact of the Proposed Action

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at ANO–2. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20, with the minor exception of the redundant seismic condensate storage tank level transmitters. These exemptions would not affect non-radiological plant effluents and have no other environmental impact. Therefore we, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

The Commission has determined not to prepare an environmental impact statement of the proposed exemptions.

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 licensee's letters dated August 15, 1984 and August 30, 1985 which contained the exemption requests, and letters dated October 20, 1986, April 22 and June 24, 1987 which provided supplemental information. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 9th day of June, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–17578 Filed 8–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–313 and 50–368]

Arkansas Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting an Exemption from 10 CFR. 50.71(e) to Arkansas Power and Light Company (AP&L or the licensee) for a one-time 90 day schedular extension of the required due date for the annual revision to the Final Safety Analysis Reports (FSAR) for Arkansas Nuclear One, Units 1 and 2, (ANO–1 and 2) located in Pope County, Arkansas.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow the licensee to submit the 1988 annual FSAR updates for ANO–1 and 2 on October 20, 1988, 90 days after the July 22 date required by 10 CFR 50.71(e). The proposed exemption was requested by the licensee by letter dated May 13, 1988.

The Need for the Proposed Action

The proposed exemption is necessary to provide the licensee additional time to complete their Safety Analysis Report Upgrade Project and incorporate all the improvements derived therefrom in the 1988 annual FSAR revision.

Environmental Impacts of the Proposed Action

The proposed exemption does not affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

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 licensee's letter dated May 13, 1988. The letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 26th day of July 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-17579 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co. et al; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendment would revise the Technical Specifications (TS) related to containment ventilation and drywell purge (VR/VQ) system isolation valves.

Specifically, the licensees proposed (1) deletion of the operability and surveillance requirements for the 50° stops installed for the VR/VQ valves, (2) insertion of footnotes in the limiting conditions for operation and applicable surveillance requirements to exclude the time when the VR/VQ valves are opened for performing stroke-time testing, and (3) extension of the administrative control permitting opening of the VR/VQ valves.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated October 30, 1987.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, IP, et al. have proposed an amendment to Facility Operating License No. NPF-62 which consists of three changes to the TS concerning the containment ventilation and drywell purge system isolation valves. The first change would delete the requirements associated with the VR/VQ valve opening angle restriction in footnote 1 (one asterisk) of TS 3.6.1.8 (limiting conditions for operations) and in TS 4.6.1.8.2 (surveillance requirements), and would revise footnote 2 (two asterisks) of TS 3.6.1.8.

Footnote 1 of TS 3.6.1.8 requires that the 36-inch containment ventilation supply and exhaust valves be blocked to prevent them from opening more than 50°. The surveillance requirements of TS 4.6.1.8.2 require that the 50° valve-opening restriction for the 36-inch containment ventilation supply and exhaust valves be verified at least once every 31 days. The licensees propose to remove these requirements from the TS. Footnote 2 of TS 3.6.1.8 states that containment ventilation system operation shall be defined as any time the 36-inch water supply and/or exhaust isolation valves are opened. The licensees propopse to insert the following statement to footnote 2: "except when opened for inservice testing performed pursuant to TS 4.0.5".

By letter dated July 20, 1983, the staff informed the licensees that the use of the 24-inch and 36-inch purge valves would be acceptable during operational modes 1, 2, and 3 if the valves were blocked to a maximum opening angle of 50° (90° corresponds to fully open). In its letter dated November 17, 1983, the licensees committed to install mechanical stops on the valves to limit them from opening more than 50° during operational modes 1, 2, and 3. The 50° stops could be removed during modes 4 and 5 if increased purge flow were required during maintenance activities. The staff found the licensees' commitment acceptable as indicated in Supplement 5 to the Clinton Supplemental Safety Evaluation Report (SSER 5) dated January 1986. The licensees incorporated the appropriate operability and surveillance requirements for the 50° stops into the TS.

Subsequently, the licensees found that purge flow was adequate during modes 4 and 5 with the 50° stops in place and thus, periodic removal of the 50° stops to increase purge flow as originally suggested would not be needed. Therefore, the licensees proposed to modify the 50° stops so that they are a permenant part of the installation of the valves and to delete the requirement for confirmation of the 50° opening angle limitation in the TS. The licensees also proposed to revise the bases for TS 3/4 6.1.8 to specify that the blocking devices are permanently installed on the 36-inch purge valves.

TS 3.6.1.8 requires that the opening of the containment building ventilation (36-inch) isolation valves for containment ventilation system operation be limited to less than or equal to 500 hours per year. System operation is defined by TS 3.6.1.8 as any time the valves are open. TS 4.0.5 requires that these valves be tested according to the inservice testing (IST) program by performing stroke-time testing every 92 days. The IST is performed such that the valves are open one at a time for stroke time verification while the other valve in series is closed. The licensees propose to exlude the time when these valves are opened to complete stroke-time testing from a cumulative system operation time limits currently specified in TS 3.6.1.8.

The second change would delete footnote 1 (one asterisk) and revise footnote 2 (two asterisks) in TS 3.6.2.7 (limiting conditions for operation), and deletes TS 4.6.2.7.4 (surveillance requirments) and its footnote.

Footnote 1 requires that the 24-inch drywall vent and purge supply and exhaust isolation valves and the 36-inch outboard isolation valves be blocked to prevent them from opening more than 50°. Footnote 2 specifies that drywell vent system operation shall be defined as any time either the 10-inch or the 24-inch inboard exhaust valves are open when all valves mentioned in TS 3.6.1.8 are closed. The licensees propose to revise footnote 2 by adding the following: "This excludes the time when either of these valves is opened for inservice testing performed pursuant to TS 4.0.5 (concurrent with all valves of TS 3.6.1.8 closed)."

The surveillance requirements of TS 4.6.2.7.4 state that at least once every 31 days, the 24-inch drywell vent and purge supply and exhaust valves and the 36-inch outboard isolation valves shall be verified to be blocked in order to restrict valve opening to less than or equal to 50°. The footnote for TS 4.6.2.7.4 also specifies that the blocking device for the 24-inch valves shall be verified installed prior to drywell closing and during each cold shutdown except such verification need not be performed more often than once every 92 days. The licensees propose to delete TS 3.6.2.7.4 and footnote 1 of TS 3.6.2.7 associated with the 50° valve opening angle limitation

[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.

since the 50° stop device will become part of the permanent valve installation.

TS Table 3.6.4–1, note (a) states that certain containment isolation values may be open on an intermittent basis under administrative control. The third change would extend the application of this note to include the VR/VQ values since they are needed to be opened while certain local leakrate tests are conducted. Note (a) would be inserted into Table 3.6.4–1 for values 1VR002A,–B and 1VQ006A,–B to allow them to be opened under administrative control during the performance of leak testing associated with the 36-inch containment ventilation supply and exhaust values every 92 days as specified in TS 4.6.1.8.3.

Environmental Impacts of the Proposed Action

Because the 50° mechanical stops for these values were previously approved by the staff (as discussed in SSER 5) and are a part of the permanent value installation, the staff finds the elimination of the operability and surveillance requirements for the 50° stops in TS 3.6.1.8 and TS 4.6.1.8.2 to be acceptable. The staff also agrees with the revised bases for TS 3/4 6.1.8 because of the permanent installation of the blocking device on these values.

The staff finds the proposed revision to footnote 2 of TS 3.6.1.8 acceptable because value testing in acccordance with the IST requirements does not require the containment ventilation system to be operable. Therefore, stroke-time testing should not be considered part of the system operation time limit.

The staff finds the proposed deletion of TS 3.6.2.7.4 and footnote 1 of TS 3.6.2.7 associated with the 50° value opening angle limitation acceptable because the 50° stop device will become part of the permanent value installation and cannot be removed.

TS 3.6.2.7 requires that the opening of the drywell vent and purge system (24-inch or 10-inch) isolation for drywell vent system operation be limited to 5 hours per year. The basis for limiting the amount of time the value can be opened for drywell vent system operation is to limit the release of radioactivity to the environs during normal operating conditions. The staff finds that the revision to footnote 2 of TS 3.6.2.7 to exclude the IST stroke-time tests from the system operation time is acceptable, because stroke-time testing per the IST program does not require the drywell vent and purge system to be operable.

The VR/VQ values are part of the test boundary for the 36-inch containment ventilation supply and exhaust values. Also, when these values are being leak tested, the 36-inch values must be closed so that the penetration will remain effectively closed during the test. The staff finds extending the application of note (a) to the values specified above acceptable because the values are required to be opened during the local leakrate testing of the 36-inch ventilation system isolation values every 92 days.

The Commission has determined that potential radiological releases during normal operations, transients, and for accident would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radioligical environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1 in accordance with standards and regulations to maintain exposure level's "as low as reasonably achievable."

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternative with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Finan Environmental Statement dated May 1982 related to this facility.

Agencies and Person Consulted

The NRC staff reviewed the licensees' request of October 30, 1987 and did not consult over agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated October 30, 1987 and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission Public Document Room, 1717 H Stteet, NW., Washington, DC 20555 and at the Vespasian Warner, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 28th day of July 1988.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–17580 Filed 8–3–88; 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 Maine Yankee Atomic Power Company (the licensee), for operation of the Maine 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) to reflect the operating limits for the Cycle 11 reload core.

The proposed action is in accordance with the licensee's application for amendment dated June 30, 1988.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide limiting combination of reactor power and Reactor Coolant System flow, temperature, and pressure during operation of Cycle 11. Maine Yankee is currently in Cycle 10 operation.

Environmental Impacts of the Proposed Action

The Commission has completed its initial evaluation of the proposed revision to the Technical Specifications. The proposed revision would allow the licensee to discharge 73 fuel assemblies and insert 72 new assemblies and one previously irradiated assembly for Cycle 11 refueling. The new fuel assemblies are fabricated by Combustion Engineering and are not significantly different from those previously used at Maine Yankee. In previous reload cores at Maine Yankee and other facilities, the NRC has found the fuel design to be acceptable. The Control Element Assembly (CEA) pattern for Cycle 11 is identical to that used in Cycle 10. Also, the thermal, thermal-hydraulic, and physics characteristics for Cycle 11 are not significantly different from those of Cycle 10. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environment impact.

With regard to potential non-radiological impacts, the proposed change to the Technical Specification 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 28th day of July, 1988.

For the Nuclear Regulatory Commission.

Carl Stahle,

Acting Director, Project Directorate I–3, Division of Reactor Projects, I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–17582 Filed 8–3–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–245]

Northeast Nuclear Energy Co. et al., Millstone Nuclear Power Station, Unit 1; Issuance of 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–21, issued to Northeast Nuclear Energy Company et al., (the licensee), for operation of the Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

Identification of Proposed Action

The amendment would consist of a change to the operating license to extend the expiration date of the operating license for Millstone Nuclear Power Station, Unit 1, from May 19, 2006 to October 2, 2010. The proposed license amendment is in response to the licensee's application dated December 22, 1986. The Commission's staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR–21, Northeast Nuclear Energy Company, et al., Millstone Nuclear Power Station, Unit No. 1, Docket No. 50–245, dated July 27th 1988."

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the Operating License for Millstone Nuclear Power Station, Unit 1. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to Continuation of Construction of Unit 2 and Operation of Units 1 and 2, Millstone Nuclear Power Station," dated June 1973, the Final Environmental Statement (FES) related to the operation of Millstone Nuclear Power Station, Unit No. 3, NUREG–1064, dated December 1984, the Environmental Assessment in support of the Provisional Operating License conversion to a Full Term Operating License, dated December 17, 1984 and more recent NRC policy.

Radiological Impacts

The staff concludes that the Exclusion Area, the Low Population Zone and the nearest population center distances will likely be unchanged from those described in NUREG–1064. Since the 40-year operating license for Millstone Unit 3 will go beyond the proposed operating life of Millstone Unit 1, the analysis in the FES, dated December 1984, would also bound the 40-year license for Millstone Unit 1 with regard to the low population zone, and distance to population centers.

Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulation regarding as low as is reasonably achievable (ALARA) limits, and are indicative of future releases. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the occupational exposures since 1966 for Millstone Unit 1 have been higher than the average in the nuclear industry. The licensee is addressing the problem of high occupational exposures via a number of short- and long-term dose reduction initiatives. The NRC staff has reviewed the licensee's initiatives and believes that these initiatives will result in a substantial reduction in occupational exposures at Millstone Unit 1.

The NRC staff concludes that radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the

FES and the staff's previous cost-benefit conclusions remain valid.

The environmental impacts attributable to transportation of fuel and waste to and from the Millstone Nuclear Power Station, Unit 1, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S–4 of 10 CFR 51.52, and the values in Table S–4 would continue to represent the contribution of transportation to the environmental costs associated with the reactor.

Non-Radiological Impacts

The Commission has concluded that the proposed extension does not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Finding of No Significant Impact

The Commission's staff has reviewed the proposed change to the expiration date of the Millstone Nuclear Power Station, Unit 1, Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated December 26, 1986, (2) the Final Environmental Statement Related to Continuation of Construction of Unit 2 and Operation of Units 1 and 2, Millstone Nuclear Power Station, June 1973, and Environmental Assessment dated December 17, 1984, and (3) the Environmental Assessment dated July 27th 1988. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 27th day of July 1988.

For the Nuclear Regulatory Commmission.

Michael L. Boyle,

Project Manager, Project Directorate I–4, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–17581 Filed 8–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp., Yankee Nuclear Power Station; 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–28 issued to Vermont Yankee Nuclear Power Corporation (the licensee), for operation of the Vermont Yankee Nuclear Power Station located in Windham County, Vermont.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to accommodate limiting conditions of operation and surveillance requirements for the automatic depressurization system (ADS) because of modifications made in response to NUREG 0737, Item II.K.3.18.

The proposed action is in accordance with the licensee's application for amendment dated December 9, 1987.

The Need for the Proposed Action

The proposed change to the TS will add new requirements appropriate for plant equipment which has been installed.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions add requirements for the new equipment to the Vermont Yankee Technical Specifications similar to requirements for other safety related equipment. The proposed changes do not increase the probability or consequences of any 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 March 3, 1988 (53 FR 6889). 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 not meeting NRC requirements.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Vermont Yankee Nuclear Power Station, July, 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed 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 December 9, 1987 which is available for public inspection at the Commission's Public Document Room, Brooks Memorial Library, 244 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland, this 29th day of July, 1988.

For the Nuclear Regulatory Commission.

Carl Stahle,

Acting Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–17583 Filed 8–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-341; Fermi-2]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a petition, dated February 4, 1988, filed by the Honorable James Caldwell, the Honorable Steven Langdon, the Honorable Herb Gray and the Honorable Howard McCurdy, members of the Canadian Parliament (petitioners). The petitioners requested that:

(a) The U.S. Nuclear Regulatory Commission (NRC) decision to allow Fermi-2 to operate at 100 percent power be overturned;

(b) The license to operate Fermi-2 be revoked; and

(c) Detroit Edison be required to prove, to the satisfaction of both the NRC and the relevant Canadian authorities that Fermi-2 is absolutely safe to operate at any level and that such Fermi-2 operation does not present any danger to the health and safety of the people of Windsor and Essex County.

The request was based on a January 15, 1988, letter from the NRC to Detroit Edison and an attached NRC Regulatory Assessment, that authorizes Fermi-2 to operate at full power. According to the petitioners, these documents reveal that there are a number of deficiencies at Fermi-2 that should have prevented the NRC from granting this authorization.

The Director has now determined that the petitioners' request should be denied for the reasons set forth in the "Director's Decision Under 10 CFR 2.206" (DD 88-11), which is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and in the local Public Document Room for Fermi-2 located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

A copy of the Decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Project Manager, Project Directorate III-1, Division of Reactor Projects III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 28th day of July 1988.

[FR Doc. 88-17588 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.32, "Criteria for Establishing a Tritium Bioassay Program," provides criteria acceptable to the NRC staff for developing and implementing a bioassay program for licensees who handle or process tritium. It also provides guidance on selecting workers who should participate in a program to detect and measure possible internal radiation exposure.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of July 1988.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 88-17577 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co. et al; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 50 to Facility Operating License No. NPF-35 and Amendment No. 43 to Facility Operating License NPF-52 issued to Duke Power Company, et. al., (the licensee), which revised the Technical Specifications for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina. The amendments were effective as of the date of issuance.

The amendments changed Technical Specification 5.3.1 "Fuel Assemblies" to provide increased flexibility in the substitution of solid stainless steel rods and open water channels for fuel rods in reconstitutible fuel assemblies to be reinserted in the reactor core during a refueling outage.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 20, 1988 (53 FR 18181). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 25396) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 1, 1988, which superseded portions of a previous request by letter dated February 5, 1988, (2) Amendment No. 50 to License No. NPF-35, and Amendment No. 43 to

License No. NPF–52, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 28th day of July 1988.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Project Directorate II–3, Division of Reactor Projects I/II.

[FR Doc. 88–17584 Filed 8–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

GPU Nuclear Corp. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 143 to Facility Operating License No. DPR–50, issued to GPU Nuclear Corporation (the licensee), which revised the License and Technical Specifications for operation of the Three Mile Island Nuclear Station Unit 1 located in Dauphin County, Pennsylvania.

The amendment revises the License and the Technical Specifications to allow an increase in the rated power level from 2535 MWt to 2568 MWt, a 1.3% increase.

The applciation for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 24, 1988 (53 FR 18629). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 18, 1988, (2) Amendment No. 143 to License No. DPR–50, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 27th day of July 1988.

Ronald W. Hernan,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–17585 Filed 8–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–14 and NPF–22 issued to Pennsylvania Power and Light Company (the licensees) for operation of the Susquehanna Steam Electric Station Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would change Technical Specification Section 3/4.3.7.1. "Radiation Monitoring Instrumentation," ACTION 70a. In its present form, the ACTION 70a requires the radiation monitoring instrumentation inoperable channel be placed in tripped condition in 1 hour and allows 7 days to restore the inoperable channel to OPERABLE status. The licensee proposed to eliminate the ACTION 70a requirement to trip the inoperable channel if it has not already tripped.

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 September 6, 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 and who wishes to participate as a party in the 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 intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: 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 General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 6, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Ousterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 28th day of July 1988.

For The Nuclear Regulatory Commission.

Donald C. Fischer,

Acting Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–17587 Filed 8–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 112 to Facility Operating License No. DPR–3 issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts. The amendment was effective as of the date of issuance.

The amendment changed the shutdown margin switching temperature from 490 °F to 470 °F. In addition a typographical error and the omission of a previously approved surveillance requirement were corrected.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and opportunity for Hearing in connection with this action was published in the **Federal Register** on April 26, 1988 (53 FR 14876). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 28083) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 23, 1988, (2) Amendment No. 112 to License No. DPR–3 and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

Morton B. Fairtile,

Project Manager, Project Directorate I–3, Division of Reactor Projects, I/II.

[FR Doc. 88–17586 Filed 8–3–88; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement of Claimed Railroad Service.

(2) *Form(s) submitted:* UI–9, UI–23.

(3) *OMB Number:* 3220–0025.

(4) *Expiration date of current OMB clearance:* 09–30–88.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Total annual responses:* 2,350.

(9) *Estimated annual number of respondents:* 2,350.

(10) *Average time per response:* 7.5 minutes.

(11) *Total annual reporting hours:* 296.

(12) *Collection description:* When the railroad service and/or compensation on the Board's records is insufficient to qualify a claimant for unemployment or sickness benefits, the statements obtain the information needed to reconcile the

compensation and/or service on record with that claimed by the employee.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Allison Herron (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–17507 Filed 8–3–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–16508; 812–7011]

Barclays Bank PLC; Application for Order

July 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Barclays Bank PLC.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 17(f).

Summary of Application: Applicant seeks an order to permit maintenance of securities and other assets of U.S. investment companies, other than those registered under section 7(d) of the 1940 Act ("U.S. Investment Companies"), with certain foreign subsidiaries of Applicant (each of which is hereinafter referred to as a "Foreign Subsidiary"), namely: Barclays Bank of Canada, Barclays Bank S.A. (France), Barclays Trust and Banking Company (Japan) Limited, Barclays Bank S.A.E. (Spain) and Barclays Bank S.A. (Switzerland).

Filing Dates: The application was filed on April 6, 1988 and amended on June 23, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 23, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date or a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Barclays Bank PLC, 54 Lombard Street, London, EC3P 3AH, England, or Paul B. Ford, Jr., Esq., Simpson Thacher & Bartlett, One Battery Park Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272–2811, or Karen L. Skidmore, Branch Chief (202) 272–3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a company organized and existing under the laws of the United Kingdom. It is one of the ten United Kingdom clearing banks. In the United Kingdom, Applicant is authorized and regulated by the Bank of England; in the United States, Applicant is regulated as a bank holding company and is subject to the International Banking Act of 1978. At December 31, 1987, Applicant had shareholders' equity of 4,118,000,000 pounds sterling.

Applicant is a wholly-owned subsidiary of Barclays PLC, an English public limited company (together with its subsidiaries, including Applicant, "Barclays Group"). The Barclays Group is a leading international banking group and was among the top five banking groups in the world as of December 31, 1986. It is engaged in a broad range of banking and financial services. The Barclays Group will provide custodial and sub-custodial services for U.S. Investment Companies throughout the world through Applicant and the Foreign Subsidiaries.

2. Each Foreign Subsidiary is a wholly-owned or majority-owned (with respect to Barclays Bank S.A.E.), direct or indirect subsidiary of Applicant and is a banking institution or trust company incorporated under the laws of a country other than the United States and regulated as such by that country's government or an agency thereof.

3. Each Foreign Subsidiary is experienced to provide custodial services and is capable and well-qualified to provide custodial and sub-custodial services to U.S. Investment Companies and under the foreign custody arrangements proposed, the protection of investors would not be diminished.

4. Applicant meets the requirements of Rule 17f–5, which permits certain entities to serve as foreign custodians under the 1940 Act provided they meet the qualifications in such rule. Applicant is an eligible foreign custodian because, in part, it has shareholders' equity well in excess of $200,000,000, and is organized and regulated in the United Kingdom as a bank. The Foreign Subsidiaries do not meet the minimum shareholders' equity requirement of the rule, and without the requested order, would not be eligible foreign custodians.

Applicant's Legal Conclusions

Applicant believes that the terms of the proposed foreign custody arrangements will adequately protect U.S. Investment Companies and their shareholders against loss. Applicant will remain liable for the performance of the duties and obligations delegated to a Foreign Subsidiary as well as for losses relating to the bankruptcy or insolvency of such Foreign Subsidiary. The risks associated with foreign investment, however, will remain with the Investment Companies (which will presumably disclose any such material risks to investor.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. The foreign custody arrangements proposed with respect to the Foreign Subsidiaries will satisfy the requirements of Rule 17f–5 in all respects other than with regard to shareholders' equity.

2. Securities of U.S. Investment Companies will be maintained with a Foreign Subsidiary only in accordance with an agreement, required to remain in effect at all times during which the Foreign Subsidiary fails to satisfy all the requirements of Rule 17f–5. Each agreement will be a three-party contract among the Foreign Subsidiary, Applicant and the U.S. Investment Company or the custodian for a U.S. Investment Company pursuant to the terms of which Applicant would undertake to provide specified custodial or sub-custodial services for the U.S. Investment Company or custodian and would delegate to the Foreign Subsidiary such of Applicant's duties and obligations as would be necessary

to permit the Foreign Subsidiary to hold in custory in the country in which it operates, the securities of the U.S. Investment Company or custodian. The agreement would further provide that Applicant's delegation of duties to the Foreign Subsidiary would not relieve Applicant of any responsibility to the U.S. Investment Company or custodian for any loss due to such delegation except such loss as may result from (i) political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and (ii) other risks of loss (excluding bankruptcy or insolvency of the Foreign Subsidiary) for which neither Applicant nor the Foreign Subsidiary would be liable under Rule 17f–5 (e.g., despite the exercise of reasonable care, loss due to Acts of God, nuclear incident and the like).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–17547 Filed 8–3–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[CM–8/1205]

Shipping Coordinating Committee; National Committee for the Prevention of Marine Pollution; Meeting

The National Committee for the Prevention of Marine Pollution (NCPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on August 24, 1988, at 9:30 AM in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the twenty-sixth session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) scheduled for September 5–9, 1988. Proposed U.S. positions on MEPC agenda item issues will be discussed.

The major items for discussion will be the following:

1. Consideration to adoption and implementation of Optional Annexes III, IV and V of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973. There are two principal issues: First, finalization of the draft revisions to Annex III (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms, or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons) including the establishment of provisions for limited quantities. Second, finalization of the U.S. prepared draft Guidelines for the Implementation of Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) of MARPOL 73/78. Progress on the U.S. initiative to seek the designation of the Gulf of Mexico as a Special Area under Annex V will also be discussed.

2. Implementation of Annex II (Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk) of MARPOL 73/78. Specifically, the establishment of guidelines for the carriage of noxious liquid substances in offshore supply vessels and dry cargo ships.

3. Implementation of Annex I (Regulations for the Prevention of Pollution by Oil) of MARPOL 73/78. Specifically, the desirability of existing specifications for oily-water separating and filtering equipment.

4. Finalization of criteria for designating particularly sensitive areas and Special Areas under MARPOL 73/78.

5. Enforcement of pollution conventions.

6. Consideration of the possible development of a new "Annex VI" of MARPOL 73/78 covering prevention of pollution by noxious solid substances carried in bulk.

7. Inter-related work of other Committees and Subcommittees.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information or documentation pertaining to the NCPMP meeting, contact either Commander D.B. Pascoe or Lieutenant G.T. Jones, U.S. Coast Guard Headquarters (G-Mer-3), 2100 Second Street, SW., Washington, DC 20593–0001, Telephone: (202) 267–0419.

Date: July 25, 1988.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88–17508 Filed 8–3–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF STATE

[Public Notice 1076]

Statement of U.S. International Air Cargo Policy

AGENCIES: Office of the Secretary, DOT; Bureau of Economic and Business Affairs, State

ACTION: Notice of statement of U.S. international air cargo policy and request for comments.

SUMMARY: This notice sets forth a proposed statement of U.S. international air cargo policy. This notice is being published in order to provide interested persons an opportunity to comment on the proposed statement. All comments received will be carefully considered before the policy statement is finalized.

DATE: Comments must be received no later than August 25, 1988.

ADDRESS: Send comments on this policy statement to Mr. Paul L. Gretch, Director, Office of International Aviation, Department of Transportation, 400 Seventh Street SW., Room 6402, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Oppler, Office of International Aviation, Department of Transportation, 400 Seventh Street SW., Room 6401, Washington, DC 20590, Telephone (202) 366–2358.

SUPPLEMENTARY INFORMATION: This statement of U.S. international air cargo policy, which was developed jointly by the Departments of State and Transportation, sets forth objectives and guidelines for use by U.S. Government officials in carrying out U.S. air cargo policy. Before this statement is finalized, the two Departments will carefully consider any comments that are received. In developing this statement, the Departments took into account the views of a variety of parties including air carriers, freight forwarders, airport operators, cities, shippers and other government agencies. The House Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation has shown particular interest in the development of this statement. The Subcommittee, chaired by Congressman James Oberstar, has held several hearings on this subject. The statement also reflects the findings and conclusions of the in-depth study of the U.S. international air cargo market completed in April 1988 by the Departments of State and Transportation.

Statement of U.S. International Air Cargo Policy

In many respects, the air cargo industry is the most dynamic and fast-changing sector of air transportation. With an increasing percentage of U.S. exports and imports moving by air, the economic importance of air cargo services is expanding rapidly. A competitive air cargo industry ensures the availability of efficient freight

services to exporters and importers, stimulates new service options and promotes trade. Competitive air cargo services also provide a stimulus to airport development, regional economies, and employment and make an important contribution to the national defense through industry participation in the Civil Reserve Air Fleet (CRAF) program.

The air cargo industry involves many participants engaged in a wide variety of cargo activities. Combination carriers, all-cargo carriers, charter specialists, firms providing door-to-door service, small package specialists, freight forwarders, airport operators, and shippers all play a role in this industry.

Air cargo services have specific qualities and requirements which are significantly different from the passenger market. Unlike passengers, air cargo moves in one direction only. Speed is critical to competitive air cargo services. Nonetheless, cargo is less sensitive to the number of stops made enroute, to the circuitry of the routing or to changes in aircraft.

Cargo is nonambulatory. Therefore, the movement and storage of air cargo on the ground is a necessary part of the air cargo business. With the growth of door-to-door service between the U.S. and other countries, the opportunity to establish sort centers and hubs, to operate or contract for pickup and delivery services and to perform take-offs and landings during nighttime hours has become increasingly important.

In order to develop an up-to-date information base and evaluate the air cargo industry's contribution to furthering broader U.S. economic objectives, the Departments of State and Transportation undertook a comprehensive study of the international air cargo industry. The findings and conclusions of the Study were carefully considered in the course of developing this statement.

The Federal Aviation Act

U.S international air cargo policy is based on the principles and objectives contained in sections 102(a), 102(b), 1102(b) and 1102(c) of the Federal Aviation Act (Act), as amended by the International Air Transportation Competition Act of 1979. (The texts of these sections are included as Appendix A to this statement.)

Section 102(a) identifies a variety of "Factors for Interstate, Overseas, and Foreign Air Transportation" that are to be considered as being "in the public interest" by U.S. authorities in carrying out the duties and responsibilities mandated by the Act.

Section 102(b) sets forth additional public interest factors aimed specifically at all-cargo services. The provisions of this section include the encouragement and development of an all-cargo air service system "responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense * * *".

Section 1102(b), added by the International Air Transportation Competition Act of 1979, establishes specific "Goals for International Aviation Policy" which the U.S. must pursue in the conduct of its aviation relations with foreign countries. These goals, some of which are similar to the public interest factors contained in section 102(a), identify "a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system * * *".

Section 1102(c) requires that in developing and implementing international aviation negotiating policy, the Secretaries of State and Transportation consult "to the maximum extent practicable" with interested parties including government agencies, airport operators, air carriers, airline labor and consumer interest groups.

Thus, the policy principles enunicated by the Federal Aviation Act identify broad public interest considerations to be taken into account in the conduct of U.S. international aviation affairs. These principles are designed to apply over a long period of time and to a wide variety of circumstances. Within this general framework, the statement of air cargo policy provides specific policy objectives and guidelines. This statement also takes into consideration cargo airlift needs of the U.S. military as expressed in the National Airlift Policy Statement. (See Appendix B of this statement.)

Policy Objectives

Consistent with the Federal Aviation Act, the findings of the International Air Cargo Study, and broader U.S. economic and security interests, the principal aims of U.S. air cargo policy are to ensure the provision of efficient, competitive air transport services for U.S. shippers and consignees and to seek expansion of opportunities for the U.S. international air cargo industry. An open, liberal operating environment serves this end by facilitating the establishment and expansion of efficient, innovative, competitive air cargo services.

Accordingly, the United States seeks to achieve the following specific objectives for all types of cargo services including scheduled and charter services:

1. Freedom of Carrier Entry

The U.S. seeks unrestricted entry into international air cargo markets for all types of U.S. cargo operators, including direct air carriers and freight forwarders. Elimination of restrictions on entry is critical if the shipping public is to enjoy fully the benefits of a competitive international aviation marketplace.

2. Routing Flexibility

The U.S. seeks maximum international routing flexibility for U.S. carriers so that they can serve intermediate and beyond points freely and efficiently utilize their hubs in the U.S. and abroad. The U.S. also seeks broader rights to change aircraft at any point on a route and to position aircraft in the most cost effective manner to serve markets that are directionally imbalanced. Increased routing flexibility expands cargo opportunities, and in some cases may be critical to the viability of a cargo operation.

3. Pricing Freedom

The U.S. seeks to establish regimes that permit airline management maximum flexibility in the setting of prices. Government intervention in air cargo pricing should be limited to exceptional cases involving unfair and/or discriminatory practices. Pricing freedom for air cargo services promotes efficiency and cost competitiveness.

4. Elimination of Restrictions on Frequency and Capacity

The U.S. seeks to eliminate governmental controls on U.S. carrier cargo capacity that restrict frequency of service, aircraft type, and/or the amount of cargo that may be carried. These restrictions impair carrier efficiency and adversely affect the availability to shippers of competitive air cargo services.

5. Efficient Ground-Side Evironment

The U.S. seeks to eliminate restrictions, impediments or unduly burdensome requirements in the ground-side enviornment that interfere with efficiency of service and a carrier's ability to compete effectively. Among the areas that U.S. aviation authorities examine closely are: (1) The rights of an airline to perform its own ground handling and to offer ground handling services to other airlines, (2) the availability of adequate warehouse facilities at reasonable cost, and (3) the efficiency of customs clearance.

6. Broad Intermodal Rights

The U.S. seeks broad rights for U.S. carriers and freight forwarders to move cargo by truck and other surface means. Intermodal rights have become particularly critical as air cargo systems have evolved to include door-to-door services.

7. Elimination of Discriminatory Practices

The U.S. insists on elimination of discriminatory practices in all aspects of international air cargo operations. Restrictions which result in discrimination deny carriers the fundamental right of fair competition; they will not be tolerated and may result in countermeasures.

Negotiating Guidelines

In seeking to further U.S. policy objectives through the negotiating process, U.S. authorities confront conflicting interests and objectives. For example, a city's desire to stimulate its local economy and promote commerce through additional air services may conflict with the U.S. airline industry's expectation that additional route rights will be offered to the carriers of a foreign country only in the context of a balanced exchange of new opportunities. Different objectives also exist between the U.S. and its aviation partners. Most foreign countries take a more regulatory and protectionist approach to international air cargo services.

Moreover, because negotiations involve issues that are complex and technical, differences in understanding can arise at the implementation stage. To minimize the possibility of such misunderstandings, U.S. negotiators will seek to commit agreements to writing and to define the terms of an agreement as precisely as possible.

The following guidelines are designed to assist U.S. negotiators in pursuing the above objectives:

1. Agreements and Proposals Will Be Evaluated in Terms of Actual Opportunities and Public Interest Factors

The value of air cargo opportunities granted to a country should be comparable to the value of opportunities available to U.S. operators in that country. In practice, air cargo opportunities conferred by an aviation agreement are only of value to the extent U.S. air cargo operators are able to capitalize on them. Key considerations in measuring actual opportunities available are the size of the air cargo market to be accessed through the agreement and the quality of the operating environment in the foreign country. The airlines of a foreign country characterized by a restrictive operating environment should be granted less access than if its environment were more open.

U.S. aviation authorities will also take into account public interest factors in considering the value to the United States of a proposed exchange of new opportunities. Key factors include: the vital importance of air services to remote locations and underutilized airports, the benefits for the local business economy of more convenient air services, and the important contribution of air cargo operators to the CRAF program.

2. Cargo Issues Merit Special Attention

Specific treatment of cargo issues in negotiations is essential. Cargo routes and routing flexibility, the pricing regime for cargo, capacity limitations (if any), the regime for cargo charters, the requirements of express traffic, and the ground-side operating environment are all matters that should be addressed. Specific treatment includes recognition of the important role combination services, including maindeck "combi" services, play in determining market shares of bilateral air cargo markets. This is particularly important in any negotiations involving restricted cargo capacity regimes.

The Government also must continue to develop expertise and commit resources to cargo issues. It must maintain a close dialogue with industry, as well as with other constituency groups affected by air cargo operations, to ensure that air cargo issues are properly addressed.

3. A Flexible Negotiating Posture Best Serves U.S. Cargo Interests

If both the foreign government and the United States are seeking new cargo opportunities that are economically comparable, then a cargo-for-cargo exchange may represent a satisfactory exchange for the two sides. In many negotiations where the U.S. is seeking new cargo opportunities, however, the foreign government involved is often primarily interested in obtaining new combination opportunities. In these cases, U.S. negotiators can maximize cargo benefits by negotiating agreements based on the leverage available—leverage that is a function of what the other side is seeking.

A flexible negotiating approach preserves the ability of the United States to pursue satisfactory resolution of cargo needs and issues, regardless of the particular circumstances. It should be emphasized, however, that trades between the passenger and cargo sectors will be entertained only when the U.S. Government determines such a trade to be in the overall interest of the United States.

4. Special Procedures May Be Necessary To Resolve Doing Business Problems

Regulations and policies of a foreign government that impede a carrier's ground-side operations have a serious impact on the competitiveness of that carrier's service. Such policies may interfere with the exercise of rights specifically conferred by a bilateral agreement and thus may represent a violation of that agreement. The United States is committed to seeking prompt resolution of such problems.

When a doing business issue arises, interested U.S. Government agencies involved will coordinate their actions to bring about a satisfactory resolution of the issue whether or not it involves a violation of bilateral agreement. U.S. authorities first will seek prompt resolution through diplomatic efforts including, if necessary, consultations with all foreign government agencies having relevant jurisdiction. When useful, the U.S. will seek to convene special working groups or task forces composed of industry representatives and U.S. and foreign government officials at an appropriately responsible level.

In cases involving actual violations of bilateral agreements where solutions are not found through diplomatic consultations, it may become necessary to take countermeasures against foreign governments or airlines.

Appendix A—Excerpts From the Federal Aviation Act

Section 102(a)—Factors for Interstate, Overseas, and Foreign Air Transportation

(a) In the exercise and performance of its powers and duties under this Act, the Board[1] shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(1) The assignment and maintenance of safety as the highest priority in air commerce, and prior to the authorization of new air transportation services, full evaluation of the recommendations of the Secretary of Transportation on the safety implications of such new services

[1] On January 1, 1985, the international functions of the Civil Aeronautics Board were transferred to the Department of Transportation. See Civil Aeronautics Board Sunset Act of 1984, Pub. L. 98-443, October 4, 1984, 49 U.S.C. 1551.

and full evaluation of any report or recommendation submitted under section 107 of this Act.

(2) The prevention of any deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of the Congress to the furtherance of the highest degree of safety in air transportation and air commerce, and the maintenance of the safety vigilance that has evolved within air transportation and air commerce and has come to be expected by the traveling and shipping public.

(3) The availability of a variety of adequate, economic, efficient, and low-price services by air carriers and foreign air carriers without unjust discriminations, undue preferences of advantages, or unfair or deceptive practices, the need to improve relations among, and coordinate transportation by, air carriers, and the need to encourage fair wages and equitable working conditions for air carriers.

(4) The placement of maximum reliance on competitive market forces and on actual and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital, taking account, nevertheless, of material differences, if any, which may exist between interstate and overseas air transportation, on the one hand, and foreign air transportation, on the other.

(5) The development and maintenance of a sound regulatory environment which is responsive to the needs of the public and in which decisions are reached promptly in order to facilitate adaption of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States, the Postal Service, and the national defense.

(6) The encouragement of air service at major urban areas in the United States through secondary or satellite airports, where consistent with regional airport plans of regional and local authorities, and when such encouragement is endorsed by appropriate State entities encouraging such service by air carriers whose sole responsibility in any specific market is to provide service exclusively at the secondary or satellite airport, and fostering an environment which reasonably enables such carriers to establish themselves and to develop their secondary or satellite airport services.

(7) The prevention of unfair, deceptive, predatory, or anticompetitive practices in air transportation, and the avoidance of—

(A) Unreasonable industry concentration, excessive market domination, and monopoly power, and

(B) Other conditions; that would tend to allow one or more air carriers or foreign air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.

(8) The maintenance of a comprehensive and convenient system of continuous scheduled interstate and overseas airline service for small communities and for isolated areas in the United States, with direct Federal assistance where appropriate.

(9) The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services.

(10) The encouragement of entry into air transportation markets by new air carriers, the encouragement of entry into additional air transportation markets by existing air carriers, and the continued strenthening of small air carriers so as to assure a more effective, competitive airline industry.

(11) The promotion, encouragement, and development of civil aeronautics and a viable, privately owned United States air transport industry.

(12) The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation.

Section 102(b)—Factors for All-Cargo Air Service

(b) In addition to the declaration of policy set forth in subsection (a) of this section, the Board,[2] in the exercise and performance of its powers and duties under this Act with respect to all-cargo service shall consider the following, among other things, as being in the public interest:

(1) The encouragement and development of an expedited all-cargo air service system, provided by private enterprise, responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense.

(2) The encouragement and development of an integrated transportation system relying upon competitive market forces to determine the extent, variety, quality, and price of such services.

(3) The provision of services without unjust discriminations, undue preferences and advantages, unfair or deceptive practices, or predatory pricing.

Section 1102(b)—Goals for International Aviation Policy

(b) In formulating United States international air transportation policy, the Congress intends that the Secretary of State, the Secretary of Transportation, and the Civil Aeronautics Board [3] shall develop a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system. This includes, among other things:

(1) The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation;

(2) Freedom of air carriers and foreign air carriers to offer fares and rates which correspond with consumer demand;

(3) The fewest possible restrictions on charter air transportation;

(4) The maximum degree of multiple and permissive international authority for United States air carriers so that they will be able to respond quickly to shifts in market demand;

(5) The elimination of operational and marketing restrictions to the greatest extent possible;

(6) The integration of domestic and international air transportation;

(7) An increase in the number of nonstop United States gateway cities;

(8) Opportunities for carriers of foreign countries to increase their access to United States points if exchanged for benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away;

(9) The elimination of discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including excessive landing and user fees, unreasonable ground handling requirements, undue restrictions on operations, prohibitions against change of gauge, and similar restrictive practices; and

(10) The promotion, encouragement, and development of civil aeronautics

[2] See footnote 1 of this Appendix A.

[3] See footnote 1 of this Appendix.

and a viable, privately owned United States air transport industry.

Section 1102(c)—Consultation With Affected Groups

(c) To assist in developing and implementing such an international aviation negotiating policy, the Secretaries of State and Transportation and the Civil Aeronautics Board [4] shall consult, to the maximum extent practicable, with the Secretary of Commerce, the Secretary of Defense, airport operators, scheduled air carriers, charter air carriers, airline labor, consumer interest groups, travel agents and tour organizers, and other groups, institutions, and government agencies affected by international aviation policy concerning both broad policy goals and individual negotiations.

Appendix B—National Airlift Policy Statement (National Security Decision Directive 280)

Key objectives and policies of the National Airlift Policy Statement which are significant to the U.S. international air cargo policy are as follows:

* * * The national defense airlift objective is to ensure that military and civil airlift resources will be able to meet defense mobilization and deployment requirements in support of US defense and foreign policies * * *

* * * The broad purpose of this directive is to provide a framework for implementing actions in both the private and public sectors that will enable the US efficiently and effectively to meet established requirements for airlift in both peacetime and in the event of crisis or war * * *.

1. United States policies shall be designed to * * * enhance the mobilization base of the U.S. commercial air carrier industry * * *.

4. * * * It is therefore the policy of the United States to recognize the interdependence of military and civilian airlift capabilities in meeting wartime airlift requirements, and to protect those national security interests contained within the commercial air carrier industry * * *.

8. The Department of State and other appropriate agencies shall ensure that international agreements and federal policies and regulations governing foreign air carriers foster fair competition, safeguard important US economic rights and protect U.S. national security interests in commercial cargo capabilities. * * *

9. United States aviation policy, both international and domestic, shall be designed to strengthen the nation's airlift capability and where appropriate promote the global position of the United States aviation industry.

Approved: July 28, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs, Department of Transportation.

Eugene J. McAllister,

Assistant Secretary for Economic and Business Affairs, Department of State.

[FR Doc. 88-17504 Filed 8-3-88; 8:45am]

BILLING CODE 4710-07-M

[4] See footnote 1 of this Appendix.

Federal Highway Administration

Environmental Impact Statement; Santa Clara and San Benito Counties, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Santa Clara and San Benito Counties, California.

FOR FURTHER INFORMATION CONTACT: Dave Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California, 95812-1915, Telephone: (916) 551-1314, or R.D. Lemmon, Study Manager, State of California, Department of Transportation, Transportation Studies Branch, P.O. Box 7310, San Francisco, California, 94120-7310, Telephone (415) 557-9150.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation will prepare a draft environmental impact statement covering alternative transportation development proposals in the State Route 152 corridor in Santa Clara and San Benito Counties from Uvas Creek, west of Gilroy, Santa Clara County passing through portions of San Benito County to the junction of State Routes 152 and 156 in Santa Clara County, a distance of approximately 17 miles. Transportation improvements are needed in the area to relieve existing and anticipated traffic congestion on highways and streets in the corridor.

Alternatives to be considered, in addition to doing nothing or transportation system management projects, (low cost improvements to existing transportation systems), include the construction of a freeway, expressway, conventional highway, or combination thereof on various alignments.

A public information open house to gather information was held on May 6, 1987 in the City of Gilroy Council Chambers. Additional meetings for scoping purposes will be scheduled with interested parties as early as appropriate or as requested.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties including the views of agencies which may have knowledge about historic resources potentially affected by the proposal or interested in the effects of the project on historic properties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: July 26, 1988.

Dave L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 88-17511 Filed 8-3-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; City of Fort Worth; Tarrant County; Johnson County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Tarrant County and Johnson County, Texas.

FOR FURTHER INFORMATION CONTACT: W.L. Hall, Jr., P.E., District Engineer, Federal Highway Administration, Federal Office Building, Room 826, 300 East Eighth Street, Austin, Texas 78708, Telephone: (512) 482-5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (DHT), intends to prepare an Environmental Impact Statement (EIS) on a proposal to extend State Highway 121 (SH121) on new alignment and right-of-way from Interstate Highway 20 (IH20) to State Highway 174 (SH174) in the City of Fort Worth; Tarrant County and Johnson County, Texas. This proposed highway segment forms the South Section of a proposed extention of SH121 from Interstate Highway 35W (IH35W) to

SH174. Previous documentation efforts on the South Section have consisted of an Environmental Assessment (EA) encompassing four alternative alignments for the proposed facility. Companion documentation is being prepared separately for the North Section of the proposed facility.

The Environmental Impact Statement will assess a variety of alternatives for route selection of the proposed project. The entire project would be on new alignment. It would traverse portions of the City of Fort Worth in Tarrant County and portions of Johnson County north of the City of Cleburne. The entire South Section would be designated as a controlled access facility, and would have continuous frontage roads except at railroad crossings. Four alternative route alignments are being studied for this highway section, in addition to the "no-build" alternative. The longest alternative totals approximately 21.5 miles in length.

The proposed facility will provide a long-needed north-south controlled access highway between the rapidly growing areas of Southwest Fort Worth/Tarrant County, the Cleburne area in Johnson County, and beyond to the counties south and west of Johnson County. The proposed facility has been an integral part of regional transportation plans since the mid-1970's. These plans include a network of local arterial roadways which would intersect with the north-south SH121 alignment.

In combination with the proposed North Section of SH121 which would connect the South Section from IH20 to IH35W and the existing Airport Freeway (SH121) just northeast of the Fort Worth Central Business District, the proposed facility would further provide needed access to Dallas-Fort Worth International Airport and major growth centers in North Tarrant County.

The Dallas-Fort Worth consolidated Metropolitan Statistical Area (CMSA), or "Metroplex", with a current (1986) estimated population of 3.6 million, is estimated by the North Central Texas Council of Governments (NCTCOG) to increase to 5 million by the year 2010. This represents an increase of 40%. Total Metroplex employment during the period 1986–2010 is projected to increase by 52 percent, from less than 2.2 million to over 3.3 million. M/PF Research, Inc., has projected that the Fort Worth-Arlington (Tarrant County) portion of the Metroplex will have at least a short-term growth rate twice that of the remainder of the Metroplex, including Dallas.

The highway section under study will connect the Cities of Fort Worth (Inc.) (1980 population 385,164), Crowley (Inc.) (1980 population 5,852), Burleson (Inc.) (1980 population 11,734), Joshua (Inc.) (1980 population 1,470), and Cleburne (Inc.) (1980 population 19,218).

Traffic projections for the year 2010 show an Average Daily Total (ADT) traffic demand for the proposed SH121 facility of 130,000 at IH35W, and 140,500 at the IH20 interchange, with decreasing amounts for southern portions of the proposed facility. The South Section of the proposed facility thus will be serving two purposes: (1) To relieve congestion on existing facilities in the Tarrant County portion of the corridor and, (2) to provide for continuing growth and commuter-recreational-agricultural access needs in Johnson County and beyond.

The proposed facility will safely and efficiently provide for the transportation needs of the area. It will alleviate congestion and delays and will provide adequate future access to housing, businesses, employment, public health and safety facilities, schools, churches, and other transportation modal facilities.

Because of the difficulty in predicting availability of funds, the DHT has not yet decided whether to use State or Federal funds to finance construction of this project.

Coordination with the communities and with public officials has been initiated and will continue. A public meeting was held on November 12, 1987 within the vicinity of the project. A public hearing will follow at a later date. Adequate notice will be given through the news media concerning the time and location of formal public involvement proceedings.

Prior to the onset of construction, the Environmental Impact Statement and records of associated public involvement process will be reviewed by appropriate agencies. Construction of the proposed project is anticipated within the next ten years.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: July 20, 1988.

W.L. Hall, Jr.,

District Engineer, Austin, Texas.

[FR Doc. 88-17505 Filed 8-3-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 29, 1988

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0120.

Form Number: 1099-G.

Type of Review: Extension.

Title: Statement for Recipients of Certain Government Payments.

Description: Form 1099-G is used by governments (primarily state and local) to report to the IRS (and notify recipients of) certain payments (e.g., unemployment compensation and income tax refunds). We use the information to insure that the income is being properly reported by the recipients on their returns.

Respondents: State or local governments, Federal agencies or employees.

Estimated Number of Respondents: 3,879.

Estimated Burden Hours Per Response: 2 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,042,865 hours.

OMB Number: 1545-0123.

Form Number: 1120, Schedule D (Form 1120, Schedule PH (Form 1120).

Type of Review: Revision.

Title: U.S. Corporation Income Tax Return; Capital Gains and Losses; Computation of U.S. Personal Holding Company Tax.

Description: Form 1120 is used by corporations to compute their taxable income and their liability. Schedule D (Form 1120) is used by corporations to

report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 2,294,081.

Estimated Burden Hours Per Response: 1120: 9 hours and 40 minutes.

Schedule D (Form 1120): 1 hour and 17 minutes.

Schedule PH (Form 1120): 2 hours and 31 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 29,494,027 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-17545 Filed 8-3-88 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement To Department Circular—Public Debt Series—No. 19-88]

Treasury Notes, Series AD-1990

Washington, July 28, 1988.

The Secretary announced on July 27, 1988, that the interest rate on the notes designated Series AD-1990, described in Department Circular—Public Debt Series—No. 19-88 dated July 21, 1988, will be 8⅜ percent. Interest on the notes will be payable at the rate of 8⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-17522 Filed 8-3-88; 8:45 am]

BILLING CODE 4810-40-M

[General Counsel Designation No. 152]

Appointment of Members of the Legal Division to the Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101-5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—

Jeanne S. Archibald, Deputy General Counsel, who shall serve as Chairperson;
Selig S. Merber, Assistant General Counsel (Enforcement);
Kenneth R. Schmalzbach, Assistant General Counsel (Administrative & General Law);
Paul Allan Schott, Chief Counsel, Office of the Comptroller of the Currency;
Leonard B. Terr, International Tax Counsel;
Marvin J. Dessler, Chief Counsel, Bureau of Alcohol, Tobacco, and Firearms; and
Michael T. Schmitz, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—

Chairperson, Deputy Chief Counsel, IRS;
Deputy General Counsel;
Two Associate Chief Counsel, IRS; and
Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Date: July 29, 1988.

Mark Sullivan III,

General Counsel.

[FR Doc. 88-17546 Filed 8-3-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

US/USSR High School Pairing Program

The United States Information Agency invites applications from private organizations to conduct a program of youth exchanges between the United States and the USSR.

Objectives

To establish linkages between US and Soviet high schools for the purpose of promoting educational exchanges of groups including students and teachers.

To promote mutual understanding between the peoples of the US and the USSR.

Scope

The program seeks to pair 100 American public and private high schools with 100 Soviet secondary schools over a three-year period and to initiate, expand and maintain annual two-way exchanges between all participating schools by the end of the period of this initiative. The program will be financed by US Government funds, USSR Government funding, contributions from US corporations and foundations, and from participating schools, students and communities. It is anticipated that exchanges will be self-sustaining after the three-year initiative ends.

The Agency seeks proposals from not-for-profit exchange and educational organizations to implement the High School Pairing project.

Program

Bilateral exchanges will begin as 5-week visits of student groups with a teacher escort during the academic year; it is anticipated that 25 pairs of schools will be able to implement exchanges by the spring of 1989.

At a minimum each school will: (1) Enhance, or by the third year have developed a program of language studies in order to generate a pool of students qualified to communicate in the language of the host country; (2) develop an extensive orientation program designed to prepare outbound US students for the exchange experience; (3) prepare an orientation program for foreign incoming students; and (4) plan and implement an annual exchange with its partner school. It is anticipated that the initial exchanges will be of groups of no less than 10 students from the same school and one teacher/escort. Each group will spend five weeks in the host country, four in the partner school and the fifth week split between two cities in the host country; generally there will be a 2-3 day period of orientation in the receiving country prior to the visit to the host school, and a 4-5 day period of travel to the additional city or cities at the end of the visit.

In the first year approximately 25 schools on each side will engage in exchanges. In the second and third years the number will increase to involve all 100 pairings. Starting with the 2nd year of the program participating schools have the option to expand the length of stay and develop alternate exchange opportunities, such as semester and year-long exchanges.

All exchanges will take place during the school year. Summer exchanges when schools are not in session are not acceptable. Sending and hosting between paired schools should take place at different times, so that the students who will travel will be present in their home school when their counterparts visit.

The exchange should result in extensive interaction between the

visiting students/faculty and the community. Wherever possible, they should be housed with host families. In the case of boarding schools, it is desirable for the host school to identify and assign sponsoring families in the community who will be responsible for providing some home hospitality (evenings and weekends). Hotel stays may be used only where absolutely necessary and again in partnership with hospitality families.

The school and community will also arrange for participation in cultural events, historical visits, tours, religious and social life, extra-curricular school activities, and local/state government.

The school should also plan a program for the accompanying teacher/escort relevant to the objectives of this initiative.

American schools selected for participation in this program that do not currently teach Russian will be expected to develop a Russian language studies curriculum during the course of the three years, so that students competent in Russian may participate in exchanges by year three. It is anticipated that all participating Russian schools will have established English-teaching programs.

Organization/Administration

In the Soviet Union the responsible agency is the State Committee on Public Education.

In the US one private organization will be selected by USIA as the principal coordinator of the program and fiscal agent for contributed funds. The relationship between USIA and the grantee organization will be that of a "cooperative agreement" to allow for extensive interaction between the two parties on all aspects of the program. USIA may also make secondary grants to other organizations as necessary to implement the program.

The principal grantee organization may work in concert with one or more other organizations in the implementation of this program. The proposal from any combination or consortium of organizations must identify one member as the fiscal agent. Subcontracting to other not-for-profit organizations is permissable. Such subcontracting must be identified in the proposal. Subcontracting subsequent to the grant award will be subject to Agency approval.

The grantee organization will be responsible for:

—Selection of US schools-The organization will prepare criteria for selection with USIA concurrence.
—Liaison with the Soviet counterpart agency in all program matters, especially in matching US and Soviet schools, dates for exchanges, financial arrangements, logistics, etc.
—Organizing workshops for school coordinators.
—Preparation of criteria for selection of student participants.
—Consultation with the Soviet agency on ways to enhance English language teaching and American studies in Soviet schools, in consultation with recognized experts in this field. IN conjunction with this activity, in the first year of the initiative the organization may wish to plan joint activities of American and Soviet specialists to address curriculum issues.
—Preparation of orientation materials for both American and Soviet students, in close consultation with USIA.
—Preparation of briefing materials for American host families.
—Health and accident insurance coverage for participants.
—Facilitation of visas for American participants; preparation of IAP 66 forms for Soviet participants (all will travel on J-1 visas).
—Provisions of administrative support and travel arrangements for all aspects of this program, including inbound and outbound delegations of administrators, consultants, et al.
—Public information.

It is anticipated that the grantee organization will need at a minimum one full-time national program coordinator. It will also be necessary for the US organization to have a coordinator in Moscow at key times to assist with logistics, maintain daily contact with the State Committee, and in general provide a base of operations.

Funding

The initial grant (in the form of a "cooperative agreement") will be to set up the administrative machinery to launch the program and implement the first round of exchanges during the period from September 15, 1988, to April 30, 1989. Subject to the availability of funding, the U.S. Government may eventually commit up to $1,000,000 over the three-year period of this initiative. USIA funds may be used for both administrative and program expenses. Although it is expected that American students will normally pay their own travel, partial scholarships (principally for travel subsidies) for needy students may be included in the request for funds.

All funding will be handled on a reciprocal non-currency basis. The program will serve equal numbers of participants on both sides each year. In order to assist in planning, both sides will agree on a minimum number of participants that will be exchanged each year. The sending side will pay all travel of its participants to the port of entry in the host country and any programming prior to the exchange (e.g., orientation). The receiving side will pay all host-country costs including domestic travel for the incoming groups, per diem, allowances, health and accident insurance, cultural activities, etc.

Requirements For Application

USIA is seeking a private organization or organizations to fulfill the functions described above.

(Note: proposals from individual schools or school districts are not eligible)

Proposals should address the following qualifications:

1. Not-for-profit educational and/or exchange organization.

2. Experience on Soviet exchanges and in working with exchange programs in the Soviet Union.

3. A base of operations in the Washington area.

4. The proven ability to work effectively with and gain the respect and trust of American public and private high schools; preferably a national network of contacts with schools.

5. The ability to set up and run a cost-effective administrative operation.

In order to be eligible for review the proposal must include:

(1) *Summary document:* a typed double-spaced abstract of approximately two pages.

(2) *Narrative:* Total text not to exceed fifteen (15) typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions; information on the applicant's prior experience with Soviet exchanges; and a description of the institution's resources that would support the program.

b. A detailed description of the proposed program, with special emphasis on the method of selecting US schools and matching them with Soviet schools, the approach to orientations, and approach to in-school preparation activities.

c. A timetable for project activities.

d. A plan for institutional evaluation of the exchange activity.

(3) A detailed three-column budget outlining specific expenditures and sources from which funds are anticipated. The budget should include any in-kind and cash contributions to the program made by the U.S. and non-U.S. institutions. The following items should include specific break downs:

—*Salaries*: Annual salary X percent of time X number of months.
—*Fringe benefits*: Explain the component elements.
—Other administrative costs.
—Indirect costs—may be expressed as a percentage only where an approved indirect cost rate agreement with the government is extant.
—*Per diem*: Use a maximum of $85 for students and $105 for adults for other than homestay periods. During homestays the receiving side will provide the incoming students with an allowance of $5–10 a day.
—*Orientation costs*: Materials, room rental, honoraria, etc.
—Scholarships.

(4) Appendices:

—Bio-sketches (curricula vitae) on principal project staff.
—Evidence of insurance coverage.
—Most recent financial statement.
—Articles of incorporation.
—Proof of tax exemption.
—List of current board of directors.
—Indirect cost rate agreement (if applicable).

Applicants should submit an original and twelve (12) copies of their proposals.

Criteria For Judging Proposals

The following criteria will be used to judge proposals submitted in response to this announcement:

—Cost-effectiveness—the best return on each federal dollar invested; reasonableness of costs in comparison to other proposals.
—Cost-sharing—the ratio of federal dollars to other contributed costs.
—Creativity in matching the proposed program to this design.
—Capability of the organization in meeting the eligibility requirements.

Review Process

The deadline for receipt of proposals in USIA is August 16, 1988.

USIA will review all proposals and make decisions on funding by September 1. Funding will be available by September 15.

For further information please contact Robert Persiko, Acting Director, Youth Exchange Staff, USIA, 301 4th Street SW., Washington, DC 20547; telephone, 202–485–7299.

Dated: August 1, 1988.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 88–17574 Filed 8–3–88; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 150
Thursday, August 4, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FEC To Hold Open Commission Meeting, Thursday, August 4, 1988

July 28, 1988.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 4, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Amendment of Part 2, of the commission's Rules Regarding the Allocation of the 216–225 MHz band. Summary: In this proceeding, the Commission considers whether to provide a primary allocation to the amateur, fixed or mobile services, in the 216–225 MHz band.

Private Radio—1—Title: Petitions for waiver and extension of the provisions of § 94.51(a) of the Commission's Rules. Summary: The Commission will consider requests by Associated Information Services and Digital Radio Network, Inc., that it waive its requirement that microwave stations be placed into operation within one year.

Mass Media—1—Title: Public Notice reminding licensees and cablecasters of their political programming obligations. Summary: The Commission will consider the adoption of a Public Notice which would remind broadcasters and cablecasters of their obligations under the lowest unit charge provision of the Communications Act [47 U.S.C. 315(b)], and their obligation to maintain a "political file" [47 CFR 73.1940(d) and 76.209(d)].

Mass Media—2—Title: Review of the Technical and Operational Requirements of Part 76, Cable Television. Summary: The Commission will consider whether to adopt a Further Notice of Proposed Rule Making to address possible changes to its rules concerning cable system technical signal quality.

Mass Media—3—Title: Amendment of Part 76, Subpart J, § 76.501 of the Commission's Rules and Regulations on Common Ownership of Cable Television Systems and National Networks. Summary: The Commission will consider further action on the existing Notice of Proposed Rule Making.

Mass Media—4—Title: Amendment of Part 73, Subpart E, § 73.658(c) of the Commission's Rules and Regulations concerning the Two-Year Limitation of the Term of Network-Affiliate Contracts. Summary: The Commission will consider whether to initiate a notice and comment proceeding reexamining this rule.

Mass Media—5—Title: In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service; Review of Technical and Operational Requirements: Part 73–E, Television Broadcast Stations; Reevaluation of the UHF Television Channel and Distance Separation Requirements of Part 73 of the Commission's Rules. Summary: The Commission will consider further action in this proceeding on the technical, economic, legal, and policy issues relating to authorizing and establishing an advanced television system for terrestrial broadcasting.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commision.

H. Walker Feaster III,

Acting Secretary.

Issued: July 28, 1988.

[FR. Doc. 88–17670– Filed 8–2–88; 2:03 p.m.]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:36 a.m. on Wednesday, July 27, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) a personnel matter; and (2) requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 1, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–17619 Filed 8–1–88; 4:51 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:38 a.m. on Friday, July 29, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: August 1, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–17620 Filed 8–1–88; 4:51 pm]

BILLING CODE 6714-01-M

federal register

Thursday
August 4, 1988

Part II

Office of Management and Budget

Budget Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report two revised deferrals of budget authority now totalling $610,581,549.

The deferrals affect programs in the Department of Defense—Civil and Funds Appropriated to the President.

The details of these deferrals are contained in the attached report.

Ronald Reagan.

The White House,

July 29, 1988.

BILLING CODE 3110-01-M

1

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D88-21A	Military assistance.....	609,186
	Department of Defense, Civil:	
D88-9B	Wildlife conservation.....	1,396
	Total, deferrals.....	610,582

SUMMARY OF SPECIAL MESSAGES
FOR FY 1988
(in millions of dollars)

	RESCISSIONS	DEFERRALS
Fourth special message:		
New items	---	---
Revisions to previous special messages	---	1,611
Effects of fourth special message	---	1,611
Amounts from previous special messages that are changed by this message (changes noted above)	---	608,971
Subtotal, rescissions and deferrals	---	610,582
Amounts from previous special messages that are not changed by this message	---	8,700,999
Total amount proposed to date in all special messages	---	9,311,581

D88-21A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-21 transmitted to Congress on February 19, 1988.

This increases by $1,000,000 the previous deferral of $608,186,000 in the Military assistance fund, Funds Appropriated to the President, resulting in a total deferral of $609,186,000. The increase in the amount deferred is to correct a clerical error in the preparation of the previous report. The deferral is now $298,185,000.

Deferral No: D88-21A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....$** 700,750,000 (P.L. 100-202)
Bureau: International Security Assistance	**Other budgetary resources...$**
Appropriation title and symbol:	**Total budgetary resources...$** 700,750,000
Military assistance 1/	**Amount to be deferred:**
	Part of year.....*$ 609,186,000
1181080	**Entire year.....$**
OMB identification code:	**Legal authority (in addition to sec. 1013):**
11-1080-0-1-152	[X] Antideficiency Act
Grant program:	[ ] Other
[ ] Yes [X] No	
Type of account or fund:	**Type of budget authority:**
[X] Annual	[X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1987 (D87-23).

* Revised from previous report.

D88-9B

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-9A transmitted to Congress on February 19, 1988.

This revision to a deferral of the Department of Defense - Civil, Wildlife conservation account increases the amount previously reported from $785,035 to $1,395,549. This increase of $610,514 results from the deferral of additional actual carryover from 1987.

Deferral No: D88-9B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Civil Bureau: Wildlife Conservation, Military Reservations 1/	**New budget authority.....*$** 2,152,160 (16 U.S.C. 670F) **Other budgetary resources..*** 1,575,677 **Total budgetary resources..*** 3,727,837
Appropriation title and symbol: Wildlife Conservation, Army 21X5095 Wildlife Conservation, Navy 17X5095 Wildlife Conservation, Air Force 57X5095	**Amount to be deferred:** Part of year..... $ Entire year.....* 1,395,549
OMB identification code: 97-5095-0-2-303 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Amount Deferred
*Wildlife Conservation, Army.....	21X5095	21-5095-0-2-303	$1,098,485
Wildlife Conservation, Navy.....	17X5095	17-5095-0-2-303	56,000
Wildlife Conservation, Air Force.....	57X5095	57-5095-0-2-303	241,064
			1,395,549

Justification: *These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These funds are being deferred because: (1) the authorizing legislation states that installations may accumulate funds over a period of time to fund a major project, (2) each installation may be designing and obtaining approval for projects, and (3)

1/ These accounts were the subject of a similar deferral in 1987 (D87-88).

* Revised from previous report.

D88-9B

there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 88-17621 Filed 8-3-88; 8:45 am]
BILLING CODE 3110-01-C

Federal Register

Thursday
August 4, 1988

Part III

Environmental Protection Agency

40 CFR Part 304

Arbitration Procedures for Small Superfund Cost Recovery Claims; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 304

[FRL-3307-3]

Arbitration Procedures for Small Superfund Cost Recovery Claims

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Pursuant to sections 107(a) and 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), and Executive Order 12580, the Environmental Protection Agency ("EPA") is proposing today a rule which would establish and govern the procedures for EPA's arbitration of small CERCLA section 107(a) cost recovery claims. This rule would implement EPA's authority under section 122(h)(2) of CERCLA, which authorizes the head of any department or agency with authority to undertake a response action under CERCLA to use arbitration as a method of settling CERCLA section 107 claims for recovery of response costs incurred by the United States pursuant to section 104 of CERCLA, when the total response costs for the facility concerned do not exceed $500,000, excluding interest.

DATE: Comments must be submitted on or before October 3, 1988.

ADDRESSES: Comments should be addressed to Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, Room M3614B, Mail Code LE-134S, 401 M Street SW., Washington, DC 20460. The public docket for this proposed rule is located in Room M3614B, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, Room M3614B, Mail Code LE-134S, 401 M Street SW., Washington, DC 20460, (202) 382-3077.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are set forth in the following form:

I. Introduction

Section 122(h)(2) of CERCLA provides EPA, as well as any other department or agency authorized to undertake a response action under CERCLA, with authority to promulgate regulations, after consultation with the Attorney General, for the use of arbitration as a method of settling CERCLA section107 claims for recovery of response costs incurred by the United States pursuant to section 104 of CERCLA. This authority is limited to cases in which the total response costs for the facility concerned do not exceed $500,000, excluding interest. EPA propses to implement its authority under section 122(h)(2) of CERCLA through this regulation.

This regulation would establish and govern the procedures for EPA's arbitration of CERCLA section 107 cost recovery claims. Arbitration may be used when the total past and projected response costs for the facility concerned do not exceed $500,000, excluding interest, and when EPA and one or more potentially responsible parties ("PRPs") at a facility voluntarily agree to submit one or more issues arising in an EPA cost recovery claim for resolution by binding arbitration. The procedures require EPA and the participating PRPs to set forth the issues they wish to be resolved by the arbitrator. The procedures, therefore, permit the parties to use arbitration to address some or all of the issues that arise in a cost recovery action, *e.g.*, whether any of the participating PRPs are liable under section 107(a) of CERCLA, whether EPA's response costs were incurred in a manner which was not inconsistent with the National Contingency Plan ("NCP"), 40 CFR Part 300, and how responsibility for payment of response costs awarded to EPA by the arbitrator should be allocated among the participating PRPs. To ensure that the arbitration results in full resolution of the claim, any issues arising in the claim that are not submitted for arbitration are deemed to be not in dispute and may not be raised later to avoid payment of the award.

EPA believes that binding arbitration, an alternative dispute resolution technique, will provide a useful method for reaching settlements with PRPs in appropriate small cost recovery cases. It offers both the Agency and PRPs an alternative to traditional litigation and negotiations, which is relatively quick and inexpensive, and which results in a binding and conclusive decision arrived at by a neutral third party within a set period of time. The Agency believes that arbitration will be most beneficially used in routine cases that do not present issues of national or precedential significance. In such cases, arbitration offers the Agency an expedited means of seeking replenishment of the Superfund without the expenditure of the large amounts of enforcement resources often necessary to litigate a cost recovery claim. In such cases, arbitration similarly offers the PRPs an expedited and potentially less costly means of resolving their liability for reimbursement of the Government's response costs. The Agency also believes that arbitration will be most efficiently used when a large percentage of the PRPs at the facility agree to participate.

II. Summary of Proposed Rule

This part of the preamble will present an overview of each of the four subparts of the proposed rule. While the Agency is interested in receiving comments from PRPs and the public on all aspects of this proposal, this summary will highlight particular issues on which EPA is most interested in receiving comments.

A. Subpart A

Subpart A of the proposed rule outlines the purpose, scope, and applicability of the regulation and defines terms used throughout the regulation. Subpart A explains that the regulation establishes and governs the procedures for arbitration, under section 122(h)(2) of CERCLA, of EPA claims for recovery, under section 107(a) of CERCLA, of response costs incurred at a facility by the United States pursuant to section 104 of CERCLA. The subpart further explains that, in accordance with section 122(h)(2) of CERCLA, the procedures may be used when the total past and projected response costs for the facility concerned do not exceed $500,000, excluding interest.

B. Subpart B

Subpart B of the rule defines the jurisdiction of the arbitrator and outlines the procedures for the referral of claims for arbitration and for the appointment of the arbitrator. With regard to referral of claims, the subpart provides that if EPA believes that a claim is appropriate for arbitration, EPA will notify all identified PRPs for the facility and offer them an opportunity to discuss referral for arbitration of one or more issues

arising in the claim. Alternatively, one or more PRPs for the facility may propose use of arbitration to EPA, after which either the PRPs or EPA shall, if practicable, invite remaining site PRPs to discuss use of arbitration. EPA and one or more PRPs may thereafter submit a joint request for arbitration which defines the issues being submitted for resolution, and, among other things, contains the parties' consent to arbitration pursuant to this rule, agreement to be bound by the resulting decision and to pay any award made therein, and agreement that the statute of limitations governing EPA's claim will be extended during the proceeding and any enforcement actions arising therefrom. With regard to the statute of limitations, the subpart also provides that the statute of limitations shall be extended during the arbitration and any enforcement actions relating thereto. The Agency interprets CERCLA as allowing extension of the statute of limitations during the arbitration process so that EPA may pursue arbitration without precluding its ability to proceed through judicial action if necessary.

Subpart B also explains the arbitrator's jurisdiction. It provides that the arbitrator may resolve one or more issues presented in an EPA cost recovery claim when EPA and one or more PRPs at the facility concerned have submitted a joint request for arbitration and when the total response costs for the facility do not exceed the dollar limitation described in part II(A) above. If the total past and projected response costs for the facility concerned increase to an amount that exceeds $500,000, excluding interest, prior to the rendering of the final arbitral decision, the parties may agree to continue the proceeding as non-binding arbitration. In such event, the arbitrator's proposed decision may be adopted by the parties as an administrative cost recovery settlement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), subject to the prior written approval of the Attorney General or his designee and a thirty-day public comment period. All procedures contained in Part 304 shall apply to the non-binding arbitration, except for §304.33(e), which addresses public comment on the proposed arbitral decision, and § 304.40, which covers effect and enforcement of the final arbitral decision. These two sections are excluded because the non-binding arbitral decision will be treated as a standard CERCLA section 122(h)(1) administrative cost recovery settlement. Accordingly, section 122(i) of CERCLA will provide the public comment requirements (instead of § 304.33(e) of the rule), and the effect and enforcement of the settlement will be governed by sections 122(h)(3) and 122(h)(4) of CERCLA.

Although the proposed rule contains this provision for converting the proceeding to non-binding arbitration if the $500,000 cost limitation is exceeded, the Agency does not anticipate that this procedure will be invoked often. This is because EPA does not intend to use arbitration under this rule unless and until it can establish, with reasonable accuracy and certainty, the total amount of response costs incurred and to be incurred at the site. Thus, prior to entering into a joint request for arbitration, the Agency will have fully documented the United States' past costs at the site. It will also have obtained sufficient information about the site to determine, with reasonable certainty, that no additional response action will be necessary, or that any additional response action will not bring the total response costs to over $500,000, including the cost of the arbitration. As a general matter, the Agency anticipates that the CERCLA section 122(h)(2) arbitration authority will be confined to use at sites at which a removal action has been performed at a total cost of less than $500,000, and at which the Agency does not anticipate, based on available information, that any further response action will be required except for minor additional work to monitor or maintain the site, which will not bring the total costs to over $500,000.

Subpart B further explains that the arbitrator may resolve only those issues that are presented for resolution by the parties in their joint request for arbitration. Issues that are not submitted by the parties for resolution, however, are deemed by the rule to be not in dispute and may not be raised as a defense to payment of the arbitrator's award. If the liability of one or more of the participating PRPs is presented for resolution, subpart B directs the arbitrator to determine whether that (or those) PRP(s) are liable under section 107(a) of CERCLA, subject only to the defenses contained in section 107(b) of CERCLA. If the dollar amount of response costs incurred by the United States is presented for resolution, the subpart directs the arbitrator to determine the total dollar amount of response costs recoverable under section 107 and to award that amount to EPA. Persons found liable under section 107 are, if the actual or threatened harm is indivisible, jointly and severally liable for all response costs incurred and to be incurred in connection with the facility concerned.

Under this proposed rule, there are three ways that joint and several liability may be addressed. First, the joint request for arbitration may ask the arbitrator to determine if the participating PRPs are liable under section 107, without providing further direction. In such instances, the rule directs the arbitrator to find all participating PRPs that he or she determines to be liable, jointly and severally liable, unless the arbitrator finds that the harm at the facility is divisible. If the arbitrator finds divisible harm, he or she is directed by the rule to allocate liability for payment of EPA's award in proportion to the harm attributable to each participating PRP.

Second, the joint request for arbitration may ask the arbitrator to determine liability, and, notwithstanding the applicability of the joint and several liability standard, may request the arbitrator to allocate responsibility for payment among the participating PRPs whom the arbitrator finds liable. In such cases, the rule allows the parties to specify in the joint request the factors to be applied by the arbitrator when performing the allocation. If the parties do not specify the factors, the arbitrator is directed to consider such factors as the arbitrator considers relevant, in his or her sole discretion, such as volume, toxicity, and mobility of the hazardous substances contributed to the facility by each participating PRP, ability to pay, and inequities and aggravating factors. The rule also offers the parties the option of specifying in the joint request that the arbitrator may allocate less than 100% of response costs awarded to EPA among the participating PRPs, or of having the arbitrator allocate 100% of such costs. EPA has included this opinion even though, under established case law, the United States is entitled to full recovery of all allowable response costs from liable PRPs. *See United States* v. *NEPACCO*, 810 F.2d 726, 747 (8th Cir. 1986). This is because the Agency seeks to encourage PRPs to use arbitration even if less than all site PRPs are participating, certain PRPs at the site are non-viable, or a portion of the waste at the site is unaccounted for. Whether EPA will agree to use this option in light of the availability of the joint and several liability standard should the case go to litigation will be determined on a case-specific basis. In any event, the rule places the burden of proving the appropriate allocation of responsibility upon the participating PRPs.

The third way that joint and several liability may be addressed under the

proposed rule is as follows. The parties, in the joint request, may ask the arbitrator to perform a binding allocation without submitting the issue of liability for arbitration. In such cases, the arbitrator will allocate responsibility for payment without rendering a decision on liability. Under this third alternative, the parties again have the options of (1) specifying the factors to be applied by the arbitrator or using the factors set forth in the rule as described above, and (2) specifying that less than all costs awarded to EPA may be allocated or using the 100% allocation method contained in the rule. As in the second joint and several liability option, the burden of proving the appropriate allocation rests with the participating PRPs.

In sum, without waiving the general applicability of the joint and several liability standard, the rule provides certain allocation alternatives that EPA may agree to use in appropriate cases to provide added incentive for use of arbitration. Despite the availability of these alternatives, the Agency realizes that use of arbitration for allocation issues will most often be pursued when the major PRPs at the site are represented in the proceeding. The Agency also expects that it will use arbitration only when the participating PRPs are capable of paying all costs awarded to EPA.

EPA is interested in receiving comments on the scope of issues which may be presented for resolution by arbitration, on whether allocations should be performed by the arbitrator, and on the options for addressing joint and several liability outlined above.

If any issue concerning the adequacy of EPA's response action is submitted for resolution or arises during the arbitrator's determination of the dollar amount of response costs recoverable by EPA, consistent with section 107 of CERCLA, subpart B requires the arbitrator to uphold EPA's selection of the response action unless any participating PRP can establish that the selection was inconsistent with the NCP. Consistent with section 113(j) of CERCLA, the arbitrator's review will be based upon the documents compiled by EPA which formed the basis for the selection of the response action under an arbitrary and capricious standard of review. If EPA's response action selection is upheld, the arbitrator is required to review EPA's costs on an arbitrary and capricious standard and to award EPA all costs incurred or to be incurred in connection with the response action, unless the participating PRPs can establish that all or part of such costs were: (1) Not actually incurred or to be incurred; or (2) not actually incurred or to be incurred in connection with the response action; or (3) clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action. If EPA's response action selection is upheld only in part, the arbitrator is directed to review EPA's costs on an arbitrary and capricious standard and to award EPA all costs incurred or to be incurred in connection with the portions of the response action which were upheld, unless the participating PRPs can show that all or part of such costs were: (1) Not actually incurred or to be incurred; or (2) not actually incurred or to be incurred in connection with the portions of the response action that were upheld; or (3) clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action.

This burden of proof and standard of review are not necessarily identical to that which would obtain in the judicial arena. In particular, the third factor, relating to whether EPA's costs were excessive, is not necessarily relevant in judicial cost recovery proceedings. Specifically, established case law holds that the United States is entitled to recover all costs associated with any response action upheld as not arbitrary and capricious. *See United States* v. *NEPACCO*, 810 F.2d 726, 747 (8th Cir. 1986). The Agency is interested in receiving comments on the burden of proof and standard or review.

Subpart B also outlines the prohibition on *ex parte* communications and explains the procedures for appointment, disclosure, and challenge of the arbitrator. The subpart explains that an arbitrator will be chosen from a National Panel of Environmental Arbitrators to be established and maintained by an organization offering arbitration services selected by EPA. EPA proposes to select the organization based upon its ability to provide the services required of the "Association" by this rule (*see* § 304.12(d)), including the provision of technically-capable arbitrators who can satisfy the requirements for impartiality contained in § 304.23(a) of the proposed rule. The selection process will also require the organization to make disclosures designed to ensure that it is free from any institutional biases.

Subpart B also contains procedures for intervention and withdrawal from the proceeding. Because subpart C requires all proposed arbitral decisions to be subject to public comment, intervention is limited to persons who are PRPs at the facility concerned and who wish to have one or more issues relating to their responsibility for payment of the referred claim resolved in the arbitral proceeding.

C. Subpart C

Subpart C of the proposed rule describes the arbitral hearing procedures. Time limits are included for each step of the process. In an effort to avoid unnecessary proof at the hearing, this subpart includes requirements for the filing of responsive pleadings with supporting exhibits and documents and for the early identification of witnesses. It also includes a mandatory pre-hearing conference at which the parties exchange witness statements, written direct testimony, a stipulation of uncontested facts, and a statement of disputed issues and consider the settlement of the claim. The arbitrator is given the discretion to determine whether to schedule a hearing on one or more of the disputed issues. Witnesses not identified on a party's witness list and evidence not previously identified or produced in a party's pleadings may be submitted at the hearing only on a showing of good cause or upon consent of all parties. Grounds for which the documents compiled by EPA supporting the selection of the response action may be supplemented are provided. The arbitrator is authorized to define the scope of oral testimony; oral direct testimony may be presented on the request of a party for good cause or on consent of all parties. The arbitrator is also the judge of the relevance and materiality of the evidence offered at the hearing and of the applicability of legal privileges. Further, the arbitrator is authorized to make such orders as may be necessary for *in camera* review of confidential business information. Conformity to legal rules of evidence is not required. The Agency is interested in receiving comment on the pre-hearing procedures and hearing procedures included in the proposed rule.

Subpart C also includes procedures for the rendering of the arbitrator's proposed decision, which, unless the parties settle their dispute during the course of the proceeding, must be issued within forty-five days after the close of the hearing or within forty-days after the pre-hearing conference if no hearing is held. The proposed decision is simply a statement of the arbitrator's determination of the issue(s) presented for resolution, along with an assessment

of fees and expenses of the proceeding. If the parties settle their dispute during the proceeding, the arbitrator, upon request, may set forth the agreement in a proposed decision. Alternatively, the parties may embody the settlement in a CERCLA section 122(h)(1) administrative cost recovery agreement.

In accordance with section 122(i) of CERCLA, subpart C requires notice of the proposed decision to be published by EPA in the **Federal Register** for a thirty-day public comment period. If public comments disclose facts or considerations to EPA which indicate that the proposed decision is inappropriate, improper, or inadequate, the parties have a thirty-day period in which to agree to modify the proposed decision and to set forth the proposed decision, as modified, in an agreed settlement. If the parties are unable to reach agreement on modification of the proposed decision, EPA will withdraw from the arbitral proceeding, and the proposed decision is null and void and of no legal effect. If public comments do not disclose to EPA facts or considerations indicating that the proposed decision is inappropriate, improper, or inadequate, then the proposed decision becomes final thirty days after EPA notifies the parties and the arbitrator that public comments received, if any, do not require modification of the proposed decision or EPA withdrawal from the proceeding. Because the Agency realizes that PRPs who have participated in the proceeding may wish to express their views on any public comments filed before EPA determines whether modification or withdrawal is necessary, the subpart provides the participating PRPs with a ten-day period in which to provide such written comments to EPA. The Agency believes that withdrawal from the proceeding as a result of public comment will be an infrequent occurrence, because small cost recovery decisions of this kind are not likely to generate a large amount of public comment.

D. Subpart D

Subpart D of the proposed rule addresses the effect and enforcement of the final decision and describes the fees and expenses of the proceeding. The subpart explains that PRPs who have resolved their liability for a claim through arbitration are entitled to contribution protection for matters addressed in the decision pursuant to section 122(h)(4) of CERCLA. It further explains that the final decision is binding and conclusive as to issues submitted for resolution and addressed in the decision.

In accordance with section 122(h)(3) of CERCLA, the subpart provides that any award made to EPA in the final decision may be enforced by the Government in any appropriate Federal district court, if such award is not paid within thirty days. Pursuant to section 122(h)(3) of CERCLA, in any such enforcement action the terms of the final decision are not subject to review. However, in accordance with generally accepted common law grounds for overturning an arbitrator's decision, subpart D provides that in any enforcement action initiated by the United States the final decision may be challenged if: (1) It was achieved through fraud or misconduct by any of the parties; (2) it was achieved through fraud, misconduct, or partiality by the arbitrator; (3) the arbitrator exceeded his or her jurisdiction or authority as defined under the rule; or (4) the decision violates public policy. Except as may be necessary to establish these four grounds, the parties may not introduce issues not submitted for arbitration as a defense to payment of the award in any such enforcement action. The subpart also precludes the final decision from being introduced as evidence of any issue of fact or law in any proceeding, except for proceedings seeking contribution for matters addressed by the decision and proceedings to enforce or challenge the decision in the manner permitted by subpart D. The subpart further explains that, with respect to the participating parties, neither the submission of a claim for arbitration nor the rendering of a decision limits the United States, including EPA, from seeking injunctive relief for further response action at the facility, from taking further response action at the facility, or from seeking reimbursement for any costs not the subject of the arbitration, pursuant to CERCLA or any other applicable statute, regulation or legal theory. The United States' ability to seek from the participating PRPs natural resources damages and relief for any criminal violations is also preserved. All claims against non-participating PRPs are preserved. The Agency solicits comment on the proposed rule's provisions concerning the effect and enforcement of the arbitral decision.

III. Summary of Supporting Analyses

A. Executive Order No. 12291

Proposed regulations must be classified as major or non-major to satisfy the rulemaking protocol established by Executive Order No. 12291. According to Executive Order No. 12291, major rules are regulations that are likely to result in:

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

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

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export matters.

EPA has determined that this proposed regulation is a non-major rule under Executive Order No. 12291 because it will not result in any of the impacts identified above. This proposed regulation provides an entirely voluntary procedure by which PRPs at a facility may reach agreement with EPA to have their liability for a CERCLA section 107 cost recovery claim resolved by arbitration. Arbitration is an alternative dispute resolution technique that should provide a quicker and less costly method or resolution than traditional litigation or negotiation. Therefore, the Agency has not prepared a regulatory impact analysis for this regulation. This proposed rule was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." EPA certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities because the rule provides a wholly voluntary procedure by which PRPs at a facility may reach agreement with EPA to have their liability for a CERCLA section 107 cost recovery claim resolved by arbitration. Arbitration is an alternative dispute resolution technique that should provide a quicker and less expensive method of resolution than traditional litigation or negotiation. Therefore, EPA has not prepared a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

This proposed rule is not subject to the provisions of the Paperwork Reduction Act. Any collection of information in this rule is required in the course of an enforcement action against a specific party or parties and, therefore, is exempt from coverage under the Act.

List of Subjects in 40 CFR Part 304

Administrative practice and procedure, Claims, Intergovernmental relations, Hazardous substances, Hazardous wastes, Natural resources, Superfund.

Date: July 28, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, Part 304, Title 40 of the Code of Federal Regulations is proposed to be added as set forth below:

PART 304—ARBITRATION PROCEDURES FOR SMALL SUPERFUND COST RECOVERY CLAIMS

Subpart A—General

Sec.

Subpart B—Jurisdiction of Arbitrator, Referral of Claims, and Appointment of Arbitrator

Subpart C—Hearings Before the Arbitrator

Subpart D—Other Provisions

Authority: 42 U.S.C. 9607(a) and 9622(h), E.O. 12580.

Subpart A—General

§ 304.10 Purpose.

This regulation establishes and governs procedures for the arbitration of EPA cost recovery claims arising under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 100 Stat. 1613 (1986) ("CERCLA"), pursuant to the authority granted EPA by section 122(h) of CERCLA, 42 U.S.C. 9622(h), and Executive Order 12580, 52 FR 2923 (January 29, 1987).

§ 304.11 Scope and applicability.

The procedures established by this regulation govern the arbitration of EPA claims for recovery, under section 107(a) of CERCLA, 42 U.S.C. 9607(a), of response costs incurred at or in connection with a facility by the United States pursuant to section 104 of CERCLA, 42 U.S.C. 9604. The procedures are applicable when:

(a) The total past and projected response costs for the facility concerned do not exceed $500,000, excluding interest; and

(b) The Administrator and one or more PRPs have submitted a joint request for arbitration pursuant to § 304.21 of this part.

§ 304.12 Definitions.

Terms not defined in this section have the meaning given by section 101 of CERCLA, 42 U.S.C. 9601, or the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300. All time deadlines in this part are specified in calendar days and shall be computed in the manner described in Rule 6(a) of the Federal Rules of Civil Procedure. *Except when otherwise specified, the following terms are defined for purposes of this part as follows:*

(a) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 100 Stat. 1613 (1986).

(b) "Administrator" means the EPA Administrator or his designee.

(c) "Arbitrator" means the person appointed in accordance with § 304.22 of this part and governed by the provisions of this part.

(d) "Association" means the organization offering arbitration services selected by EPA.

(e) "Claim" means the amount sought by EPA as recovery of response costs incurred and to be incurred by the United States at a facility, which does not exceed $500,000, excluding interest.

(f) "*Ex parte* communication" means any communication, written or oral, relating to the merits of the arbitral proceeding, between the Arbitrator and any interested person, which was not originally filed or stated in the administrative record of the proceeding. Such communication is not "*ex parte* communication" if all parties to the proceeding have received prior written notice of the proposed communication and have been given the opportunity to be present and to participate therein.

(g) "Interested person" means the Administrator, any EPA employee, any party, any potentially responsible party associated with the facility concerned, any person who filed written comments in the proceeding, any participant or intervenor in the proceeding, all officers, directors, employees, consultants, and agents of any party, and any attorney of record for any of the foregoing persons.

(h) "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, developed under section 311(c)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, as amended, revised periodically pursuant to section 105 of CERCLA, 42 U.S.C. 9605, and published at 40 CFR Part 300.

(i) "National Panel of Environmental Arbitrators" or "Panel" means a panel of environmental arbitrators selected and maintained by the Association to arbitrate selected and maintained by the Association to arbitrate costs recovery claims under this part.

(j) "Participating PRP" is any potentially responsible party who has agreed, pursuant to § 304.21 of this part, to submit one or more issues arising in an EPA claim for resolution pursuant to the procedures established by this part.

(k) "Party" means EPA and any person who has agreed, pursuant to § 304.21 of this part, to submit one or more issues arising in an EPA claim for resolution pursuant to the procedures established by this part, and any person who has been granted leave to intervene pursuant to § 304.24(a) of this part.

(l) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United Satates Government, State municipality, commission, political subdivision of a State, or any interstate body.

(m) "Potentially responsible party" or "PRP" means any person who may be liable pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for response costs incurred and to be incurred by the United States not inconsistent with the NCP.

(n) "Response action" means remove, removal, remedy and remedial action, as those terms are defined by section 101 of CERCLA, 42 U.S.C. 9601, including enforcement activities related thereto.

(o) "Response costs" means all costs of removal or remedial action incurred and to be incurred by the United States at a facility pursuant to section 104 of CERCLA, 42 U.S.C. 9604, including, but not limited to, all costs of investigation and information gathering, planning and implementing a response action, administration, enforcement, litigation, interest and indirect costs.

Subpart B—Jurisdiction of Arbitrator, Referral of Claims, and Appointment of Arbitrator

§ 304.20 Jurisdiction of Arbitrator.

(a) In accordance with the procedures established by this part, the Arbitrator is authorized to arbitrate one or more issues arising in an EPA claim when:

(1) The total past and projected response costs for the facility concerned do not exceed $500,000, excluding interest; and

(2) The Administrator and one or more PRPs have submitted a joint request for arbitration pursuant to § 304.21 of this part.

(b)(1) If the total past and projected response costs for the facility concerned increase to a dollar amount in excess of $500,000, excluding interest, prior to the rendering of the final decision pursuant to § 304.33 of this part, the parties may mutually agree to continue the proceeding as non-binding arbitration pursuant to the procedures established by this part, except that §§ 304.33(e) and 304.40 of this part shall not apply.

(2) If all of the parties agree to continue the proceeding as non-binding arbitration, the proposed decision rendered by the Arbitrator pursuant to § 304.33 of this part shall not be binding upon the parties, unless all of the parties agree to adopt the proposed decision as an administrative settlement pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1). Any administrative settlement agreed upon in this manner shall be subject to the prior written approval of the Attorney General (or his designee) pursuant to section 122(h)(1) of CERCLA and shall be subject to public comment pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i).

(3) If the parties do not agree to continue the proceeding as non-binding arbitration, or if the administrative settlement agreed upon is not approved by the Attorney General (or his designee), or if EPA withdraws or withholds consent from the administrative settlement as a result of public comment, EPA shall withdraw from the proceeding and the Association shall assess or refund, as appropriate, any administrative fees, expenses, or Arbitrator's fees.

(c) The Arbitrator's authority, as defined by paragraphs (d) and (e) of this section, to determine issues arising in EPA's claim is limited only to the issues submitted for resolution by the parties in the joint request for arbitration pursuant to § 304.21 of this part. Any issues arising in EPA's claim that are not submitted for resolution shall be deemed to be not in dispute and shall not be raised in any action seeking enforcement of the decision for the purpose of overturning or otherwise challenging the final decision, except as provided in § 304.40(c) of this part.

(d)(1) If the issue of liability of any participating PRP has been submitted for resolution, the Arbitrator shall determine whether the participating PRP is liable pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), subject only to the defenses specifically enumerated in section 107(b) of CERCLA, 42 U.S.C. 9607(b).

(2) If the issue of the dollar amount of response costs recoverable by EPA has been submitted for resolution, the Arbitrator shall determine, pursuant to paragraph (e) of this section, the dollar amount of response costs recoverable by EPA pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), and shall award the total amount of such costs to EPA.

(3) Unless the Arbitrator finds that the actual or threatened harm at the facility is divisible, any participating PRP whom the Arbitrator determines to be liable shall be jointly and severally liable for the total amount of response costs awarded to EPA. If the Arbitrator finds that the harm is divisible, the Arbitrator shall allocate liability for payment of EPA's award among the participating PRPs based on the portion of the harm attributable to each participating PRP.

(4) Notwithstanding the indivisibility of the actual or threatened harm, and without waiving the general applicability of the joint and several liability standard, as an alternative to paragraph (d)(3) of this section, the parties may request the Arbitrator to allocate responsibility for payment of response costs awarded to EPA among the participating PRPs whom the Arbitrator determines to be liable. Any such request shall be made in the joint request for arbitration pursuant to § 304.21 of this part. If such a request is made, the provisions of paragraphs (d)(4)(i), (d)(4)(ii), and (d)(4)(iii) of this section shall apply.

(i) The joint request for arbitration may specify the factors to be applied by the Arbitrator when allocating among the participating PRPs responsibility for payment of the response costs awarded to EPA. If the joint request does not specify such factors, the Arbitrator shall base the allocation on such factors as the Arbitrator considers relevant, in his or her sole discretion, such as volume, toxicity, and mobility of the hazardous substances contributed to the facility by each participating PRP, ability to pay, and inequities and aggravating factors.

(ii) The joint request for arbitration may specify that the Arbitrator may allocate among the participating PRPs less than all response costs awarded to EPA. If this is not specified, the Arbitrator shall allocate among the participating PRPs 100% of the response costs awarded to EPA.

(iii) The burden of establishing the appropriate allocation of responsibility for payment of the response costs awarded to EPA shall rest entirely with the participating PRPs.

(5) The parties may request that the Arbitrator perform an allocation even if the issue of the liability of the participating PRPs is not submitted for resolution in the joint request for arbitration. Such a request for allocation shall be made in the joint request for arbitration pursuant to § 304.21 of this part. If such a request is made, the provisions of paragraphs (d)(4)(i), (d)(4)(ii), and (d)(4)(iii) of this section shall apply.

(e)(1) If any issue concerning the adequacy of EPA's response action has been submitted for resolution or arises during the Arbitrator's determination of the dollar amount of response costs recoverable by EPA, the Arbitrator shall uphold EPA's selection of the response action, unless any participating PRP can establish that the selection was inconsistent with the NCP. The Arbitrator's review of the adequacy of any response action taken by EPA shall be based upon the documents compiled by EPA which formed the basis for the selection of the response action.

(2) If any Arbitrator upholds EPA's selection of the response action in full, the Arbitrator shall award EPA all response costs incurred and to be incurred in connection with the response action, unless any participating PRP can establish that all or part of such costs were:

(i) Not actually incurred or to be incurred; or

(ii) Not actually incurred or to be incurred in connection with the response action; or

(iii) Clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action.

(3) If the Arbitrator upholds EPA's selection of the response action only in part, the Arbitrator shall award EPA only those response costs incurred and to be incurred in connection with the portions of the response action that were upheld, unless any participating PRP can establish that all or part of such response costs were:

(i) Not actually incurred or to be incurred; or

(ii) Not actually incurred or to be incurred in connection with the portions of the response action that were upheld; or

(iii) Clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action.

(4) The standard of review to be applied by the Arbitrator under paragraphs (e)(1), (e)(2), and (e)(3) of this section is arbitrary and capricious or otherwise not in accordance with law.

(5) In reviewing any procedural errors alleged by any party, the Arbitrator may disallow response costs only if the errors were so serious and related to matters of such central relevance that the response action would have been significantly changed had such errors not been made.

§ 304.21 Referral of claims.

(a) If EPA believes that a claim may be an appropriate candidate for arbitration, EPA will notify all identified PRPs for the facility concerned and provide such PRPs with an opportunity to discuss referral of one or more issues arising in the claim for resolution pursuant to the procedures established by this part. Alternatively, one or more PRPs at a facility may propose to EPA use of arbitration, after receipt of a demand by EPA for payment of a claim, but prior to commencement of civil litigation of the claim. Where practicable, before an agreement to refer a claim for arbitration is made final under this alternative, either the PRPs or EPA shall notify the other PRPs at the facility of the potential use of arbitration.

(b)(1) The Administrator and one or more PRPs associated with a facility may submit to the Association a joint request for arbitration of one or more issues arising in an EPA claim concerning the facility. The joint request shall be signed by all of the parties and shall include:

(i) A brief description of the facility, the EPA response action taken at the facility, the EPA claim, and the parties;

(ii) A statement of the issues arising in the claim that are being submitted by the parties for resolution by arbitration;

(iii) A statement that the parties consent to resolution of the issues jointly submitted pursuant to the procedures established by this part by an Arbitrator appointed pursuant to § 304.22 of this part;

(iv) A statement that the parties agree to be bound by the final decision on all issues jointly submitted by the parties for resolution and to pay any award made in the final decision, subject to the right to challenge the final decision solely on the grounds and in the manner prescribed by § 304.40(c) of this part;

(v) A statement that the parties agree that the award made in the final decision may be enforced pursuant to § 304.40(c) of this part;

(vi) A statement that the parties agree that the final decision shall be binding only with respect to the response costs at issue in the claim submitted for arbitration;

(vii) A statement that the parties agree that the statute of limitations governing the EPA claim submitted shall be extended for a time period equal to the number of days from the date the joint request for arbitration is submitted to the Association to the date of resolution of any enforcement action relating to the final decision;

(viii) A statement that each signatory to the joint request is authorized to enter into the arbitration and to bind legally the party represented by him or her to the terms of the joint request; and

(ix) The appropriate filing fee (*see* § 304.41(a) of this part).

(2) The joint request shall also include the name, address and telephone number of each party, and, if a party is represented by an attorney, the attorney's name, address and telephone number. A party changing any of this information must promptly communicate the change in writing to the Association and all other parties. A party who fails to furnish such information or any changes thereto is deemed to have waived his or her right to notice and service under this part.

(c) Any party may move to modify the joint request for arbitration to include one or more additional issues arising in the referred claim. To be effective, any such modification must be signed by the Arbitrator and all other parties. The joint request for arbitration may also be modified to add one or more additional parties, if such intervention is permitted by § 304.24(a) of this part. To be effective, any such modification must be signed by the Arbitrator, the intervening party or parties, and all other parties.

(d) The statute of limitations governing the EPA claim submitted for arbitration shall be extended for a time period equal to the number of days from the date the joint request for arbitration is submitted to the Association to the date of resolution of any enforcement action relating to the final decision.

§ 304.22 Appointment of Arbitrator.

(a) The Association shall establish and maintain a National Panel of Environmental Arbitrators.

(b) Within ten days of the filing of the joint request for arbitration, the Association shall identify and submit simultaneously to all parties an identical list of ten persons chosen from the National Panel of Environmental Arbitrators, whom the Association believes will not be subject to disqualification because of circumstances likely to affect impartiality pursuant to § 304.23 of this part. Each party shall have ten days from the date of receipt of the list to identify any persons objected to, to rank the remaining persons in the order of preference, and to return the list to the Association. If a party does not return the list within the time specified, all persons on the list are deemed acceptable to that party. From among the persons whom the parties have indicated as acceptable, and, in accordance with the designated order of mutual preference, if any, the Association shall invite an Arbitrator to serve. If the parties fail to mutually agree upon any of the persons named, or if the accepted Arbitrator is unable to serve, or if for any other reason the appointment cannot be made from the submitted lists, the Association shall make the appointment from among the other members of the Panel. In no event shall appointment of the Arbitrator by the Association take longer than thirty days from the filing of the joint request for arbitration.

(c) Within seven days of the appointment of the Arbitrator, the Association shall mail to each of the parties notice of the identity of the Arbitrator and the date of the appointment, together with a copy of these rules. The Arbitrator shall, within five days of his or her appointment, file a signed acceptance of the case with the Association. The Association shall, within seven days of receipt of the Arbitrator's acceptance, mail notice of such acceptance to the parties.

(d) If any appointed Arbitrator should resign, die, withdraw, be disqualified or otherwise be unable to perform the duties of the office, the Association may, on satisfactory proof, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of this section, and the matter shall be resumed.

§ 304.23 Disclosure and challenge procedures.

(a) A person appointed as an Arbitrator under § 304.22 of this part shall, within five days of receipt of his or her notice of appointment, disclose to the Association any circumstances likely to affect impartiality, including

any bias or any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or their counsel, or any past or present relationship with any PRP to which the claim many relate.

(b) Upon receipt of such information from and appointed Arbitrator or other source, the Association shall, within two days of receipt, communicate such information to the parties. Such communication may be made orally or in writing, but if made orally, shall be confirmed in writing.

(c) If any party wishes to request disqualification of an Arbitrator, such party shall notify the Association and the other parties of such request and the basis therefore within seven days of receipt of the information on which such request is based.

(d) The Association shall make a determination on any request for disqualification of an Arbitrator within seven days after the Association receives any such request, and shall notify the parties in writing of such determination. This determination shall be within the sole discretion of the Association, and its decision shall be final.

§ 304.24 Invention and withdrawal.

(a) (1) No later than thirty days prior to the pre-hearing conference (*see* § 304.31 of this part), any PRP associated with the facility which is the subject of the referred claim may move to intervene in the arbitral proceeding for the purpose of having one or more issues relating to his or her responsibility for payment of the referred claim resolved.

(2) If the Arbitrator has been appointed, a motion to intervene shall be filed with the Arbitrator and a copy shall be served upon all parties. It the Arbitrator has not yet been appointed, a motion to intervene shall be submitted to the Association and a copy shall be served upon all parties.

(3) Any such motion to intervene may be granted only upon the written approval of the Arbitrator and all of the parties in the form of a modification to the joint request for arbitration pursuant to § 304.21(c) of this part. By signing such a modification, the intervening party consents to be bound by the terms of the joint request for arbitration submitted pursuant to § 304.21(b) of this part and any modifications previously made thereto pursuant to § 304.21(c) of this part, and consents to be bound by such revisions to the time limits for the filing of pleadings as the Arbitrator may make to prevent delaying the pre-hearing conference.

(b) Any party may move to withdraw from the arbitral proceeding within thirty days after receipt of the notice of appointment of the Arbitrator (*see* § 304.22 of this part). The Arbitrator may approve such withdrawal, without prejudice to the moving party, and shall assess such administrative fees and expenses (*see* § 304.41 of this part) again the withdrawing party as the Arbitrator deems appropriate. No party may withdraw from the arbitral proceeding after this thirty-day period, except that EPA may withdraw from the proceeding in accordance with § 304.20(b)(3) or § 304.33(e) of this part.

§ 304.25 Ex parte communication.

(a) No interested person shall make or knowingly cause to be made to the Arbitrator an *ex parte* communication.

(b) The Arbitrator shall not make or knowingly cause to be made to any interested person and *ex parte* communication.

(c) The Association may remove the Arbitrator in any proceeding in which it is demonstrated to the Association's satisfaction that the Arbitrator has engaged in prohibited *ex parte* communication to the prejudice of any party. If the Arbitrator is removed, the procedures in § 304.22(d) of this part shall apply.

(d) Whenever *ex parte* communication in violation of this section is received by or made known to the Arbitrator, the Arbitrator shall immediately notify in writing all parties to the proceeding of the circumstances and substance of the communication and may require the party who made the communication or caused the communication to be made, or the party whose representative made the communication or caused the communication to be made, to show cause why that party's arguments or claim should not be denied, disregarded, or otherwise adversely affected on account of such violation.

(e) The prohibitions of this section apply upon appointment of the Arbitrator and terminate on the date of the final decision.

Subpart C—Hearings Before the Arbitrator

§ 304.30 Filing of pleadings.

(a) Discovery shall be in accordance with this section and § 304.31 of this part.

(b) Within thirty days after receipt of the notice of appointment of the Arbitrator (*see* § 304.22 of this part), EPA shall submit to the Arbitrator two copies of a written statement and shall serve a copy of the written statement upon all other parties. The written statement shall in all cases include the information requested in paragraph (b)(1), (b)(6), and (b)(7) of this section, shall include the information requested in paragraph (b)(2) of this section if the issue of liability of any participating PRP has been submitted for resolution, shall include the information requested in paragraph (b)(3) of this section if any issue concerning the adequacy of EPA's response action has been submitted for resolution or may arise during the Arbitrator's determination of the dollar amount of response costs recoverable by EPA, shall include the information requested in paragraph (b)(4) of this section if the issue of the dollar amount of response costs recoverable by EPA has been submitted for resolution, and shall include the information requested in paragraph (b)(5) of this section if any issue concerning allocation of liability for payment of EPA's award has been submitted for resolution:

(1) A statement of facts, including a description of the facility, the EPA response action taken at the facility, the response costs incurred and to be incurred by the United States in connection with the response action taken at the facility, and the parties;

(2) A description of the evidence in support of the following four elements of liability of the participating PRP(s) whose liability pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), is at issue, and any supporting documentation therefor:

(i) The site at which EPA's response action was taken is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. 9601(9);

(ii) There was a "release or threat of release" within the meaning of sections 101(22) and 104(a) of CERCLA, 42 U.S.C. 9601(22) and 9604(a), of a "hazardous substance" as defined by section 101(14) of CERCLA, 42 U.S.C. 9601(14), at the facility at which EPA's response action was taken;

(iii) The release or threat of release caused the United States to incur "response costs" as defined in § 304.12(o) of this part; and

(iv) The participating PRP is in one of the categories of liable parties in section 107(a) of CERCLA, 42 U.S.C. 9607(a);

(3) An index of any documents compiled by EPA which formed the basis for the selection of the response action taken at the facility (all indexed documents shall be made available to any participating PRP);

(4) A summary, broken down by category, of all response costs incurred and to be incurred by the United States in connection with the response action taken by EPA at the facility (supporting

documentation for the summary shall be made available to any participating PRP pursuant to the procedures described in Rule 1006 of the Federal Rules of Evidence);

(5) To the extent such information is available, the names and addresses of all identified PRPs for the facility, the volume and nature of the substances contributed to the facility by each identified PRP, and a ranking by volume of the substances contributed to the facility;

(6) A recommended location for the pre-hearing conference and the arbitral hearing; and

(7) Any other statement or documentation that EPA deems necessary to support its claim.

(c) Within thirty days after receipt of EPA's written statement, each participating PRP shall submit to the Arbitrator two copies of an answer and shall serve a copy of the answer upon all other parties. The answer shall in all cases include the information requested in paragraphs (c)(1), (c)(6), and (c)(7) of this section, shall include the information requested in paragraph (c)(2) of this section if the issue of the liability of the answering participating PRP has been submitted for resolution, shall include the information requested in paragraph (c)(3) of this section if any issue concerning the adequacy of EPA's response action has been submitted for resolution or may arise during the Arbitrator's determination of the dollar amount of response costs recoverable by EPA, shall include the information requested in paragraph (c)(4) of this section if the issue of the dollar amount of response costs recoverable by EPA has been submitted for resolution, and shall include the information requested in paragraph (c)(5) of this section if any issue concerning the allocation of responsibility for payment of EPA's award has been submitted for resolution:

(1) Any objections to the statement of facts in EPA's written statement, and, if so, a counterstatement of facts;

(2) Any objections to EPA's position on the liability of the answering participating PRP pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), a description of the evidence in support of the defenses to liability of the answering participating PRP which are specifically enumerated in section 107(b) of CERCLA, 42 U.S.C. 9607(b) (*i.e.*, that the release or threat of release of a hazardous substance at the facility was caused solely by an act of God, an act of war, an act or omission of an unrelated third party, or any combination therof), and any supporting documentation therefore;

(3) Any objections to the response action taken by EPA at the facility based upon any documents compiled by EPA which formed the basis for the selection of the response action;

(4) Any objections to EPA's summary and supporting documentation for all response costs incurred and to be incurred by the United States in connection with the response action taken by EPA at the facility;

(5) Any documentation which the participating PRP deems relevant to the allocation of responsibility for payment of EPA's award;

(6) A recommended location for the pre-hearing conference and the arbitral hearing; and

(7) Any other statement or documentation that the participating PRP deems necessary to support its claim.

(d) EPA may file a response to any participating PRP's answer within twenty days of receipt of such answer. Two copies of any such response shall be served upon the Arbitrator, and a copy of any such response shall be served upon all parties.

(e) If EPA files a response, any participating PRP may file a reply thereto within ten days after receipt of such response. Two copies of any such reply shall be served upon the Arbitrator, and a copy of any such reply shall be served upon all parties.

§ 304.31 Pre-hearing conference.

(a) The Arbitrator and the parties shall exchange witness lists (with a brief summary of the testimony of each witness) and any exhibits or documents that the parties have not submitted in their pleadings pursuant to § 304.30 of this part, within 110 days after the appointment of the Arbitrator (*see* § 304.22 of this part) or within 10 days prior to the pre-hearing conference, whichever is earlier.

(b) The Arbitrator shall select the location, date, and time for the pre-hearing conference, giving due consideration to any recommendations by the parties.

(c) The pre-hearing conference shall be held within one hundred twenty days after the appointment of the Arbitrator (*see* § 304.22 of this part).

(d) The Arbitrator shall mail to each party notice of the pre-hearing conference not later than twenty days in advance of such conference, unless the parties by mutual agreement waive such notice.

(e) Any party may be represented by counsel at the pre-hearing conference. A party who intends to be so represented shall notify the other parties and the Arbitrator of the name and address of counsel at least three days prior to the date set for the pre-hearing conference. When an attorney has initiated the arbitration by signing the joint request for arbitration on behalf of a party, or when an attorney has filed a pleading on behalf of a party, such notice is deemed to have been given.

(f) The pre-hearing conference may proceed in the absence of any party who, after due notice, fails to appear.

(g)(1) At the pre-hearing conference, the Arbitrator and the parties shall exchange witness statements, a stipulation of uncontested facts, a statement of disputed issues, and any other documents, including written direct testimony, that will assist in prompt resolution of the dispute and avoid unnecessary proof.

(2) The Arbitrator and the parties shall consider the settlement of all or part of the claim. The Arbitrator may encourage further settlement discussions among the parties. Any settlement reached may be set forth in a proposed decision in accordance with § 304.33 of this part. If such a settlement is not set forth in a proposed decision, the settlement shall be treated as an administrative settlement pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), and shall be subject to public comment pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i).

§ 304.32 Arbitral hearing.

(a) The Arbitrator may, in his sole discretion, schedule a hearing with the parties on one or more of the disputed issues identified in the statement of disputed issues pursuant to § 304.31(g)(1) of this part.

(b) The Arbitrator shall select the location, date, and time for the arbitral hearing, giving due consideration to any recommendations by the parties.

(c) The hearing shall commence within forty-five days after the pre-hearing conference (*see* § 304.31 of this part). The Arbitrator may, upon showing by the parties that settlement is likely, extend the date for the hearing for up to thirty additional days, if further settlement discussions have been held pursuant to § 304.31(g)(2) of this part.

(d) The Arbitrator shall mail to each party notice of the hearing not later than twenty days in advance of the hearing, unless the parties by mutual agreement waive such notice. Such notice shall include a statement of the disputed issues to be addressed at the hearing. The Arbitrator need not mail a second notice to the parties if the date for the hearing is extended pursuant to paragraph (c) of this section.

(e) Any party may be represented by counsel at the hearing. A party who intends to be so represented shall notify the other parties and the Arbitrator of the name and address of counsel at least three days prior to the date set for the hearing. When an attorney has initiated the arbitration by signing a joint request on behalf of a party, or when an attorney has filed a pleading on behalf of a party, or when notice has been given pursuant to § 304.31(e) of this part, such notice is deemed to have been given.

(f) The Arbitrator shall make the necessary arrangements for the making of a true and accurate record of the arbitral hearing.

(g) The Arbitrator shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties.

(h) The Arbitrator may take adjournments upon the request of any party or upon the Arbitrator's own initiative and shall take such adjournment when all of the parties agree thereto.

(i) The Arbitrator shall administer oaths to all witnesses before they testify at the arbitral hearing.

(j)(1) A hearing shall be opened by the recording of the location, date, and time of hearing, the presence of the Arbitrator and the parties, and counsel if any, and by the Arbitrator's acknowledgement for the record of all pleadings and all other documents that have been filed by the parties.

(2) The hearing shall be conducted in accordance with the Arbitrator's jurisdiction as defined by § 304.20 of this part.

(3) The Arbitrator may, at any time, require oral statements clarifying the issues to be addressed at the hearing.

(4) The Arbitrator may require the parties to present witnesses for questioning by the Arbitrator and for direct and cross-examination by the parties on any of the disputed issues, except for any disputed issues concerning the selection or adequacy of the response action, which shall be governed by paragraph (j)(6) of this section.

(5) The Arbitrator shall define the scope of oral testimony. A party may present oral direct testimony only upon a showing of good cause why such testimony could not have been submitted in written form, or upon consent of all of the parties.

(6) Notwithstanding §§ 304.20(e)(1) and 304.20(e)(4) of this part, the Arbitrator may require EPA to supplement the documents compiled by EPA which formed the basis for the selection of the response action (with additional documents, affidavits, or oral testimony), if any participating PRP asserts, and the Arbitrator finds, that the documents do not adequately explain the grounds for EPA's selection of the response action. In addition, EPA may supplement the documents compiled by EPA which formed the basis for the selection of the response action for the purpose of providing additional background information on the facility or the response action.

(k)(1) Except as provided in paragraph (j)(6) of this section, exhibits and other documentary evidence not included in a party's pleadings, not exchanged prior to the pre-hearing conference pursuant to § 304.31(a) of this part, or not exchanged at the pre-hearing conference pursuant to § 304.31(g)(1) of this part, may be introduced at the hearing only upon a showing of good cause by the moving party or upon consent of all of the parties.

(2) Except as provided in paragraph (j)(6) of this section, witnesses not identified in a party's witness list may be presented at the hearing only upon a showing of good cause by the moving party or upon consent of all of the parties.

(3) The Arbitrator shall be the judge of the relevance and materiality of the evidence offered during the proceeding and of the applicability of legal privileges. Conformity to legal rules of evidence shall not be required.

(4) The Arbitrator may make such orders as may be necessary for *in camera* consideration of evidence for reasons of business confidentiality as defined by 40 CFR 2.201(e) and as consistent with section 104(e)(7) of CERCLA, 42 U.S.C. 9604(e)(7).

(l) The hearing may proceed in the absence of any party who, after due notice, fails to appear or fails to obtain an adjournment. If a party, after due notice, fails to appear or fails to obtain an adjournment, such party will be deemed to have waived the right to be present at the hearing.

(m) After all disputed issues have been heard by the Arbitrator, the Arbitrator may permit the parties to make closing statements, after which the Arbitrator shall declare the hearing closed.

(n) The hearing shall be completed within two weeks, unless the Arbitrator extends the hearing for good cause.

(o) The Arbitrator may permit the parties to submit proposed findings of fact, rulings, or orders within ten days after receipt of the hearing transcript or such longer time upon a finding of good cause.

(p) The parties may provide, by written agreement, for the waiver of the hearing.

§ 304.33 Arbitral decision and public comment.

(a) The Arbitrator shall render a proposed decision within forty-five days after the hearing is closed, or within forty-five days after the pre-hearing conference if no hearing is held, unless the parties have settled the dispute prior to the rendering of the proposed decision.

(b)(1) The proposed decision shall be in writing and shall be signed by the Arbitrator. It shall be limited in accordance with the Arbitrator's jurisdiction as defined by § 304.20 of this part, and shall, if such issues have been jointly submitted by the parties for resolution, contain the Arbitrator's determination of:

(i) Which participating PRPs, if any, are liable pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a);

(ii) The dollar amount of response costs, if any, to be awarded to EPA; and

(iii) The allocation of responsibility for payment of EPA's award, if any, among the participating PRPs.

(2) The proposed decision shall also assess arbitration fees and expenses (*see* § 304.41 of this part) in favor of any party, or combination of parties, and, in the event any administrative fees or expenses are due the Association, in favor of the Association.

(c) If the parties settle their dispute during the course of the proceeding, the Arbitrator may, upon the parties' request, set forth the terms of the agreed settlement in a proposed decision. Except as provided in § 304.20(b) of this part, a proposed decision which embodies an agreed settlement shall be subject to all applicable provisions of this part, including, but not limited to, paragraph (e) of this section and § 304.40 of this part.

(d) The parties shall accept as legal delivery of the proposed decision the placing in the United States mail of a true copy of the proposed decision, addressed to each party's last known address or each party's attorney's last known address, or by personal service.

(e)(1) Pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice of the proposed decision shall be published promptly by EPA in the **Federal Register**. Such notice shall include the name and location of the facility concerned, the names of the parties to the proceeding, and a brief summary of the proposed decision, and shall provide persons who are not parties to the proceeding a thirty-day period in which to file written

comments relating to the proposed decision. Any filed comments shall be made available to the participating PRPs and to the public. The participating PRPs shall have ten days from the close of the public comment period in which to submit to EPA in writing their views on the merits of any comments filed. EPA shall consider any comments filed, and shall, within thirty days after the close of the ten-day period during which the participating PRPs may submit their views on any comments filed, provide written notice to the Arbitrator and the participating PRPs. The written notice shall be made available to the public and shall include:

(i) A summary of any comments filed;

(ii) Responses to any comments filed;

(iii) A discussion of whether any comments filed disclose to EPA facts or considerations which indicate the proposed decision is inappropriate, improper or inadequate; and

(iv) EPA's determination as to whether modification of the proposed decision or withdrawal from the arbitral proceeding is necessary based upon such comments.

(2) If EPA's written notice does not state that modification or withdrawal is necessary based upon public comments, then the proposed decision shall become final thirty days after the date of issuance of EPA's written notice. If EPA's written notice states that modification or withdrawal is necessary, the parties shall have thirty days from the date of issuance of EPA's written notice to modify the proposed decision so that it is no longer inappropriate, improper or inadequate and to set forth the proposed decision, as modified, in an agreed settlement. If an agreed settlement is reached, such agreed settlement shall be the final decision. If the parties do not modify the proposed decision in an agreed settlement within thirty days, the proposed decision shall be null and void and of no legal effect, EPA shall withdraw from the proceeding, and the arbitrator shall assess such administrative fees and expenses (*see* § 304.41 of this part) against the parties as the Arbitrator deems appropriate.

(f) Payment of EPA's award, if any, and any fees or expenses due pursuant to the final decision, shall be made within thirty days after the date of the final decision.

(g) The Arbitrator shall, upon written request of any party, furnish to such party certified facsimiles of all papers in the Arbitrator's possession that may be required in judicial proceedings relating to the arbitration pursuant to § 304.40 of this part.

Subpart D—Other Provisions

§ 304.40 Effect and enforcement of final decision.

(a) Pursuant to section 122(h)(4) of CERCLA, 42 U.S.C. 9622(h)(4), any participating PRP who has resolved his or her liability for an EPA claim through a final decision reached pursuant to the procedures established by this part shall not be liable for claims for contribution regarding matters addressed by the final decision.

(b) The final decision shall be binding and conclusive upon the parties as to issues that were jointly submitted by the parties for resolution and addressed in the decision.

(c)(1) Judgment upon any award made in the final decision may be sought by the Attorney General on behalf of EPA in any appropriate Federal district court, if such award is not paid within the time required by § 304.33(f) of this part. Any judgment obtained may be enforced by the Attorney General on behalf of EPA in any appropriate Federal district court pursuant to section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3). Pursuant to section 122(h)(3) of CERCLA, the terms of the final decision shall not be subject to review in any such action.

(2) In any such enforcement action initiated by the United States, the final decision may be challenged by any party if:

(i) It was achieved through fraud, misconduct, or partiality on the part of the Arbitrator;

(ii) It was achieved through fraud or misconduct by one of the parties affecting the result;

(iii) The Arbitrator exceeded his or her jurisdiction under § 304.20 of this part or failed to decide the claim within the bounds of his or her authority under this part; or

(iv) It violates public policy.

(3) Except as necessary to show such fraud, misconduct, partiality, excess of jurisdiction or authority, or violation of public policy, in any such enforcement action, a party may not raise, for the purpose of overturning or otherwise challenging the final decision, issues arising in the claim that were not submitted for resolution by arbitration.

(d) Except as otherwise provided in this section, and except as necessary for a participating PRP to defend against an action seeking contribution for matters addressed by the final decision, no final decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any provision of CERCLA or any other provision of law.

(e) Neither the institution of an arbitral proceeding nor the rendering of a final decision on an EPA claim shall preclude or otherwise affect the ability of the United States, including EPA, to:

(1) Seek injunctive relief against any participating PRP for further response action at the facility concerned pursuant to CERCLA or any other applicable statute, regulation or legal theory; or

(2) Take further response action at the facility concerned pursuant to CERCLA or any other applicable statute, regulation or legal theory; or

(3) Seek reimbursement from any participating PRP for any costs not the subject of the arbitral proceeding pursuant to CERCLA or any other applicable statute, regulation or legal theory; or

(4) Seek any relief for any violation of criminal law from any participating PRP; or

(5) Seek damages for injury to, destruction of, or loss of natural resources from any participating PRP; or

(6) Seek any relief, civil or criminal, from any person not a party to the arbitral proceeding under CERCLA or any other applicable statute, regulation or legal theory.

§ 304.41 Administrative fees, expenses, and Arbitrator's fee.

(a) The Association shall prescribe an Administrative Fee Schedule and a Refund Schedule, which shall be subject to the approval of EPA. The schedule in effect at the time of filing or the time of refund shall be applicable. The filing fee shall be advanced to the Association by each party as part of the joint request for arbitration, subject to apportionment of the total administrative fees by the arbitrator in the decision. If a claim is withdrawn or settled, a refund shall be made in accordance with the Refund Schedule.

(b) Expenses of witnesses shall be borne by the party producing such witnesses. The expense of the stenographic record and all transcripts thereof shall be prorated equally among all parties ordering copies, unless otherwise agreed by the parties, or unless the Arbitrator assesses such expenses or any part thereof against any specified party in the decision. The expense of an interpreter shall be borne by the party requesting the interpreter.

(c) The Association shall establish the per diem fee for the Arbitrator, subject to the approval of EPA, prior to the commencement of any activities by the Arbitrator. Arrangements for compensation of the Arbitrator shall be made by the Association.

(d) The Association may require an advance deposit from the parties to defray the Arbitrator's fee and the

administrative fee, and shall render an accounting to the parties and return any balance of such deposit in accordance with the Arbitrator's award, within thirty days after the date of the final decision.

§ 304.42 Miscellaneous provisions.

(a) Any party who proceeds with the arbitration knowing that any provision or requirement of this part has not been complied with, and who fails to object thereto either orally or in writing in a timely manner, shall be deemed to have waived the right to object.

(b) The original of any joint request for arbitration, modification to any joint request for arbitration, pleading, letter, or other document filed in the proceeding (except for exhibits and other documentary evidence) shall be signed by the filing party or by his or her attorney.

(c) All papers associated with the proceeding shall be served on an opposing party either by personal service or United States mail, First Class, addressed to the party's attorney, or if the party is not represented by an attorney or the attorney cannot be located, to the last known address of the party.

(d) If any provision of this part, or the application of any provision of this part to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this part shall not be affected thereby.

[FR Doc. 88-17571 Filed 8-3-88; 8:45 am]
BILLING CODE 6560-50-M

Reader Aids

Federal Register

Vol. 53, No. 150

Thursday, August 4, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5843.....29219

Executive Orders:
11269 (Amended by EO 12647).....29323
12647.....29323

Administrative Orders:
Memorandum of July 21, 1988 (correction).....28938

5 CFR

890.....28997

Proposed Rules:
831.....29057
841.....29057

7 CFR

27.....29325
210.....29144
725.....29221
981.....29222
1446.....28997

Proposed Rules:
401.....29340, 29341
1408.....29307
1910.....29341

12 CFR

227.....29223, 29225

14 CFR

39.....28855, 28856, 28858-28860, 28999
71.....28861, 28862
75.....28862
97.....29000
1260.....29328

Proposed Rules:
Ch. I.....28888
21.....28888
23.....28888
71.....28889

15 CFR

371.....28862
375.....28864
385.....28862
399.....28864

16 CFR

13.....29226

17 CFR

211.....29226
231.....29226
241.....29226
271.....29226
400.....28978
402.....28978
403.....28978
404.....28978
450.....28978

18 CFR

157.....29002

19 CFR

113.....29228
122.....29228
178.....29228

Proposed Rules:
177.....29343

20 CFR

404.....29011
416.....29011

21 CFR

74.....29024
81.....29024
82.....29024
1308.....29232

23 CFR

658.....28870

24 CFR

201.....28871
203.....28871
234.....28871
511.....28990

26 CFR

Proposed Rules:
1.....29343

28 CFR

2.....29233

29 CFR

1926.....29116

30 CFR

Proposed Rules:
701.....29310
773.....29343
785.....29310
843.....29343

32 CFR

199.....28873
385.....29329
387.....29330

33 CFR

110.....29032
117.....28883, 29032, 29034

Proposed Rules:
165.....28890
166.....29058

36 CFR

Proposed Rules:
7.....28891

38 CFR

21.....28883

40 CFR

23.....29320
52.....28884
166.....29037
168.....29037
261.....29038
370.....29331
761.....29114

Proposed Rules:
35.....29194
50.....29346
51.....29346
52.....29236-29242
58.....29346
142.....29194
180.....29244
248.....29166
261.....28892, 29058, 29067
304.....29428

41 CFR

101-7.....29045
101-26.....29234
101-40.....29046
201-11.....29051
201-30.....29051
201-31.....29051
201-32.....29051

Proposed Rules:
101-1.....28895
105-1.....28896

44 CFR

64.....29053

Proposed Rules:
67.....28896, 28897

46 CFR

30.....28970
98.....28970
151.....28970
153.....28970

47 CFR

0.....29053
1.....28940
64.....29053
73.....29056
87.....28940

48 CFR

208.....29332
252.....29332
505.....28885
514.....28885
525.....28885

Proposed Rules:
215.....29347

49 CFR

Proposed Rules:
24.....28995
1152.....29245

50 CFR

17.....29335
215.....28886
611.....29337
661.....29235, 29337
663.....29338

LIST OF PUBLIC LAWS

Last List July 29, 1988

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 is 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).

H.J. Res. 569/Pub. L. 100-376

Designating July 24 through 30, 1988, as "Lyme Disease Awareness Week." (Aug. 1, 1988; 102 Stat. 882; 1 page) Price: $1.00

S.J. Res. 338/Pub. L. 100-377

To designate August 1, 1988, as "Helsinki Human Rights Day." (Aug. 1, 1988; 102 Stat. 883; 4 pages) Price: $1.00

H.R. 3251/Pub. L. 100-378

Bicentennial of the United States Congress Commemorative Coin Act. (Aug. 1, 1988; 102 Stat. 887; 3 pages) Price: $1.00