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WHO: The Office of the Federal Register.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 88-058]

Inspection of Means of Conveyance, Baggage, and Cargo Moving Interstate From Hawaii, Puerto Rico, or the Virgin Islands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending two subparts in our Hawaiian and territorial quarantine notices with respect to inspection requirements and the location of inspection for ships, other surface craft, aircraft, and cargo, baggage, and personal effects moving from Hawaii, Puerto Rico, or the Virgin Islands of the United States to other parts of the United States. These amendments will improve the efficiency of inspections, and consolidate and clarify the Department's regulations and procedures with respect to these inspections. We are also making editorial changes to make the organization of the two subparts similar.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Havens, Port Operations Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR Part 318, among other things, quarantine Hawaii, Puerto Rico, and the Virgin Islands of the United States to prevent the spread of dangerous plant diseases and insect infestations that are new to or not widely prevalent or distributed within and throughout the United States. The two subparts we are amending are "Hawaiian Fruits and Vegetables" (7 CFR 318.13 *et seq.*), and "Fruits and Vegetables From Puerto Rico or Virgin Islands" (7 CFR 318.58 *et seq.*).

We published in the **Federal Register** on February 3, 1988 (53 FR 3028-3036, Docket Number 84-356), a proposal to amend the requirements for inspection of ships, vessels, other surface craft, and aircraft, and of certain cargo, baggage, and personal effects moving from Hawaii, Puerto Rico, or the Virgin Islands to other parts of the United States. That proposal specified requirements for inspection of baggage moved from Hawaii, Puerto Rico and the Virgin Islands to other parts of the United States, clarified requirements for inspection of means of conveyance and cargo from Hawaii, Puerto Rico and the Virgin Islands, and consolidated various requirements of the Hawaii and Puerto Rico-Virgin Islands regulations to improve organization of the regulations and to aid enforcement.

Comments

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before April 4, 1988. We received two comments, one from the Office of Inspector General of the United States Department of Agriculture and one from the Department of Agriculture of the Commonwealth of Puerto Rico.

The Office of Inspector General noted that the proposed regulations do not state specific actions to be taken by an inspector who finds a passenger or an article to be in violation of the regulations, and suggested that the inspector's responsibilities under these circumstances be detailed in the regulations.

In response to this comment, we are making changes to §§ 318.13-10 and 318.58-10, "Inspection of baggage, other personal effects, and cargo". In §§ 318.13-10 and 318.58-10, the proposed regulations require that a person found to be in violation of the regulations "shall state his or her name and address, and provide corroborative identification to the inspector." We are adding to this provision, each place it appears, a requirement that the inspector seize the violative articles, and record the name and address of the person in violation of the regulations, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

The proposed regulations state the responsibilities of the inspector for disposing of articles in violation of the regulations, in §§ 318.13-8 and 318.58-8, "Articles and persons subject to inspection."

Taken together, these sections of the regulations describe the inspector's responsibility to prevent the movement of articles in violation of the regulations, and to obtain the information necessary for filing a complaint or assessing a civil penalty against the violator. Proceedings for civil penalties or other legal actions against the violator, if any are initiated, will be handled in accordance with applicable Department procedures and rules of practice.

The Puerto Rico Department of Agriculture objected to the fact that the proposed regulations do not deal with the movement of baggage and cargo from the mainland to Puerto Rico, and noted that there are many pests and diseases that could move to Puerto Rico in baggage or cargo and cause harm to Puerto Rican agriculture.

We are not making any changes in response to this comment. We agree that there are many pests, such as citrus canker and various fruit files, that could cause damage if moved to Puerto Rico from the mainland. However, movement of articles that could contain pests and diseases from any other state to Puerto Rico is regulated by 7 CFR Part 301, "Domestic Quarantine Notices," and is outside the scope of the proposed regulations, which pertain to the quarantines imposed on Hawaii, Puerto Rico and the Virgin Islands, and concern movements from, not to, those places.

Based on the rationale in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase

in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Most of the effects of this rule will apply to airlines and ship lines that are not small entities. Any effects on small entities by the rule's inspection and shipping requirements (*e.g.*, small packers and shippers) should be minimal; the rule does not prohibit the movement of any products formerly allowed movement, and will not increase shipping costs to small entities. Persons are not charged for the inspection of their baggage and other personal effects by an inspector, and there is no inspection cost to shippers and importers of cargo with the exception of reimbursement to the Department for overtime hours requested by shippers or importers.

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

Paperwork Reduction Act

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 318

Agricultural commodities, Baggage, Cargo, Guam, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Hawaii, Puerto Rico, Transportation, Virgin Islands, Incorporation by reference.

Accordingly, 7 CFR Part 318 is amended as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for Part 318 is revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51 and 371.2(c).

§ 318.13a [Amended]

2. Section 318.13a is amended by removing paragraph (b).

3. Section 318.13–3 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 318.13–3 Conditions of movement.

(a) *To any destination.* Any regulated articles may be moved interstate from Hawaii in accordance with this subpart to any destination if:

(1) The movement is authorized by a valid certificate issued in accordance with § 318.13–4 (a) or (b) and the movement complies with the conditions of any applicable compliance agreement made under § 318.13–4(d), or

(2) The movement is exempted from certificates or limited permit requirements by administrative instructions in this subpart.

* * * * *

(d) *Attachment of certificates and limited permits.* Except as otherwise provided for certain air cargo and containerized cargo on ships moved in accordance with § 318.13–10, each box, bale, crate, or other container of regulated articles moved under certificate or limited permit shall have the certificate or limited permit attached to the outside of the container: *Provided,* That if a certificate or limited permit is issued for a shipment of more than one container of for bulk products, the certificate or limited permit shall be attached to or stamped on the accompanying waybill, manifest, or bill of lading.

4. Section 318.13–6 is revised to read as follows:

§ 318.13–6 Container marking and identity.

For shipments of regulated articles moved in accordance with this subpart, the following information shall be clearly marked on each container, or for shipments of multiple containers or bulk products, on the waybill, manifest, or bill of lading accompanying the articles: Nature and quantity of contents; name and address of shipper, owner, or person shipping or forwarding the articles; name and address of consignee; shipper's identifying mark and number; and, the number of the certificate or limited permit authorizing movement, if one was issued.

§ 318.13–7 [Amended]

5. Section 318.13–7 is amended as follows:

a. The heading is changed to read "Products as ships' stores or in the possession of passengers or crew."

b. In paragraph (a) "ship, vessel, other surface craft, or aircraft" is removed and "aircraft moving to Guam, ship, vessel, or other surface craft" is inserted.

c. In paragraph (a) "Virgin Islands of the United State:" is removed and "Virgin Islands of the United States." is inserted, and the remainder of that sentence is removed.

d. In paragraph (b) "a ship, vessel, or other surface craft, or aircraft in Hawaii" is removed and "an aircraft moving from Hawaii to Guam, or a ship, vessel, or other surface craft in Hawaii" is inserted.

e. In paragraph (b) "the ship, vessel, other surface craft, or aircraft before arrival" is removed and "the aircraft moving from Hawaii to Guam, or the ship, vessel, or other surface craft before arrival" is inserted.

6. Section 318.13–8 is revised to read as follows:

§ 318.13–8 Articles and persons subject to inspection.

Persons, means of conveyance (including ships, other ocean-going craft, and aircraft), baggage, cargo, and any other articles, that are destined for movement, are moving, or have been moved from Hawaii to the continental United States, Guam, Puerto Rico, or the Virgin Islands of the United States are subject to agricultural inspection at the port of departure and/or the port of arrival. If an inspector finds any article prohibited movement by the quarantine and regulations of this subpart, he or she, taking the least drastic action, shall order the return of the article to the place of origin, or the exportation of the article, under safeguards satisfactory to him or her, or otherwise dispose of it, in whole or part, to comply with the quarantine and regulations of this subpart.

7. Section 318.13–9 is revised to read as follows:

§ 318.13–9 Inspection of means of conveyance.

(a) *Inspection of aircraft prior to departure.* No person shall move any aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless the person moving the aircraft has contacted an inspector and offered the inspector the opportunity to inspect the aircraft prior to departure and the inspector has informed the person proposing to move the aircraft that the aircraft may depart.

(b) *Inspection of aircraft moving to Guam.* Any person who has moved an aircraft from Hawaii to Guam shall contact an inspector and offer the inspector the opportunity to inspect the aircraft upon the aircraft's arrival in

Guam, unless the aircraft has been inspected and cleared in Hawaii prior to departure in accordance with arrangements made between the operator of the aircraft, the Animal and Plant Health Inspection Service, and the government of Guam.

(c) *Inspection of ships upon arrival.* Any person who has moved a ship or other ocean-going craft from Hawaii to the continental United States, Guam, Puerto Rico, or the Virgin Islands of the United States shall contact an inspector and offer the inspector the opportunity to inspect the ship or other ocean-going craft upon its arrival.

§§ 318.13–10 and 318.13–11 [Removed]

8. Sections 318.13–10 and 318.13–11 are removed.

§ 318.13–12 [Redesignated as § 318.13–10 and Revised]

9. Section 318.13–12 is redesignated as § 318.13–10, and is revised to read as follows:

§ 318.13–10 Inspection of baggage, other personal effects, and cargo.

(a) *Offer for inspection by aircraft passengers.* Passengers destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States shall offer their carry-on baggage and other personal effects for inspection at the place marked for agricultural inspections, which will be located at the airport security checkpoint or the aircraft boarding gate, at the time they pass through the checkpoint or the gate. Passengers shall offer their check-in baggage for inspection at agricultural inspection stations prior to submitting their baggage to the check-in baggage facility. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to such baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Passengers shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a passenger's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The passenger shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the passenger, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(b) *Offer for inspection by aircraft crew.* Aircraft crew members destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, shall offer their baggage and personal effects for inspection at the inspection station designated for the employing airline not less than 20 minutes prior to the scheduled departure time of the aircraft or the rescheduled departure time as posted in the public areas of the airport. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Aircraft crew members shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a crew member's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The crew member shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the crew member, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(c) *Baggage inspection for persons traveling to Guam on aircraft.* No person who has moved from Hawaii to Guam on an aircraft shall remove or attempt to remove any baggage or other personal effects from the area secured for customs inspections before the person has offered to an inspector, and has had passed by the inspector, his or her baggage and other personal effects. persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(d) *Baggage acceptance and loading on aircraft.* No person shall accept or load any check-in aircraft baggage destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless a certificate is attached to the baggage, or the baggage bears a USDA stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been inspected and passed.

(e) *Offer for inspection by persons moving by ship.* No person who has moved on any ship or other ocean-going craft from Hawaii to the continental United States, Puerto Rico, Guam, or the Virgin Islands of the United States, shall remove or attempt to remove any baggage or other personal effects from the designated inspection area as provided in § 318.13–10(h) on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has had passed by the inspector, the baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(f) *Loading of certain cargoes.* (1) Except as otherwise provided in paragraph (f)(2) of this section, no person shall present to any common carrier or contract carrier for movement, and no common carrier or contract carrier shall load, any cargo containing fruits, vegetables, or other articles regulated under this subpart that are destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless the cargo has been offered for inspection, passed by an inspector, and bears a USDA stamp or USDA inspection sticker, or unless a certificate or limited permit is attached to the cargo as specified in § 318.13–3(d).

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker, and without an

attached certificate or limited permit if the cargo is moved:

(i) As containerized cargo on ships or other ocean-going craft or as air cargo;

(ii) The carrier has on file documentary evidence that a valid certificate or limited permit was issued for the movement; and

(iii) A notation of the existence of these documents is made by the carrier on the waybill, manifest, or bill of lading that accompanies the shipment.

(g) *Removal of certain cargoes in Guam.* No person shall remove or attempt to remove from a designated inspection area as provided in § 318.13–10(h), on or off the means of conveyance, any cargo moved from Hawaii to Guam containing fruits, vegetables, or other articles regulated under this subpart, unless the cargo has been inspected and passed by an inspector in Guam.

(h) *Space and facilities for baggage inspection.* Baggage inspection will not be performed until the person in charge or possession of the ship, other ocean-going craft, or aircraft provides space and facilities on the means of conveyance, pier, or airport that are adequate, in the inspector's judgment, for the performance of inspection.

10. A new § 318.13–11 is added to read as follows:

§ 318.13–11 Disinfection of means of conveyance.

If an inspector, through an inspection pursuant to this subpart, finds that a means of conveyance is infested with or contains plant pests, and the inspector orders disinfection of the means of conveyance, then the person in charge or in possession of the means of conveyance shall disinfect the means of conveyance and its cargo in accordance with an approved method contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and in a manner prescribed by the inspector, prior to any movement of the means of conveyance or its cargo. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "Materials incorporated by reference."

§§ 318.13–13 through 318.13–17 [Redesignated as §§ 318.13–12 through 318.13–16]

11. Sections 318.13–13 through 318.13–17 are redesignated as 318.13–12 through 318.13–16.

§ 318.13–12 [Amended]

12. Newly designated § 318.13–12 is amended as follows:

a. In the first sentence of paragraph (a) "Before any ship, vessel, other surface craft, or aircraft from Hawaii" is removed and "Before any aircraft moving to Guam from Hawaii, or any ship, vessel, or other surface craft from Hawaii" is inserted.

b. In the second sentence of paragraph (a) the colon after "inspection area" is replaced with a period, and the remainder of that sentence is removed.

13. Newly designated § 318.13–13 is revised to read as follows:

§ 318.13–13 Movements by the Department of Agriculture.

Notwithstanding any other restrictions of this subpart, articles subject to the requirements of the regulations in this subpart may be moved if they are moved:

(a) By the United States Department of Agriculture for experimental or scientific purposes;

(b) Pursuant to a Departmental permit issued for the article and kept on file at the port of departure;

(c) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plant pests and diseases; and,

(d) With a Departmental tag or label bearing the number of the Departmental permit issued for the article securely attached to the outside of the container of the article or securely attached to the article itself if not in a container.

Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands

§ 318.58–1 [Amended]

14. Section 318.58–1 is amended by adding a new paragraph (f) to read as follows:

* * * * *

(f) *Certificate.* A document signed by an inspector certifying that a particular ship, vessel, other surface craft, or aircraft, or any specified lot or shipment of fruits or vegetables or other plant materials, via baggage, parcel post, express, freight or other mode of transportation, has been inspected and found apparently free from articles the movement of which is prohibited by the quarantine and regulations in this subpart, and from the plant pests referred to in said quarantine; or that the lot or shipment is of such a nature that no danger of infestation or infection is involved; or that it has been treated in a manner to eliminate infestation. A certificate covering treated products must state the treatment applied.

§ 318.58–2 [Removed]

15. Section 318.58–2 is removed.

§ 318.58–3 [Redesignated as § 318.58–2 and Amended]

16. Section 318.58–3 is redesignated as § 318.58–2, the section heading is revised, paragraphs (a), (b) and (c) are redesignated as (b)(1), (b)(2) and (b)(3), and a new paragraph (a), and new heading for paragraph (b) are added to read as follows:

§ 318.58–2 Regulated articles.

(a) *Prohibited movement.* Fruits, vegetables, and other products specified in § 318.58 and not eligible for inspection and certification under § 318.58–4 or otherwise expressly authorized movement in the regulations in this subpart are prohibited movements.

(b) *Regulated movement.* (1) Subject to * * *

* * * * *

17. A new § 318.58–3 is added to read as follows:

§ 318.58–3 Conditions of movement.

(a) *To any destination.* Any regulated articles may be moved interstate from Puerto Rico or the Virgin Islands of the United States in accordance with this subpart to any destination if:

(1) The movement is authorized by a valid certificate issued in accordance with § 318.58–4, or

(2) The movement is exempted from certificate requirements by administrative instructions in this subpart.

(b) *Segregation of certified articles.* Articles authorized for movement by a certificate after treatment in accordance with § 318.58–4(b), taken aboard any ship, vessel, other surface craft, or aircraft in Puerto Rico or the Virgin Islands of the United States, must, under the supervision of an inspector, be segregated and protected from infestation by any plant pest or disease.

(c) *Attachment of certificates.* Except as otherwise provided for certain air cargo and containerized cargo on ships moved in accordance with § 318.58–10, each box, bale, crate, or other container of regulated articles moved under a certificate shall have the certificate attached to the outside of the container: *Provided,* that if a certificate is issued for a shipment of more than one container or for bulk products, the certificate shall be attached to or stamped on the accompanying waybill, manifest, or bill of lading.

§ 318.58–5 [Removed]

§ 318.58–4 [Redesignated as § 318.58–5]

18. Section 318.58–5 is removed, and § 318.58–4 is redesignated as § 318.58.5.

19. A new § 318.58–4 is added to read as follows:

§ 318.58–4 Issuance of certificates.

An inspector may issue a certificate for the movement of regulated articles upon compliance with the regulations in this subpart and under either of the following conditions:

(a) *Certification on basis of inspection or nature of lot involved.* An inspector may issue a certificate for fruits and vegetables designated in § 318.58–2(b)(1) after he has inspected them and found that they appear free from infestation and infection, or has determined without an inspection that the lot for shipment is of such a nature that there appears to be no danger of infestation or infection.

(b) *Certification on basis of treatment.* Fruits and vegetables designated in § 318.58–2(b) may be certified after undergoing an approved treatment contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and if the articles are handled after treatment in accordance with all conditions that the inspector requires. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "materials incorporated by reference." Treatments shall be applied at the expense of the shipper, owner, or person in charge of the articles. The Department of Agriculture or its inspector will not be responsible for loss or damage resulting from any treatment prescribed or supervised under this subpart.

§ 318.58–3c [Redesignated as § 318.58–4a]

20. Section 318.58–3c is redesignated as § 318.58–4a.

§ 318.58–7 [Amended]

21. Section 318.58–7 is amended as follows: (a) By removing "ships, vessels, or aircraft" and inserting "ships or other ocean-going craft"; (b) by adding the phrase, "or aircraft moving from Puerto Rico or the Virgin Islands of the United States to Guam" after the words "United States" and before the words ": Provided, That"; and (c) by amending the reference to "318.58–11" to read "318.58–12" in the proviso.

22. Section 318.58–8 is revised to read as follows:

§ 318.58–8 Articles and persons subject to inspection.

Persons, means of conveyance (including ships, other ocean-going craft, and aircraft), baggage, cargo, and any other articles that are destined for movement, are moving, or have been moved from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States are subject to agricultural inspection at the port of departure and/or the port of arrival. If an inspector finds any article prohibited movement by the quarantine and regulations of this subpart, he or she, taking the least drastic action, shall order the return of the article to the place of origin or the exportation of the article, under safeguards satisfactory to him or her, or otherwise dispose of it, in whole or part, to comply with the quarantine and regulations of this subpart.

23. Section 318.58–9 is revised to read as follows:

§ 318.58–9 Inspection of means of conveyance.

(a) *Inspection of aircraft prior to departure.* No person shall move any aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, District, or Territory of the United States, except Guam, unless the person moving the aircraft has contacted an inspector and offered the inspector the opportunity to inspect the aircraft prior to departure and the inspector has informed the person proposing to move the aircraft that the aircraft may depart.

(b) *Inspection of aircraft moving to Guam.* Any person who has moved an aircraft from Puerto Rico or the Virgin Islands of the United States to Guam shall contact an inspector and offer the inspector the opportunity to inspect the aircraft upon the aircraft's arrival in Guam, unless the aircraft has been inspected and cleared in Puerto Rico or the Virgin Islands prior to departure in accordance with arrangements between the operator of the aircraft, the Animal and Plant Health Inspection Service, and the government of Guam.

(c) *Inspection of ships upon arrival.* Any person who has moved a ship or other ocean-going craft from Puerto Rico or the Virgin Islands of the United States to any other State, District, or Territory of the United States shall contact an inspector and offer the inspector the opportunity to inspect the ship or other ocean-going craft upon its arrival.

§§ 318.58–10 and 318.58–14 [Removed]

§ 318.58–11 [Redesignated as § 318.58–10 and Revised]

24. Sections 318.58–10 and 318.58–14 are removed, and § 318.58–11 is redesignated as § 318.58–10 and revised to read as follows:

§ 318.58–10 Inspection of baggage, other personal effects, and cargo.

(a) *Offer for inspection by aircraft passengers.* Passengers destined for movement by aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States, except Guam, shall offer their carry-on baggage and other personal effects for inspection at the place marked for agricultural inspections, which will be located at the airport security checkpoint or the aircraft boarding gate, at the time they pass through the checkpoint or the gate. Passengers shall offer their check-in baggage for inspection at agricultural inspection stations prior to submitting their baggage to the check-in baggage facility. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that the baggage or personal effects have been inspected and passed as required. Passengers shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a passenger's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The passenger shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the passenger, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(b) *Offer for inspection by aircraft crew.* Aircraft crew members destined for movement by aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States, except Guam, shall offer their baggage and personal effects for inspection at the inspection station designated for the employing airline not less than 20 minutes prior to the scheduled departure time of the aircraft or the rescheduled departure time as posted in the public areas of the airport. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Aircraft crew members shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a crew member's baggage or personal effects discloses an article in violation of the

regulations in this part, the inspector shall seize the article. The crew member shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the crew member, the nature of the identification presented for corroboration, the nature of the violations, the types of articles involved, and the date, time, and place of the violation.

(c) *Baggage inspection for persons traveling to Guam on aircraft.* No person who has moved from Puerto Rico or the Virgin Islands of the United States to Guam on an aircraft shall remove or attempt to remove any baggage or other personal effects from the area secured for customs inspections before the person has offered to an inspector, and had passed by the inspector, his or her baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(d) *Baggage accepting and loading on aircraft.* No person shall accept or load any check-in aircraft baggage destined for movement from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States, except Guam, unless a certificate is attached to the baggage, or the baggage bears a USDA stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been offered for inspection and passed by an inspector.

(e) *Offer for inspection by persons moving by ship.* No person who has moved on any ship or other ocean-going craft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States shall remove or attempt to remove any baggage or other personal effects from a designated inspection area as provided in § 318.58–10(h), on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has passed by the inspector, the baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(f) *Loading of certain cargoes.* (1) Except as otherwise provided in paragraph (f)(2) of this section, no person shall present to any common carrier or contract carrier for movement, and no common carrier or contract carrier shall load, any cargo containing fruits, vegetables, or other articles regulated under this subpart that are distined for movement from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States, except Guam, unless the cargo has been offered for inspection, passed by an inspector, and bears of USDA stamp or USDA inspection sticker, or ulesss a certificate or limited permit is attached to the cargo as specified in § 318.58–3(c).

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker and without an attached certificate or limited permit if the cargo is moved:

(i) As containerized cargo on ships or other ocean-going craft or as air cargo;

(ii) The carrier has on file documentary evidence that a valid certificate or limited permit was issued for the movement; and

(iii) A notation of the existence of these documents is made by the carrier on the waybill, manifest, or bill of lading that accompanies the shipment.

(g) *Removal of certain cargoes in Guam.* No person shall remove or attempt to remove from a designated inspection area as provided in § 318.58–10(h), on or off the means of conveyance, any cargo moved from Puerto Rico or the Virgin Islands of the United States to Guam containing fruits, vegetables, or other articles regulated under this subpart, unless the cargo has been inspected and passed by an inspector in Guam.

(h) *Space and facilities for baggage inspection.* Baggage inspection will not be performed until the person in charge or possession of the ship, other ocean-going craft, or aircraft provides space and facilities on the means of conveyance, pier or airport that are adequate, in the inspector's judgment, for the performance of inspections.

25. A new § 318.58–11 is added to read as follows:

§ 318.58–11 Disinfection of means of conveyance.

If an inspector, through an inspection pursuant to this subpart, finds that a means of conveyance is infested with or contains any plant pest, and the inspector orders disinfection of the means of conveyance, then the person in charge or in possession of the means of conveyance shall disinfect the means of conveyance and its cargo, in accordance with an approved method contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and in a manner prescribed by the inspector, prior to any movement of the means of conveyance or its cargo. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "Materials incorporated by reference."

§ 318.58–12 [Redesignated as § 318.58–14]

26. Section 318.58–12 is redesignated as § 318.58–14.

27. A new § 318.58–12 is added and reserved as follows:

§ 318.58–12 [Reserved]

28. Section 318.58–13 is revised to read as follows:

§ 318.58–13 Movements by the Department of Agriculture.

Notwithstanding any other restrictions of this subpart, articles subject to the requirements of the regulations in this subpart may be moved if they are moved:

(a) By the United States Department of Agriculture for experimental or scientific purposes;

(b) Pursuant to a Departmental permit issued for the article and kept on file at the port of departure;

(c) Under conditions specified on the Departmental permit and found by the

Administrator to be adequate to prevent the spread of plant pests and diseases; and,

(d) With a Departmental tag or label bearing the number of the Departmental permit issued for the article securely attached to the outside of the container of the article or securely attached to the article itself if not in container.

29. A new § 318.58–15 is added to read as follows:

§ 318.58–15 Costs and charges.

Plant Protection and Quarantine shall furnish the services of the inspector during regularly assigned hours of duty at the usual places of duty without cost to the person requesting the services. Plant Protection and Quarantine will not assume responsibility for any costs or charges, other than those indicated in this paragraph, in connection with the inspection, treatment, conditioning, storage, forwarding, or any other operation incidental to the movement of regulated articles under this subpart.

30. A new § 318.58–16 is added to read as follows:

§ 318.58–16 Cancellation of certificates.

Any certificate that has been issued or authorized under this subpart may be withdrawn by an inspector orally or in writing if he or she determines that the holder of the certificate has not complied with all conditions under the regulations for the use of the document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate has been withdrawn may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

Done in Washington, DC, this 19th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–1651 Filed 1–24–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Stabilization and Conservation Service

7 CFR Parts 725 and 726

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule that was published on October 31, 1988 (53 FR 43845). The interim rule amended the regulations found at 7 CFR Parts 725 and 726 to implement provisions of the Disaster Assistance Act of 1988 with respect to: (1) Crediting flue-cured or burley tobacco undermarketings; (2) determining 1989 effective burley tobacco marketing quotas; and (3) the lease and transfer of burley tobacco marketing quotas after July 1.

EFFECTIVE: January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382–0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity 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).

Discussion of Changes

This final rule adopts without change an interim rule which amended the regulations found at 7 CFR Parts 725 and 726 to implement the provisions of section 203 of the Disaster Assistance Act of 1988 ("the 1988 Act") with respect to the determination of the undermarketings of the 1988 crop of burley or flue-cured tobacco that otherwise could be claimed in accordance with sections 317 and 319 of the Agricultural Adjustment Act of 1938, as amended ("the 1938 Act"). Section 203 of the 1988 Act provides that such undermarketings shall be reduced by the number of pounds for which a disaster payment was made on the 1988 crop of tobacco.

With regard to burley tobacco, section 304 of the 1988 Act authorizes an increase in the 1989 effective undermarketings from that previously authorized if producers on a farm have undermarketed the farm's 1988 effective farm marketing quota due to a natural disaster condition. The interim rule amended the regulations found at 7 CFR Part 726 to provide that the 1989 effective undermarketings for qualifying burley tobacco farms may not exceed the sum of the pounds of quota leased to the farm in 1988 and 125 percent of the 1988 basic farm marketing quota.

The interim rule also amended the regulations at 7 CFR Part 726 to implement the provisions of section 304 of the 1988 Act which amended section 319 of the 1938 Act with respect to the 1988 and subsequent crops of burley tobacco to authorize the lease and transfer of burley tobacco marketing quotas after July 1 under certain natural disaster conditions.

One comment was received during the comment period which ended on November 30, 1988. A State farm organization urged adoption of the interim rule as a final rule.

Lists of Subjects in 7 CFR Parts 725 and 726

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Final Rule

PARTS 725 AND 726—[AMENDED]

Accordingly, the interim rule amending 7 CFR Parts 725 and 726 which was published at 53 FR 43845 on October 31, 1988, is adopted as a final rule without change.

Signed in Washington, DC, on January 6, 1989.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-1592 Filed 1-24-89; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 981

[FV-88-120FR]

Handling of Almonds Grown in California; Final Salable, Reserve, and Export Percentages for the 1988-89 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for marketable California almonds received by handlers during the 1988-89 crop year, which began July 1, 1988. This action is taken under the marketing order for almonds grown in California and is intended to avoid unreasonable fluctuations in shipments and prices in view of projected record large California and worldwide almond supplies.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The order and agreement are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

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

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

There are an estimated 115 handlers of almonds subjects to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action will require handlers of California almonds to withhold, as a reserve, from normal domestic and export markets, 25 percent of merchantable almonds received from growers during the 1988-89 crop year—July 1, 1988 through June 30, 1989. The remaining 75 percent (the salable percentage) of the crop may be sold by handlers in any market. Total 1988 crop marketable production has been projected to be 556.8 million kernel weight pounds—which would be the third largest crop in history. Total 1988-89 crop year supplies (1988 crop marketable production plus marketable production carried in from the 1987-88 crop year) are projected at a record large 782.4 million kernel weight pounds—11.3 percent larger than last year's previous record supply of 702.9 million kernel weight pounds. These projections are based on the most recent official almond crop estimate. Worldwide supplies for 1988 are also expected to be a record high. Domestic and export trade demand for 1988-89 is estimated at 530 million kernel weight pounds.

Reserve almonds may be released to the salable category at a later date if it is found that the amount of almonds released by the salable percentage is insufficient to satisfy the 1988-89 trade demand, including desirable carryover requirements for use during the 1989-90 crop year (i.e., if it appears that the released portion of the 1989 crop will be insufficient to meet 1989-90 trade demand needs). This could happen, for example, if the crop should fall significantly short of projected production. The Almond Board of California (Board) may then vote to release a higher percentage of reserve almonds to the salable category to provide adequate almonds to meet trade demand. Otherwise, reserve almonds must be diverted to secondary outlets.

While this rule may restrict the amount of almonds which handlers may sell in normal domestic and export markets, the salable and reserve percentages are needed to lessen the impact of the projected oversupply situation facing the industry and to promote stronger marketing conditions, thus avoiding unreasonable fluctuations in prices and supplies and improving grower returns. The reserve percentage is designed to reduce the oversupply situation in the industry in the 1988-89 crop year by holding off the market a percentage of the available almonds that could be added to an already fully supplied market. If the reserve were zero and all available California almonds were salable, almond prices, in a market which already has record supplies on hand, would be expected to drop in both domestic and foreign markets. Thus, the Board's recommendation for a 25 percent reserve is designed to effectuate the purposes of the Act by avoiding unreasonable fluctuations in supplies and prices. Also, the creation of a reserve from this year's crop may add market stability to the 1989-90 crop year by reserving 25 percent of this year's production for shipment during the 1989-90 season in the event that 1989 production is inadequate to fill that season's trade demand.

The authority to establish salable and reserve percentages is found in § 981.47 of the order. This action is based on a recommendation of the Almond Board of California, hereinafter referred to as the "Board," which is the agency responsible for local administration of the order, and upon other available information.

Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent (0 percent of the reserve set aside for export), respectively, on estimates of marketable supplies and combined domestic and export trade demands for the 1988-89 crop year. The Board's 1988 marketable production estimate of 556.8 million kernel weight pounds is based on its

1988 crop estimate of 580.0 million kernel weight pounds, minus an estimated weight loss of 23.2 million kernel weight pounds resulting from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 530.0 million kernel weight pounds—160.0 million pounds for domestic needs and 370.0 million pounds for export needs. An inventory adjustment is made to account for supplies of salable almonds carried in from the 1987–88 crop year on July 1, 1988. Inventory adjustments are also made for 1987–88 crop year reserve almonds released to the salable category effective August 1, 1988 and for supplies of salable almonds to be carried over on June 30, 1989 for early season shipment during the 1989–90 crop year until the 1989 crop is available for market. After adjusting for available inventory, the trade demand is calculated at 417.6 million kernel weight pounds, the quantity of almonds from the estimated 1988 marketable production necessary to meet trade demand. The salable percentage of 75 percent is designed to meet that demand.

The remaining 25 percent (139.2 million kernel weight pounds) of the 1988 crop marketable production will be withheld by handlers to meet their reserve obligations. All or part of these almonds may later be released to the salable category if it is found that the supply made available by the salable percentage is insufficient to satisfy 1988–89 trade demand, including desirable carryover requirements for use during the 1989–90 crop year. The Board is required to make any recommendations to the Secretary to increase the salable percentage prior to May 15, 1989. Alternatively, reserve almonds may be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year.

A tabulation of the estimates and calculations used by the Board in arriving at its July 20, 1988, recommendation follows:

MARKETING POLICY ESTIMATES—1988 CROP

[Kernel Weight Basis]

	Million lbs.	Percent
Estimated Production:		
1. 1988 Production	580.0	
2. Loss and Exempt—4.0%	23.2	
3. Marketable Production	556.8	
Estimated Trade Demand:		
4. Domestic	160.0	
5. Export	370.0	
6. Total	530.0	
Inventory Adjustment:		
7. Carryin 7/1/88	112.8	
8. Additional Carryin 8/1/88	112.8	
9. Desirable Carryover 6/30/89	113.2	
10. Adjustment (Item 9 minus item 7 minus item 8)	(−112.4)	
Salable/Reserve:		
11. Adjusted Trade Demand (Item 6 plus item 10)	417.6	
12. Reserve (Item 3 minus item 11)	139.2	
13. Salable % (Item 11÷item 3×100)		75%
14. Reserve % (100% minus item 13)		25%

As shown by the preceding table, for the 1988–89 crop year, estimated exports are included in the trade demand. Thus, an export percentage of 0 percent of the reserve is established. Therefore, unreleased reserve almonds will not be eligible for export to normal export outlets.

This action is designed to help avoid unreasonable fluctuations in shipments and prices as the almond industry faces its largest total worldwide supply in history. Worldwide production for 1988–89 is forecast by the Board at 788.3 million kernel weight pounds—second only to last year's (1987–88) record high production of 871.4 million kernel weight pounds. Worldwide supply for the period September 1, 1988 through August 31, 1989, is forecast by the Board at a record 940.0 million kernel weight pounds. In addition, the projected 1988–89 crop year domestic supply of 782.4 million marketable kernel weight pounds would be 39.4 percent larger than the 561.4 million kernel weight pound average of domestic supplies for the last five years (1983–84 through 1987–88). This year's projected domestic crop of 580 million kernel weight pounds would be the third largest in history.

The 1982 Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) specify that 110 percent of recent years' sales must be made available to primary markets each season. This action and an earlier release of reserve almonds from the 1987 crop (53 FR 28631, July 29, 1988) will provide an estimated 643.2 million kernel weight pounds of California almonds for unrestricted sales (1988 crop salable production plus carryin from the 1987 crop) to meet increasing domestic and world almond consumption demands. This amount exceeds the actual 1987–88 record for delivered sales of California almonds by 32.9 percent. Thus, the Guidelines requirement will be met.

Interested persons were invited in a proposed rule (53 FR 36053, September 16, 1988) to submit their views and comments on this action during a 15-day comment period.

Eleven comments were received during the 15-day comment period. Ten comments on the proposed rule did not support the proposed percentages for salable and reserve categories for California almonds in the 1988–89 marketing year. One comment, from Blue Diamond Growers, Inc., supported the proposed rule. Two of the comments were not filed in direct response to the request for comments in the proposed rule, but were letters to the Secretary of Agriculture concerning proposed salable and reserve percentages for California almonds during the 1988–89 year. These were included by the Department as comments in opposition to the proposed rule.

Commenters on the proposed rule to establish salable and reserve percentages for California almonds during the 1988–89 crop year were: Steven W. Easter, of Blue Diamond Growers (Blue Diamond); Budge Brown, of Brown Enterprises; Frank S. Swain, Chief Counsel for Advocacy of the Small Business Administration (SBA); Lars E. Johnson, of L. E. Johnson Almond Orchards; Gary Powell, of the Quality Nut Co.; Cloyd Angle, of Cal-Almond, Inc.; Robert G. den Dulk; James G. Crecelius, of Monte Vista Farming Company; Brian Leighton, counsel to the Independent Almond Handlers Association; Daniel L. Mallory, of the Roberts Ferry Nut Co.; and Les Portello, of Portello Ranch.

Several objections submitted to the proposed 1988–89 volume regulations were raised by more than one commenter. Where objections have been duplicated by more than one party, the content of such comments are discussed together. Other comments are addressed individually.

The most prevalent comment on the proposed volume regulation for the 1988–89 year concerned the percentage levels proposed for salable and reserve categories. Several commenters raised

objections that the reserve percentage of 25 percent is larger than required in the present market. Some commenters also asserted that no volume regulation at all would be the most advantageous strategy for this year. One commenter stated that selling all available almonds without utilizing a reserve might expand markets for almonds. Several commenters felt that while an almond reserve of some percentage might be useful this year, a reserve of 25 percent would be too large because the actual crop yield may be below, perhaps significantly below, the latest official National Agricultural Statistics Service (NASS) estimate of 580 million kernel weight pounds. If the crop should be smaller than the NASS estimate, these commenters stated, a 25 percent reserve could result in reduced supplies of almonds available for unrestricted sales, causing the industry to be unable to fully satisfy the anticipated trade demand, if the percentages were not revised later in the season. One commenter stated that if next year's crop is also unusually large, which is a possibility, then the 25 percent reserve would not be likely to be released, and would result in excessive carryover of inventory from previous years which could depress prices, or else the reserve would be disposed of in noncompetitive outlets, causing a large reduction in returns on the 25 percent of the crop that had been placed in reserve. Several commenters suggested that a reserve in the 15 percent range might be sufficient to provide a buffer against a short crop next year, while allowing for high levels of almond shipments early in this crop year. (Many of the concerns raised by the foregoing comments were discussed in some detail at the Board's July 20, 1988, meeting, when the 1988–89 salable, reserve and export percentages were recommended. At that meeting, options discussed included the establishment of no reserve for the 1988–89 year, and the potential impact of such action on the market.)

In regard to the concern that the crop estimate is higher than actual crop production may be this year, the Board monitors ongoing developments in the industry, including such factors as whether the total almond production in the current crop year will fall short of early season estimates. The Board has the responsibility to recommend an increase of the salable percentage later in the season if it appears that supplies made available by the initial free percentage will be insufficient to meet trade demand needs. The next NASS crop estimate will be available early in 1989. However, the Board need not wait until the early 1989 estimate, but may recommend revising the salable and reserve percentages at any time until May 15 of each year, if other information available to the Board indicates such revision is necessary to provide sufficient supplies to meet trade demand.

Other commenters felt that the reserve of 25 percent would be too large because there is currently strong market demand for almonds. Commenters stated that since demand appears good in the industry, holding almonds in reserve would be necessary and would reduce sales at the start of the season. The level of demand is evidenced, one commenter stated, by the fact that Blue Diamond and Dole Foods, two large handlers of almonds, withdrew temporarily from the market in mid-September to reassess the market situation and adjust their pricing structures. One comment noted that, in a press release issued to explain why it was withdrawing from the market, Blue Diamond stated that it anticipates that the total California almond yield will be less than official crop estimates (probably due to stress and disease factors stemming from this summer's dry growing conditions) and that almond sales are currently brisk.

Steven W. Easter of Blue Diamond, however, in his comment in support of the proposed salable and reserve percentages, wrote that if the almond industry were to release all of the available almond tonnage to the market immediately without use of the reserve, the impact on growers' returns would be "disastrous." Use of zero percent reserve at the opening of the crop year would be very detrimental to almond prices, Mr. Easter wrote. In his opinion, if there were no reserve, monetary returns to growers might not even cover the costs of almond production. He added that he also believes that all of the available almonds could not be absorbed by the market this year, and that if all available almonds were marketed, speculative buying of almonds would occur at very low prices in an unstable market. Mr. Easter added that since 1970, at least one year in three has yielded a small almond crop with consequent shortages in the marketplace. The use of the reserve in this year of excess supply, this commenter stated, would also provide a buffer in the event of a short crop and an undersupplied market next year, which is a statistical possibility, and would provide market stability.

Another concern raised in comments upon the proposed rule was that withholding a 25 percent reserve on the 1988–89 almond crop would be detrimental to small handlers and independent handlers of almonds. Several commenters stated that, as small businesses, if they could sell all of their almonds quickly in the beginning of the season (i.e., without volume regulation) they would make more money than if they held almonds in reserve, and thus, the proposed action to hold a reserve would have a significant impact on their business. However, these comments do not take into account the fact that if there were no volume regulation, not only the commenters' own businesses but most other small almond handlers would be trying to sell their almonds quickly in order to reduce storage or holding costs. Large handlers also would continue to aggressively market their almonds, and the market would be under the pressure of record large supplies, driving down prices received for almonds. Prices likely to be received by handlers under such rapid marketing of their almonds (i.e., without a reserve) would not be the same as prices with a reserve in place. Without a reserve, prices would be expected to be significantly lower in an oversupplied market. The advantage described by a handler if that handler were able to market all its almonds immediately, is valid only theoretically, because in actual practice most handlers would likely follow the same course of action, and thus, no particular handler would be able to market its almonds immediately without stiff competition from the rest of the industry also attempting to do so. While large handlers traditionally market throughout the crop year, it is reasonable to assume that, without regulation, they also would seek to market more of their almonds early in the crop year.

In a related concern, several commenters state that the price improvement gained by the reserve would have to be quite high in order to compensate for the holding of a reserve, because these commenters equate the reserve to losing 25 percent of their crop. In actual practice, the 25 percent reserve is not lost to the market. Commonly, a portion of the reserve, and in some cases the entire reserve, is released to be freely salable later in the season, as the 18 percent reserve portion of the crop was released in the 1987–88 crop year. Such releases may occur once a portion of an annual crop has been marketed, and the danger of a seriously oversupplied market early in the marketing season, with consequent price reductions, has passed.

In the event that the reserve is not released, it would be marketed to low-

value outlets non-competitive with normal markets. While reserve almonds would not likely be sold at prices comparable with salable almonds, the improved prices received for the salable portion of the crop and the improved stability of the industry are expected to compensate for this reduction.

Raising a similar concern, another commenter stated that in the event that the 25 percent reserve is not released later in the season or carried over into the next year, the Board should prepare an economic analysis to be certain that the improvement in grower and handler returns due to the holding of the 25 percent reserve would be sufficient to cover the reduction in revenue represented by selling the reserve into non-competitive outlets such as almond butter, oil, donations to educational or charitable organizations, etc. The Department anticipates that the Board will review economic conditions as the season progresses and will make recommendations to release reserve almonds as they are needed. Again, if reserve almonds are eventually disposed of into low-value outlets, the revenue gain on the salable portion of the crop would be maximized as much as possible. This would take place, for example, if the production surplus cannot be absorbed by the market and releasing the reserve would be detrimental to the market.

One comment concerned the classification of this action as a "major" or a "non-major" rule. The Department has, in accordance with Executive Order 12291 and Departmental Regulation 1512–1, found this action to be a "non-major" rule under criteria contained therein. Under those criteria, an action would be classified as "major" if such action were expected to have an annual effect on the economy of $100,000,000, expected to cause a major increase in prices to consumers or costs to industry or expected to have significant adverse effects on productivity, employment, competition, investment, or the ability of U.S.-based businesses to compete with foreign enterprise. The commenter in voicing concern about the "major" or "non-major" status of the rule makes certain calculations which the commenter states show an impact to the economy of more than $100,000,000 which would classify this action as "major." However, the commenter arrives at this "impact figure" by calculating the total dollar value of the reserve (approximately 139 million kernel weight pounds) and equating this figure to lost revenue. In actual practice, the reserve does not equal lost revenue because such a calculation does not take into account expected improved returns for the 75 percent salable portion of the crop, or the returns received for the 25 percent of the crop which will be sold to low-value outlets or released to the salable category later in the season. In the event that some or all of the reserve is transferred to the salable category later in the season, there would not be a reduction of revenue received for the reserve, but improved returns would be anticipated for both the reserve and the initial salable percentage of 75 percent of the 1988–89 almond crop. Therefore, this action will not have an impact of $100,000,000 on the annual economy, but is designed to prevent a negative impact on the almond industry due to oversupplied markets.

Regarding the remaining criteria that could classify this action as a "major" rule, the establishment of salable, reserve, and export percentages is not expected to cause a major price increase to either consumers or industry, but is designed to stabilize both supplies and prices. For the same reasons, the salable and reserve percentages to be established by this action will not have an adverse effect on productivity, employment, competition, investment, or the ability of U.S.-based businesses to compete with foreign enterprise.

The SBA, in its comment, requested that the Department conduct a Regulatory Flexibility Analysis regarding the proposed rule, showing an economic analysis of the effects of the proposed almond reserve. Mr. Swain of the SBA also stated that small almond handlers could possibly lose part of their market share due to the 25 percent reserve limiting their ability to meet contractual obligations for the year, whereas this is less likely to be a problem for larger handlers who market for a cooperative.

With respect to such potential contractual obligations, the almond marketing order has been in effect since 1950 and many reserve percentages have been established. Handlers are aware of the marketing order and program operations conducted under the order, and plan their business operations accordingly. Thus, the probability of a large almond crop this year, in addition to the large carryover from the prior season, would be sufficient cause for handlers to anticipate the establishment of a reserve and plan their business operations accordingly taking these factors into consideration.

Section 605(b) of the Regulatory Flexibility Act provides that a Regulatory Flexibility Analysis is not necessary if the head of an Agency has certified that a rule will not have a "significant economic impact on a substantial number of small entities." That section further requires the Agency to provide a succinct statement explaining the reasons for such certification. The AMS has considered the economic impact of this rule on small entities. The majority of handlers in the California almond industry may be classified as small businesses. Any costs imposed on small businesses by this action are expected to be more than offset by the benefits derived therefrom. Therefore, this action is not expected to have a significant economic impact on them. For this and other reasons stated herein, the Administrator of the AMS has certified that this action will not have a significant economic impact on a substantial number of small entities. This certification meets the applicable requirements of the RFA.

Miscellaneous comments also were received concerning the perceived fairness or unfairness of the almond marketing order in general and the makeup of the industry representation on the Board between members representing the cooperative and independents. This final rule only concerns the establishment of salable, reserve and export percentages for almonds. However, marketing agreement and Order No. 981 regulating the handling of almonds grown in California are effective under the Agricultural Marketing Agreement Act of 1937, as amended, and the nomination and selection of the members on the Committee are pursuant to the procedures that appear in the provisions of the order.

After consideration of all relevant material presented, including the Board's recommendations, the comments received, and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This final rule will take effect 30 days after its publication in the **Federal Register** and will apply to all almonds received by handlers during the 1988–89 crop year, which began July 1, 1988 and ends June 30, 1989. The 30-day period is intended to give handlers adequate time to meet the requirements of this rule.

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

Subpart—Salable, Reserve, and Export Percentages

2. Add a new § 981.236 to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 981.236 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1988.

The salable, reserve, and export percentages during the crop year beginning July 1, 1988, shall be 75 percent, 25 percent, and 0 percent, respectively.

Dated: January 19, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–1652 Filed 1–24–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

Low-Level Radioactive Waste Disposal Facility; Availability of Publication Concerning Application of Quality Assurance

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a publication which provides guidence to an applicant in meeting the low-level waste (LLW) disposal facility quality assurance requirements in 10 CFR Part 61.

ADDRESS: Copies of NUREG–1293, may be purchased by calling the U.S. Government Printing Office on (202) 275–2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio Jr., Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone: (301) 492–3438

SUPPLEMENTARY INFORMATION: This document provides guidance to an applicant in meeting the quality control (QC) requirement of 10 CFR 61.12(j). The regulation requires that a license application for an LLW disposal facility include a description of the QC program to be applied to determining the proposed characteristics of the disposal site. The regulation also requires a QC program during design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste. Audits and managerial controls must be included in the QC program. The propose of the managerial controls, audits and QC program required by 10 CFR 61.12(j) is to ensure a planned, organized, and documented approach to meeting the performance objectives and the technical requirements of 10 CFR Part 61. The requirements stated in 10 CFR 61.12(j) provide the bases for developing a QA program and the guidance provided.

The document provides guidance to an applicant for the development of an acceptable quality assurance program using eighteen criteria that are similar to the criteria developed for Appendix B of 10 CFR Part 50. Although Appendix B of 10 CFR Part 50 is not a regulatory requirements for an LLW disposal facility, the criteria that were developed for 10 CFR Part 50 are basic to any QA program. Some of the criteria addressed here are identical to criteria addressed in 10 CFR Part 50; some of the criteria addressed here have been modified to address an LLW disposal facility.

This document provides QA guidance for the design, construction, operation and closure of those structures, systems, and components as well as site characterization activities necessary to meet the regulatory requirements.

Dated at Rockville, Maryland, this 17th day of January 1989.

For the Nuclear Regulatory Commission.

Michael J. Bell,

Chief, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–1497 Filed 1–24–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–CE–25–AD; Amdt. 39–6119]

Airworthiness Directives; Piper PA–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper PA–60 series airplanes, which requires a one-time inspection of the cabin door for proper rigging, installation of cabin door placards, and modification of the cabin door latching system by installation of a door ajar warning system. The FAA has learned of twelve accidents/incidents in which it has been reported that the upper cabin entry door opened in flight. The actions of this AD will help insure that the upper cabin door is properly secured to preclude possible loss of control of the airplane.

EFFECTIVE DATE: February 24, 1989.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: Piper Service Letter (SL) 980, dated February 7, 1985, Piper Maintenance Manual (Part Number 761 732), Revision IR860920, dated September 20, 1986, and Piper Service Bulletin (SB) 600–74, dated July 3, 1978, may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, telephone (407) 567–4361. Information regarding Air Continental's Supplemental Type Certificate (STC) SA1327GL may be obtained from Air Continental, Inc., One Continental Drive, Norwalk, Ohio 44857; telephone (419) 668–3088/1–800–321–4409. This information also may be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, Aerospace Engineer, ACE–120A, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, telephone (404) 991–2910.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a one-time inspection of the cabin door for proper rigging, installation of main cabin door placards, and modification of the cabin door latching system by installation of a warning system on all Piper PA–60 series airplanes was published in the **Federal Register** on September 16, 1988 (53 FR 36055). The proposal resulted from twelve accidents/incidents since 1980 involving cabin door openings on these series airplanes. The FAA has determined that these incidents and accidents were caused by failure to insure that the door was closed and

latched prior to takeoff, improper door latching due to misrigging, or a lack of attention to the maintenance of the mechanical condition of the door latching system. Further investigation has shown that in addition to the rigging instructions available in the Piper Maintenance Manual for these airplanes, Piper has issued other service information pertaining to the cabin door latching system. Specifically, Piper issued SB 600–74, dated July 3, 1978, which provides instructions for installation of a placard on the D-ring door handle that will indicate the direction of handle rotation for latching/locking the door. In addition, this SB provides instructions for installation of index decals to indicate the position of the latching pins. Piper also issued SL 980, dated February 7, 1985, that announces the availability of an Entrance Door Ajar Warning System. This system will alert the pilot when the door is not secured by providing a warning light on the instrument panel.

Interested persons have been afforded an opportunity to comment on the proposal. Thirty-four commenters responded. Twenty-nine of the commenters were from the same company and submitted identical statements. These comments expressed support of the proposed AD indicating they had experienced several incidents where the upper cabin door came open in flight. They pointed out that their company is the holder of an STC that covers the installation of a dual switch door ajar warning system for Piper Models PA–60–600/601 airplanes. Their STC door ajar warning light system was evaluated and considered satisfactory. Therefore, the FAA has determined that this STC, which specifies the installation of a cabin door ajar warning system in accordance with Air Continental, Inc., Kit No. 10001, no revision, dated June 6, 1988, is an optional means of compliance with part of the proposed AD for Model PA–60–600/601 airplanes and it is hereby incorporated without further notice.

Of the five (5) remaining commenters, one commenter supports an annual full inspection of the door latching mechanism, a cabin door placard, and a requirement that a reliable "door unsafe warning system" be installed in all Piper PA–60 series airplanes. This commenter indicated that Piper's current door warning system is not optimal since the door latch pin may become worn and may not properly engage the plunger on the switch so that a false door warning is given. As noted, the commenter considered that the one-time inspection of the rigging of the door latching mechanism is insufficient and that it should be part of every annual inspection. This inspection was not proposed annually by the FAA because it is specified in the Maintenance Manual and mandated by FAR 43.

The commenter also said the estimated cost of compliance with the AD would be far less than the estimated cost of $850 because Piper has reduced the cost of their modification kit. This cost reduction is relieving in nature and will not have an adverse effect on small entities.

Another commenter said, "if the micro-switch breaks, the pilot would get a false indication that the door was in a safe, locked position." He also stated that PA–60 pilots should rely upon their own eyes during a proper preflight inspection. This commenter recommended changes to the door closing procedure shown on the checklist. The commenter felt that "aviators cannot be placarded or annunicated against unsafe behavior." The FAA realizes the micro-switch could fail, as the commenter suggested. However, the light would not be annunciated when the door is normally open prior to closing the door for operating the airplane and, therefore, should be noticed by the pilot. As this commenter further suggests, the pilot should be alert to an unlatched door. The proposal is not being changed in view of these comments.

Another commenter suggested that the installation of a door ajar warning system be left to the discretion of the owner/operator until and unless an extremely reliable device is available at a price of approximately $125. The FAA has learned that the price of the kit has been reduced to this price range. As noted previously, this is relieving in nature and will not have an adverse effect on small entities. The proposal is not being changed in view of this comment.

Another commenter said, "Regarding modification and installation of a door ajar warning system for the Aerostar, I think it would be a burden of inconvenience to have such a system installed and a waste of money for such a system. I believe the placards on the airplane are sufficient for any competent pilot to close and secure the cabin door." The FAA agrees that if the pilot is attentive to details, the placards should be sufficient to assure that the pilot properly closes and secures the door. However, in view of the number of reported accidents/incidents, additional safeguards will provide an increased level of safety. Therefore, the proposal is not being changed in view of these comments.

Another commenter, who operates a PA–60–601P airplane, respond that the AD is reasonable and, very likely the provisions of the AD would increase safe operation of these airplanes. Therefore, the commenter had no objection to the proposed ruling and supports and FAA position. This commenter reviewed the docket file on this proposal and discussed the action with other interested parties. As a result of the investigation and supporting evidence presented by the FAA, the commenter supports this FAA rulemaking effort. The commenter also supports the FAA's efforts to make aviation safer for all concerned parties.

Accordingly, the above changes have been incorporated into this final rule along with minor editorial clarifications.

Comments on the FAA determination of cost were noted with the above comments on the proposal. Piper has reduced the cost of their kit and accordingly, the FAA estimate has been revised downward. This cost reduction is relieving to the owner and/or operator and, accordingly, has no effect on the issuance of this AD.

Accordingly, the proposal is adopted with the changes noted above. The FAA has determined that this regulation involves approximately 1,020 airplanes at an approximate one-time cost of $445 for each airplane, or a total one-time fleet cost of $453,900. The cost of complying with the proposal is so small that it will not have a significant financial impact on any small entities owning the affected airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting

the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

PIPER (AEROSTAR): Applies to PA–60 series (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the upper cabin door from opening in flight, accomplish the following:

(a) Inspect the cabin door for proper rigging in accordance with Piper Maintenance Manual (Part Number 761 732), Revision IR860920, dated September 20, 1986. Prior to further flight, repair any discrepancies.

(b) Install cabin door placards in accordance with Piper Service Bulletin 600–74, dated July 3, 1978.

(c) Modify the cabin door latching system by the installation of a door ajar warning kit as prescribed in the information listed in either paragraph (c)(1) or (c)(2), as follows:

(1) Piper Service Letter 980, dated February 7, 1985, or

(2) Supplemental Type Certificate SA1327G1 issued to Air Continental, Inc., which specifies Kit No. 10001, no revision, dated June 6, 1988 (for Model PA–60 600/601 airplanes).

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

(e) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Atlanta Aircraft Certification Office, ACE–115A, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, telephone (407) 567–4361; or Air Continental, Inc., One Continental Drive, Norwalk, Ohio 44857, telephone 1–800–321–4409/(419) 668–3088; or may examine these documents at the FAA, Office of the Assistant Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on February 24, 1989.

Issued in Kansas City, Missouri, on January 11, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1595 Filed 1–14–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ACE–11]

Alteration of Transition Area; Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal Action is to alter the transition area at Des Moines, Iowa, by increasing the radius of the 700-foot transition area from fifteen (15) miles to twenty (20) miles. This action eliminates the need to increase Minimum Vectoring Altitudes (MVA) caused by the application of a new method for determining the elevation of the general terrain.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: A change has been made in the method for evaluating the elevation of general terrain. In the past, the general terrain had been determined by review of quadrangle charts. The current method uses the contour lines of sectional charts to verify the terrain elevations. This method results in higher MVA's. This action will increase the radius of the Des Moines, Iowa, 700-foot transition area from fifteen (15) miles to twenty (20) miles and eliminates the need to increase the MVA of 2,500 feet within this radius. This action will provide ample area for descent to the final approach intercept at a reasonable altitude. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

Discussion of Comments

On page 45274 of the **Federal Register** dated November 9, 1988 (53 FR 45274), the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Des Moines, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

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

List of Subjects In 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

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

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

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

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Des Moines, Iowa

That airspace extending upward from 700' above the surface within a 23-mile radius of the Des Moines Municipal Airport ASR radar site (latitude, 41°32'26"N; longitude, 093°39'10"W).

This amendment becomes effective at 0901 u.t.c. April 6, 1989.

Issued in Kansas City, Missouri, on January 9, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89–1598 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88-ASO-19]

Revocation of Transition Area; Forest, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the transition area, Forest, MS. The transition area was established to accommodate instrument flight rule (IFR) operations at the Forest Municipal Airport. At the time the transition area was established, a nonfederal, Nondirectional Radio Beacon (NDB) with a Standard Instrument Approach Procedure (SIAP) had been planned for the airport. The airport authority has since abandoned plans to commission the NDB and to publish a NDB SIAP.

EFFECTIVE DATE: 0901 U.T.C., May 4, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On October 27, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Forest, Mississippi, Transition Area (53 FR 43447). The transition area was originally established to accommodate IFR operations. A nonfederal NDB was planned to support a standard instrument approach procedure (SIAP) to the Forest Municipal Airport. The Airport Authority has since abandoned plans to commission the NDB and to publish a NDB SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the Forest, Mississippi, Transition Area.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Forest, MS [Removed]

Issued in East Point, Georgia, on January 10, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-1597 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 7

[T.D. ATF 280; Ref: Notice Nos. 600, 610, 611]

Use of the Terms "Cereal Beverage," "Near Beer," "Alcohol-Free," "Non-Alcoholic," and "Reduced/Low Alcohol" in the Labeling and Advertising of Malt Beverages

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

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this final rule clarifying in the regulations that malt beverage products containing less than one-half of 1 percent (.5%) alcohol by volume shall be designated labels and in advertisements as "malt beverage," or "cereal beverage," or "near beer." Further, ATF is incorporating into the regulations ATF Rul. 84-1, concerning the use of the terms "reduced alcohol" and "low alcohol" for malt beverages containing less than 2.5 percent alcohol by volume, and ATF Rul. 85-11, concerning the use of the terms "non-alcoholic" for malt beverages containing less than 0.5 percent alcohol by volume, and "alcohol-free" for malt beverage products containing no alcohol.

ATF believes that these new regulations will provide industry members with specific guidelines concerning the use of the above-mentioned terms in order to better inform consumers as to the identity of such products containing reduced, little, or no alcohol.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Jim Ficaretta, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

Section 105 (e) and (f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and (f), provides, in general terms, that malt beverage labeling and advertising shall not contain any statement which is false, deceptive, misleading, or is likely to mislead the consumer regarding the product. In addition, section 105(e) and (f) authorizes the Secretary to prescribe such regulations as will provide the consumer with adequate information as to the identity and quality of the malt beverage product, except that statements of, or statements likely to be considered as statements of, alcohol content of malt beverages are prohibited unless required by State law.

Regulations which implement these provisions are set forth in 27 CFR Part 7. In that regard, §§ 7.29(a) and 7.54(a) prohibit false and misleading statements in the labeling and advertising of malt beverages. Sections 7.22(a) and 7.52(b) provide that a class designation must appear on the labels of, and in the advertising of, all malt beverages.

Sections 7.26 and 7.29(f), respectively, prohibit statements of actual alcohol content, or statements likely to be considered as statements of alcohol content, from appearing on labels of malt beverages, unless required by State

law. Similar prohibitions exist in § 7.54(c) for the advertising of malt beverages.

The term "malt beverage," as defined in section 117(a)(8) of the FAA Act, 27 U.S.C. 211(a)(7), and its implementing regulation, 27 CFR 7.10, refers to a beverage made by alcoholic fermentation from specific materials.

Neither the law, nor the regulations, contain any reference to a minimum level of alcohol content before a product is considered a "malt beverage." The legislative history of the FAA Act clearly shows that Congress intentionally omitted any minimum alcoholic content from the definition in order to bring all malt beverages within the purview of the statute, regardless of alcohol content. In that regard, the report of the Committee on Ways and Means of the Federal Alcohol Control Bill stated: "The definition of malt beverages * * * is a technical one designed to cover the beverage products of the brewing industry and includes such products regardless of their alcoholic content." H.R. Rep. No. 1542, on H.R. 8870, 74th Cong., 1st Sess. 16 (1935).

Notice No. 600

On August 12, 1986, ATF published a notice of proposed rulemaking (Notice No. 600, 51 FR 28836) addressing, in part, the use of the word "light" (lite) in the labeling and advertising of alcoholic beverages. The Bureau also proposed to incorporate into the regulations ATF Rul. 84–1 (A.T.F. Q.B. 1984–2, 35). This ruling permitted malt beverage products containing less than 2.5 percent alcohol by volume to be labeled and advertised as a "reduced alcohol" or "low alcohol" malt beverage.

As mentioned in ATF Rul. 84–1, the legislative history of the FAA Act indicates that Congress was concerned with prohibiting statements of alcoholic strength in the labeling and advertising of malt beverages. Thus, the Bureau believes that while the statute prohibits statements which represent the malt beverage as being high in alcohol content, it would not preclude statements which indicate that the alcohol content of the malt beverage is below the range of alcohol content found in regular malt beverages.

The comment period for Notice No. 600 closed on November 10, 1986, but was reopened four days later on November 14, with the publication of Notice No. 611 (51 FR 41355). The comment period finally closed on December 31, 1986, with ATF receiving over 600 comments.

Having carefully analyzed the comments, the Bureau determined that another notice of proposed rulemaking addressing the "light" issue was necessary. Such notice was published in the **Federal Register** on June 17, 1988 (Notice No. 659, 53 FR 22678). However, the proposal in Notice No. 600 to incorporate ATF Rul. 84–1 into the regulations is being addressed in this final rule.

Analysis of Comments—"Reduced/Low Alcohol"

In response to Notice No. 600, ATF received five comments on the "low/reduced alcohol" issue. Two commenters were in favor of incorporating ATF Rul. 84–1 into the regulations. One of those commenters, the Beer Institute, represents 37 U.S. brewers who produce over 92 percent of the beer sold in the United States. The other commenter, the Federal Trade Commission (FTC), supported ATF's proposal, "because it will facilitate truthful labeling, increase consumer information, and therefore improve market efficiency."

Two commenters opposed the incorporation of ATF Rul. 84–1 into the regulations. One of the two commenters failed to cite a reason, while the other believed the terms "low alcohol" or "reduced alcohol" should be allowed, "only after the enactment of a requirement that all malt beverage labels must disclose the alcohol content of the product." However, ATF believes that such disclosure requires legislative action.

The fifth comment was submitted on behalf of Cardinal Brewery Fribourg, S.A., brewer of Moussy, a malt beverage containing less than one half of one percent (.5%) alcohol by volume. In their petition to the Bureau, initially discussed in Notice No. 610, Cardinal Brewery requested that, among other things, the term "low alcohol" be limited to malt beverages containing an alcohol content above .05 percent by volume, but below .5 percent.

Although such levels of alcohol content would be considered "low," ATF believes the term "low alcohol," as defined by Cardinal Brewery, is too restrictive. As noted in ATF Rul. 84–1, the alcohol content of regular malt beverages falls within the range of 3.5 to 5.0 percent alcohol by volume. Thus, malt beverage products containing less than 2.5 percent alcohol by volume have a substantially lower alcohol content and may be accurately described as "low alcohol" or "reduced alcohol" malt beverages.

Therefore, with this final rule, malt beverage products containing less than 2.5 percent alcohol by volume may be labeled and advertised as a "low alcohol" or "reduced alcohol" malt beverage. Accordingly, with the effective date of this final rule, ATF Rul. 84–1 (and corresponding Industry Circular #84–5) is superseded.

Further, labeling and advertising for reduced alcohol or low alcohol malt beverages may include statements comparing the alcohol content of the reduced or low alcohol product to the alcohol content of any other (malt) beverage, provided they are truthful, accurate, specific, and not misleading. Comparative statements regarding malt beverages may not refer to the *actual* alcohol content of either of the products being compared.

Notice No. 610

On October 30, 1986, ATF published Notice No. 610 in the **Federal Register** (51 FR 39666) proposing to incorporate into regulations ATF Rul. 85–11 (A.T.F. Q.B. 1985–3, 42), concerning the use of the terms "non-alcoholic" and "alcohol-free" in the labeling and advertising of malt beverages containing less than .5 percent alcohol by volume. Specifically, the Bureau proposed that only malt beverage products containing *no* alcohol could be labeled or advertised as "alcohol-free." Further, malt beverages labeled or advertised as "non-alcoholic" must include the statement "contains less than 0.5 percent alcohol by volume," in direct conjunction with that term, in readily legible printing and on a completely contrasting background. ATF believed these regulations, if adopted as proposed, would provide consumers with better information as to the identity of malt beverage products containing little or no alcohol.

In Notice No. 610, the Bureau also proposed to clarify in the regulations that malt beverages containing less than .5 percent alcohol by volume shall bear the class designation "malt beverage," "cereal beverage," or "near beer," and *not* "beer," on labels and in advertising. This was addressed, to some degree, in Rev. Rul. 57–322, 1957–2, C.B. 930, which allowed the term "near beer" to be used in labeling and advertising of malt beverages containing less than .5 percent alcohol by volume. Thus, as prescribed by regulation (§ 7.24(d)), only malt beverage products containing at least .5 percent alcohol by volume may use the desigation "beer."

It should also be noted that in Notice No. 610 ATF solicited comments on a petition it received on behalf of Cardinal Brewery Fribourg (previously mentioned). The petitioner requested, as an alternative to disclosure of actual alcohol content on labels of and in the advertising of malt beverages, the

establishment of two categories for malt beverages containing less than .5 percent alcohol by volume—

(a) "Alcohol-free" for malt beverages containing alcohol at or below .05 percent by volume, and;

(b) "Non-alcoholic" or "Low alcohol" for malt beverages containing more than .05 percent alcohol by volume, but less than .5 percent alcohol by volume.

Cardinal Brewery believed that some differentiation should be made between malt beverages with only trace amounts of alcohol and those with greater amounts.

Analysis of Comments—"Alcohol-Free"

The comment period for Notice No. 610 closed on January 28, 1987, with the Bureau receiving a total of seven comments. Five commenters supported the Bureau's proposal regarding the term "alcohol-free." Two commenters, including the petitioner Cardinal Brewery, objected to ATF's proposed definition of "alcohol-free." Both commenters believed that ATF should define the term in the same manner that the Food and Drug Administration (FDA) had defined "salt-free," i.e., FDA has allowed *de minimis* (trace) amounts of salt in "salt-free" foods (see 21 CFR 105.66). Further, one of the (two) commenters noted that FDA has issued proposed regulations allowing *de minimis* quantities of cholesterol in foods labeled as "cholesterol free" (51 FR 42584; November 24, 1986).

Similarly, both commenters believed that *de minimis* amounts of alcohol should be permitted in "alcohol-free" products.

However, as pointed out in Notice No. 610, ATF's proposed definition of "alcohol-free" *is* consistent with FDA's policy that alcohol free claims on labels of food (including "non-alcoholic" beverages) that contain alcohol render the food misbranded under the provisions of the Federal Food, Drug, and Cosmetic Act, and are subject to regulatory action. As stated in FDA's testimony given at a congressional hearing held in Washington, DC on May 19, 1986—

> * * * FDA has interpreted the claim "alcohol-free" when applied to dealcoholized beverages to imply that the alcohol has been completely removed. Since that is not totally possible, we object to the use of this claim even though the trace amounts that may remain in these products are not significant from a health standpoint.

In addition to the above, one commenter noted that use of the term "alcohol-free," as defined by Cardinal Brewery, "* * * would contradict the public perception of the meaning of the word 'free' and would affirmatively mislead the public into believing that the product contains absolutely no alcohol whatsoever." This comment reflects the views of the Bureau as well.

Thus, AFT is adopting the definition as proposed in Notice No. 610, in that only malt beverage products containing *no* alcohol may be labeled or advertised as "alcohol-free."

"Non-Alcoholic"

Six commenters addressed the use of the term "non-alcoholic." Four commenters supported the definition, and the accompanying qualification statement ("contains less than 0.5 percent alcohol by volume"), proposed by ATF.

Another commenter believed that the Bureau's proposed qualification statement emphasizes the "negligibility of the alcohol rather than the existence of alcohol." As an alternative, the commenter suggested the following statement accompany the term "non-alcoholic"—"ALERT, this product is not alcohol free and may contain .5% alcohol." AFT, however, believes the qualification statement, as proposed in Notice No. 610, fully protects the consumer who sees a product labeled as "non-alcoholic" from being misled regarding the presence of trace amounts of alcohol in the product.

The sixth commenter was the petitioner Cardinal Brewery. In addition to that stated earlier, Cardinal Brewery contented that their proposed definitions were based upon similar restrictions that FDA has imposed on products containing sodium. However, as mentioned, while FDA has established *de minimis* levels of sodium for "low salt" and "salt free" products, no such levels have been established for dealcoholized beverages under their jurisdiction, such as dealcoholized wine. As stated in their testimony at the May 1986 hearing, referred to earlier, "* * * our policy on the use of the terms 'alcohol-free' and 'non-alcoholic' is consistent with the current policy of [AFT] for the use of these claims on the labels of malt beverages."

ATF believes that the proposals made in Notice No. 610, regarding the use of the terms "alcohol-free" and "non-alcoholic," adequately protect the consumer from receiving any false or misleading impression concerning the meaning of these terms and is, therefore, adopting the regulations as proposed. Accordingly, with the effective date of this final rule, ATF Rul. 85–11 (and corresponding Industry Circular #85–13) is superseded.

Designation of Malt Beverages Containing Less Than One-Half of 1 Percent Alcohol by Volume

Under the FAA Act, and its implementing regulation, 27 CFR 7.10, the term "malt beverage" is defined to mean a beverage made by alcoholic fermentation from specific materials. Neither the law, nor the regulations, contain any reference to a minimum level of alcohol content before a product is considered a "malt beverage."

As noted in Notice No. 610, the legislative history of the FAA Act clearly shows that Congress intentionally omitted any minimum alcoholic content from the definition in order to bring all malt beverages within the purview of the statute, regardless of alcohol content. Thus, any product which meets the above definition of a "malt beverage" may bear that designation on its label or in its advertising.

However, the regulations at 27 CFR 7.24(d) prohibit any product containing less than one-half of 1 percent alcohol by volume from bearing the designation "beer," "ale," "porter," etc. This regulation reflects historic trade and consumer recognition that the reference to a product as a "beer" means that the product contains not less than .5 percent alcohol by volume. Section 7.24(d) is also consistent with section 5052(a) of the Internal Revenue Code of 1986, and its implementing regulation, 27 CFR 25.11.

Malt beverage products containing less than .5 percent alcohol by volume, on the other hand, have historically been referred to in the regulations and in ruling (e.g., Rev. Rul. 57–322) as "cereal beverage" or "near beer." This was discussed, at length, in Notice No. 610. To summarize, ATF proposed that malt beverage products containing less than .5 percent alcohol by volume shall bear the class designation "malt beverage," "cereal beverage," or "near beer." In accordance with Rev. Rul. 57–322, if the designation "near beer" is used, both words must appear in the same size and style of type, in the same color of ink, and on the same background.

In response to Notice No. 610, the Bureau received one comment addressing the issue of designations for malt beverages containing less than .5 percent alcohol by volume. The commenter opposed the Bureau's restrictions on the use of the term "beer," limiting it to a product containing not less than .5 percent alcohol by volume. Basically, the commenter believed that such a

restriction is unnecessary, and is likely to harm consumers by depriving them of product information. For example, consumers seeking substitutes for beer may decide not to purchase a "near beer" or "cereal beverage," based on the assumption that the latter products are significantly different in smell, taste, etc. from "beer" when, in fact, they may not be.

It should be noted that in their petition, Cardinal Brewery had also requested the definition of "beer" be amended to include malt beverages containing less than .5 percent alcohol by volume. However, that request was previously denied, based on the reasons presented in Notice No. 610.

ATF maintains that the current definition of "beer" reflects historic trade and consumer recognition of a product containing not less than .5 percent alcohol by volume. Similarly, the terms "near beer" and "cereal beverage" reflect historic trade and consumer recognition of a product containing less than .5 percent alcohol by volume. Further, the restriction on the use of the term "beer," as prescribed in regulations issued pursuant to the FAA Act, is consistent with the term as defined in regulations issued pursuant to the Internal Revenue Code. Therefore, ATF is adopting the regulations as proposed in Notice No. 610. In addition, the provisions of Rev. Rul. 57–322, relating to the use of the term "near beer," are being incorporated into the regulations. Accordingly, with the effective date of this final rule, Rev. Rul. 57–322 is superseded.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

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

(c) Significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1512–0482. The estimated average burden associated with the collections of information in this final rule is 1 hour per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Information Programs Branch, Room 7011, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms.

Disclosure

Copies of the petition, the notices of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

Part 7—Labeling and Advertising of Malt Beverages is amended as follows:

PART 7—[AMENDED]

Paragraph 1. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 7.24 is amended by adding two new sentences at the beginning of paragraph (d) to read as follows:

§ 7.24 Class and type.

* * * * *

(d) Products containing less than one-half of 1 percent (.5%) of alcohol by volume shall bear the class designation "malt beverage," or "cereal beverage," or "near beer." If the designation "near beer" is used, both words must appear in the same size and style of type, in the same color of ink, and on the same background. * * *

* * * * *

Par. 3. Section 7.26 is amended by designating the existing text as paragraph (a), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 7.26 Alcoholic content.

(a) * * *

(b) The terms "low alcohol" or "reduced alcohol" may be used only on malt beverage products containing less than 2.5 percent alcohol by volume.

(c) The term "non-alcoholic" may be used on malt beverage products, provided the statement "contains less than 0.5 percent (or .5%) alcohol by volume" appears in direct conjunction with it, in readily legible printing and on a completely contrasting background.

(d) The term "alcohol-free" may be used only on malt beverage products containing no alcohol.

Par. 4. Section 7.29 is amended by adding a new sentence at the end of the existing paragraph (f) to read as follows:

§ 7.29 Prohibited practices.

* * * * *

(f) *Use of words "strong", "full strength", and similar words.* * * * This does not preclude use of the terms "low alcohol," "reduced alcohol," "non-alcoholic," and "alcohol-free," in accordance with § 7.26 (b), (c), and (d).

* * * * *

Par. 5. Section 7.54 is amended by adding a new sentence at the end of existing paragraph (c) to read as follows:

§ 7.54 Prohibited statements.

* * * * *

(c) *Alcohol content.* * * * This does not preclude use of the terms "low alcohol," "reduced alcohol," "non-

alcoholic," and "alcohol-free," as used on labels, in accordance with § 7.26 (b), (c), and (d).

* * * * *

Signed: December 16, 1988.

Stephen E. Higgins,

Director.

Approved: January 4, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-1488 Filed 1-24-89; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3508-3; Docket No. AM704]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Delaware Department of Natural Resources and Environmental Control

AGENCY: Environmental Protection Agency.

ACTION: Delegation of authority.

SUMMARY: Section 112(d) of the Clean Air Act permits EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 61, National Emissions Standards for Hazardous Air Pollutants (NESHAP). On August 20, 1987, the State of Delaware Department of Natural Resources and Environmental Control (DNREC) requested delegation of authority for an additional NESHAP source category to implement and enforce NESHAP regulations for Equipment Leaks of Benzene. The benzene NESHAP, as delegated, will be incorporated by reference to 40 CFR Part 61, Subparts A, J, and V (July 1, 1987 revision). EPA granted the request on November 10, 1987, with the understanding that EPA will retain full responsibility for the application of the benzene NESHAP to Texaco Refining and Marketing, Inc. (TEXACO), until the current litigation with EPA is concluded. Certain provisions that address standard setting and waiver of compliance have not been delegated. Those provisions are cited at 40 CFR 61.06, 61.11, 61.12(d), 61.13(h), 61.14(g), 61.16 and 61.244. The State has the authority to implement and enforce the NESHAP regulation for Equipment Leaks of Benzene as of the date of the publication of this notice.

EFFECTIVE DATE: January 25, 1989.

ADDRESSES: Copies of the delegation and accompanying documents are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Joseph W. Kunz.

State of Delaware, Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Kelley Yost of EPA, Region III above, telephone (215) 597-2746.

SUPPLEMENTARY INFORMATION: The Delaware Department of Natural Resources and Environmental Control (DNREC) was delegated the authority to enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA. Notice of that delegation was published at 43 FR 6771 (February 15, 1978). They also requested and were delegated authority for several other NESHAP source categories for which EPA published notifications at 44 FR 70465 (December 7, 1979), 47 FR 17989 (April 27, 1982), and 51 FR 12144 (April 9, 1986).

On August 24, 1987, the Secretary of The Delaware Department of Natural Resources and Environmental Control submitted a letter to EPA Region III, requesting delegation of the benzene NESHAP. The following letter was sent to Delaware on November 10, 1987, delegating authority for the benzene NESHAP.

Mr. Robert R. French,

Manager, Air Resources Section, Delaware Department of Natural Resources & Environmental Control, P.O. Box 1401, Dover, Delaware 19901

Dear Mr. French: This letter responds to your August 20, 1987 request to EPA, for delegation of authority to the Delaware Department of Natural Resources & Environmental Control (DNREC) to enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Equipment Leaks of Benzene, 40 CFR Part 61, Subparts A, J, and V (collectively referred to as the benzene NESHAP).

We have reviewed the pertinent laws, rules and regulations of the State of Delaware and have determined that they continue to provide adequate and effective procedures for implementation and enforcing the NESHAP. Therefore, EPA delegates primary authority for implementation and enforcement of the benzene NESHAP, as delegated, will be incorporated by reference to 40 CFR Subparts A, J, and V as of July 1, 1987.

This delegation will become effective upon publication, by EPA, in the **Federal Register**. At that time, certain conditions and exceptions to this delegation will be set forth. This delegation is granted with the understanding that EPA will retain full responsibility for the application of the benzene NESHAP to Texaco Refining and Marketing, Inc. (Texaco), in Delaware City, until all current EPA litigation pertaining to Texaco for benzene NESHAP is resolved in federal courts.

This Notice now sets forth the conditions and exceptions to this delegation of responsibility for the benzene NESHAP to Delaware. The following provisions of the NESHAP regulations are excepted from this delegation, and EPA retains exclusive authority for their application:

a. Determination of whether actions intended to be taken constitute construction or modification of a source subject to a standard (40 CFR 61.06).

b. Waiver of compliance from existing sources. (40 CFR 61.11)

c. Allowance of alternative means of compliance. (40 CFR 61.12(d))

d. Approved of specified on alternative emission testing. (40 CFR 61.13(h))

e. Approval of specified or alternative monitoring requirements. (40 CFR 61.14(g))

f. Determination of public availability of information (40 CFR 61.16)

g. Allowance of use of alternative means of emission limitation. (40 CFR 61.244)

Enforcement of the NESHAP regulation for Equipment Leaks of Benzene in the State of Delaware will primarily be the responsibility of the DNREC.

Pursuant to section 112(d)(2) of the Clean Air Act, 42 U.S.C. 7412(d)(2), EPA retains authority to enforce any NESHAP standard whenever such enforcement is deemed by the EPA to be necessary to carry out the purposes of the Clean Air Act. Where the Department determines that such enforcement is not feasible and so notifies EPA when the DNREC acts in a manner inconsistent with the term of this delegation, U.S. EPA will exercise its concurrent enforcement authority, pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within the State of Delaware subject to NESHAP regulations.

The reporting provisions of 40 CFR 61.04 requiring sources to make submission to the EPA will be satisfied only by making such submission to both the DNREC and to EPA, Region III.

The DNREC and U.S. EPA Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a DNREC interpretation and Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the DNREC. This system of communication will insure that both agencies are informed on:

a. The current compliance status of subject sources in the State of Delaware;

b. The interpretation of applicable regulations;

c. The description of sources and source inventory data; and,

d. Applications for compliance test waivers and approval of waivers for matters where EPA retains authority for such waivers pursuant to this delegation.

From time to time when appropriate, the DNREC will revise its NESHAP regulations to include the provisions of Federal amendments and newly promulgated regulations for NESHAP pollutant source categories.

If the Director of the Air Management Division, or other appropriate staff at EPA Region III, determines that a DNREC program of enforcing or implementing the NESHAP regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DNREC.

This delegation is effective upon publication. There is no requirement that the DNREC notify the U.S. EPA of its acceptance.

Unless U.S. EPA receives from the DNREC written notice of objections within ten (10) days of publication of this notice, the DNREC will be deemed to have accepted all of the terms of the delegation.

The Office of Management and Budget has exempted this delegation of authority from the requirements of section 3 of Executive Order 12291.

Authority: Section 112(d), the Clean Air Act 42 U.S.C. 7412(d).

Date: January 12, 1989.

James M. Seif,

Regional Administrator.

[FR Doc. 89–1589 Filed 1–24–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 17

Nondiscrimination on the Basis of Age in Federally-Assisted Programs

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: These final regulations implement the provisions of the Age Discrimination Act of 1975, and the government-wide regulations published in the **Federal Register** on June 12, 1979 (44 FR 33768, June 12, 1979). The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

The Age Discrimination Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have a disproportionate effect on a particular age group. The Act excludes from its coverage most employment practices except for programs funded under the public services employment titles of the Job Partnership Training Act. The Act applies to persons of all ages.

These final regulations are designed to guide the actions of recipients of financial assistance from the Department of the Interior (DOI). They discuss the responsibilities of DOI recipients and the investigation, conciliation and enforcement procedures DOI will use to ensure compliance with the Act.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Charlene D. Hutchinson, Office for Equal Opportunity, Department of the Interior, Washington, DC 20240, or phone (202) 343–3443 (voice) or (202) 343–3434 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101 *et seq.*) as part of the amendments to the Older Americans Act (Pub. L. 94–135). The Age Discrimination Act was amended by the Civil Rights Restoration Act of 1988 (Pub. L. 100–259).

The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act prohibits recipients of Federal financial assistance from taking actions that result in denying or limiting services or otherwise discriminating on the basis of age. The Act contains exceptions which limit the general prohibition against age discrimination. The Act permits the use of age distinctions which are necessary to the normal operation of a program or to the achievement of a statutory objective. The Act applies only to programs or activities in which there is an intermediary (recipient) standing between the Federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the National Parks System) in which Federal assistance flows directly and unconditionally from the Federal government to the individual beneficiary. In accordance with the Act, the Secretary of the Department of Health, Education and Welfare (now the Department of Health and Human Services (HHS)) issued government-wide regulations to guide the development of agency specific regulations by each Federal agency that administers programs of Federal financial assistance, (44 FR 33768, June 12, 1979, codified at 45 CFR Part 90). These final regulations are intended to be consistent with HHS' government-wide regulations. These final regulations were approved by HHS on August 10, 1988.

The Civil Rights Restoration Act of 1987, Pub. L. 100–259 (CRRA), was enacted on March 22, 1988, subsequent to the publication of these rules as proposed regulations. The CRRA, among other matters, amends the Age Discrimination Act of 1975, and other civil rights statutes, to define the term "program and activity" to mean all of the operations of specified entities. For State and local governments, only the department or the agency that receives the aid is covered. For private corporations, if the federal aid is extended to the corporation as a whole, or if the corporation is prinicipally engaged in providing education, health care, housing, social services or parks and recreation, the entire corporation is covered. If the federal aid is extended to only one plant or geographically separate facility of other private businesses, only that plant is covered. For other entities, established by two or more of the entities listed in the statute, the entire entity is covered if it receives any federal aid. The CRRA leaves in effect the enforcement structure and adds no new language to the fund termination provision of the Age Discrimination Act. The CRRA contains a provision which leaves intact the current exemption from coverage by the civil rights laws for "ultimate beneficiaries" of federal financial assistance such as farmers who receive assistance under commodity programs or other comparable programs.

DOI published proposed regulations in the **Federal Register** on October 21, 1987, (52 FR 39243, October 21, 1987). Publication of the proposed rule was followed by a 30 day comment period. Comments, suggestions, and recommendations were requested by November 20, 1987. No comments were received.

In order to be consistent with HHS' government-wide rule (45 CFR Part 90), several sections of the proposed rule have been revised. The last sentence of § 17.335(a)(1), "Compliance Procedures" has been deleted to ensure consistency with 45 CFR Part 90. Section 17.335(b) has been revised to more precisely reflect the degree of "pinpointing" required by the Age Discrimination Act and to make this section consistent with the government-wide rule.

Section 17.303(b) "Definition", has been corrected to include "or the use of any policy, rule, standard, or method of administration." This portion of the definition was inadvertently omitted from the proposed rule.

In addition to publishing specific regulations consistent with the government-wide regulations, the

following actions will be taken by DOI to implement the Act:

1. DOI will report annually to the Congress through HHS on its compliance and enforcement activities.

2. DOI will provide written notices to its recipients concerning their obligations under the Act. Technical assistance will be provided to recipients where necessary and educational materials will be made available explaining the rights and obligations of beneficiaries and recipients.

3. DOI will establish a procedure for processing complaints of alleged age discrimination. The complaints process will entail an initial screening by DOI after consultation with the recipient, if necessary, to determine whether the complaint meets the criteria in §§ 17.310, 17.311, and 17.331 before referral to mediation. DOI will send appropriate notices to complainants and recipients of their rights and obligations under the Act. All complaints covered by the Act will be referred to the Federal Mediation and Conciliation Service (FMCS) for mediation.

4. DOI will evaluate the effectiveness of its regulations 30 months after their effective date. The results of this evaluation will be published in the **Federal Register** for public comment.

Section 90.31(f) of HHS' government-wide regulations (44 FR 33768, June 12, 1979), requires each Federal agency to publish an appendix to its final age regulations containing a list of each age distinction in a Federal statute or in regulations affecting financial assistance administered by the agency. DOI has determined that statutes and regulations which govern DOI's programs of financial assistance do not contain age distinctions. Therefore, an appendix listing are distinctions in statutes and regulations governing DOI financial assistancee programs is not published with these final regulations.

This final rule is divided into the following major categories: General; Standards for Determining Age Discrimination; Responsibilities of Recipients; and Investigation, Conciliation, and Enforcement Procedures.

The "general" section of these regulations explains the purpose of DOI's age discrimination regulations and defines terms used throughout the rule.

Each recipient of Federal financial assistance must sign an assurance that it will comply with the Act and these regulations.

The general and specific prohibitions against discrimination on the basis of age are covered in § 17.310 of this rule. The exceptions to those prohibitions are set forth in § 17.311.

The rule contains several exceptions which limit prohibitions against age discrimination. Section 17.311 of the regulations permits the use of age distinctions which are based on reasonable factors other than age. Section 17.311(a) of the regulations defines two terms which are essential to an understanding of those exceptions: "Normal operation" and "statutory objective." "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. "Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected legislative body.

Recipients of DOI funds also are permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." The action may be taken even though it has a disproportionate effect on persons of different ages. According to the regulations, however, the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

This rule sets forth the duties of DOI recipients. DOI recipients are responsible for ensuring that their programs and activities are in compliance with the Act and DOI regulations.

Where a primary recipient extends financial assistance to subrecipients, the primary recipient must notify subrecipients of their obligations under the regulations. DOI recipients must also inform beneficiaries of the protections provided by the Act and these regulations.

This final rule establishes the procedures DOI will use in its investigation, conciliation, and enforcement activities. These procedures reflect the procedural requirements included in HHS' government-wide regulations.

Section 17.332 introduces mediation into the complaints process for age discrimination. DOI will refer all complaints covered by the Act to the FMCS, which was designated by the Secretary of HHS to manage the mediation process.

Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date DOI first receives the complaint. No further action will be taken by DOI in connection with a successfully mediated complaint.

DOI will, however, investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated.

Finally, the regulations permit DOI to disburse withheld funds to an alternate recipient. The alternate recipient must be in compliance with the regulations and must demonstrate the ability to achieve the goals of the program for which the funds were originally extended.

II. Regulatory Procedures

Impact Analysis Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The administrative and procedural regulations implementing the Age Discrimination Act are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small nonprofit organizations, and small governmental entities. The impact of these regulations on small entities is minimal because an economic impact such as termination of funding will occur only in those very limited instances where the small entity fails to comply with the statutory and regulatory prohibition concerning age discrimination.

Paperwork Reduction Act (Recordkeeping and Reporting Requirements)

The information collection requirements contained in § 17.323 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0027.

National Environmental Policy Act

Because these regulations are administrative, legal, and procedural in

nature, they will not have a significant effect on the quality of the human environment and are categorically excluded from the NEPA Process. *See* 516 DM 2, Appendix 1.

Authorship Statement

The principal author of this final rulemaking document is Charlene D. Hutchinson of the Office for Equal Opportunity, U.S. Department of the Interior.

Date: November 16, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

List of Subjects in 43 CFR Part 17

Civil rights, Handicapped.

The Department of the Interior adds a new Subpart C to 43 CFR Part 17 as set forth below:

PART 17—[AMENDED]

Subpart C—Nondiscrimination on the Basis of Age

General

Sec.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR Part 90.

Subpart C—Nondiscrimination on the Basis of Age

General

§ 17.300 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 17.301 What is the purpose of DOI's age discrimination regulations?

The purpose of these regulations is to set out DOI's policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR Part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 17.302 To what programs do these regulations apply?

(a) The Act and these regulations apply to each DOI recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by DOI.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or,

(ii) Establishes criteria for participation in age-related terms; or,

(iii) Describes intended beneficiaries or target groups in age-related terms; or

(2) Any employment practice of any employer, employment agency, or labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Partnership Training Act (29 U.S.C. 1501 *et seq.*).

§ 17.303 Definitions.

As used in these regulations, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135).

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age" means how old a person is, or the number of years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Discrimination" means unlawful treatment based on age.

(g) "DOI" means the United States Department of the Interior.

(h) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "FMCS" means the Federal Mediation and Conciliation Service.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, transferee, or subrecipient, but excludes the ultimate beneficiary of the assistance.

(k) "Secretary" means the Secretary of the Department of the Interior or his or her designee.

(l) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a

recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) "United States" means the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

Standards for Determining Age Discrimination

§ 17.310 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 17.311.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to, discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 17.311 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

(1) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

(b) Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited by § 17.310 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Exceptions to the rules against age discrimination: Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by § 17.310 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 17.312 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 17.311(b) and 17.311(c), is on the recipient of Federal financial assistance.

§ 17.313 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 17.311.

§ 17.314 Age distinctions contained in DOI regulations.

Any age distinctions contained in a rule or regulation issued by DOI shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 17.311.

§ 17.315 Affirmative action by recipients.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

Duties of DOI Recipients

§ 17.320 General responsibilities.

Each DOI recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford DOI access to its records to the extent DOI finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 17.321 Notice to subrecipients and beneficiaries.

(a) Where a recipient extends Federal financial assistance from DOI to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(b) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them of the protections against discrimination provided by the Act and these regulations.

§ 17.322 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from DOI shall sign a written assurance as specified by DOI that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 17.330 or complaint investigation under § 17.331, DOI may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOI to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the DOI regulations, the recipient shall take corrective action.

§ 17.323 Information collection requirements.

Each recipient shall:

(a) Keep records in a form and containing information which DOI determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to DOI, upon request, information and reports which DOI

determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by DOI to the books, records, accounts, and other recipient facilities and sources of information to the extent DOI determines necessary to ascertain whether the recipient is complying with the Act and these regulations.

(d) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0027. The information will be collected and used to assess recipients' compliance with the Act. Response is required to obtain a benefit.

(e) Public reporting burden for this information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed; and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to: Departmental Clearance Officer, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, Mail Stop 2242; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Investigation, Conciliation, and Enforcement Procedures

§ 17.330 Compliance reviews.

(a) DOI may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOI may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, DOI will attempt to secure voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOI will arrange for enforcement as described in § 17.335.

§ 17.331 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with DOI, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant had knowledge of the alleged act of discrimination. For good cause shown, however, DOI may extend this time limit.

(b) DOI will consider the date a complaint is filed to be the date upon which the complaint sufficiently meets the criteria for acceptance as described in paragraphs (a) and (c)(1) of this section.

(c) DOI will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint, as described in paragraphs (a) and (c)(1) of this section.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact DOI for information and assistance regarding the complaint resolution process.

(d) DOI will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 17.332 Mediation.

(a) *Referral of complaints for mediation.* DOI will promptly refer to the FMCS all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations unless the age distinction complained of is clearly within an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, FMCS shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The FMCS shall send the agreement to DOI. DOI, however, retains the right to monitor the recipient's compliance with the agreement.

(d) The FMCS shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) DOI will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:

(1) 60 days elapse from the time the complaint is filed; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the FMCS determines that an agreement cannot be reached.

(f) The FMCS shall return unresolved complaints to DOI.

§ 17.333 Investigation.

(a) *Informal Investigation.* (1) DOI will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, DOI will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. DOI may seek the assistance of any involved State program agency.

(3) DOI will put any agreement in writing and have it signed by the parties and an authorized official at DOI.

(4) The settlement shall not affect the operation of any other enforcement effort of DOI, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If DOI cannot resolve the complaint through informal means, it will develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, DOI will attempt to obtain voluntary compliance. If DOI cannot obtain voluntary compliance, it will begin enforcement as described in § 17.335.

§ 17.334 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of DOI's investigation, conciliation, and enforcement process.

§ 17.335 Compliance procedure.

(a) DOI may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from DOI under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) DOI will limit any termination under § 17.335(a)(1) to the particular recipient and particular program or activity or part of such program or activity DOI finds in violation of these regulations. DOI will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from DOI.

(c) DOI will take no action under paragraph (a) of this section until:

(1) The Secretary or his/her designee has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary or his/her designee has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary or his/her designee will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOI also may defer granting new Federal financial assistance from DOI to a recipient when a hearing under § 17.335(a)(l) is initiated.

(1) New Federal financial assistance from DOI includes all assistance for which DOI requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance from DOI does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 17.335(a)(1).

(2) DOI will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 17.335(a)(1). DOI will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. DOI will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 17.336 Hearings, decisions, post-termination proceedings.

Certain DOI procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to DOI's enforcement of these regulations. The procedural provisions of DOI's Title VI regulations can be found at 43 CFR 17.8 through 17.10 and 43 CFR Part 4, Subpart I.

§ 17.337 Remedial action by recipients.

Where DOI finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that DOI may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, DOI may require both recipients to take remedial action.

§ 17.338 Alternate funds disbursal procedure.

(a) When DOI withholds funds from a recipient under these regulations, where permissible the Secretary may disburse the withheld funds directly to an alternate recipient under the applicable regulations of the bureau or office providing the assistance.

(b) The Secretary will require any alternative recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 17.339 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and DOI has made no finding with regard to the complaint; or

(2) DOI issues any finding in favor of the recipient.

(b) If DOI fails to make a finding within 180 days or issues a finding in favor of the recipient, DOI will:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the Secretary of the Interior, and the recipient;

(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attonrey's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[FR Doc. 89-1681 Filed 1-24-89; 8:45 am]
BILLING CODE 4310-RE-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-144; FCC 88-423]

Minimum Power Requirements for Noncommercial Educational FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends § 73.511 of the Commission's Rules concerning minimum power requirements for noncommercial educational FM Stations. It is needed to make these requirements correspond with similar requirements recently revised for commercial Class A radio stations.

EFFECTIVE DATE: January 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Policy and Rules Division, Mass Media Bureau (202) 254–3394.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 22, 1988; Released: January 18, 1989.

In the matter of review of technical parameters for FM allocation rules of Part 73, Subpart B, FM broadcast stations.

1. This action originates in an earlier Commission decision in Docket 86–144, (See *Memorandum Opinion and Order* in MM Docket No. 86–144, FCC 88–152, 53 FR 17040, May 13, 1988) which changed the minimum power requirements for Class A commercial radio broadcast facilities and, accordingly amended § 73.211 of the Commission's Rules. Correspondingly, § 73.511 of the noncommercial FM radio rules should have been revised at the same time because the definition of a class A station is the same whether the station is commercial or noncommercial. However, revision of § 73.511 was inadvertently omitted in the earlier decision. This *Order* corrects that oversight and pursuant to the Agency's oversight function, and § 73.511 is amended accordingly.

2. This *Order* makes no substantive changes which impose additional burdens or remove provisions relied upon by licensees or the public and, accordingly, we conclude, for the reasons set forth above, that this revision will serve the public interest.

3. Because this amendment does not impose any additional burdens, and raises no issue upon which public comment would serve a meaningful purpose, good cause exists for dispensing with the notice, comment, and effective date provisions contained in the Administrative Procedure Act. *See* 5 U.S.C. 553 (b) and (d).

4. Because a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. The amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

6. Therefore, it is ordered, that pursuant to sections 4 and 303 of the Communications Act of 1934, as amended (47 U.S.C. 154 and 303), Part 73 of the FCC Rules and Regulations is hereby amended as set forth below, effective upon publication in the **Federal Register.**

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Rule Amendments

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154 and 303.

2. Section 73.511 is amended by revising paragraph (a) to read as follows:

§ 73.511 Power and antenna height requirements.

(a) No new noncommercial educational station will be authorized with less power than minimum power requirements for commercial Class A facilities. (See § 73.211.)

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–1572 Filed 1–24–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–474; RM–5855, RM–5878, RM–5915]

Radio Broadcasting Services; Springdale, AR and Aurora, Carthage, and Willard, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants two proposals to modify existing facilities at Springdale, Arkansas, and Aurora, Carthage and Willard, Missouri, as set forth *infra* (see Supplementary Information). With this action, the proceeding is terminated.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–474, adopted November 28, 1989, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commisson's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The Commission, at the request of Moran Broadcasting Company, substitutes Channel 285C2 for Channel 285A at Springdale, Arkansas, and modifies the license of Station KCIZ(FM) to specify operation on the higher powered channel. Channel 285C2 is allotted to Springdale with a site restriction 27.3 kilometers northwest of the community at reference coordinates 36–19–47 and 94–22–55. In order to accommodate the upgrade at Springdale, it is necessary to substitute Channel 250A for Channel 285A at Carthage, Missouri, and modify the license of Station KRGK(FM) accordingly. Channel 250A is allotted to Carthage at the current licensed site of Station KRGK(FM) at reference coordinates 37–10–58 and 94–21–35. Additionally, at the request of Aurora Broadcasting, Inc., Channel 263C2 is substituted for Channel 261A at Aurora, Missouri, and the license of Station KELE(FM) modified accordingly. Channel 263C2 is allotted to Aurora, with a site restriction 20.9 kilometers northeast of the community at reference coordinates 37–03–51 and 93–30–48. In order to accommodate the Aurora modification, Channel 286C2 is substituted for Channel 263A at Willard, Missouri, as requested by Aurora Broadcasting, Inc. Channel 286C2 is allotted to Willard at a restricted site 11.0 kilometers west of the community at reference coordinates 37–19–35 and 93–32–47. The Carthage, Missouri substitution set forth above is also required to accommodate the Willard upgrade. Channel 263A at Willard, Missouri was made available for filing applications in Report Number No. W–30 which opened on December 16, 1987 and closed on January 26, 1988. The Public Notice announcing the acceptance of applications for Willard indicated the possibility of an upgrade in Docket No. 87–474. Thus, since public notice of the channel upgrade was given, the Commission will not open another window for the Class C2 channel at Willard, Missouri.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Arkansas, with respect to Springdale, by deleting Channel 285A and adding Channel 285C2.

3. Section 73.202(b), the Table of FM Allotments is amended under Missouri, with respect to the communities listed below, as follows: Aurora—remove Channel 261A and add Channel 263C2; Carthage—remove Channel 285A and add Channel 250A; Willard—remove Channel 263A and add Channel 286C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1569 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-599; RM-6036; RM-6318, RM-6319]

Radio Broadcasting Services; Anna, Christopher, Herrin, IL and Lutesville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 243C2 for Channel 224A at Anna, Illinois, and modifies the license of Station WRAJ(FM) to specify operation on the higher class channel, as requested by Union Broadcasting, Inc. ("petitioner"). The restricted site coordinates for Channel 243C2 at Anna are 37-22-31 and 89-26-51. Missouri Bible Study Group and Illinois Bible Study Group filed a consolidated counterproposal requesting allotment of Channel 243A to Christopher, Illinois and Lutesville, Missouri. In addition, Bluff City Broadcasting, Inc., filed a counterproposal requesting allotment of Channel 243A to Herrin, Illinois. The three proposals are mutually exclusive. However, the need for a community comparison is not necessary, since channels are available for all three communities. This action allots Channel 278A to Christopher, Illinois with a site restriction of 3.6 kilometers (2.2 miles) southeast, Channel 224A to Herrin, Illinois, and Channel 286A to Lutesville, Missouri. The coordinates for Channel 278A, Christopher are 37-57-59 and 89-00-38, the coordinates for Channel 224A, Herrin are 37-48-12 and 89-01-36, and the coordinates for Channel 286A, Lutesville, Missouri are 37-18-01 and 89-58-52. With this action, this proceeding is terminated.

DATES: Effective March 3, 1989. The window period for filing applications for Channel 278A at Christopher, Channel 224A at Herrin, and Channel 286A at Lutesville will open on March 6, 1989, and close on April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-599, adopted November 30, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Illinois by adding Channel 243C2 at Anna, and deleting Channel 224A, by adding Channel 278A at Christopher, by adding Channel 224A at Herrin and by adding Channel 286A at Lutesville, Missouri.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1568 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-143; RM-6159]

Radio Broadcasting Services; Cloquet and Grand Marais, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 263C1 for Channel 265A at Cloquet, Minnesota, in response to a petition filed by WKLK, Inc. We shall also modify the license of Station WKLK-FM to specify operation on Channel 263C1 in lieu of Channel 265A in accordance with § 1.402(g) of the Commission's Rules. The coordinates for Channel 263C1 are 46-45-40 and 92-22-12. To accommodate the substitution of channels at Cloquet, it is necessary to substitute Channel 237C for Channel 263C at Grand Marais, Minnesota. Timothy D. Martz is the applicant for Channel 263C at Grand Marais (870908MK) and in comments filed in this proceeding has agreed to the substitution of channels at coordinates 47-59-13 and 90-24-12. In accordance with Commission policy, we will retain the applicants' filing protection for Channel 236C when he amends to specify Channel 237C since the class of channel is equivalent. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-143, adopted December 9, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Minnesota is amended by deleting Channel 265A and adding Channel 263C1 at Cloquet and by deleting Channel 263C and adding Channel 237C at Grand Marais.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1573 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-72; RM-6157]

Radio Broadcasting Services; Brookings, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dakota Broadcasting, Inc., substitutes Channel 229C2 for Channel 232A at Brookings, South Dakota, and modifies its license for Station KGKG to specify operation on the higher powered channel. Channel 229C2 can be allotted to Brookings in compliance with the Commission's minimum distance separation requirements and can be used at its current transmitter site. The required mileage separations are met based on the recent modification of Station KKRC–FM's license at Sioux Falls, South Dakota, to specify operation on Channel 279C2 in lieu of its present Channel 228A in MM Docket 88–165. The coordinates for this allotment are North Latitude 44–18–13 and West Longitude 96–46–10. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–72, adopted December 9, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Brookings, South Dakota, is amended by deleting Channel 232A and adding Channel 229C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–1570 Filed 1–24–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–441; RM–5993]

Radio Broadcasting Services; Pinedale, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266C2 to Pinedale, Wyoming, as that community's first local FM service, at the request of Connie Lyn Garder. The channel can be allotted in compliance with the Commission's minimum distance separation requirements, at coordinates 42–51–54 and 109–51–48. With this action, this proceeding is terminated.

DATES: Effective March 3, 1989. The window period for filing applications will open on March 6, 1989, and close on April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–441, adopted November 30, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wyoming by adding Channel 266C2 to Pinedale, Wyoming.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–1571 Filed 1–24–89; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 553 and Appendix A

[APD 2800.12 CHGE 60]

General Services Administration Acquisition Regulation; Availability of GSA Form 3501 Concerning Solicitation Provisions and Appendix A Concerning Contracting Office Assignment Codes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to revise section 553.370–3501 to illustrate the August 1988 edition of the GSA Form 3501, Solicitation Provisions (Sealed Bid) and to revise Appendix A to reflect current Contracting Office Assignment Codes. The intended effect is to provide procedures and guidance to GSA contracting activities.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations on (202) 523–3822.

SUPPLEMENTARY INFORMATION: This rule was not published in the **Federal Register** for public comment because the rule is establishing internal agency guidance, which has no impact on offerors or contractors. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule simply revises GSA's internal operating procedures. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements that are subject to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 553

Government procurement.

1. The authority citation for 48 CFR Part 553 and Appendix A continues to read as follows:

Authority: 40 U.S.C. 486(c).

Editorial Note: The form mentioned above and Appendix A are illustrated and made a part of the regulation. However, the form and Appendix A are not illustrated in the **Federal Register** or the Code of Federal Regulations. Individual copies may be obtained from the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Washington, DC 20405.

Dated: January 13, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

FR Doc. 89-1544 Filed 1-24-89; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 81131-9019]

Groundfish of the Bering Sea and Aleutian Islands; Foreign Fishing

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

ACTION: Final notice of initial specifications of groundfish for 1989; reapportionment of reserves; request for comments.

SUMMARY: NOAA announces final specifications of total allowable catches (TACs) and initial domestic annual harvest (DAH) and reserve amounts for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area for the 1989 fishing year. This action also reapportions some of the reserve to U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) and solicits comments on this reapportionment. The initial specification of the total allowable level of foreign fishing (TALFF) is zero.

This action is necessary to establish harvest limits for groundfish in the 1989 fishing year. This action is based on public comments, the best available information on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the North Pacific Fishery Management Council (Council) at its meeting of December 5–9, 1988. The intended effect of this action is the conservation and management of groundfish resources in the BSAI area.

DATES: Effective at 0901 Greenwich Mean Time (GMT or 0001 Alaska Standard Time (AST)) on January 1, 1989 through 0900 GMT on January 1, 1990 (2400 AST, on December 31, 1989) or until changed by subsequent notice in the **Federal Register.**

Comments on the reapportionment part of this notice are invited until February 3, 1989.

ADDRESS: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI area are governed by Federal regulations (at 50 CFR 611.93 and Part 675) which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the Council and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the Council, to annually specify the TAC, initial DAH, and initial TALFF for each target species and the "other species" category as soon as practicable after December 15 (§ 675.20(a)(6)). The sum of the species' TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). For 1989, this sum of TACs is equal to 2.0 million mt, as indicated in Table 1.

A notice specifying preliminary initial TAC, reserve, DAH, and TALFF amounts for the 1989 fishing year was pulished on November 29, 1988 and comments were invited until December 23, 1988 (53 FR 47998). Eight written comments were received and are summarized and responded to below. In addition, oral comments were heard and public consultation with the Council occurred during the Council's December 5–9, 1988 meeting in Anchorage, Alaska. Council recommendations made at this meeting account for differences between the preliminary specifications and those published in this notice.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel (AP), and Scientific and Statistical Committee (SSC), at their September and December 1988 meetings, reviewed current biological information about the condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the 1988 resource assessment document (RAD). The Plan Team annually produces such a document as the first step in the process of specifying TACs. The RAD contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of preliminary ABCs for each species for 1989 and other biological data from the 1988 draft RAD were provided in the notice of preliminary 1988 specifications (53 FR 47998, November 29, 1988). The Plan Team's revised ABCs were reviewed by the SSC, AP, and Council at its December 1988 meeting. Revisions were made based on the SSC's review to produce the Council's final ABC estimates. The Council then developed its TAC recommendations to the Secretary based on the final ABCs as adjusted for other biological and socioeconomic considerations. For each species category, the recommended TAC for 1989 is equal to or less than that species' final ABC. Therefore, the Secretary finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

A principal consideration for the Council in developing its 1989 TAC recommendations was assuring that the sum of the species TACs did not exceed the maximum OY of two million mt. The Secretary finds also that the recommended TACs, to the extent possible under the maximum OY limit, are consistent with socioeconomic goals and objectives of the FMP.

Apportionment of TAC

As required under § 675.20(a)(3), the amount of TAC for each species initially is reduced by 15 percent. The sum of these 15 percent amounts is designated as the reserve. This reserve is not species-specific and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, provided that such reapportionments do not result in overfishing (§ 675.20(a)(3)).

The remaining 85 percent of TAC is the initial TAC (ITAC). This amount is apportioned between DAH and TALFF such that TALFF, for each target species and the "other species" category at the beginning of the year, equals the ITAC minus DAH. For 1989, initial TALFF is zero for all species because the DAH equals ITAC.

Each DAH amount is further apportioned between its two components, JVP and the expected domestic annual processing (DAP) category which includes U.S. vessels that process their catch onboard or deliver it to U.S. fish processors. Under the intent of the domestic processor preference amendments to the Magnuson Act (Pub. L. 95–354), JVP equals DAH minus DAP. In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). The initial DAP and JVP amounts for each target species and the "other species" category equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year, subject to available TAC and accommodation of DAP. This projection is based on the latest reliable information that is available, including industry surveys, market data and the stated intentions of U.S. fishing industry representatives (§ 675.20(a)(4)). The final TACs, ITACs, reserve, and initial apportionments of groundfish between DAP and JVP in the BSAI area for 1989 are given in Table 1 of this notice.

JVP Split Apportionment

Amendment 11 to the FMP established a procedure for splitting the initial JVP apportionment of pollock for each subarea into two parts (52 FR 45966, December 3, 1987). This rule (§ 675.20(b)(3)) provided for Part One to be available for harvest by the JVP fishery on January 15 and Part Two to be withheld until April 15. The initial JVP for pollock in 1989 is small relative to comparable amounts in 1987 and 1988. In anticipation of this decreased initial JVP amount, the Council, at its September 1988 meeting, recommended suspension of the split-apportionment rule for 1989 with the JVP directed fishery for pollock to begin on January 15. The Secretary has taken this action by emergency rule effective January 15 through April 15, 1989 (53 FR 416; January 6, 1989). Therefore, the initial JVP for pollock in Table 1 is available for directed fishing on January 15.

Reapportionment

This action makes an initial reapportionment from reserve to JVP under authority of § 675.20(b)(1)(i). This reapportionment subtracts a total of 4,725 mt from reserve and adds it to the JVP species categories as follows: Arrowtooth flounder—700 mt; squid—25 mt; and "other species"—4,000 mt. See Table 2. Species categories receiving reapportioned amounts from the reserve are species which are likely to be harvested incidentally during JVP directed fishing for other species, and which have TACs that are not expected to be fully used by DAP fisheries. Based on past experience, NMFS anticipates that this reapportionment will not limit DAP fishing in any way. The purpose of this reapportionment is to provide JVP fisheries with the option to retain this bycatch which otherwise would have to be treated in the same manner as prohibited species and be discarded.

Directed Fishing Prohibition

When the Regional Director determines that the amount of the TAC of any target species or of the "other species" category remaining during the fishing year is necessary in other groundfish fisheries, § 675.20(a)(7) directs the Secretary to prohibit further directed fishing for that species. Directed fishing is defined at § 675.2 but generally allows a fisherman to retain bycatches of that species up to 20 percent of the catch, take, or harvest, or to 20 percent of the fish or fish products onboard his vessel. Such retained bycatches are counted against the remaining TAC for that species. The purpose of this provision is to minimize the waste of groundfish resources from required discarding by slowing the harvest rate of any groundfish species as its total catch approaches its TAC. However, when the catch of a species reaches its TAC (or JVP, for example), any further bycatches of it may not be retained and must be treated in the same manner as a prohibited species (§ 675.20(a)(8)).

The Regional Director, Alaska Region, has determined that the amounts of certain groundfish species apportioned to DAP and JVP are insufficient for directed fishing without excessive waste later in the fishing year from discard as "prohibited species" and that these amounts are necessary for bycatch in fisheries for other groundfish species. These species and the amounts necessary for bycatch in other fisheries are as follows:

DAP sablefish, Bering Sea subarea.	2,380 mt.
JVP arrowtooth flounder	700 mt.
JVP squid	25 mt.
JVP "other species"	4,000 mt.

Therefore, the Secretary prohibits DAP directed fishing for sablefish in the Bering Sea subarea, and JVP directed fishing for arrowtooth flounder, squid, and "other species" in the Bering Sea and Aleutian Islands area for the remainder of the fishing year.

Comments and Responses

Eight letters of comment were received on the preliminary 1989 specifications published November 29, 1988 (53 FR 47998). Most comments were affected by the Council's actions at its December, 1988 meeting. In summary, commenters expressed one of two basic concerns, either that estimates and apportionments of DAP were inflated and would harm JVP interests, or that DAP could harvest the entire TAC and that premature reapportionment of reserve or DAP to JVP would harm DAP interests. Commenters focused almost exclusively on the apportionment of pollock in the Bering Sea subarea. Comments and responses, therefore, are summarized below according to these two basic concerns.

Comment 1: The 1.34 million mt TAC for pollock in the Bering Sea subarea can be fully harvested by the growing DAP fleet. The NMFS projection of the 1989 DAP harvest of pollock is sufficiently high to justify prohibiting JVP directed fishing for this species until the second half of the fishing year. The Council recommendation for initial DAP pollock in the Bering Sea subarea is only about 61 percent of the NMFS-projected DAP harvest. If the entire "reserve" (i.e., 15 percent of the Bering Sea subarea pollock TAC) for this species were reapportioned to DAP, the total would amount to only 73 percent of the projected harvest. There is no justification for an initial JVP that allows JVP directed fishing for this species. The procedure used by the Council to provide for 50,000 mt of pollock in the Bering Sea subarea for JVP directed fishing was inappropriate and violates the requirement to specify DAP before JVP. If implemented, the Council's recommendation creates a risk that DAP will run out of fish (pollock) before the end of the fishing year. NMFS should not make any early-year reapportionments from reserve to JVP to preserve the ability of the DAP sector to harvest pollock throughout the year up to its TAC.

Response: There is no question of the rapid growth in harvesting and processing capacity of the DAP sector. The annual DAP harvest of groundfish off Alaska generally has increased an average of 70 percent from 1981 through 1987. The 1988 total groundfish harvest is likely to be about 50 percent greater than that in 1987. In recent years, most of this growth has occurred in the Bering Sea subarea and, specifically, from pollock.

To estimate DAP harvests in a succeeding year, NMFS, Alaska Region,

surveys domestic groundfish processors on their processing capacity and intentions for the coming year. This survey includes shore-based and floating processors and new operations planned for the coming year but not yet operational. Due to the uncertainty of new and planned processing operations, NMFS forecasts or projections of DAP harvests in the coming year tend to liberally favor DAP. For example, the NMFS survey performed in November 1987, for the 1988 fishing year resulted in a projected DAP pollock harvest from the Bering Sea subarea of 614,162 mt. The actual DAP pollock harvest from this area in 1988 is likely to be about 526,162 mt or about 86 percent of the original projection. The Alaska Region refines its projected DAP harvest throughout the year with subsequent inseason surveys and reapportions surplus DAP to JVP, if indicated.

The projected DAP harvest of Bering Sea subarea pollock in 1989, based on a November 1988 survey of processors, is 1,342,193 mt. The Council apparently was skeptical that domestic processors could actually achieve this level of production which represents an increase in production equivalent to 2.4 times that in 1988. In addition, the Council noted that initial NMFS projections in the past have been about 20 percent higher than actual performance. Decreasing the 1989 projection by this proportion produces an estimated DAP harvest of pollock in the Bering Sea subarea of about 1,074,000 mt. Based on public testimony, the Council further reduced this estimate to 1,045,585 mt. This is a decrease from the NMFS projection of about 22 percent but still provides for DAP growth of nearly two times the likely 1988 harvest of pollock in the Bering Sea subarea. Moreover, reapportionments from reserve to pollock DAP in this area could be made later in the year up to an amount equivalent to the TAC. Such reapportionments could make an additional 201,000 mt of pollock available to DAP fisheries. This would increase the total pollock DAP in the Bering Sea subarea to 1,246,585 mt or almost 2.5 times the likely catch in 1988. NOAA has determined that the Councils' recommended specification of DAP for pollock in the Bering Sea subarea is consistent with the Magnuson Act because it provides ample opportunity in 1989 for domestic processors to achieve their probable production of pollock products, based on a comparison of 1988 NMFS projections with actual 1988 production. Therefore, NOAA considers the Council's recommendation to be defensible and appropriate.

The Alaska Region will be refining its projections of the DAP harvest of pollock (and other species) during the 1989 fishing year based on in season surveys of domestic processor intentions and capacity. The Secretary will publish reapportionments based on these revised data as provided under § 675.20(b). It is unlikely that DAP harvesters will use the entire potential DAP (initial DAP plus later apportionments from reserve) before the end of the 1989 fishing year.

Comment 2: Apportionments to DAP should be made in a manner that is fair and equitable to JVP fishermen. Requests of the DAP sector (from the NMFS survey of domestic processing capacity and intentions) should be critically reviewed and verified. Reevaluations should be made quarterly to determine the probability of surplus DAP, and reapportionment to JVP should be more timely to allow uninterrupted operations.

The DAP sector requests include 25 processor vessels which are not currently operating. Many of these planned operations are unlikely to materialize because of difficulty in securing financing and shipyard commitments. The NMFS should intensively review such projects using more realistic assumptions. Not doing this results in inflated projections of DAP capacity which unfairly excludes American fishermen in joint venture operations from the groundfish fisheries. Inflated projections also result from "double-dipping" on the survey response. The DAP survey lacks transparency which prevents effective commenting and rebuttal of domestic processing claims.

The OY limit should be raised by emergency Secretarial rulemaking. Not raising this limit and accepting the DAP requests at face value will exclude at least 50 percent of the 90 to 125 U.S. catcher vessels working in joint ventures from the fishery, because they do not have a domestic market for their catch. This dislocation constitutes a socio-economic emergency. The rapid capitalization of the DAP fleet also indicates a need to raise the OY limit in combination with a moratorium on new entry into the fishery.

The JVP fishery has 100 percent observer coverage on all vessels receiving JVP catches. This observer coverage provides a source of data important to the biological assessment of the stocks and monitoring of catch rates. This data base will be lost if JVP operations are forced to leave before implementation of adequate observer coverage in the DAP fleet. If 20 percent observer coverage is considered adequate, then 20 percent of the OY should be earmarked for JVP.

Response: NOAA is likewise concerned with the accuracy of its surveys of domestic processing needs and the impact of DAP apportionments on JVP harvesters. It is for these reasons that NOAA thoroughly scrutinizes the results of those surveys and endeavors to accurately assess domestic processor needs and balance fairly the statutory requirement to accommodate DAP processors while recognizing the needs of JVP fishermen.

Estimates of groundfish harvests by planned (but not currently operational) DAP operations are arguably the most uncertain. Another uncertainty arises from survey responses that indicate the production of different kinds of fish products at the same time, an unlikely event due to logistical or marketing impracticalities. The Alaska Region accounts for these and other uncertainties in formulating its projections by discounting, sometimes by significant amounts, the domestic processor requests from the survey. In addition, NMFS, in presenting its projections, cautions the Council regarding these uncertainties and to what extent they have been accounted for. The Council may further adjust the NMFS projections, based on this information and public testimony, in formulating its recommendations to the Secretary. All information and survey results presented to the Council are public and available for comment and rebuttal. The responses of individual firms cannot be made public because of the need to preserve the confidentiality of private businesses.

On several previous occasions, the Council has considered changing the upper limit to the OY range. Its most recent consideration was in 1988 when the Council developed a draft environmental impact statement (DEIS). After reviewing the DEIS, the Council decided against making a recommendation to the Secretary to amend the FMP in this regard.

Classification

This action is authorized under 50 CFR 611.93(b) and 675.20 and complies with Executive Order 12291. The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on the reapportionment part of this notice. As immediate effectiveness of this action is necessary to benefit

fishermen who would otherwise forego harvestable amounts of groundfish, the 30-day delayed effectiveness provision is also waived. However, interested persons are invited to submit comments in writing on the reappportionment to the above address.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

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

Dated: January 19, 1989

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

TABLE 1—FINAL 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	1989 TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,340,000	1,139,000	1,045,585	93,415	1,139,000	0
AI	13,450	11,432	11,432	0	11,432	0
Pacific Ocean Perch						
BS	5,000	4,250	4,250	0	4,250	0
AI	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS	400	340	340	0	340	0
AI	1,100	935	935	0	935	0
Sablefish:						
BS	2,800	2,380	2,380	0	2,380	0
AI	3,400	2,890	2,890	0	2,890	0
Atka Mackeral: BSAI	20,285	17,242	17,242	0	17,242	0
Pacific Cod: BSAI	230,681	196,079	158,613	37,466	196,079	0
Yellowfin Sole: BSAI	182,675	155,274	45,274	110,000	155,274	0
Greenland Turbot: BSAI	8,000	6,800	6,800	0	6,800	0
Arrowtooth Flounder: BSAI	6,000	5,100	5,100	0	5,100	0
Rock Sole: BSAI	90,762	77,148	67,543	9,605	77,148	0
Other Flatfishes: BSAI	75,183	63,906	23,906	40,000	63,906	0
Squid: BSAI	1,000	850	850	0	850	0
Other Species: BSAI	13,264	11,274	11,274	0	11,274	0
Total	2,000,000	1,700,000	1,409,514	290,486	1,700,000	0

[1] Amounts are in metric tons.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC—ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.

TABLE 2—REAPPORTIONMENT OF RESERVE: REVISED 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,340,000	1,139,000	1,045,585	93,415	1,139,000	0
AI	13,450	11,432	11,432	0	11,432	0
Pacific Ocean Perch:						
BS	5,000	4,250	4,250	0	4,250	0
AI	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS	400	340	340	0	340	0
AI	1,100	935	935	0	935	0
Sablefish:						
BS	2,800	2,380	2,380	0	2,380	0
AI	3,400	2,890	2,890	0	2,890	0
Atka Mackerel: BSAI	20,285	17,242	17,242	0	17,242	0
Pacific Cod: BSAI	230,681	196,079	158,613	37,466	196,079	0
Yellowfin Sole: BSAI	182,675	155,274	45,274	110,000	155,274	0
Greenland Turbot: BSAI	8,000	6,800	6,800	0	6,800	0
Arrowtooth Flounder: BSAI	6,000	5,100	5,100	0	5,100	0
Change: Add	0	0	0	700	700	0
Revised	6,000	5,100	5,100	700	5,800	0
Rock Sole: BSAI	90,762	77,148	67,543	9,605	77,148	0
Other Flatfishes: BSAI	75,183	63,906	23,906	40,000	63,906	0
Squid: BSAI	1,000	850	850	0	850	0
Change: Add	0	0	0	25	25	0
Revised	1,000	850	850	25	875	0
Other Species: BSAI	13,264	11,274	11,274	0	11,274	0
Change: Add	0	0	0	4,000	4,000	0
Revised:	13,264	11,274	11,274	4,000	15,274	0
Totals	2,000,000	1,700,000	1,409,514	290,486	1,700,000	0
Change [7]	0	0	0	4,725	4,725	0

TABLE 2—REAPPORTIONMENT OF RESERVE: REVISED 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA[1]—Continued

Species	TAC	Initial TAC[2]	DAP[3]	JVP[4]	DAH[5]	TALFF[6]
Revised	2,000,000	1,700,000	1,409,514	295,211	1,704,725	0

[1] Amounts are in metric tons.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC—ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.
[7] The total increase in JVP and DAH is subtracted from the reserve. Hence, the remaining reserve = 300,000—4,725 = 295,275.

[FR Doc. 89-1666 Filed 1-19-89; 4:33 pm
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 81131-9019-1]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of prohibition on receipt.

SUMMARY: NOAA announces prohibitions on receipt by foreign processors in the Exclusive Economic Zone (EEZ) of pollock taken in directed fisheries for pollock in the Bering Sea Subarea. This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), limits joint venture processing (JVP) to the amount of pollock specified for JVP, assures optimum use of groundfish, and promotes orderly conduct of the groundfish fisheries.

DATES: Effective 1000 G.M.T., January 21, 1989 (0100 Alaska Standard Time, January 21, 1989). Comments will be accepted through February 3, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Pat Peacock, Fishery Management Specialist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the EEZ under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675. An emergency interim rule (54 FR 416, January 6, 1989) established one JVP pollock season in 1989, starting January 15 and reversed Amendment 11 to the FMP (52 FR 45966, December 3, 1987), which divided the JVP pollock season into two parts for the 1988 and 1989 fishing seasons.

For other actions in 1989 concerning JVP pollock in the Bering Sea Subarea, see the Notice of Specifications for groundfish in the Bering Sea and Aleutian Islands published elsewhere in todays's **Federal Register.**

Notice of Closure to Directed Fishing

Under § 675.20(a)(7), the Regional Director (RD) has determined that 43,415 mt of pollock out of the 93,415 mt JVP apportionment for this species in the Bering Sea subarea will be needed for bycatch in other JVP fisheries (i.e., Pacific cod, yellowfin sole, rock sole, and "other flatfish"). To preserve this bycatch amount for other JVP fisheries, it is necessary that foreign processors must cease receiving pollock at 1000 GMT, January 21, 1989 (0100 Alaska Standard Time) caught by U.S. fishermen, when the RD estimates 50,000 mt of pollock will have been delivered to foreign processors. Directed fishing is defined in § 675.2.

Classification

The action is taken under the authority of 50 CFR 675.20(a)(7) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for comment. Immediate effectiveness of this notice is necessary to prevent the harvest of pollock from exceeding the JVP amount.

Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: January 19, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-1667 Filed 1-19-89; 4:32 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 15
Wednesday, January 25, 1989

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

Farmers Home Administration

7 CFR Parts 1944 and 1951

Interest, Penalties, and Administrative Costs

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration proposes to amend its regulations to provide for assessing individual borrowers a $7.00 fee when the Agency must process an uncollectible item. This action is taken to implement an Office of Management and Budget (OMB) Circular A–129 requirement that agencies assess interest, penalties, and administrative costs. The effect of this action will be to compensate the Agency for the cost of processing an uncollectible item.

DATES: Comments are due on or before March 27, 1989.

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

FOR FURTHER INFORMATION CONTACT: William J. French, Financial and Management Analysis Staff, Farmers Home Administration, USDA, Room 6434, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 475–4741.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industrials, 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.

Environmental Impact Statement

This document has 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.

Regulatory Flexibility Act

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 only deals with the assessment of a fee on individual borrowers allowing the Government to capture its costs of processing uncollectible items.

Intergovernmental Consultation

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.428 Economic Emergency Loans

Discussion

The Farmers Home Administration is required by OMB Circular A–129 to assess interest, penalties, and administrative costs on delinquent accounts in accordance with the Debt Collection Act of 1982. The Agency has not passed the cost of processing uncollectible items on to the borrower in the past, however, it has been determined that it is not fiscally responsible for the Agency to continue to absorb these losses. We, therefore, are proposing to charge a fee of $7.00 to individual borrowers for each uncollectible item which will only cover our costs of processing the item.

List of Subjects

7 CFR Part 1944

Home improvement, Housing and community development, Low and moderate income housing, Mobile homes, Mortgages, Rural housing and subsidies.

7 CFR Part 1951

Account servicing, Accounting, Collection of loan payments & depositing payments through the Concentration Banking System (CBS), Financial institutions, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

Therefore, as proposed, Chapter XVII of Title 7, Code of Federal Regulations, is amended as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

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

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Exhibit D to Subpart A is amended by revising item 12 to read as follows:

Exhibit D of Subpart A—Rural Housing Applicant Interview

* * * * *

12. *Monthly Payment:* Regular payments must be made on or before the due date. Normally, payments will be applied first to unpaid interest and the balance to principal. If a noninterest accruing administrative cost

has been charged to the borrowers account, payment will be applied to the outstanding administrative cost first. If for any reason a payment cannot be made on time the borrower should immediately contact the local County Office.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for Part 1951 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 A—Account Servicing Policies

4. Section 1951.6 is amended by revising paragraph (e)(4) to read as follows:

§ 1951.6 Handling payments.

* * * * *

(e) * * *

(4) If an uncollectible item is received, the Finance Office will reverse the amount from the borrower's account and a new Form FmHA 451–26, "Transaction Record," reflecting the uncollectible amount will be prepared. The Form FmHA 451–26 will be mailed to the County Office. The uncollectible item with a transmittal memorandum will be sent to the County Office. The County Office will return the uncollectible check to the borrower after it is fully redeemed. The borrower will make payment by sending a new check and a new payment coupon to the Finance Office. There will also be a $7.00 noninterest accruing administrative cost charged to the borrower's account for uncollectible items due to insufficient funds. Therefore, the borrower's payment for the uncollectible item should be for the regular payment amount plus the administrative cost.

* * * * *

5. Section 1951.10 is amended by revising the introductory text to read as follows:

§ 1951.10 Application of payments on production-type loan accounts.

Employees receiving payments on OL, EO, SW codes "24," EM for Subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited by the Finance Office first to any administrative costs, then to unpaid billed interest, and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to any administrative costs, to a portion of interest which accrues during the deferral period, to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431–2) and Form FmHA 1962–1.

* * * * *

6. In § 1951.11, current paragraphs (d)(1)(i) and (d)(1)(ii) are redesignated as paragraphs (d)(1)(ii) and (d)(1)(iii), respectively, and a new paragraph (d)(1)(i) is added to read as follows:

§ 1951.11 Application of payments on real estate accounts.

* * * * *

(d) *Finance Office handling.*

(1) * * *

(i) Payments will be applied first to satisfy any administrative costs.

* * * * *

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

7. In § 1951.309, current paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) are redesignated as paragraphs (b)(1)(ii), (b)(1)(iii), (b)(1)(iv) and (b)(1)(v), respectively, and a new paragraph (b)(1)(i) is added to read as follows:

§ 1951.309 Receiving and applying payments.

* * * * *

(b) * * *

(1) * * *

(i) Administrative cost.

* * * * *

Dated: October 3, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 89–1593 Filed 1–24–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-1]

Proposed Revision of Transition Area; Athens, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Athens, Georgia, transition area. This revision will increase the transition area radius from 9 to 11.5 miles to provide additional controlled airspace for aircraft executing Standard Instrument Approach Procedures (SIAP's) utilizing the Athens, Georgia, VHF Omnidirectional Range (VOR). It will also correct the airport name and the airport geographical position coordinates.

DATES: Comments must be received on or before March 1, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 89–ASO–1, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT:

James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia

30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filled in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Comunications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Administration (14 CFR Part 71) to revise the Athens, Georgia, transition area. The radius of the transition area would be increased from 9 to 11.5 miles to provide additional controlled airspace for aircraft executing standard instrument approach procedures utilizing the Athens, Georgia, VOR. The airport name would be corrected from Athens Municipal to Athens/Ben Epps Airport. Also, a minor correction would be made to the airport geographical position coordinates. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Athens, Georgia [Revised]

That airspace extending upward from 700' above the surface within an 11.5-mile radius of Athens/Ben Epps Airport (Lat. 33°56'55"N., Long. 83°19'36"W).

Issued in East Point, Georgia, on January 11, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region

[FR Doc. 89-1602 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-24]

Proposed Designation of Transition Area; Tipton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to designate a 700-foot transition area at Tipton, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Mathews Memorial Airport, Tipton, Iowa, utilizing the Cedar Rapids VORTAC as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before February 27, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Tipton, Iowa. To enhance airport usage, a new instrument approach procedure is being developed for the Mathews Memorial Airport, Tipton, Iowa, utilizing the Cedar Rapids VORTAC as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment

of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Tipton, Iowa, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to insure segregation of aircraft using the approach procedure under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR). This action will change the airport status from VFR to IFR.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Tipton, Iowa

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Mathews Memorial Airport (41°45'52"N, 91°09'15"W).

Issued in Kansas City, Missouri on January 9, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-1600 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-15]

Proposed Alteration to Transition Area; Menominee, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Menominee, MI, transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to Menominee-Marinettee Twin County Airport, Menominee, MI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions in controlled airspace.

DATES: Comments must be received on or before March 3, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-15, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-15". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Menominee, MI.

The present transition area is being modified to accommodate existing SIAPs to Menominee-Marinette Twin County Airport. The alterations will consist of a size reduction to the existing control zone extensions and returning that portion of airspace back to the public.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Menominee, MI [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Menominee-Marinette Twin County Airport (lat. 45°07'36"N., long. 87°38'18"W.) within 2 miles each side of the 352° bearing from the airport extending from the 6.5 mile radius to 11.5 miles north of the airport, within 3 miles each side of the 212° bearing from the airport extending from the 6.5 mile radius to 8.5 miles southwest of the airport.

Issued in Des Plaines, Illinois, on January 12, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-1599 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-23]

Proposed Amendment of Transition Area; Lakeview, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Lakeview, Oregon, Transition Area. Additional 1,200 foot area is needed to encompass controlled airspace associated with holding at Goose NDB Lakeview, Oregon to accommodate climbing in the holding pattern by Turbojet aircraft.

DATES: Comments must be received on or before March 10, 1989.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-23, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-23, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communication should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-23". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to accommodate climbing in the Goose NDB (Lakeview, Oregon) holding pattern by turbojet aircraft. This area will be depicted on aeronautical charts enabling pilots operating in Visual Flight Rules conditions to circumnavigate the area and avoid conflicting with aircraft operating on Instrument Flight Rules clearances.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendment are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lakeview, Oregon [Amended]

On the eighth line after "RBN", Change the period to a semi-colon and add the following: "and that airspace within an area bounded by a line beginning at Latitude 42°22'00", longitude 120°41'00", to Latitude 42°22'00", longitude 120°12'00", to latitude 41°48'00", longitude 120°12'00", to latitude 41°48'00", longitude 120°41'00", to beginning."

Issued in Seattle, Washington, on January 10, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 89-1601 Filed 1-24-89; 8:45 am]

BILLING CODE 4901-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 86P-0297/CP]

Cacao Products; Proposal To Amend the Standards of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the U.S. standards of identity for certain cacao products. The proposed amendments would provide for the use of safe and suitable nutritive carbohydrate sweeteners, neutralizing agents, and emulsifiers; reduce the current minimum milkfat content; and eliminate the current "nonfat milk solids-to-milkfat ratios" in certain cacao products. The agency is also proposing to update the language and format of the standards and to provide for optional ingredient labeling requirements. The proposed amendments respond principally to a citizen petition submitted by the Chocolate Manufacturers Association of the United States of America (CMA), will promote honesty and fair dealing in the interest of consumers, and, to the extent practicable, will achieve consistency with the Codex standards.

DATE: Comments by March 27, 1989. The agency proposes that any final rule that may be issued based upon this proposal become effective 60 days after date of publication of the final rule in the **Federal Register.**

ADDRESS: Written comments, data, or information to the Dockets Management Branch (FHA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION:

I. Advance Notices of Proposed Rulemaking

In the **Federal Register** of December 2, 1985 (50 FR 49398 and 49405), FDA published two advance notices of proposed rulemaking (ANPR's) that offered interested persons the opportunity to comment on the desirability of, and need for, adopting the Codex Alimentarius standard for Chocolate (Codex standard 87-1981) and the Codex Alimentarius standard for Cocoa Powders (Cocoas) and Dry Cocoa—Sugar Mixtures (Codex standard 105-1981). The comment period for the notices ended January 30, 1986. At the request of CMA, FDA extended the comment period 90 days to April 30, 1986, and subsequently, for an additional 30 days to May 30, 1986.

II. Comments

Ten letters, containing one or more comments, were received from ingredient distributors, a consultant, and CMA. Six letters were in response to the chocolate ANPR and four were in response to the cocoa powders ANPR. The comments generally opposed the adoption of the Codex standards, but CMA did submit a citizen petition proposing to amend the U.S. standards for cacao products (21 CFR Part 163) to incorporate certain aspects of the Codex standards for chocolate and cocoa powders. Several comments suggested changes similar to those recommended in the CMA petition, while others addressed issues outside the scope of the ANPR's.

The agency has reviewed the CMA petition and the comments received in response to the ANPR's for chocolate and cocoa powders and has concluded that it would be in the best interest of consumers to propose to amend the U.S. standards to incorporate some of the changes suggested by CMA and by those commenting on the ANPR's. The agency believes that these proposed changes will achieve, to the extent practicable, consistency with the Codex standards for chocolate and cocoa powders.

The agency is also taking this opportunity to propose a number of other changes such as (1) adding a new § 163.5 *Methods of analysis* (21 CFR 163.5) which will eliminate repetition in the cacao standards, (2) deleting the outdated ingredient listings, (3) updating the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC) citations, and (4) updating the format and language of the standards. The FDA-initiated changes will be discussed under the heading "Other Changes."

The CMA-requested changes, the grounds given in support thereof, the comments received to the two ANPR's, and the agency's responses are discussed below.

III. Chocolate Manufacturers Association Petition

The Chocolate Manufacturers Association of the United States of America, 7900 Westpark Dr., McLean, VA 22102, requested in a petition dated July 8, 1986, that FDA amend the standards of identity for cacao nibs (21 CFR 163.110), chocolate liquor (21 CFR 163.111), breakfast cocoa (21 CFR 163.112), sweet chocolate (21 CFR 163.123), milk chocolate (21 CFR 163.130), buttermilk chocolate (21 CFR 163.135), skim milk chocolate (21 CFR 163.140), and mixed dairy product chocolates (21 CFR 163.145) to accomplish four major changes. The changes would (1) provide for the use of additional nutritive carbohydrate sweeteners in chocolate, (2) permit the use of specified neutralizing agents in

the preparation of cacao nibs, (3) reduce the minimum milkfat content of chocolate products and eliminate current nonfat milk solids-to-milkfat ratio requirements, and (4) permit the use of safe and suitable emulsifying ingredients in addition to those now permitted.

A. Nutritive Carbohydrate Sweeteners

CMA requested that FDA amend the standards of identity for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130) to (1) replace the term "optional saccharine ingredients" with the term "nutritive carbohydrate sweeteners" wherever it appears, (2) include in the list of permitted sweeteners cane or beet sugar, partly refined sugars (soft sugars), anhydrous dextrose, dextrose monohydrate, modified glucose syrup, dried modified glucose syrup, glucose syrup, dried glucose syrup, fructose, fructose syrup, dried fructose syrup, lactose, hydrolyzed lactose (acid or enzyme), honey, and maple syrup, and (3) permit the specified sweeteners to be used alone or in combinations of two or more and remove the quantitative limitations on the permitted sweeteners listed in the standards. One comment on the ANPR for cocoa powders also requested that fructose be included in the permitted list of sweeteners.

The grounds given by CMA for these requested changes are as follows: The current U.S. standards for sweet chocolate and milk chocolate (§§ 163.123 and 163.130) permit only sucrose and some forms of dextrose and corn syrup as optional nutritive carbohydrate sweeteners. Furthermore, these current U.S. standards place quantitative limitations on the ratios of such ingredients. CMA stated that it is not aware of any reason why other nutritive carbohydrate sweeteners should not be used in these chocolate products, nor of any basis for restricting the proportions or quantities of any particular nutritive carbohydrate sweetening ingredients.

CMA further stated that since the chocolate standards were initially promulgated over 40 years ago, various forms of equally satisfactory new carbohydrate sweetening ingredients have become commercially available. It pointed out that advances in food technology have enabled manufacturers of chocolate to utilize these sweeteners in the production of products having a wide variety of textures and taste properties. CMA argued that allowance for the use of such new ingredients, many of which are permitted in other standardized foods, would provide the consumer with a wider variety of products from which to choose. Moreover, the additional carbohydrate sweeteners would include all sweeteners permitted by the Codex Alimentarius, as set forth in the Codex standard for chocolate. CMA also argued that permitting the use of the additional nutritive carbohydrate sweeteners in the manufacture of chocolate may provide an advantage to manufacturers in the foreseeable future, with resulting benefit to the consumer.

The agency agrees in principle with the CMA proposal to permit the use of additional nutritive carbohydrate sweeteners in chocolate products, thereby allowing manufacturers to avail themselves of more innovative technology. However, rather than specifying the additional nutritive carbohydrate sweeteners in the standards as suggested by the comments and CMA, FDA is proposing to amend the standards for sweet chocolate and milk chocolate (§§ 163.123 and 163.130), and, by cross reference, the standards of identity for buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), mixed dairy product chocolates (§ 163.145), sweet cocoa and vegetable fat (other than cacao fat) coating (§ 163.150), sweet chocolate and vegetable fat (other than cacao fat) coating (§ 163.153), and milk chocolate and vegetable fat (other than cacao fat) coating (§ 163.155), to identify the sweeteners by functional group designation, i.e., as safe and suitable "[n]utritive carbohydrate sweeteners" and to require specific ingredient listing by common or usual name on product labels in accordance with the applicable sections of Part 101 (21 CFR Part 101). The agency believes that permitting the use of safe and suitable ingredients of a particular functional category will minimize any future need to amend the standards to provide for additional specific ingredients, and that the benefits resulting from this action will be passed on to the consumer.

B. Neutralizing Agents

CMA requested that FDA amend the standards of identity for cacao nibs (§ 163.110), chocolate liquor (§ 163.111), breakfast cocoa (§ 163.112), sweet chocolate (§ 163.123), and milk chocolate (§ 163.130) to provide for the optional use of phosphoric acid, citric acid, and *L*-tartaric acid as neutralizing agents within specified limits of use.

The grounds given by CMA for this requested amendment are as follows: U.S. standards allow only the use of alkalies as pH adjusting agents. Alkalies are necessary in the production of certain types of chocolate, but even with the most cautious processing procedures, it is difficult to control exactly the amount of alkali to be added. It is important to do so because the desired flavor and function are achieved only when the alkalinity is within 0.2 pH units of the optimum pH. CMA stated that the use of the neutralizing agents requested will ensure consistent pH levels, functionality, flavor, and consumer acceptability in the products produced. Moreover, according to CMA, the requested neutralizing agents are identical to those now permitted in the Codex standard for cocoas. In addition, CMA asserted that exacting control over the raw materials (cocoa beans, nibs) by permitting the use of neutralizing agents to maintain a specific pH, functionality, and flavor will result in a cost advantage to the manufacturer, who will be able to use a wider variety of raw materials, resulting ultimately in an economic benefit to the consumer.

The agency believes CMA's request has merit. The three acids specified as neutralizing agents by CMA are generally recognized as safe (GRAS) and are listed among the GRAS substances in 21 CFR Parts 182 and 184 (phosphoric acid (§ 182.1073), citric acid (§ 182.1033), and *L*-tartaric acid (§ 184.1099)). They are also listed in current Food Chemicals Codex specifications. Accordingly, FDA is proposing to amend the standards for cacao nibs (§ 163.110), chocolate liquor (§ 163.111), and breakfast cocoa (§ 163.112), and, by cross reference, the standards for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130), to provide for the three acids as neutralizing agents.

C. Minimum Milkfat Content and Milk Solids to Milkfat Ratio

CMA requested that FDA amend the standards of identity for milk chocolate (§ 163.130), buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), and mixed dairy product chocolates (§ 163.145) to change references to the milkfat level from 3.66 present to 3.39 percent and to eliminate the required nonfat milk solids-to-milkfat ratios.

CMA stated several reasons in support of the requested amendments. The U.S. standard for milk chocolate mandates that "finished milk chocolate contain not less than 3.66 percent by weight of milkfat." CMA asserted that because this level is seven percent higher than the level of milkfat found naturally in whole milk, manufacturers of milk chocolate must add butterfat to their formulations to comply with the standard. Consequently, it suggested

that if the milkfat requirement for milk chocolate is reduced to "not less than 3.39 percent," milk chocolate could be made from commercially available whole milk with no additional butterfat required, and consistency would be achieved between the standard for milk chocolate and the U.S. standard for milk (21 CFR 131.110).

CMA stated that the amount of milkfat required for milk chocolate represents a limitation on the manufacture of milk chocolates with greater than 12 percent milk solids (12 percent being the minimum total milk solids content required by the standard) because more butterfat must be added when the solids are increased above 12 percent to maintain the current ratio. CMA asserted that if the required nonfat milk solids-to-milkfat ratios were removed, more flexibility in the types of products manufactured would be available, and greater choice would be given to the consumer. Moreover, CMA stated that removal of the ratio requirement is consistent with the Codex standards.

CMA further stated that although many chocolate products do not require a higher milk solids content, for some products, particularly those coated with milk chocolate, a slightly more firm chocolate having less susceptibility to heat is desirable. For other products, a higher milk solids content, without a proportional increase in milkfat, enhances palatability and mouth-feel. On the other hand, the richer, higher milkfat chocolates, produced in accordance with the U.S. standards, are also highly desirable. Adoption of the requested amendments will permit manufacturers to meet consumer needs by producing certain products with a high milk solids content. At the same time, those manufacturers desiring to make chocolates in conformance with the minimum requirements of the standards could do so.

The agency believes that the CMA requests have merit and are consistent with FDA policy and efforts to provide, where appropriate, technological flexibility. Accordingly, FDA is proposing to lower the required minimum level for milkfat to "not less than 3.39 percent" or "less than 3.39 percent", as appropriate, and to delete the requirements for the "nonfat milk solids-to-milkfat ratio" in the standards for milk chocolate (§ 163.130), buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), and mixed dairy product chocolates (§ 163.145).

D. Emulsifying Ingredients

CMA requested that FDA amend the standards of identity for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130) to provide for the use of safe and suitable emulsifying ingredients in an amount not to exceed 1.0 percent in the finished food. Comments on the ANPR for chocolate suggested including the additional emulsifiers listed in the Codex standard.

The grounds given by CMA for this requested amendment are as follows: The U.S. standards permit only specified emulsifiers as optional ingredients in sweet chocolate and milk chocolate. CMA asserted that these requirements are unnecessarily restrictive, reflect the outdated use of "strict recipes," and inhibit innovation and the introduction of new food technologies in the chocolate industry. CMA argued that permitting the use of safe and suitable emulsifiers is consistent with FDA's policy of providing food manufacturers with more flexibility regarding their use of permitted optional ingredients. Examples of food standards where FDA has adopted a "safe and suitable" policy for optional ingredients include standards of identity for fruit butters, jellies, preserves, and related products (21 CFR Part 150); cheeses and related cheese products (21 CFR Part 133); bakery products (21 CFR Part 136); and frozen desserts (21 CFR Part 135). In addition, the Codex standard for chocolate provides for the use of emulsifiers not permitted by the U.S. standards (50 FR 49398). CMA argued that while it would be possible to simply conform to the Codex list, utilizing the "safe and suitable" approach is preferable because it would allow the chocolate manufacturer to use more innovative technologies as they become available without the necessity for formal amendment of the standards.

The agency agrees with the CMA proposal to employ the safe and suitable approach relating to emulsifying ingredients in chocolate products, thereby allowing manufacturers to avail to themselves of more innovative technology. However, rather than list the specific emulsifying ingredients in the standards as suggested by the comments, FDA is proposing to identify the permitted ingredients as safe and suitable emulsifying agents in the standards of identity for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130), to retain the maximum combined use level of not more than 1.0 percent to prevent possible abuse, and to require listing of the specific emulsifier used in the food in accordance with the requirements of applicable sections of the labeling regulations in Part 101.

The agency notes that not all of the emulsifiers listed in the Codex standard for chocolate are permitted for use in foods in this country. Specifically, polyglycerol polyricinoleate, sorbitan tristearate, and ammonium salts of phosphatidic acids have not been listed by FDA for use in food and are not GRAS or subject to a prior sanction. Therefore, they are not considered safe and suitable for use in chocolate products.

IV. Other Changes

FDA is proposing to make several additional changes in the standards of identity for cacao products in Part 163.

1. FDA is proposing to insert new § 163.5 *Methods of analysis* to avoid repetitive listing of the methods for determining cacao fat or cacao shell content and is deleting the reference citations in the individual standards.

2. FDA is also proposing to update the format and language in the standards of identity for cacao nibs (§ 163.110), chocolate liquor (§ 163.111), breakfast cocoa (163.112), cocoa (§ 163.113), low-fat cocoa (which FDA is proposing to correct editorially to read "lowfat cocoa") (§ 163.114), cocoa with dioctyl sodium sulfosuccinate for manufacturing (§ 163.117), sweet chocolate (§ 163.123), milk chocolate (§ 163.130), buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), mixed dairy product chocolates (§ 163.145), sweet cocoa and vegetable fat (other than cacao fat) coating (which FDA is proposing to rename "chocolate flavor coating") (§ 163.150), sweet chocolate and vegetable fat (other than cacao fat) coating (which FDA is proposing to rename "sweet chocolate and vegetable fat coating") (§ 163.153), and milk chocolate and vegetable fat (other than cacao fat) coating (which FDA is proposing to rename "milk chocolate and vegetable fat coating") (§ 163.155. Where appropriate, the agency is providing for the use of safe and suitable optional ingredients by functional category and requiring label declaration of the ingredients used in accordance with Part 101. FDA believes that adopting this approach in the cacao products standards will benefit consumers because manufacturers will be able to produce a wider variety of high quality products and will be able to avail themselves of the advantages of modern technological innovation as well as of added flexibility in product formulation. The safety and suitability of the ingredients chosen from a functional category are governed by the definition of "safe and suitable" in 21 CFR 130.3(d) in conjunction with appropriate food additive and GRAS regulations in Parts 172, 182, and 184 (21

CFR Parts 172, 182, and 184), including the good manufacturing practice regulations in §§ 172.5, 182.1, and 184.1 (21 CFR 172.5, 182.1, and 184.1).

3. The current U.S. standards for chocolate liquor (§ 163.111), sweet chocolate (§ 163.123), and milk chocolate (§163.130) provide for the optional use of dried cereal malt extract, ground coffee, and ground nut meats as seasoning ingredients. No provision for these ingredients is made in the Codex standards. FDA believes that these ingredients are seldom used in the preparation of chocolate or milk chocolate and would more likely be used in confectionery products not included under the cacao products standards. Accordingly, the agency is proposing to delete specific mention of these ingredients from the list of optional ingredients. Their presence, when used in a confectionery product, would be listed in the ingredient statement of the product in accordance with the applicable sections of the labeling regulations in Part 101 of this chapter.

4. The current U.S. standards provide for the use of honey, molasses, brown sugar, and maple sugar as optional seasoning ingredients. FDA proposes to delete specific mention of these from the present list of optional ingredients because they will be included under the proposed amendment as safe and suitable nutritive carbohydrate sweetners.

5. The current U.S. standards for chocolate liquor (§ 163.111(a)) and breakfast cocoa (§ 163.112(a)) cite Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), 13th Ed. (1980), Section 13.031, "Fat in Cacao Products, Knorr Tube Method," as the prescribed method for the determination of fat content. This 1925 method is outdated. Therefore, FDA is proposing to cite the newer, currently used method in the AOAC, 14th Ed. (1984), Sections 13.032–13.033, "Fat in Cacao Products, Soxhlet Extraction Method," as the prescribed method for the determination of fat content. The adoption of the newer method was a joint effort by the AOAC and the Office of International du Cacao et du Chocolat (OICC). The method was collaboratively studied in 1970 and is cited in Analytical Methods of the OICC, 8A/1972, and in the Codex standards.

6. The U.S. standard for sweet cocoa and vegetable fat (other than cacao fat) coating (§ 163.150) does not provide for the optional use of chocolate liquor as an ingredient. FDA believes it is sometimes desirable to formulate confectionery coatings to contain some chocolate liquor. Therefore, FDA is proposing to amend § 163.150 to provide for the optional use of cocoa alone or in combination with chocolate liquor.

In addition "Sweet cocoa and vegetable fat (other than cacao fat) coating" is not generally used in the industry. FDA believes that the term "chocolate flavored coating" is more appropriate for a product containing both cocoa and chocolate as characterizing flavors and is proposing to amend the standard accordingly.

7. The U.S. standards for sweet cocoa and vegetable fat (other than cacao fat) coating (§ 163.150), sweet chocolate and vegetable fat (other than cacao fat) coating (§ 163.153), and milk chocolate and vegetable fat (other than cacao fat) coating (§ 163.155) describe confectionery coatings prepared with vegetable fats with required melting points either higher or lower than that for cacao fat. FDA is aware that advances in the technology for food fats have resulted in various fat formulations and processing techniques that will allow the production of suitable coatings, with the desired physical properties, within the parameters of the standards without specification of melting points of the fat and oil components used. Thus, FDA believes that the melting point restrictions imposed by the standards are outdated and, therefore, proposes to remove them.

Based on past correspondence with the confectionery industry the agency believes that manufacturers recognize and understand that the vegetable fat referred to in these standards is not cacao fat. Accordingly, in the interest of providing for shorter names, FDA is proposing to delete the phrase "other than cacao fat" in the names of the standards for these vegetable fat coatings. The agency believes that label declarations of the vegetable fat source or the common or usual name of the fat ingredients, as required by applicable sections of Part 101, will have more meanings to the consumer. Accordingly, FDA is proposing to require listing the common or usual name of each ingredient in accordance with Part 101 of this chapter.

V. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), FDA has reviewed this proposed rule to determine the impact on small businesses. The proposed rule provides increased flexibility to the producer, relaxes the recipe-type requirements, and permits the use of certain safe and suitable optional ingredients. FDA certifies that this action will not have significant economic impact on a substantial number of small entities.

VI. Environmental Impact

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

VII. Request for Comments

Interested persons may, on or before March 27, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 163

Cacao products, Chocolate, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 163 be amended as follows:

PART 163—CACAO PRODUCTS

1. The authority citation for 21 CFR Part 163 is revised to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

2. Section 163.5 is added to Subpart B to read as follows:

§ 163.5 Methods of analysis.

Shell and cacao fat content in cacao products shall be determined by the following methods of analysis prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the Association of Official Analytical Chemists, 1111 North 19th St., Suite 210, Arlington, VA 22209, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(a) Shell content—12th Ed. (1975), sections 13.010–13.014, under the heading "Shell in Cacao Nibs—Official Final Action," pages 208–210.

(b) Fat content—14th Ed. (1984), sections 13.032–13.033, under the heading "Fat in Cacao Products—Soxhlet Extraction Method—Final Action," pages 242–243.

3. Section 163.110 is revised to read as follows:

§ 163.110 Cacao nibs.

(a) *Description.* (1) Cacao nibs is the food prepared by removing the shell from cleaned, cured, dried, and cracked cacao beans. The cacao shell content is not more than 1.75 percent by weight, calculated on an alkali-free basis, as determined by the method prescribed in § 163.5(a).

(2) The cacao nibs, or the cacao beans from which they are prepared, may be processed by heating with one or more of the optional alkali ingredients specified in paragraph (b)(1) of this section.

(3) The cacao nibs, or the cacao beans from which they were prepared, as appropriate, may be further processed with one or more of the optional neutralizing agents specified in paragraph (b)(2) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Alkali ingredients.* Bicarbonate, carbonate, or hydroxide of ammonia, potassium, or sodium, or carbonate or oxide of magnesium, added as such or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such or before shelling from the cacao beans, the total quantity of alkali ingredient used is not greater in neutralizing value (calculated from the respective combining weights of the alkali ingredients used) than the neutralizing value of 3 parts by weight of anhydrous potassium carbonate.

(2) *Neutralizing agents.* Phosphoric acid, citric acid, and *L*-tartaric acid, added as such or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such or before shelling from the cacao beans, the total amount of phosphoric acid used is not greater than 0.5 part by weight, expressed as P_2O_5. The total amount, singly, or in combination, of citric acid and *L*-tartaric acid is not greater than 1.0 part by weight.

(c) *Nomenclature.* The name of the food is "cacao nibs," "cocoa nibs," or "cracked cocoa."

(1) When the cacao nibs, or the cacao beans, are processed with alkali ingredients specified in paragraph (b)(1) of this section, the name of the food shall be accompanied by the statement, "Processed with alkali" or "Processed with _____," the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When the cacao nibs or the cacao beans are processed with neutralizing agents specified in paragraph (b)(2) of this section, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with _____," the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in paragraphs (c)(1) and (c)(2) of this section shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used in the food shall be declared on the label as required by applicable sections of Part 101 of this chapter.

4. Section 163.111 is revised to read as follows:

§ 163.111 Chocolate liquor.

(a) *Description.* (1) Chocolate liquor is the solid or semiplastic food prepared by finely grinding cacao nibs. The fat content of the food may be adjusted by adding one or more of the optional ingredients specified in paragraph (b)(1) of this section to the cacao nibs. Chocolate liquor contains not less than 50 percent nor more than 58 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b). When milkfat is added, the prescribed method of analysis is not applicable.

(2) Optional alkali ingredients specified in paragraph (b)(2) of this section may be used as such in the preparation of the chocolate liquor under the conditions and limitations specified in § 163.110(b)(1). Any alkali ingredients used in the preparation of the cacao beans, cacao nibs, or ground cacao nibs from which the chocolate liquor is prepared, or from any cocoa added in the preparation of such chocolate liquor, shall be considered as optional ingredients in the finished chocolate liquor.

(3) Optional neutralizing agents specified in paragraph (b)(3) of this section may be used as such in the preparation of the chocolate liquor under the conditions and limitations specified in § 163.110(b)(2). Any neutralizing agents used in the preparation of the cacao beans, cacao nibs, or ground cacao nibs from which the chocolate liquor is prepared, or from any cocoa added in the preparation of such chocolate liquor, shall be considered as optional ingredients in the finished chocolate liquor.

(4) Chocolate liquor may be spiced, seasoned, or flavored with one or more of the ingredients listed in paragraphs (b)(4), (b)(5), and (b)(6) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used.

(1) Cacao fat and cocoas (breakfast cocoa, cocoa, or lowfat cocoa) or any mixture of two or more of these.

(2) Alkali ingredients. Bicarbonate, carbonate, or hydroxide of ammonia, potassium, or sodium or carbonate or oxide of magnesium, used as such or in aqueous solution.

(3) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, used as such or in aqueous solution.

(4) Spices, natural and artificial flavorings, and other seasonings that do not impart a flavor that imitates the flavor of chocolate, milk, or butter.

(5) Butter or milkfat.

(6) Salt.

(c) *Nomenclature.* The name of the food is "chocolate liquor," "chocolate," "unsweetened chocolate," "bitter chocolate," "baking chocolate," "cooking chocolate," "chocolate coating," or "unsweetened chocolate coating."

(1) When any optional alkali ingredient specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with alkali" or "Processed with ——," the blank being filed in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(3) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ——," the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more other spices, seasonings, or flavorings specified in paragraph (b)(4) of this section is used in the chocolate liquor, the label shall bear an appropriate statement, e.g., "Spice added," "flavored with ——," or "with —— added," the blank being filled in with the common name of the spice, seasoning, or flavoring used, in accordance with §101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph, showing optional ingredients used, shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

5. Section 163.112 is revised to read as follows:

§ 163.112 Breakfast cocoa.

(a) *Description.* (1) Breakfast cocoa is the food prepared by pulverizing the material remaining after part of the cacao fat has been removed from ground cacao nibs. Breakfast cocoa contains not less than 22 percent by weight of cacao fat as determined by the method prescribed in §163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(1) of this section may be used as such in the preparation of breakfast cocoa under the conditions and limitations specified in § 163.110(b)(1). Any alkali ingredients used in the preparation of the cacao beans, cacao nibs, or ground cacao nibs from which the breakfast cocoa is prepared shall be considered as optional ingredients in the finished breakfast cocoa.

(3) Optional neutralizing agents specified in paragraph (b)(2) of this section may be used as such in the preparation of the breakfast cocoa under the conditions and limitations specified in §163.110(b)(2). Any neutralizing agents used in the preparation of the cacao beans, cacao nibs, or ground cacao nibs from which the breakfast cocoa is prepared shall be considered as optional ingredients in the finished breakfast cocoa.

(4) Breakfast cocoa may be spiced, seasoned, or flavored with one or more of the ingredients listed in paragraphs (b)(3) and (b)(4) of this section.

(b) *Optional Ingredients.* The following safe and suitable ingredients may be used.

(1) Alkali ingredients. Bicarbonate, carbonate, or hydroxide of ammonia, potassium, or sodium or carbonate or oxide of magnesium, used as such or in aqueous solution.

(2) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, used as such or in aqueous solution.

(3) Spices, natural and artificial flavorings, and other seasonings that do not impart a flavor that imitates the flavor of chocolate, milk, or butter.

(4) Salt.

(c) *Nomenclature.* The name of the food is "breakfast cocoa," or "high fat cocoa."

(1) When any optional alkali ingredient specified in paragraph (b)(1) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompanied by the statement "Processed with alkali" or "Processed with ——," the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ——," the blank being filled in with the common usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, seasonings, or flavorings specified in paragraph (b)(3) of this section is used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added," "flavored with ——," or "with —— added," the blank being filled in with the common name of the spice, seasoning, or flavoring used, in accordance with §101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow the name written without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the lable as required by applicable sections of Part 101 of this chapter.

6. Section 163.113 is revised to read as follows:

§ 163.113 Cocoa.

(a) *Description.* Cocoa, or medium fat cocoa, is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of optional ingredients, for breakfast cocoa in § 163.112, except that the cacao fat content is less than 22 percent but not less than 10 percent by weight, as determined by the method in § 163.5(b).

(b) *Nomenclature.* The name of the food is "cocoa" or "medium fat cocoa."

7. Section 163.114 is revised to read as follows:

§ 163.114 Lowfat cocoa.

(a) *Description.* Lowfact cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of optional ingredients, for breakfast cocoa in § 163.112, except that the cacao fat content is less than 10 percent by weight, as determined by the method in § 163.5(b).

(b) *Nomenclature.* The name of the food is "lowfat cocoa".

8. Section 163.117 is revised to read as follows:

§ 163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.

(a) *Description.* Cocoa with dioctyl sodium sulfosuccinate for manufacting is the food additive complying with the provisions in § 172.520 of this chapter. It conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, for breakfast cocoa in § 163.112, or for cocoa in § 163.113, or for lowfat cocoa in § 163.114, except that the food additive contains dioctyl sodium sulfosuccinate (complying with the requirements of § 172.810 of this chapter, including the limit of not more than 0.4 percent by weight of the finished food additive).

(b) *Nomenclature.* The name of the food additive is "cocoa with dioctyl sodium sulfosuccinate for manufacturing" to which is added any modifier of the word "cocoa" required by the definition and standard of identity to which the food additive otherwise conforms. When the food additive is used in a fabricated food, the words "for manufacturing" may be omitted from any declaration of ingredients required under § 101.4 of this chapter.

9. Section 163.123 is revised to read as follows:

§ 163.123 Sweet chocolate.

(a) *Description.* (1) Sweet chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more nutritive carbohydrate sweetners and one or more optional ingredients specified in paragraph (b) of this section.

(2) Sweet chocolate contains not less than 15 percent by weight of chocolate liquor complying with the requirements of § 163.111 and, if used, contains less than 12 percent by weight of total milk solids.

(3) Semisweet chocolate is sweet chocolate that contains not less than 35 percent by weight of chocolate liquor complying with the requirements of § 163.111.

(4) Cacao fat content is determined by the method prescribed in § 163.5(b).

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat.

(2) Nutritive carbohydrate sweeteners.

(3) Spices, natural and artificial flavorings, and other seasonings that do not impart a flavor that imitates the flavor of chocolate, milk, or butter.

(4) Dairy ingredients.

(i) Cream, milkfat, butter.

(ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk.

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk.

(iv) Concentrated buttermilk, dried buttermilk.

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* (1) The name of the food is "sweet chocolate," "sweet chocolate coating," "semisweet chocolate," "semisweet chocolate coating," "bittersweet chocolate," or "bittersweet chocolate coating," as appropriate.

(2) When optional alkalizing ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate liquor was prepared, the label shall bear the statement "Processed with alkali" or "Processed with ———," the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(3) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate liquor was prepared, the label shall bear the statement "Processed with neutralizing agents" or "Processed with ———," the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(4) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

10. Section 163.130 is revised to read as follows:

§ 163.130 Milk chocolate.

(a) *Description.* (1) Milk chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more dairy ingredients and one or more optional ingredients specified in paragraph (b) of this section.

(2) Milk chocolate contains not less than 10 percent by weight of chocolate liquor complying with the requirements of § 163.111, not less than 3.39 percent by weight of milkfat, and not less than 12 percent by weight of total milk solids.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used.

(1) Cacao fat.

(2) Nutritive carbohydrate sweeteners.

(3) Spices, natural and artificial flavorings, and other seasonings that do not impart a flavor that imitates the flavor of chocolate, milk, or butter.

(4) Dairy ingredients.

(i) Cream, milkfat, butter.

(ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk.

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk.

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* (1) The name of the food is "milk chocolate" or "milk chocolate coating."

(2) When optional alkali ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with alkali" or "Processed with ———," the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(3) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents" or "Processed with ———," the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(4) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

11. Section 163.135 is revised to read as follows:

§ 163.135 Buttermilk chocolate.

(a) *Description.* Buttermilk chocolate is the food that conforms to the standard of identity for milk chocolate, § 163.130, except that:

(1) The optional dairy ingredients are limited to sweet cream buttermilk, concentrated sweet cream buttermilk, or any combination of two or more of these.

(2) The finished buttermilk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of sweet cream buttermilk solids.

(b) *Nomenclature.* The name of the food is "buttermilk chocolate," "buttermilk chocolate coating," "sweet cream buttermilk chocolate," or "sweet cream buttermilk chocolate coating."

(c) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

12. Section 163.140 is revised to read as follows:

§ 163.140 Skim milk chocolate.

(a) *Description.* Skim milk chocolate is the food which conforms to the standard of identity for milk chocolate, § 163.130, except that:

(1) The optional dairy ingredients are limited to skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk, and any combination of two or more of these.

(2) The finished skim milk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of skim milk solids.

(b) *Nomenclature.* The name of the food is "skim milk chocolate," "skim milk chocolate coating," "sweet skim milk chocolate," ro sweet skim milk chocolate coating."

(c) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on

the label, as required by applicable sections of Part 101 of this chapter.

13. Section 163.145 is revised to read as follows:

§ 163.145 Mixed dairy product chocolates.

(a) *Description.* Mixed dairy product chocolates are the foods that conform to the standard of identity for milk chocolate, § 163.130, except that:

(1) The optional dairy ingredients for each of the foods are mixtures of two or more of the following:

(i) Any dairy ingredients or combination of such ingredients specified in § 163.130.

(ii) Any dairy ingredients or combination of such ingredients specified in § 163.135.

(iii) Any dairy ingredients or combination of such ingredients specified in § 163.140.

(2) The finished mixed dairy product chocolates shall contain not less than 12 percent by weight of total milk solids of the specific dairy ingredients used and may contain less than 3.39 percent by weight of milkfat. The quantity of each component used in any such mixture is such that no component contributes less than one third of the weight of the total milk solids contributed by that component used in largest proportion.

(b) *Nomenclature.* The name of the food is "chocolate" or "chocolate coating," preceded by the designation of the type of milk ingredients used as prescribed in paragraph (a) of this section in order of predominance by weight, e.g., "milk and skim milk chocolate".

(c) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label, as required by applicable sections of Part 101 of this chapter.

14. Section 163.150 is revised to read as follows:

§ 163.150 Chocolate flavor coating.

(a) *Description.* Chocolate flavor coating is the food that conforms to the definition and standard of identity for sweet chocolate, § 163.123, except that:

(1) In the preparation of the product, cocoa or a mixture of cocoa and chocolate liquor is used in such quantity that the finished product contains not less than 6.8 percent by weight of nonfat cacao solids, calculated on a moisture-free basis.

(2) In its preparation, one or a combination of two or more optional ingredients specified in paragraph (b) of this section is used.

(3) The requirement in § 163.123(a)(2), limiting the total milk solids to 12 percent by weight does not apply.

(b) *Optional ingredients.* (1) Breakfast cocoa, cocoa, lowfat cocoa.

(2) Chocolate liquor.

(3) Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The fats, oils, or stearins may be hydrogenated.

(c) *Nomenclature.* The name of the food is "chocolate flavor coating," sweet cocoa and vegetable fat coating," or "sweet cocoa and vegetable fat (other than cacao fat) coating."

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

15. Section 163.153 is revised to read as follows:

§ 163.153 Sweet chocolate and vegetable fat coating.

(a) *Description.* Sweet chocolate and vegetable and fat coating conforms to the definition and standard of identity for sweet chocolate in § 163.123, except that in the preparation of the product, one or a combination of two or more optional ingredients specified in paragraph (b) of this section is used.

(b) *Optional ingredients.* Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated.

(c) *Nomenclature.* The name of the food is "sweet chocolate and vegetable fat coating" or "sweet chocolate and vegetable fat (other than cacao fat) coating."

(d) *Labeling.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

16. Section 163.155 is revised to read as follows:

§ 163.155 Milk chocolate and vegetable fat coating.

(a) *Description.* Milk chocolate and vegetable fat coating conforms to the definition and standard of identity for milk chocolate in § 163.130, except that in the preparation of the product, one or a combination of two or more of the optional ingredients specified in paragraph (b) of this section is used.

(b) *Optional ingredients.* Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The oils, fat, and stearins may be hydrogenated.

(c) *Nomenclature.* The name of the food is "milk chocolate and vegetable fat coating" or "milk chocolate and vegetable fat (other than cacao fat) coating."

(d) *Labeling.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-1561 Filed 1-24-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

Exemption From Civil Prosecution for Investigative and Law Enforcement Personnel

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposed to implement a provision of the Chemical Diversion and Trafficking Act of 1988 which exempts certain employees of the DEA from civil prosecution in the event that they make an unauthorized disclosure of information referred to in paragraph (c)(1) of section 310 of the Controlled Substances Act (21 U.S.C. 830).

DATE: Written comments and objections must be received on or before March 27, 1989.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: G. Thomas Githel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537 (202-633-1216).

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100-690) specifies that, although any person who is aggrieved by a disclosure of information in violation of section 310 of the Controlled Substances Act may bring a civil action against the violator for appropriate relief, a civil action may not be brought against investigative or law enforcement personnel of the DEA who make such a disclosure. The DEA finds it necessary to clarify this provision of the Act by providing definitions for the terms "investigative personnel" and "law enforcement personnel".

The Administrator of the DEA hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review to the Office of Management and Budget.

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

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Research, Seizures and forfeiture.

For reasons set out above, Title 21, Code of Federal Regulations, Part 1316 is proposed to be amended as follows:

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES AND PROCEDURES

Part 1316 is amended by adding a new Subpart F consisting of §§ 1316.91 and 1316.92 to read as follows:

Subpart F—Exemption From Civil Prosecution for Investigative and Law Enforcement Personnel of the Drug Enforcement Administration

Sec.
1316.91 Definitions.
1316.92 Exemption.

Subpart F—Exemption From Civil Prosecution for Investigative and Law Enforcement Personnel of the Drug Enforcement Administration

Authority: 21 U.S.C. 830, 871(b)

§ 1316.91 Definitions.

As used in this part, the following terms shall have the meaning specified:

(a) The term "investigative personnel" includes DEA management, Diversion Investigators, attorneys, analysts and support personnel employed by the Drug Enforcement Administration who are involved in the processing, reviewing and analyzing of declarations and other relevant documents or data relative to regulated transactions or are involved in conducting investigations inititated pursuant to the receipt of such declarations, documents or data.

(b) The term "law enforcement personnel" means Special Agents employed by the Drug Enforcement Administration.

§ 1316.92 Exemption.

(a) Any person who is aggrieved by a disclosure of information in violation of subsection (c)(1) of section 310 of the Controlled Substances Act (21 U.S.C. 830) may bring a civil action against the violator for appropriate relief.

(b) Notwithstanding the provision of paragraph (a) of this section, a civil action may not be brought under such paragraph against investigative or law enforcement personnel of the Drug Enforcement Administration.

Date: January 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-1514 Filed 1-24-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Allowances for Extraordinary Costs, Transportation and Gas Processing

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of request for comments, extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on its Notice of Request for Comments, which was published in the **Federal Register** on November 28, 1988 (53 FR 47829), concerning whether extraordinary cost allowance provisions should be developed for its oil, coal, and geothermal product value regulations. In response to requests for additional time, the MMS will extend the comment period from January 27, 1989, to March 15, 1989.

DATES: Comments must be received by 4:00 p.m. m.s.t. March 15, 1989.

ADDRESS: Written comments should be sent to: Minerals Management Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, telephone (303) 231-3432, (FTS) 326-3432.

Dated: January 18, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89-1566 Filed 1-24-89; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3508-5]

Approval and Promulgation of Implementation Plans; Illinois

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

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing disapproval of a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision pertains to the disapproval of an Alternative Control Strategy (ACS or bubble) for Krueger Ringier, Incorporated (Krueger Ringier). USEPA's action is based upon a SIP revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

DATE: Comments on this revision and on the proposed USEPA action must be received by February 24, 1989.

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

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

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

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). For these areas, Part D of the Act requires that each State revise its SIP to provide for attaining the primary NAAQS by December 31, 1982 (in certain cases, by December 31, 1987, for ozone and/or CO). These SIP revisions must also provide for attaining the secondary

NAAQS as soon as practicable. The requirements for an approval SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

On December 8, 1986, the State of Illinois submitted to USEPA, as a proposed revision to the Illinois Ozone SIP, an ACS for Krueger Ringier. This ACS is in the form of a State Operating Permit, which was issued May 2, 1986, and expires either on June 30, 1989, or on the date that reinstallation of Rotogravure Press 21 is commenced in Illinois, whichever date is earlier.

This ACS, if approved by USEPA, would allow Krueger Ringier to exceed State emission limits for its varnish machine in Chicago, Illinois, by balancing the increase above allowable emissions with the emission reduction from the shutdown of its Rotogravure Press 21. This line has been relocated to Augusta, Georgia.

Summary of the Proposed Revision

Krueger Ringier, Incorporated, operates a plant in Chicago, Illinois, which prints paperback books. One part of the printing process is the application of varnish to the book covers. Krueger Ringier currently operates Varnish Coating Machine 865, which is subject to Rule 205(n)(1)(C) [1] for paper coating. This rule limits the Volatile Organic Compound (VOC) content of coatings used on this line to not more than 2.9 pounds of VOC per gallon of coating, excluding water. The average actual VOC content of coatings used on this line is 3.8 pounds of VOC per gallon of coating, and the maximum actual VOC content is 4.2 pounds of VOC per gallon of coating.

In order to offset the excess emissions from the varnish coater, Krueger Ringier requested a bubble between the varnish coater and a printing press that has been removed from the Chicago plant.

The Illinois Environmental Protection Agency (IEPA) issued a permit for this source, subject to the following conditions:

1. Krueger Ringier shall comply with the following limits in lieu of Rule 205(n)(1)(C):

a. Volatile organic material emissions from Varnish Machine 865 shall not exceed a total of 121 tons/year. Compliance with this limit shall be determined from a running total of 52 weeks of emissions data.

b. Coatings as applied at Varnish Machine 865 shall not have volatile organic material emissions in excess of 4.2 pounds per gallon of total coating (13.1 pounds per gallon of coating solids). Compliance with this limit shall be determined on a weekly basis.

c. Volatile organic material emissions from Varnish Machine 865 shall not exceed a total of 970 lbs/day. Compliance with this limit shall be determined by allocating weekly volatile organic material emissions in proportion to daily operation.

2. Krueger Ringier shall maintain the following records for Varnish Machine 865 to enable compliance with the limits in Condition 2 to be determined.

a. Daily records of the operating hours,

b. Weekly records of coating (including thinning solvent) consumption; and

c. Periodic records of the composition and volatile organic material content of coatings, as received.

On December 8, 1986, Illinois requested USEPA to revise its SIP similarly.

USEPA Evaluation of the Proposed Revision Bubble

Criteria for evaluating requests for bubbles are contained in USEPA's December 4, 1986, Emissions Trading Policy Statement (ETPS) (51 FR 43814). This policy states that only reductions which are surplus, enforceable, permanent and quantifiable can be used in an emission trade.

To determine the quantity of reductions that are surplus, the State must first establish an appropriate emissions baseline. The baseline for any source is the product of three factors—emission rate, capacity utilization, and hours of operation. For a source located in a nonattainment area lacking an approved demonstration of attainment, the baseline is the lowest of actual, SIP-allowable, or RACT-allowable emissions. The baseline is calculated using the actual emission rate, SIP limit or RACT limit, whichever is lowest, as of the date of application to trade, and the lower of actual and allowable capacity utilization and hours of operation. Actual values for these factors are generally based on the 2 years of operation preceding the source's application to trade, unless another 2-year period is shown to be more representative of actual operations. Sources which were shut down prior to the application to trade have zero emissions and, therefore, have no credit available. In addition, bubbles in these areas must produce progress toward attainment, which means in the case of bubbles submitted to USEPA after December 4, 1986, a reduction of at least 20 percent in the remaining emissions.

Krueger Ringier's bubble is based on credit from the shutdown of a printing press which was removed from the Chicago plant in 1984. Krueger Ringier submitted its bubble application to Illinois Environmental Protection Agency (IEPA) on December 10, 1985. Illinois, in submitting the ACS revision, calculated the emissions from the source, as if the emission reduction from the shutdown of Rotogravure Press 21 were creditable. However, because the shutdown of the printing press occurred prior to the application for trade, no credit is available from this source, and the ACS is not approvable.

The actual and allowable emissions by which IEPA determined the bubble to be approvable are summarized below:

EMISSIONS (TONS/YEAR)

Source	Actual		Allowable	
	Before bubble	After bubble	Before bubble	After bubble
Varnish Machine 865	121	51	51.0	121
Press 21	726	0	181.5	0
Total	847	51	232.5	121

The "before bubble" actual and allowable emissions and the "after bubble" allowable emissions are based on 1980 and 1981 solids usage. The "after bubble" actual emissions are based on expected production and do not represent a regulatory limit.

Weekly Averaging

Guidance for evaluation of requests for long-term (greater than 24-hour) averaging is given in a January 20, 1984, memorandum titled "Averaging Time for Compliance with VOC Emission Limits," and a January 20, 1987, memorandum titled "Determination of Economic Feasibility." These state that long-term averaging can be permitted if it is not possible to keep accurate daily records, or compliance on a daily basis is not feasible. The January 20, 1984, memorandum contains the following additional criteria for approval of a longer averaging time:

1. Averaging times must be as short as practicable and in no case longer than 30 days.

2. A demonstration must be made that the use of long-term averaging will not

[1] It should be noted that Illinois has recodified it air regulations into 35 Illinois Administrative Code (35 IAC). This ACS is written as a variance to the IAC regulations. This regulatory format is not part of the Illinois SIP. Therefore, the ACS is discussed in this rulemaking as though it were a variance from the regulations, in the SIP, using the numbering system in the SIP

jeopardize either attainment of the ozone standard or the reasonable further progress plan for the area.

3. Sources in areas lacking approved SIPs cannot be considered for longer term averages, until the SIP has been revised.

Krueger Ringier believes that weekly averaging is justified because it is extremely difficult to keep accurate daily records. However, Krueger Ringier has not adequately explained why it would be infeasible to keep daily records. In addition, weekly averaging cannot be allowed in the Chicago area, while it lacks an approved ozone SIP. It should be noted that on May 26, 1988, USEPA notified the Governor of Illinois that the Ozone SIP for this area is substantially inadequate to assure attainment of the NAAQS. Further, on October 17, 1988 (53 FR 40415), USEPA disapproved the Ozone SIP for the Chicago area.

Consistency With USEPA Policy

The bubble does not meet the requirements of USEPA's December 4, 1986, ETPS because it grants credit for pre-application shutdown in a nonattainment area lacking an approved attainment demonstration. In addition, it does not satisfy USEPA's policy on long-term averaging. The bubble provides no permanent, enforceable emission limit, because a State operating permit which has a limited life is the basis for the bubble. If USEPA were to approve this bubble, the SIP revision would expire upon expiration of this operating permit, at which time the federally enforceable emission limit for the source would be the underlying SIP requirements. (See *Bethlehem Steel Corporation v. Gorsuch*, 742 F.2d 1028 (7th Cir. 1984).)

This notice identifies major deficiencies which cause the revision to be unapprovable. However, if the State corrects these major deficiencies, it should also ensure conformance with USEPA requirements specified in the following: (1) Appendix D of the proposed Post-1987 ozone policy, titled "Discrepancies and Inconsistencies Found in Current SIP's", (2) a May 25, 1988, clarification to Appendix D titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations", and (3) the "SIP Approvability Checklist-Enforceability", which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," before resubmitting the revision for approval by USEPA. These documents contain USEPA's requirements (largely dealing with SIP approvability and enforceability) which must be met for a site-specific SIP revision to be approved.

Proposed Rulemaking Action

For the above cited reasons, USEPA proposes to disapprove the incorporation of an ACS for Krueger Ringier into the Illinois SIP. Public comment is solicited on the proposed SIP revision and on USEPA's proposed rulemaking action. Pubic comments received by the date indicated above will be considered in the development of USEPA's final rulemaking action.

Under the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, USEPA must assess the impact of any final rule on small entities. If this ACS is finally disapproved, it will not have a significant economic impact on a large number of small entities. Only a single entity, Krueger Ringier, is involved.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7642.

Dated: January 12, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–1590 Filed 1–24–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6938]

Proposed Flood Elevation Determinations; Pennsylvania; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR 40105 on October 13, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Township of Jackson, Butler County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insuance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Jackson, Butler County, Pennsylvania, previously published at 53 FR 40105 on October 13, 1988, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–488)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 40105, in the October 13, 1988 issue of **Federal Register**, the entries under Jackson (Township), Butler County, are corrected to read as follows:

Source of flooding and location	Depth in feet above ground. * Elevation in feet (NGVD)
* * * * *	
Breakneck Creek:	
At confluence with Connoquenessing Creek	* 914
Approximately 0.1 mile upstream of corporate limits	* 928
* * * * *	
Maps available for inspection at the Township Secretary's Office, Box 69, Zelienople, Pennsylvania.	
Send comments to The Honorable William Tomlinson, Chairman of the Township of Jackson Board of Supervisors, Butler County, R.D. #2, Zelienople, Pennsylvania 16063.	

Issued: January 18, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–1580 Filed 1–24–89; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA-6938]

Proposed Flood Elevation Determinations; Virginia; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Modified Determinations of base (100-year) flood elevations previously published at 53 FR 40111 on October 13, 1988. This correction notice provides a more accurate representation of the revised Flood Insurance Rate Map for the Town of Appalachia, Wise County, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Modified Determination of base (100-year) flood elevations for selected locations in the Town of Appalachia, Wise County, Virginia, previously published at 53 FR 40111 on October 13, 1988, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 40111, in the October 13, 1988 issue of **Federal Register**, the entries under Appalachia, Town, Wise County, for Looney Creek, are corrected to read as follows:

Source of flooding and location	Depth in feet above ground. *Elevation in feet (NGVD)	
	Existing	Modified
* * * * *		
Looney Creek:		
Approximately .40 mile downstream of North Inman Street	*1,645	*1,646
Approximately 1.06 miles upstream of North Inman Street	*1,775	*1,774
* * * * *		
Maps available for inspection at the Town Hall, Appalachia, Virginia. Send comments to the Honorable Bobby L. Dorton, Appalachia Town Manager, Wise County, P.O. Drawer 112, Appalachia, Virginia 24216.		

Issued: January 18, 1989.

Harold T. Duryee

Administrator, Federal Insurance Administration.

[FR Doc. 89–1579 Filed 1–24–89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1385, 1386, 1387, and 1388

Developmental Disabilities Program; Correction

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Administration for Developmental Disabilities is correcting an error in § 1386.32(a) of the Notice of Proposed Rulemaking (NPRM) which appeared in the **Federal Register** on December 7, 1988 (53 FR 49332). The preamble stated that we were proposing the same change regarding financial status reports in § 1386.32(a) as was proposed in § 1386.23(c). This change, however was not made in § 1386.32(a).

DATE: The comment period remains the same. Commentors have until February 6, 1989 to submit comments.

ADDRESSES: Please address comments to: Commissioner, Administration on Developmental Disabilities, Room 5300 (Regulations), Wilbur J. Cohen Building, 330 Independence Avenue SW., Washington, DC 20201. Attention: Ms. Elsbeth Porter Wyatt.

It would be helpful if agencies and organizations submitted comments in duplicate. Two weeks after the close of the comment period, comments and letters will be available for public inspection in Room 5300, Wilbur J. Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday, 9:00 a.m. to 4:00 p.m. telephone (202) 245–7719.

FOR FURTHER INFORMATION CONTACT: Elsbeth Wyatt, (202) 245–7719.

SUPPLEMENTARY INFORMATION: On December 7, 1988, the Department published an NPRM proposing amendments to 45 CFR Parts 1385, 1386, 1387, and 1388 to implement the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987 (42 U.S.C. 6000 *et seq.*).

The NPRM proposed standards for determining whether a State has used Federal funds to supplement and not supplant State and local funds. It also proposed to establish a peer review process for the evaluation of applications under the University Affiliated Program and made other clarifying, technical, and conforming changes. The proposed regulatory language for § 1386.32(a) was inadvertently omitted.

The preamble stated: "In § 1386.32 Periodic reports: Basic State grants, we are proposing to make the same change regarding financial status reports as we proposed in § 1386.23(c). OHDS will continue to require quarterly reports and will implement this requirement administratively through an OHDS Program Instruction rather than through language in the regulations. The new language proposed in paragraph (a) continues the requirement that the State agency must submit financial status reports but deletes the regulatory language specifying a time period for submittal."

The following correction is made in § 1386.32(a) of the NPRM published in the **Federal Register** on December 7, 1988 (53 FR 49332).

PART 1386—[AMENDED]

1. Section 1386.32(a) in the first column on page 49335 is revised to read as follows:

§ 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial Officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

* * * * *

(Catalog of Federal Domestic Assistance Program Number 13.630—Developmental Disabilities Basic Support.

Approved: January 18, 1989.

James E. Larson,

Acting Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 89-1653 Filed 1-24-89; 8:45 am]

BILLING CODE 4130-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-185, RM-6288, RM-6499]

Radio Broadcasting Services; Montgomery, Dunbar and Mount Gay-Shamrock, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive proposals for the use of Channel 227A. (1) Upper Kanawha Valley Broadcasters, Inc., seeks the allottment of Channel 227A to Montgomery, West Virginia, as a first local FM service (Option I). (2) Donald Mills d/b/a West Virginia Rural Radio Company, seeks the substitution of Channel 227A for vacant but unapplied for Channel 234A at Mount Gay-Shamrock, West Virginia, in order to accomplish the substitution of Channel 233B1 for Channel 233A at Dunbar, West Virginia, and the modification of its construction permit for Station WBES-FM at Dunbar (Option II). To accomplish the Dunbar upgrade an alternative plan is considered for the deletion of Channel 234A from Mount-Gay Shamrock without benefit of a replacement channel (Option III). The community of Dunbar could receive its first wide coverage area FM service. Channel 233B1 at Dunbar requires a site restriction of 13.1 kilometers (8.2 miles) northeast of the city at coordinates 38-27-34 and 81-39-17. Channel 227A at Montgomery requires a site restriction of 6.5 kilometers (4 miles) west of the community, at coordinates 39-09-47 and 81-23-40.

DATES: Comments must be filed on or before March 10, 1989, and reply comments on or before March 27, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jeffrey R. Batten, Manager, Upper Kanawha Valley Broadcasters, Inc., 1028 First Avenue, Montgomery, West Virginia 25136 (Petitioner for Montgomery, West Virgina); and Leonard S. Joyce, Esquire, Blair, Joyce & Silva, 1825 K Street, NW., Washington, DC 20006 (Counsel for proponent at Dunbar, West Virginia).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 88-185, adopted December 2, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1575 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Chapter 53

Air Force Systems Command Federal Acquisition Regulation Supplement; Contracting by Negotiation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule; withdrawal.

SUMMARY: On September 14, 1987, the Department of the Air Force published (at 52 FR 34692) a proposed rule to amend Chapter 53 of Title 48 of the Code of Federal Regulations by adding the Air Force Sytems Command (AFSC) Federal Acquisition Regulation as Appendix B, consisting of Parts AFSC 5315, Contracting by Negotiation, and AFSC 5352, Solicitation Provisions and Contract Clauses. It has been determined that these parts apply to other departments within the Department of Defense and should be incorporated into the DOD FAR Supplement. The Air Force has submitted a case to the DAR Council for consideration.

DATE: January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Hazel Stevens, HQ AFSC/PKCP, Andrews AFB MD 20334-5000, telephone (301) 981-4022.

SUPPLEMENTARY INFORMATION: Therefore, the Department of the Air Force has withdrawn the proposal to amend Title 48 of the Code of Federal Regulations, Chapter 53, by adding Appendix B to include AFSC 5315 and Part 5352.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1691 Filed 1-24-89; 8:45 am]

BILLING CODE 3910-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503 and 552

[GSAR Notice 5-221]

General Services Administration Acquisition Regulation; Improper Business Practices and Personal Conflicts of Interest

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Regulation (GSAR) that would revise Subpart 503.2 which deals with contractor gratuities to Government employees to provide agency procedures for dealing with violation of the Gratuities clause; add section 503.404 to prescribe a solicitation provision and contract clause on contingent fees for use in acquisitions of leasehold interests in real property; revise section 503.570 which deals with contractors referring to contracts awarded by GSA in commercial advertising in a manner which indicates the product or service is endorsed by the Government; revise Subpart 503.7 which deals with voiding and rescinding contracts to revise agency procedures; add sections

552.203–4 and 552.203–5 to provide the text of the Contingent Fees provision and clause for use in acquisitions of leasehold interests in real property and would revise section 552.203–70 to amend the Restriction on Advertising clause.

DATE: Comments are due in writting on or before February 24, 1989.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th & F Street, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jim Drummond, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Background

The Director, Office of Management and Budget, by memorandum December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this proposed rule.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a 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 it implements the Federal Acquisition Regulation (FAR) by providing agency procedures for dealing with violations of the Gratuities clause and for voiding and rescinding contracts under FAR Subpart 3.7. The proposal also makes minor changes to the existing policy on contractor's referring to GSA contract awards in commercial advertising. In addition, the proposed rule supplements the FAR by codifying a provision and clause on contingent fees for use in contracts for the acquisition of heasehold interests in real property. The provision and clause recognize real estate agents or brokers as being a bona fide employee or agency in line with real estate industry practices. Therefore, Initial Regulatory Flexibility Analysis has not been prepared. Comments have invited from small business and other interested parties.

C. Paperwork Reduction Act

This proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 503 and 552.

Government procurement.

It is proposed that 48 CFR Parts 503 and 552 be amended as follows:

1. The authority citation for 48 CFR Parts 503 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 503—[AMENDED]

Subpart 503.2—Contractor Gratuities to Government Personnel

2. Section 503.203 is revised to read as follows:

503.203 Reporting suspected violations of the Gratuities clause.

Employees shall immediately report any suspected violation of the Gratuities clause to the contracting officer, the Assistant Inspector General for Investigations or the Regional Inspector General for Investigations and to the Deputy Standards of Conduct Counselor in accordance with GSPMR 105–735.202(e)(4). The report must outline circumstances which indicate the Gratuities clause has been violated and include all pertinent documents. The Office of Inspector General will investigate and, if appropriate, forward a report and recommendation to the Department of Justice and/or the Office of Acquisition Policy, and/or the Office of Ethics and Civil Rights.

3. Section 503.204 is revised to read as follows:

503.204 Treatment of violations.

(a) The Associate Administrator for Acquisition Policy or a designee shall make determinations under FAR 3.204.

(b) The Associate Administrator or designee, after coordinating the matter with legal counsel, may initiate proceedings under FAR 3.204(a) by notifying the contractor that action against the contractor for a violation of the Gratuities clause is being considered. Notice must be provided by means of a letter sent by certified mail to the last known address of a party, its counsel, or agent for service of process. In the case of a business, notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venture. If no return receipt is received within 10 calendar days of mailing, receipt will be presumed.

(c) The contractor shall have 30 calendar days to exercise its rights under FAR 3.204(b), unless an extension is granted.

(d) The Associate Administrator or designee may refer a matter to an agency fact-finding official designated by the Chairman of the GSA Board of Contract Appeals, if a determination is made that there are disputes of fact material to making a determination under FAR 3.204(a). Referrals for fact-finding will not be made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official shall:

(1) Afford the contractor the opportunity to dispute material facts relating to the determinations under FAR 3.204(a) (1) and (2).

(2) Conduct the proceedings under rules that are consistent with FAR 3.204(b).

(3) Schedule a hearing within 20 calendar days of receipt of the referral. Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver written findings of fact to the Associate Administrator or designee (together with a transcription of the proceedings, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(e) The Associate Administrator or designee may reject the findings of the fact-finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(f) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Associate Administrator or designee shall conduct the hearing required by FAR 3.204(b).

(g) If it is determined that the Gratuities clause has been violated, the contractor may present evidence of mitigating factors to the Associate Administrator or designee, either orally or in writing, in accordance with a schedule established by the Associate Administrator or designee. The Associate Administrator or designee shall exercise the Government's right under FAR 3.204(c) only after considering mitigating factors.

Subpart 503.4—Contingent Fees

4. Section 503.404 is added to read as follows:

503.404 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.203–4, Contingent Fee Representation and Agreement, in solicitations and contracts for the acquisition of leasehold interests in real property.

(b) The contracting officer shall insert the provision at 552.203–5, Covenant Against Contingent Fees, in solicitations and contracts for the acquisition of leasehold interests in real property

Subpart 503.5—Other Improper Business Practices

5. The text of section 503.570 is removed and the section title is revised to read as follows:

503.570 Advertising.

6. Section 503.570–1 is added to read as follows:

503.570–1 Policy.

Contractors shall not refer to contracts awarded by GSA in commercial advertising in a manner which states or implies that the product or service provided is approved or endorsed by the Government or is considered by the Government to be superior to other products or services. This policy is intended to avoid the appearance of preference by the Government toward any product or service.

7. Section 503.570–2 is added to read as follows:

503.570–2 Contract clause.

The contracting officer shall insert the clause at 552.203–70, Restriciton on Advertising, in solicitations and contracts for supplies or services when the contract amount is expected to exceed the small purchase limitation.

Subpart 503.7—Voiding and Rescinding Contracts

503.700 [Removed]

8. Section 503.700 is removed.

9. Section 503.702 is revised to read as follows:

503.702 Definitions.

"Notice" means a letter sent by certified mail to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venture. If no return receipt is received within 10 calendar days of mailing, receipt will be presumed.

"Voiding and rescinding official" means the Associate Administrator for Acquisition Policy or a designee.

503.703 [Removed]

10. Section 503.703 is removed.

11. Section 503.705 is revised to read as follows:

503.705 Procedures.

(a) Where a contract has been tainted by fraud, bribery, conflict of interest, or similar misconduct, the contracting officer should consult with counsel to determine if the Government has a common law remedy such as avoidance, recision, or cancellation. Alternatively, the matter may be referred to the voiding and rescinding official under FAR 3.705, if there has been a final conviction for any violation of 18 U.S.C. 201–224.

(b) The contracting officer may postpone a decision to exercise the Government's common law right to void, rescind, or cancel a contract pending completion of legal proceedings against a contractor.

(c) A referral to the voiding and rescinding official should identify the final conviction and include the information required by FAR 3.705(d) (2) through (5). The contracting officer should coordinate the referral with the Office of Inspector General to ascertain if a debarment referral is contemplated.

(d) The voiding and rescinding official shall review the referral and coordinate the matter with assigned legal counsel and the contracting activity. If a determination is made to declare void and rescind a contract and to recover the amounts expended and the property transferred, the voiding and rescinding official shall issue the notice required by FAR 3.705, and conduct the hearing contemplated by FAR 3.705(c)(3). If the voiding and rescinding official determines that there is a genuine dispute of material fact regarding the agency decision, the voiding and rescinding official shall refer the matter to the fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. Such a referral will be made if there is a dispute of fact that relates to:

(1) The contracts affected by the final conviction giving rise to the proposed action.

(2) The amounts expended and property transferred by the Government under the contracts covered by the proposed action.

(3) The identity and value of any tangible benefits received by the Government under the affected contracts.

(e) If a referral for fact-finding is made, the fact-finding official shall:

(1) Afford the contractor the opportunity to dispute material facts relating to 503.704(d) (1) through (3).

(2) Conduct the proceedings under rules that are consistent with FAR 3.705(c)(3).

(3) Schedule a hearing within 20 calendar days of receipt of the referral. Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(f) The voiding and rescinding official shall not issue the agency's final decision under FAR 3.705(e) until receipt of the fact-finding official's report, if any. The voiding and rescinding official may reject the findings of the fact-finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(g) In actions in which it determined there are no material disputes of fact relating to the determinations required by FAR 3.705(d)(2), (4) and (5), the voiding and rescinding official will conduct the hearing contemplated by FAR 3.705(c)(3).

(h) The final decision must be coordinated with the contracting activity and a copy of the decision provided to the activity.

PART 552—[AMENDED]

Subpart 552.2—Text of Provisions and Clauses

12. Section 552.203–4 is added to read as follows:

552.203–4 Contingent Fee Representation and Agreement.

As prescribed in 503.404(a), insert the following provision:

Contingent Fee Representation and Agreement (XXX 1989)

(a) Representation. The Offeror represents that, except for full-time bona fide employees working solely for the offeror or bona fide established real estate agents or brokers maintained by the Offeror for the purpose of securing business, the Offeror—

(Note: The Offeror must check the appropriate boxes. For interpretation of the term "bona fide employee or agency," see paragraph (b) of the Covenant Against Contingent Fees clause.)

(1) —— has, —— has not employed or retained any person or company to solicit or obtain this contract and;

(2) —— has, —— has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) Agreement. The Offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer—

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the data and applicable solicitation or contract number,

and representing that the prior SF 119 applies to this offer or quotation.

(End of provision)

13. Section 552.203–5 is added to read as follows:

552.203–5 Covenant Against Contingent Fees.

As prescribed in 503.404(b), insert the following clause:

Covenant Against Contingent Fees (XXX 1989)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) "Bona fide employee or agency," as used in this clause, means licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice, who have not obtained such license for the sole purpose of effecting this contract, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contracts or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

14. Section 552.203–70 is revised to read as follows:

552.203–70 Restriction on Advertising.

As prescribed in 503.570–2, insert the following clause:

Restriction on Advertising (XXX 1989)

The Contractor shall not refer to contracts awarded by the United States Government in commercial advertising in such a manner as to state or imply that the product or service provided is approved or endorsed by any element of the Federal Government or is considered by the Government to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, which refer to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored in whole or in part, by any element of the United States Government.

(End of clause)

Dated: January 12, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–1543 Filed 1–24–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5315

Department of the Air Force Federal Acquisition Regulation Supplement; Price Negotiation

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule; withdrawal.

SUMMARY: On March 4, 1987, the Department of the Air Force published (at 52 FR 6590) a proposed rule to supplement FAR Subpart 15.8, Price Negotiation, to set forth Air Force policy on the segregation of recurring and nonrecurring costs for support equipment items. During the public comment process it was recommended that the change applied to other departments within the Department of Defense and should be recommended for incorporation into the DOD FAR Supplement. The Air Force agreed with the recommendation and submitted a case to the DAR Council for consideration.

DATE: January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Maj. Rob Gocke, SAF/AQCP, Room, 4C251, Pentagon, Washington, DC., 20330–1000, telephone (202) 697–6522.

SUPPLEMENTARY INFORMATION: Therefore, the Department of the Air Force has withdrawn the proposed rule at section 5315.892, of Chapter 53, 48 CFR, subject: Segregation of recurring and nonrecurring costs for support equipment.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–1615 Filed 1–24–89; 8:45 am]

BILLING CODE 3910–01–M

Notices

Federal Register
Vol. 54, No. 15
Wednesday, January 25, 1989

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 COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Sheets, Pillowcases, and Towels.

Form Number: MQ–23X.

Type of Request: New.

Burden: 90 hours.

Number of Respondents: 30.

Avg Hours per Response: 45 minutes.

Needs and Uses: The U.S. Government has a clear need for information on the domestic production of broadwoven fabrics to monitor textile agreements with foreign countries. The users of these data are Government agencies, business firms, and trade associations for making production, investment, and trade policy decisions.

Affected Public: Businesses or other for-profit.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 19, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1625 Filed 1–24–89; 8:45 am]

BILLING CODE 3510–70–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1990 Decennial Census—Precensus Local Review Recanvass.

Form Number: D–108A.

Type of Request: New.

Burden: 20,948 hours.

Number of Respondents: 654,619.

Avg Hours Per Response: 2 minutes (approximately).

Needs and Uses: This survey will provide local and tribal governments the opportunity to participate in a program to review preliminary housing unit and special place counts before Census Day. As required, enumerators recanvass selected geographic areas with discrepancies to identify possible coverage or geographic coding problems. The data are used by the Census Bureau to improve its address files before the actual census is taken.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 19, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1626 Filed 1–24–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Report of Building or Zoning Permits Issued and Local Public Construction.

Form Number: C–404.

Agency Approval Number: 0607–0094.

Type of Request: Revision.

Burden: 29,436 hours.

Number of Respondents: 104,400 monthly; 8,000 annual.

Avg Hours per Response: 15 minutes (monthly); 25 minutes (annual).

Needs and Uses: This data collected from state and local officials on new construction authorized by building permits provide one of the few monthly measures of economic activity available for small geographic areas. The series on housing authorizations, a component of the index of leading economic indicators, is also used to estimate housing starts.

Affected Public: State or local governments.

Frequency: Monthly and Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 19, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89-1627 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held Feb. 14, 1989 at 9:30 a.m., Herbert C. Hoover Building, Room 1617F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals and related test equipment or technology.

Agenda

General Session

1. Introduction of Members and Visitors.
2. Introduction of Invited Guests.
3. Presentation of Papers or Comments by the Public.
4. Approval of Minutes.
5. Review of Membership.
6. Discussion of G-COM Regulations.
7. Discussion of Graphic Workstation—Flow Chart.
8. Discussion of Optical Disk Drive Proposal.
9. Discussion of Disk Packs.

Executive Session

10. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4086, 14th & Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Betty Ferrell, 202-377-4959.

Date: January 17, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89-1628 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE INTERNATIONAL TRADE ADMINISTRATION

[C-201-009]

Certain Iron-Metal Castings From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 27, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from Mexico. We have now completed that review and determine the total bounty or grant to be 0.01 percent *ad valorem* for the period April 1, 1983 through December 31, 1983, 0.03 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.18 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. The Department considers any rate less than 0.50 percent *ad valrem* to be *de minimis*.

EFFECTIVE DATE: January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 15093) the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from Mexico (48 FR 8834; March 2, 1983). 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 this review are shipments of Mexican iron-metal construction castings ("castings"), including manhole covers, rings and frames, catch basin grates and frames, cleanout covers and grates, meter boxes and valve boxes. These castings are commonly called municipal or public works castings. During the review period, such merchandise was classifiable under items 657.0950, 657.0990, 657.2540 and 657.2550 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under items 7326.90.90 and 7325.10.00 of the Harmonized Tariff Schedule.

The review covers the period April 1, 1983 through December 31, 1985 and the following programs: (1) FOMEX; (2) state tax incentives (3) Article 15 of the General Law of Credit Institutions and Auxiliary Organizations; (4) CEPROFI; (5) FONEI; (6) FOGAIN; (7) CEDI; (8) NDP preferential discounts; (9) Bancomext loans; (10) FOMIN; (11) FIDEIN; (12) import duty reductions and exemptions; (13) delay of payments on loans; and (14) delay of payments to PEMEX of fuel charges.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Municipal Castings Fair Trade Committee and other domestic producers ("the petitioners"), and Maquiladora San Diego, Zaragoza Castings, and Fundidora de la Frontera ("the respondents").

Comment 1: The petitioners contend that special bank accounts for export earnings which receive interest benefits and devaluation protection are countervailable because these accounts are available only to exporters.

Department's Position: We disagree. The "special" bank accounts for export earnings are connected to the dual exchange rate system instituted by the Mexican government at the end of 198[illegible]. The bank accounts are not a new feature of the system. Under the dual

exchange rate system, exporters must convert their dollar earnings into pesos at the controlled exchange rate. Because the controlled rate is lower than the "free" rate, the system actually works to the detriment, rather than the benefit, of exporters. In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Iron-Metal Construction Castings from Mexico* (March 2, 1983, 48 FR 8834), we found that this dual exchange rate system is not countervailable.

The peso amounts in these bank accounts are, effectively, indexed to dollars because they earn interest equal to the rate of devaluation of the controlled rate plus the average interest rate for deposits in the Eurodollar market (LIBOR + 1). If exporters were allowed to hold their export earnings in dollar accounts, they could earn an equivalent return with interest at comparable dollar rates. In fact, any company located within Mexico can open a dollar account, which earns interest at the rate of LIBOR + 1, with the deposits not converted into pesos until the date of withdrawal. For these reasons, we reaffirm our position in the final determination in this case that this program is not countervailable.

Comment 2: The petitioners contend that there were exports into the United States during the review period through Laredo, Texas that were not accounted for by any of the producers, manufacturers or exporters identified in the questionnaire response. The petitioners believe that the total countervailable benefits cannot be determined until all such producers, manufacturers and exporters are identified, and the benefits received by each determined.

Department's Position: We disagree. In our questionnaire, we requested data covering all exports of the subject merchandise to the United States. As is sometimes the case where there are many small companies, a 100 percent response rate is not always possible. In this case, the Mexican government could not identify all exporters from its export statistics because some exporters ship under a basket category export code. For each of the three periods covered in this review, we received company responses covering a portion of total exports which we consider sufficient for our final results of review. In none of the three review periods did exports imported through Laredo equal even one percent of total exports.

Comment 3: The petitioners contend that the Department, having found that one company in the state of Baja California del Norte used state tax incentives, made no effort to determine the use of state tax benefits by other exporters located in that state.

Department's Position: We disagree. We verified two of the three respondent exporters located in Baja California del Norte. One received the level of benefits that was reported in the questionnaire response. The second, as a cooperative, does not have payrolled employees and thus does not qualify for an exemption. Because we cannot verify all firms, we must determine the accuracy of the response based on those firms verified. Since vertification demonstrated that in the questionnaire response the verified firms had reported all benefits, we believe it is reasonable to assume that the third firm, which reported in the questionnaire response that it received no benefits, did not receive benefits under this program.

Comment 4: The respondents contend that the Department must revoke the countervailing duty order on certain iron-metal construction castings from Mexico. Effective April 23, 1985, the date of the Understanding between the United States and Mexico Regarding Subsidies and Countervailing Duties ("the Understanding"), the United States Trade Representative designated Mexico "a country under the Agreement" as defined in section 701 of the Tariff Act of 1930. Since Mexico is now a "country under the Agreement," section 701 entitles Mexico to a determination by the International Trade Commission "ITC") that the subject merchandise materially injures or threatens material injury to a United States industry producing a like product. Pursuant to section 701, the Department cannot impose countervailing duties on any merchandise from Mexico without an affirmative ITC injury determination. Since the ITC has indicated that it does not have the authority to conduct an injury investigation on merchandise already subject to an outstanding order, the Department should revoke this order.

Department's Position: As we explained in the final results of the last administrative review of this order and in several other final results notices, we believe that we lack the authority to revoke any countervailing duty order on Mexican products on the basis of the Understanding. *See, e.g., Certain Iron-Metal Construction Castings from Mexico; Final Results of Countervailing Duty Administrative Review* (51 FR 9698, March 20, 1986), *Portland Hydraulic Cement and Cement Clinker from Mexico; Final Results of Countervailing Duty Administrative Review*, (51 FR 44501, December 10, 1986), and *Portland Hydraulic Cement and Cement Clinker; Final Results of Countervailing Duty Administrative Review* (53 FR 18325, May 23, 1988).

Comment 5: The respondents maintain that the Department's contention that the injury provision of the Understanding affects only countervailing duty orders issued after April 23, 1985 is in error. In a recent Court of International Trade ("CIT") decision, *Cementos Anahuac del Golfo, S.A.* v. *United States*, 12 CIT ____, Slip Op. 88–58 (May 12, 1988), the CIT determined that after the effective date of the Understanding, countervailing duties could only be imposed on Mexican merchandise following an affirmative ITC injury determination regardless of whether the countervailing duty order was issued before or after the effective date of the Understanding. The CIT remanded the review, instructing the Department to follow section 701 rather than section 303 of the Tariff Act. The Department should do the same in this case.

Department's Position: The CIT's decision in *Cemetos Anahuac del Golfo S.A. v. United States* ("*Anahuac I*") applies only to *Portland Hydraulic Cement and Cement Clinker from Mexico; Final Results of Administrative Review of Countervailing Duty Order* (50 FR 51732; December 19, 1985), which covered the period July 1, 1983 through December 31, 1983. Moreover, we are appealing the *Anahuac I* decision.

The respondents ignore an even more recent decision in the cement proceeding, *Cementos Anahuac del Golfo, S.A. v. United States*, Slip Op. 88–75, (June 9, 1988), ("*Anahuac II*"), which supports our position that the Understanding does not require an affirmative injury determination for Mexican countervailing duty orders issued before April 23, 1985.

Comment 6: The respondents contend that, even if the Department continues to believe that section 303 applies to this case, the Department must still revoke this countervailing duty order because section 303(a)(2) requires an affirmative injury determination for duty-free products from a country with which the United States has an international obligation. Although the Department has interpreted the phrase "international obligation" to refer only to the General Agreement on Tariffs and Trade ("GATT"), the CIT found in *Anahuac I*, and the respondents agree, that the Understanding also constitutes such an international obligation. Because the subject merchandise enters free of duty, section 303(a)(2) rather than section 303(a)(1) applies to this case. Under similar circumstances in three previous countervailing duty proceedings, *Certain*

Fasteners from India (47 FR 44129), *Carbon Steel Wire Rod from Trinidad and Tobago* (50 FR 19511), and *Certain Scissors and Shears from Brazil* (50 FR 11927), the Department determined, or preliminarily determined, that it did not have the authority to impose countervailing duties without an affirmative ITC injury determination. The same reasoning applies to this case.

Department's Position: As explained in our response to Comment 5, we are appealing the *Anahuac I* decision. Additionally, the CIT's decision in *Anahuac II* supports our position. In the three cases cited by the respondents, the exporting countries were GATT members and the merchandise was duty-free during the potential assessment period. None of these cases is analogous to the present case because Mexico was not a member of the GATT at the time the duty-free castings covered by this review were imported. *See* also, *Portland Hydraulic Cement and Cement Clinker from Mexico; Final Results of Countervailing Duty Administrative Review*, (53 FR 18325, May 23, 1988).

However, with Mexico's accession to the GATT on August 24, 1986, the United States has an "international obligation" to provide an injury test under section 303, which prohibits the imposition of countervailing duties absent such a test on duty-free merchandise entered into the United States after the date of Mexico's accession to the GATT. We are currently pursuing means by which an injury determination could be made concerning imports of Mexican castings entered on or after August 24, 1986, the date of Mexico's accession to the GATT.

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant to be 0.01 percent *ad valorem* for the period April 1, 1983 through December 31, 1983, 0.03 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.18 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. The Department considers any rate less than 0.50 percent to be *de minimis*.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after April 1, 1983 and on or before December 31, 1985.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice. This deposit waiver 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 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary for Import Administration.

January 13, 1989.

[FR Doc. 89–1650 Filed 1–24–89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Bluegrass Stone Center; Decision on Application for Duty-Free Entry of Scientific Instrument

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 Number: 88–222. *Applicant:* Bluegrass Stone Center, Lexington, KY 40504. *Instrument:* Lithotripter, Model HM4. *Manufacturer:* Dornier Medizintechnik, West Germany. *Intended Use:* See notice at 53 FR 23781, June 24, 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, was available in the United States at the time it was ordered (August 21, 1987). *Reasons for this Decision:*

Although Medstone International, Inc., Costa Mesa, California manufactures a comparable device, it was not approved for general use by the Food and Drug Administration at the time of order of the foreign article.

Our consultants at the National Institutes of Health have advised us with respect to this application that there were no known approved domestic instruments available, at the time of order, which were equivalent to the foreign article.

We know of no other instrument that was being manufactured in the United States which was of equivalent scientific value to the foregin instrument for the purposes for which it was intended to be used at the time it was ordered (see also 52 FR 22512, June 12, 1987).

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–1646 Filed 1–24–89; 8:45 am]

BILLING CODE 3510-DS-M

University of California, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88–176. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Cardiac Ventricular Volume Measuring Device Via Conductance, Model SIGMA–5. *Manufacturer:* Leycom, The Netherlands. *Intended Use:* See notice at 53 FR 20152, June 2, 1988. *Reasons for this Decision:* The foreign instrument continuously measures ventricular (heart) volume by analysis of five segmented signals from an impedance catheter. *Advice Submitted By:* The National Institutes of Health, September 16, 1988.

Docket Number: 88–152. *Applicant:* University of California, San Diego, La Jolla, CA 92093–0109. *Instrument:* Two (2) Microelectrode Microdrives. *Manufacturer:* Narishige Scientific Instrument Lab, Japan. *Intended Use:* See notice at 53 FR 17093, May 13, 1988. *Reasons for this Decision:* The foreign instrument provides high mechanical stability using a single-piece electrode positioning device that is skull mounted and adjustable in x, y, and z coordinates. *Advice Submitted By:* The National Institutes of Health, September 15, 1988.

Docket Number: 88–163. *Applicant:* Eastman Dental Center, Rochester, NY 14620. *Instrument:* Dental Implant Components. *Manufacturer:* Nobelpharma, Sweden. *Intended Use:* See notice at 53 FR 17095, May 13, 1988. *Reasons for this Decision:* The foreign instrument provides optimum geometric structure and titanium purity for success in osseointegration. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88–143. *Applicant:* University of Oklahoma, Norman, OK 73019. *Instrument:* Reflex Microscope

with Software. *Manufacturer:* Reflex, United Kingdom. *Intended Use:* See notice at 53 FR 15100, April 27, 1988. *Reasons for this Decision:* The foreign instrument can digitize shape coordinates in three dimensions without physical contact with a precision of 0.02 mm in the horizontal plane. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88–132. *Applicant:* U.S. Department of Energy, Argonne, IL 60439–4812. *Instrument:* Laser, Model HD–300. *Manufacturer:* Lumonics, Inc., Canada. *Intended Use:* See notice at 53 FR 15099, April 27, 1988. *Reasons for this Decision:* The foreign instrument provides: (1) microprocessor controlled scanning, (2) repetition rates to 100Hz, (3) 95 percent beam polarization, and (4) a typical linewidth of 0.002nm. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88–138. *Applicant:* Cornell University, Ithaca, NY 14853. *Instrument:* Research Irradiator, Model Gammacell 1000. *Manufacturer:* Atomic Energy of Canada, Ltd., Canada. *Intended Use:* See notice at 53 FR 15100, April 27, 1988. *Reasons for this Decision:* The foreign instrument provides a stationary 1200 curie cesium source and low external surface radiation (0.1 to 0.3 mrem/hr). *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88–141. *Applicant:* University of Wisconsin-Madison, Madison, WI. *Instrument:* Laser Scanning Confocal Microscope System. *Manufacturer:* MRC Lasersharp, United Kingdom. *Intended Use:* See notice at 53 FR 15100, April 27, 1988. *Reasons for this Decision:* The foreign instrument provides scanned laser beam confocal optics and computer-aided three dimensional image processing. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88–117. *Applicant:* University of California, La Jolla, CA 92093. *Instrument:* Primate Chairs and Surgical Implant Components. *Manufacturer:* The Workshop, University of Oxford, United Kingdom. *Intended Use:* See notice at 53 FR 15102, April 27, 1988. *Reasons for this Decision:* The foreign article is a restraint chair providing high stability for maintaining placement of neurological electrode implants in primates. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88–051R. *Applicant:* Texas A&M University, College Station, TX 77843–3255. *Instrument:* Fluorescence Lifetime Spectrometer. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 1811, January 22, 1988. *Reasons for this Decision:* The foreign instrument provides time-completed single photon counting operating in the pulsed light mode. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 87–297. *Applicant:* University of Vermont, Burlington, VT 05401. *Instrument:* Five Syringe Quenched Flow Module. *Manufacturer:* Biologic, France. *Intended Use:* See notice at 52 FR 42028, November 2, 1987. *Reasons for this Decision:* The foreign instrument provides independent stepper motor control of five syringes allowing double mixing and quenching, programmable mixing ratios, and millisecond dead time. *Advice Submitted By:* The National Institutes of Health, September 21, 1988.

Docket Number: 88–181. *Applicant:* Virginia Commonwealth University, Richmond, VA 23298–0551. *Instrument:* Microforge, Model MF–83. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* See notice at 53 FR 20153, June 2, 1988. *Reasons for this Decision:* The foreign instrument provides: (1) separate heating and cooling control, (2) precise micromanipulator positioning, and (3) fire polishing at 600x magnification. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advices that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff

[FR Doc. 89–1647 Filed 1–24–89; 8:45 am]

BILLING CODE 3510–DS–M

University of Utah, et al.; Applications for Duty-Free Entry of Scientific Instruments

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88–120R. *Applicant:* University of Utah, Purchasing Department, 151 Annex Building, Salt Lake City, UT 84112. *Instrument:* Scanning Electron Microscope, Model Camscan Series 2. *Manufacturer:* Cambridge Scanning Co., Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of April 27, 1988.

Docket Number: 89–015. *Applicant:* University of California at Berkeley, Purchasing Department, 2405 Bowditch Street, Berkeley, CA 94720. *Instrument:* Electron Microscope, JEM–1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used primarily for the study of specialized nucleoprotein structures involved in the control of high-precision DNA transactions such as site-specific recombination, DNA replication and gene expression, both prokaryotic and eukaryotic systems. The experiments to be conducted will include studies on the following:

1. Site specific recombination of bacteriophage 2,
2. Initiation of replication of bacteriophage 2,
3. Determining subunit arrays in DNA replication,
4. Measurement of stereostructure of knots and catenanes produced by site-specific recombination,
5. The form of supercoiled DNA [papilloma virus],
6. State of viral minichromosomes from cells arrested at cell metaphase,
7. Visualization of replication intermediaries of viral DNA.

In addition, the instrument will be used on a one-to-one basis in the training of graduate students and post-doctoral fellows. *Application Received by Commissioner of Customs:* October 28, 1988.

Docket Number: 89–016. *Applicant:* Louisiana State University Medical Center in New Orleans, 1901 Perdido Street, New Orleans, LA 70112. *Instrument:* Electron Microscope, CM–10/PC. *Manufacturer:* N.V. Philips, The

Netherlands. *Intended Use:* The instrument will be used for the following research purposes:

1. Study of the presence and distribution of neural elements in articular structures and corneal wound healing.

2. Examination of structure-function relationships in structural membrane proteins using bdellovibrios bacteria as a developmental model system and as a highly sensitive probe.

3. Study of periodontal cell attachment between bone-normal root, bone-diseased root and bone-root planed diseased root in the presence and absence of microbial products.

4. Mapping the central locations of primary afferent synopses from the dental pulp and assessing their relationships with trigeminothalamic relay cells.

5. Investigation of cardiac hypertrophy in cultured cardiac myocytes, particularly the possibility of constructing a ventricular cardiac myocyte tissue culture system based on heart muscle cells from spontaneously hypertensive rats.

6. Microstructural investigation of dental alloys used for restoration and prosthetic devices.

Application Received by Commissioner of Customs: October 28, 1988.

Docket Number: 89–017. *Applicant:* Tulane University, Delta Regional Primate Research Center, Three River Road, Covington, LA 70433. *Instrument:* Electron Microscope, Model JEM–1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to examine animal and human tissues both in *in vivo* and *in vitro* druing infectious disease research. Studies will include examination of the organisms and the cells affected. The instrument will also be used from time to time to teach electron microscopy techniques to undergraduate and graduate students. *Application Received by Commissioner of Customs:* October 31, 1988.

Docket Number: 89–018. *Applicant:* National Institute for Occupational Safety and Health, Division of Physical Science and Engineering, MRSB, 4676 Columbia Parkway, Cincinnati, OH 45226. *Instrument:* Electron Microscope, Model JEM–100CXII. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to examine samples from industrial hygiene surveys and asbestos abatement projects for the presence of asbestos fibers. *Application Received by Commissioner of Customs:* November 2, 1988.

Docket Number: 89–019. *Applicant:* VA Medical Center, 4150 Clement Street, San Francisco, CA 94121. *Instrument:* Spectophotometer, Model SF–51. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to study the rapid kinetic process in biological systems in order to define the transport and enzyme mechanisms by a kinetic approach. *Application Received by Commissioner of Customs:* November 2, 1988.

Docket Number: 89–020. *Applicant:* University of Utah, Purchasing Department, 151 Annex Building, Salt Lake City, UT 84112. *Instrument:* Electron Microscope, Model H–600–3. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used for research which concerns the organization of the vertebrate retina. *Application Received by Commissioner of Customs:* November 2, 1988.

Docket Number: 89–021. *Applicant:* University of Nebraska-Lincoln, Center for Agricultural Meteorology and Climatology, 242 Chase Hall, Lincoln, NE 68583–0728. *Instrument:* Infrared Gas Analyzer, Model E009. *Manufacturer:* Advanced Systems, Inc., Japan. *Intended Use:* The instrument will be used for studies of the exchange of carbon dioxide between vegetated surfaces and the atmosphere in order to develop improved understanding of surface transfer processes controlling the flux of carbon dioxide. In addition, the instrument will be used for educational purposes in the courses Agronomy 899, 999 and Agricultural Engineering 899, 999. Doctoral Dissertation. *Application Received by Commissioner of Customs:* November 2, 1988.

Docket Number: 89–022. *Applicant:* U.S. Department of Commerce, National Institute of Standards and Technology, Building 222, Room A121, Gaithersburg, MD 20899. *Instrument:* Time-of-Flight Secondary Ion Mass Spectrometer. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* The instrument will be used for the following studies:

1. Investigation of the heterogeneous distribution of light elements (lithium, beryllium, boron) within individual micrometer-size ariborne particulates.

2. Study of the ability to fingerprint individual micrometer-sized airborne particulates.

3. Mapping of the distributions of organic species and polymer on surfaces and in biological tissue while minimizing damage produced by the primary ion beam.

Application Received by Commissioner of Customs: November 8, 1988.

Docket Number: 89–023. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439–4812. *Instrument:* Fragment Mass Analyzer. *Manufacturer:* Bruker Analtische Messtechnik, West Germany. *Intended Use:* The instrument will be used in the study of nuclear reactions induced by beams from the ATLAS heavy-ion accelerator to separate nuclear reaction products from the primary accelerator beam and to disperse them at the focal plane by mass/charge. *Application Received by Commissioner of Customs:* November 8, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–1648 Filed 1–24–89; 8:45 am]

BILLING CODE 3510–DS–M

Texas A & M University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–227. *Applicant:* Texas A & M University, College Station, TX 77843. *Instrument:* Gas Isotope Ratio Mass Spectrometer. *Manufacturer:* CJS Sciences, Ltd., U.K. *Intended Use:* See notice at 53 FR 30084, August 10, 1988. *Reasons for this Decision:* The foreign instrument provides a guranteed internal precision of 0.015 per mil, an automatic cryo-cool inlet for sample volumes down to 6.0 μl and a multi-sample manifold driven by the data system. *Advice Submitted By:* National Bureau of Standards, September 19, 1988.

Docket Number: 88–240. *Applicant:* Research Foundation, State University of New York, Stony Brook, NY 11794. *Instrument:* Micromanipulator. *Manufacturer:* Narashige, Japan. *Intended Use:* See notice at 53 FR 31077, August 17, 1988. *Reasons for this Decision:* The foreign instrument provides hydraulically driven, vibration-free, independent movements in three dimensions with 2.0 μm increments. *Advice Submitted By:* National Institutes of Health, September 27, 1988.

Docket Number: 88–225. *Applicant:* National Bureau of Standards, Gaithersburg, MD 20899. *Instrument:* FTI

Spectrophotometer System, Model DA3.16. *Manufacturer:* BOMEM, Inc., Canada. *Intended Use:* See notice at 53 FR 30084, August 10, 1988. *Reasons for this Decision:* The foreign instrument provides an unapodized resolution of 0.02 cm^{-1} and a spectral range of 200 to 50,000 cm^{-1}. *Advice Submitted By:* National Institutes of Health, September 27, 1988.

Docket Number: 88–188. *Applicant:* University City Science Center, Philadelphia, PA 19104. *Instrument:* Mortar and Pestle Mill System with Accessories. *Manufacturer:* The Pascall Engineering Co., Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 20154, June 2, 1988. *Reasons for this Decision:* The foreign instrument extracts submitochondrial particles with electron transfer comonents from muscle tissue. *Advice Submitted By:* National Institutes of Health, September 6, 1988.

Docket Number: 88–199. *Applicant:* Duke University Medical Center, Durham, NC 27710. *Instrument:* Mass Spectrometer, Model NM70S. *Manufacturer:* VG Analytical, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 19984, June 1, 1988. *Reasons for this Decision:* The foreign instrument provides (1) continuous flow FAB, (2) resolution to 50 000, and (3) scan speed to 0.1 seconds per decade. *Advice Submitted By:* National Institutes of Health, September 21, 1988.

Docket Number: 88–165. *Applicant:* Thomas Jefferson University, Philadelphia, PA 19107. *Instrument:* Flash Photolysis Device. *Manufacturer:* Gert Rapp, West Germany. *Intended Use:* See notice at 53 FR 18329, May 23, 1988. *Reasons for this Decision:* The foreign instrument provides focussing optics and pulse shaping optimized for initiating contractile events in muscle fibers. *Advice Submitted By:* National Institutes of Health, September 21, 1988.

Docket Number: 88–220. *Applicant:* Howard Hughes Medical Institute, Upton, NY 11973. *Instrument:* Double Crystal Monochrometer, KMA–15. *Manufacturer:* Kohzu Seiki, Co., Ltd., Japan. *Intended Use:* See notice at 53 FR 23781, June 24, 1988. *Reasons for this Decision:* The foreign instrument provides a tunable angle range of 4.5° to 70° with constant height and a double crystal. *Advice Submitted By:* National Institutes of Health, September 21, 1988.

Docket Number: 88–217. *Applicant:* Thomas Jefferson University, Philadelphia, PA 19107. *Instrument:* Myograph-Microfluoromety System. *Manufacturer:* Dr. K. Guth, West Germany. *Intended Use:* See notice at 53 FR 22686, June 17, 1988. *Reasons for this Decision:* The foreign instrument provides a force transducer with a sensitivity of 1.0 mg with low-drift and a linearity range of at least 3 mm. *Advice Submitted By:* National Institutes of Health, September 21, 1988.

Docket Number: 88–088R. *Applicant:* U.S. Environmental Protection Agency, Research Triangle Park, NC 27771. *Instrument:* Mass Spectrometer, Model 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 53 FR 6028, February 29, 1988. *Reasons for this Decision:* The foreign instrument provides a (1) resolution to 50 000, (2) mass range to 175 000 amu, and (3) continuous flow FAB capability. *Advice Submitted By:* National Institutes of Health, October 4, 1988.

Docket Number: 88–068R. *Applicant:* University of Illinois at Chicago, Chicago, IL 60680. *Instrument:* Mass Spectrometer, Model MAT 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 53 FR 1812, January 22, 1988. *Reasons for this Decision:* The foreign instrument provides: (1) Extended mass range to 10 000 amu, (2) scan rates to 0.01 seconds per decade, and (3) continuous flow FAB capability. *Advice Submitted By:* National Institutes of Health, October 4, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Bureau of Standards and the National Institutes of Health advise that (1) the capabilities to each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–1649 Filed 1–24–89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings to allow for input on Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP).

DATES: Written comments will be accepted until March 31, 1989. All hearings will begin at 7:00 p.m. and will be tape recorded with tapes filed as the official transcript of the hearing. The hearings are scheduled as follows.

1. February 22, 1989, Pocomoke, Maryland
2. February 27, 1989, Pomona, New Jersey
3. March 1, 1989, Galilee, Rhode Island
4. March 6, 1989, Cape May Court House, New Jersey.

ADDRESSES: Comments may be mailed to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901. The hearings will be held at the following locations:

1. Pocomoke—Pocomoke Days Inn, Rt. 13 South, Pocomoke, MD
2. Pomono—Stockton State College, Pomona, NJ
3. Galilee—Dutch Inn, Great Island Rd., Galilee, RI
4. Cape May Court House—Cape May County Extension Office, Dennisville Rd., Cape May Court House, NJ.

SUPPLEMENTARY INFORMATION: The FMP was developed and implemented to reverse the decline in the abundance of the surf clam resource. While the FMP has successfully achieved this goal, the industry remains overcapitalized. The moratorium on entry imposed in 1977 did not act as a significant check on effort, as vessel owners increased the fishing power of their vessels to deal with the constraints of a management regime centered around a limitation on fishing time. Currently, vessels are limited to several 6 hour trips per quarter. In an effort to alleviate the problems and inefficiencies in the fishery, the Mid-Atlantic Fishery Management Council (Council) initiated consideration of a management scheme involving an allocation of the resource quotas among participants in the fishery. This proposal became known as Amendment 8 to the FMP. The development of this amendment has been closely watched by the industry. In accord with section 302(h)(3) of the Magnuson Act, interested industry members have been afforded many opportunities to participate in this development process. The many options originally considered as management alternatives have been weighed and

considered by the Council and narrowed to a point where the industry can focus on a comprehensive management program for comment.

The industry and other interested members of the public are invited to give their thoughts in writing or at the public hearings listed above on Amendment 8 which proposes to: (1) Revise the existing vessel permit requirement; (2) create an allocation permit requirement; (3) create a permit for those who buy, receive, and process surf clams or ocean quahogs; (4) allow the NMFS to establish fees for the permits; (5) combine the three surf clam management areas; (6) initiate a vessel allocation system coastwide for both surf clams and ocean quahogs; (7) remove all surf clam and ocean quahog effort limitations; (8) reduce the surf clam minimum size to 4.75"; (9) provide that the surf clam minimum size limit may be suspended on a year to year basis under certain conditions; (10) provide that dealers and processors must make their reports available for inspection by authorized officers or designated NMFS employees; (11) initiate a requirement that all surf clam and ocean quahog cages must be tagged from the time the surf clams or ocean quahogs are placed into the cage; (12) prohibit shucking surf clams or ocean quahogs at sea; (13) allow the Regional Director to require that vessel owners or operators notify NMFS before a vessel departs the dock on a trip to harvest surf clams or ocean quahogs and before the vessel reaches the dock from a trip on which surf clams or ocean quahogs were caught; (14) remove the moratorium on the entry of new vessels into the Mid-Atlantic surf clam fishery; and (15) allow the Regional Director to authorize experimental fishing not otherwise authorized by the regulations for the collection of fishery data.

Dated: January 19, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-1668 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 19, 1988.

The USAF Scientific Advisory Board Human Systems Division Advisory Group will meet at Wright-Patterson AFB, OH on March 8, 1989 from 8:00 a.m. to 5:30 p.m. and on March 9, 1989 from 8:00 a.m. to 2:00 p.m., in Room 203, Building 14.

The purpose of the meeting will be discussions on selected programs and projects relating to the missions of the Human Systems Division.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1635 Filed 1-24-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

January 19, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Combat will meet on February 9-10, 1989 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330.

The purpose of this meeting is to review the requirements for and the status of Air Force Electronic Combat programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1634 Filed 1-24-89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 21, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. Public reporting burden for this collection of information is estimated to average 31 minutes for response, including the time for reviewing instructions, searching existing data sources, gathering OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 19, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.
Title: Integrated Quality Control Measurement Project.

Abstract: This study will determine the error rate in awards of student aid, assess the effectiveness of prior initiatives to reduce error rates and identify new initiatives to reduce error rates. The Department will use the information to compare actual award and disbursement amounts calculated by the financial institution with those calculated on the basis of the best available data.

Additional Information: An expedited review is requested for this new measurement project to allow adequate time to collect data from approximately 3500 students prior to the end of the Spring term. This information collection is required for the Department to comply with the Financial Integrity Act in order to measure the accuracy of student aid programs.

Frequency: One time only.

Affected Public: Individuals or households; businesses or other for-profit; non-profit institutions; small businesses or organizations

Reporting Burden:

Responses: 11,069.

Burden Hours: 5,676.

Recordkeeping:

Recordkeepers: 0.

Burden Hours: 0.

BILLING CODE 4000-01-M

DRAFT

DATA COLLECTION INSTRUMENTS

The data collection instruments for which clearance is being sought are substantially similar to those used in the 1984 Title IV Quality Control Study, with the exception of the new Lending Institution Record Form. The specific rationale for each instrument is described below:

Institutional Questionnaire

Because institutions have discretion in making Campus-Based aid awards, it is very important to understand the institutional context and aid packaging policy, that is, how decisions are reached about the amounts and types of discretionary aid to grant to different students. Institutions are also responsible for determining whether students meet such categorical eligibility requirements as citizenship or resident alien status, at least half-time status, and maintenance of satisfactory academic progress. For example, for the eligibility requirement of "satisfactory progress", student records should show hours carried and grade point average, but each student's file can not be expected to include the institution's definition of satisfactory progress; it is necessary to get that information from an administrator.

Student and Parent Questionnaires

In order to determine whether the information reported at the time of application for financial assistance was correct and complete, personal interviews must be conducted with the recipient students and their parents, if dependent, and telephone interview must be conducted with parents of independent students. During the interviews, respondents will be asked to provide documentation for certain items in order to verify that the information they provided on their applications is correct. Many of the necessary documents are confidential and cannot be assessed except through the respondent or with his or her written permission. This documentation to verify respondents' answers is crucial since, in many cases, respondent recall on questions regarding finances or household information during an earlier specific period of time is not accurate.

Financial Institution Record Form

Experience with prior ED Quality Control studies has shown that obtaining accurate bank account balances requires direct confirmation from financial institutions.

Tax Assessor Record Form

Experience with prior ED Quality Control studies has shown that local tax assessors provide a more objective and accurate determination of the value of real estate assets than the student or parent would provide.

Lending Institution Record Form

Previous quality control studies have reported error in the Stafford Loan Program at the point of certification, but limited data was gathered on loan amounts. In this study, OPE will report both certification and loan error in the Stafford Loan Program. For this reason, an additional data collection instrument has been developed to confirm the Stafford loan amount directly from the institution furnishing the loan.

DRAFT

B. ITEM BY ITEM JUSTIFICATION

The items included in the four questionnaires and three verification forms are justified by the seven major project objectives. Exhibit II-3 links each objective to its corresponding research questions, method of analysis, primary data needs, and sources of data. Thus, the exhibit provides an overall picture of the data requirements of each project objective.

Public reporting burden for this collection of information is estimated to average 31 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing thisd burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

PLAN FOR ACHIEVING PROJECT OBJECTIVE 1

PROJECT OBJECTIVE 1:
To determine whether error persists in the Title IV programs

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
What are the levels and rates of overall error in each of the Title IV programs?	Compute best award - reported (actual) award (overall, student, institutional, marginal)	Best values of data	Students
What are the levels and rates of student error in each of the Title IV programs?	Extrapolate from sample to population	Reported values of data	Parents
What are the levels and rates of institutional error in each of the Title IV programs?	Compute confidence intervals	Sample design information	Institutions
What are the levels and rates of marginal error for student items in each of the Title IV programs?	Determine liability error		IRS
What are the levels and rates of marginal error for institutional items in each of the Title IV programs?			Tax assessors
What are the levels and rates of overall liability error in each of the Title IV programs?			Financial institutions
What are the levels and rates of student liability error in the Title IV programs?			Stafford Loan lenders
What are the levels and rates of institutional liability error in the Title IV programs?			Financial aid office files
			Other institutional records

PLAN FOR ACHIEVING PROJECT OBJECTIVE 2

PROJECT OBJECTIVE 2:
To establish whether patterns and trends of error exist that point to problems across the Title IV programs

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
Are there particular characteristics of students that indicate highly error-prone nature, across the Title IV programs? If so, what are these characteristics. Are there particular characteristics of institutions that indicate highly error-prone nature, across the Title IV programs? If so, what are these characteristics.	Analysis of relationships between error and student characteristics: • Univariate • Multivariate Analysis of relationships between error and institutional characteristics: • Univariate • Multivariate	Best values of data Reported values of data Demographic and control variables of students and parents Demographic and control variables of institutions	Students Parents Institutions IRS Tax assessors Financial institutions Stafford Loan lenders Financial aid office files Other institutional records

PLAN FOR ACHIEVING PROJECT OBJECTIVE 3

PROJECT OBJECTIVE 3:
To measure the effects of professional judgement on Title IV aid recipients

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
Are institutions meeting all of the regulatory requirements for exercising professional judgement? How frequently are institutions exercising professional judgement? • Application line items • SAI or FC • Cost of attendance • Overriding dependency status What is the magnitude of the changes institutions are making when they exercise professional judgement? • Application line items • SAI or FC • Cost of attendance • Overriding dependency status Where is professional judgement most often used? • What types of students • Which institutions • What items	Categorize and tabulate professional judgement decisions Tabulate effects of professional judgement using award data Compute/simulate awards without professional judgement, and compare to awards with professional judgement Tabulate and summarize differences in awards by types of students and types of institutions	Best values of data Reported values of data Best values of data in absence of professional judgement Demographic and control variables of students and parents Demographic and control variables of institutions	Students Parents Institutions IRS Tax assessors Financial institutions Stafford Loan lenders Financial aid office files Other institutional records

PLAN FOR ACHIEVING PROJECT OBJECTIVE 4

PROJECT OBJECTIVE 4:
To measure, to the extent possible, the effects of prior ED initiatives

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
How have the levels and rates of error changed in each of the Title IV programs since the previous study?	Simulate best and reported awards with 1988-89 data under 1985-86 program rules	Best values of 1985-86 data	Students
What proportion of these changes can be attributed to major ED corrective actions?	For changes in verification procedures, compare error rates from 1985-86 study and 1988-89 study	Reported values of 1985-86 data	Parents
To what extent does verification remove error (See Project Objective 5)?	For changes in application procedures and program regulations, compare error from the 1985-86 study with error calculated on the 1988-89 data using the 1985-86 rules	Best values of 1988-89 data	Institutions
What is the effectiveness of institutional quality control procedures, coupled with an institutional verification program, vis-a-vis integrated verification?	Compare the error rates of the IQC pilot schools with the non-pilot comparison schools	Reported values of 1988-89 data	IRS
	Establish baseline error rates for new pilot schools for further analysis after they have implemented corrective actions	Demographic and control variables of students and parents, 1985-86	Tax assessors
		Demographic and control variables of students and parents, 1988-89	Financial institutions
		Demographic and control variables of institutions, 1985-86	Stafford Loan lenders
		Demographic and control variables of institutions, 1988-89	Financial aid office files
			Other institutional records
			ED copies of data tapes and programs from the Stage Two Study

PLAN FOR ACHIEVING PROJECT OBJECTIVE 5

PROJECT OBJECTIVE 5:
To measure residual error

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
What is the error removed through verification (by program)? • Integrated Verification • Institutional verification programs	Compute/simulate error prior to verification	Best values of data	Students
	Compute/simulate error after verification	Reported values of data	Parents
		Documentation provided as a result of verification	Institutions
What is the error remaining after verification (by program)? • Integrated verification • Institutional verification programs	Extrapolate information from sample to population	Demographic and control variables of students and parents	IRS
	Categorize and tabulate institutional policies and procedures concerning verification	Demographic and control variables of institutions	Tax assessors
		Institutional guidelines and policies	Financial institutions
What verification procedures are most effective at minimizing residual error?	Analyze attributes affecting the effectiveness of verification		Stafford Loan lenders
			Financial aid office files
			Pell History File
			Other institutional records

PLAN FOR ACHIEVING PROJECT OBJECTIVE 6

PROJECT OBJECTIVE 6:
To the extent permitted by the data, identify probable causes and recommend corrective actions to reduce or eliminate error

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
To what extent are major item errors (student and institutional) a result of systemic problems or breakdowns?	Identify major contributors to error • Confusion • Lack of information • System design	Best values of data	Students
What actions can ED, applicants, institutions, lenders, and processors take to minimize the error in the Title IV programs?	Assess causes of error	Reported values of data	Parents
How much are these actions likely to reduce the errors, and what are the resulting effects on program costs likely to be?	Identify alternative corrective actions	Demographic and control variables of students and parents	Institutions
What are general estimates of the costs to implement major corrective actions?	Assess potential effects • Error removed • Distribution of awards • Costs and benefits	Demographic and control variables of institutions	IRS
What actions are required on ED's part to implement major corrective actions?	Recommend comprehensive set of corrective actions	Selected estimates of time, equipment, and support required to implement major corrective actions	Tax assessors
What is the estimated implementation schedule for major corrective actions, and how will primary forms and applications need to be revised to achieve the desired results?			Financial institutions Stafford Loan lenders Financial aid office files Other institutional records

PLAN FOR ACHIEVING PROJECT OBJECTIVE 7

PROJECT OBJECTIVE 7:
To describe the effects of proposed corrective actions on improving quality in the delivery of Federal student aid

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
Already discussed in Project Objective 6. In order to recommend corrective actions, we believe it is necessary to assess the effects of the proposed corrective actions.	Assess potential effects of proposed corrective actions • Error removed • Distribution of awards • Costs and benefits Recommend comprehensive set of corrective actions	Best values of data Reported values of data Demographic and control variables of students and parents Demographic and control variables of institutions Selected estimates of time, equipment, and support required to implement major corrective actions	Students Parents Institutions IRS Tax assessors Financial institutions Stafford Loan lenders Financial aid office files Other institutional records

Exhibit I-3

TOTAL REPORTING BURDEN

	Number		Hours		Total
Institutional Interviews	355	x	1.5	=	533
Students	3,550	x	.75	=	2,663
Parents of Dependent Students	2,308	x	.75	=	1,731
Parents of Independent Students	1,242	x	.17	=	211
Financial Institutions	410	x	.1	=	41
Lenders	2,029	x	.1	=	203
Tax Assessors	1,175	x	.25	=	294
Total	11,069				5,676

[FR Doc. 89-1661 Filed -24-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Record of Decision; Superconducting Super Collider

AGENCY: Department of Energy (DOE).

ACTION: Record of decision; Superconducting Super Collider (SSC).

SUMMARY: DOE has decided to proceed with the SSC and that the location of the SSC will be in Ellis County, Texas. DOE will prepare a Supplemental Environmental Impact Statement (EIS) prior to construction of the SSC.

FOR FURTHER INFORMATION CONTACT: Dr. Wilmot Hess, Chairman, SSC Site Task Force, Office of Energy Research, ER–65/GTN, U.S. Department of Energy, Washington, DC 20545.

Decision

DOE has decided to proceed with the SSC and select the site proposed by the state of Texas as the location for the SSC. The Texas site is located in Ellis County, about 25 miles south of Dallas and 35 miles southeast of Fort Worth.

DOE has determined that this site is the location that will best meet its goal to permit the highest level of research productivity and effectiveness of the SSC, at a reasonable cost of construction and operation, with minimal adverse effect on the environment. Prior to construction of the SSC, DOE will prepare a Supplemental EIS to further analyze impacts at the Texas site based on site-specific design, and assess alternative measures to mitigate potentially adverse impacts.

Basis for Decision

This Record of Decision has been prepared pursuant to the Council on Environmental Quality "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)" (40 CFR Part 1500), and the "DOE NEPA Guidelines" (52 FR 47662, December 15, 1987).

The Texas site was selected as the preferred alternative for location of the SSC in November 1988 and was identified as such in the final EIS *Superconducting Super Collider*, December 1988 (DOE EIS–0138). In addition to the information considered in selecting the preferred alternative, DOE has considered the final EIS and issues raised in comments on the final EIS, and has determined that the Texas proposal remains superior from an overall standpoint.

The Texas site provides the opportunity to construct the collider tunnel in a uniform, well-characterized geologic medium. The chalk and marl in which the tunnel will be constructed are essentially impermeable. The average tunnel depth is relatively shallow, about 150 feet. The site presents minimal construction risk.

Ample regional resources exist at the Texas site to support the SSC. The local communities can provide extensive housing, services, and employment opportunities for workers' families. The site is easily accessible. There is a skilled high-technology and construction labor pool in the area. Coordination between state and local governmental units is effective. A high level of public support for the project is present.

Environmental regulatory requirements can be met. The potential for adverse environmental impacts at the Texas site is small, and there is a substantial potential to mitigate any of the few potentially long- and short-term adverse impacts. The potential disturbance to a small area of wetlands could be feasibly mitigated. About 30 miles of new roads, 25 miles of road upgrades, and 5 miles of new powerlines would be required at the Texas site, but the site provides enough flexibility for locating these facilities that long-term adverse impacts are not expected.

The regional conditions at the Texas location would not pose adverse effects on the construction or operation of the SSC. The climate is favorable for construction schedules, and underground vibrations from nearby activities would not pose a problem. The Texas site could adequately support the SSC needs for electricity and water.

There are no scheduling problems anticipated from land acquisition at the Texas site. An estimated 420 ownerships would be affected, which would result in about 175 relocations.

The life-cycle cost estimate for the Texas site is expected to be approximately $10.8 billion, which was among the lowest at the seven alternative sites. Although there are inherent uncertainties in predicting costs for this project at any site over the 25-year operating period, possibly in the range of 10 percent, the projected life-cycle cost for the Texas site is consistent with the DOE construction estimate for the SSC. As explained in the final EIS, neither the no action alternative nor the programmatic alternatives would accomplish the mission of the SSC. Most technical alternatives were determined to be not feasible; technical alternatives that were feasible were not expected to have environmental consequences which would be significantly different from those associated with the conceptual design for the SSC.

Background

The purpose of the SSC and its associated national laboratory facility will be to investigate the structure of matter at a more fundamental level than is presently possible. This will provide the capability for the U.S. to maintain world leadership in high energy physics.

The SSC will be the largest scientific instrument ever built. The major feature of the facility will be an oval tunnel about 53 miles in circumference. The tunnel will contain approximately 10,000 superconducting magnets which will focus and guide two beams of protons (subatomic particles). The beams will be accelerated in opposite directions to velocities near the speed of light, and then made to collide at energies of up to 40 trillion electron volts. The collisions are expected to create smaller subatomic particles which will be analyzed to determine their character.

Construction of the SSC is anticipated to be completed during the late 1990's. The SSC is expected to remain in operation for 25 to 30 years after construction. After completion of its useful life it will be decommissioned. Additional NEPA review will be completed prior to a decision to either: (1) Expand SSC facilities into future use areas; or (2) decommission the facility.

Research and development for the SSC project has been conducted as a national scientific effort. In 1986, the Central Design Group of Universities Research Association, Inc., prepared a "Conceptual Design Report" which concluded that the SSC was technically feasible and that cost and schedule estimates were acceptable. In January 1987, the President proposed construction of the SSC to Congress. DOE established a Site Task Force (STF) in February 1987 to oversee many of the site selection functions and evaluate proposed sites for the SSC.

In April 1987 DOE issued an Invitation for Site Proposals (ISP) for the SSC. The ISP included the procedures for selection, qualification criteria, technical evaluation criteria, and cost considerations. Using an evaluation process which included recommendations from the National Academy of Sciences and the National Academy of Engineering, seven best qualified site proposals were announced by DOE in January 1988. These seven best-qualified site proposals, analyzed in the EIS as the seven reasonable siting alternatives, are located in Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee, and Texas.

DOE issued an Advance Notice of Intent to prepare the SSC EIS (52 FR

16304, May 4, 1987), followed by a Notice of Intent (53 FR 1821, January 22, 1988). Scoping meetings were held near each of the seven sites. DOE issued the draft EIS in August 1988. The Environmental Protection Agency (EPA) Notice of Availability (53 FR 34148, September 2, 1988) announced a 45-day public review and comment period on the draft EIS. During that time, public hearings were held near each of the seven sites. DOE received oral and written comments from approximately 5,700 commenters.

On November 10, 1988, the Secretary of Energy selected the Texas proposal as the preferred alternative for the location of the SSC. Selection of the preferred alternative considered the findings presented in "SSC Site Evaluations, A Report by the SSC Site Task Force," November 1988 (DOE/ER-0392), and the analysis of the sites in the draft EIS. The Secretary of Energy also considered input from meetings with the seven state proposers and the DOE Energy Systems Acquisition Advisory Board, in addition to issues raised in comments submitted by the public and government agencies on the draft EIS.

DOE issued the final EIS in December 1988. The EPA Notice of Availability for the final EIS was published on December 16, 1988 (53 FR 50568).

Alternatives Considered

Four different types of alternatives were considered by DOE for this project and evaluated in the EIS. These were: (1) Technical alternatives; (2) programmatic alternatives; (3) the no action alternative; and (4) site alternatives.

Technical Alternatives

DOE considered using different beam composition, energy, and luminosity. DOE also considered using conventional magnets, warm superconducting magnets, and alternative superconducting magnets. DOE is still considering the potential for feasible alternatives to the design of detectors and experimental areas, and injector configurations. Feasible alternatives developed will be identified in the Supplemental EIS.

Programmatic Alternatives

DOE considered using other accelerators, international collaboration for the SSC, and delay of constructing the project.

No Action Alternative

DOE considered the consequences of a decision not to site, construct, and operate the SSC.

Site Alternatives

The seven best qualified sites identified by DOE in January 1988 were analyzed as the only reasonable siting alternatives. The alternative sites are located in Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee, and Texas.

Environmentally Preferable Alternatives

Two of the alternatives assessed in the EIS are believed to be environmentally preferable: (1) The no action alternative; and (2) the Texas site alternative.

The no action alternative would result in the least amount of surface and subsurface environmental effects of any alternative considered in the EIS. However, the no action alternative is rejected by DOE because it would jeopardize the future of the U.S. high energy physics program. The operation of the SSC is a vital component of future U.S. basic research efforts in high energy physics. The lack of this instrument would erode U.S. world leadership in this field.

Of the siting alternatives, the Texas site alternative is felt to be environmentally preferable. The final EIS indicates that the adverse ecological impacts would be less at the Texas site compared to the other six site alternatives. The selected Texas site has already been highly modified through the extensive development of land for pasture and farming, and has a high potential for mitigation of adverse impacts.

Mitigation

DOE has considered all practicable means to avoid or minimize environmental harm from construction and operation of the SSC at the Texas site. As shown in the final EIS, construction and operation of the SSC at this site would result in the least amount of significant adverse environmental impacts which could not be mitigated. Residual adverse impacts include: Use of a small fraction of the excess surface water capacity; disturbance of about 3 acres of wetlands; relocation of about 175 parties; and impacts from construction of about 30 miles of new roads, 25 miles of road upgrades, and 5 miles of new powerlines. It may be possible to further mitigate these residual impacts through modifications to the final site design. Design mitigation measures will be identified and analyzed in the Supplemental EIS. Beneficial impacts, besides the knowledge to be gained from operation of the SSC, include increased job opportunities during both construction and operation of the SSC, and secondary socioeconomic benefits to local businesses and the community.

DOE is committed to implement mitigation measures required by DOE policy, law, or regulation, as identified in the final EIS. In addition, DOE will determine through the Supplemental EIS the potential for three additional types of mitigation: (1) Design-controlled elements (those included in the conceptual design for the SSC and/or included in the Texas proposal); (2) flexibility in placement of the collider ring and other surface facilities; and (3) the possibility for development of additional mitigation measures to further reduce residual impacts identified in the SSC EIS. The Supplemental EIS will identify measures to mitigate site-specific adverse impacts, such as for fire ant control.

Floodplain/Wetlands Statement of Findings

Pursuant to Executive Order 11988, "Floodplain Management," Executive Order 11990, "Protection of Wetlands," and 10 CFR 1022, "Compliance With Floodplain/Wetlands Environmental Review Requirements," DOE has incorporated a floodplain/wetlands assessment within the final EIS (Volume I, Chapter 5; and Volume IV, Appendixes 7 and 11). The final EIS contains: (1) A complete description of the proposed action at the Texas site, including maps of floodplain and wetland areas; (2) assessment of the positive and negative environmental effects of the proposed action upon floodplain and wetland areas; and (3) a discussion of possible alternatives which would lessen or avoid adverse impacts to floodplains and wetlands.

Floodplains

Ellis County, Texas is included in the national floodplain mapping program of the Federal Emergency Management Agency. Using the SSC conceptual design, certain of the project facilities (about 10 acres total) and some projected future use areas (about 70 acres total) would fall within the 100-year floodplain boundary of South Prong Creek, Chambers Creek, Baker Branch, Mill Branch, and an unnamed tributary to Chambers Creek. Access roads would cross the stream channels of Red Oak Creek and Big Onion Creek.

DOE has considered alternative means to mitigate adverse impacts to floodplains. In addition to not constructing the SSC at the Texas site, the final EIS considers the flexibility of relocating either the collider tunnel or related surface facilities to avoid

encroachment upon floodplains; construction of berms, levees or other structures; channel diversion; and construction of bridges or culverts for access roads.

Construction of the SSC at the Texas site would not conflict with state or local floodplain protection standards.

Wetlands

DOE has determined that it is probable that construction of the SSC at the Texas site will encroach upon a small amount of wetland areas. The wetlands affected include both natural areas and constructed stock ponds. About 3 acres of wetlands would be disturbed if the facility is constructed according to the conceptual design. These areas have been previously degraded from a natural condition by grazing and soil erosion. In addition, up to about 37 acres of wetlands could be affected by construction at identified future expansion areas.

Operation of the SSC should not impact existing wetlands, but could add additional wetland areas due to construction of a 400-acre evaporation pond. DOE has considered alternative means to mitigate adverse impacts to wetlands. In addition to the option not to construct the SSC at the Texas site, the final EIS addresses the potential for relocating surface facilities to avoid wetland areas; using bridges for access roads; constructing erosion control measures; using responsible construction practices; and replacing lost wetlands.

Supplemental Assessment

The Texas site offers great potential for flexibility in adjusting both the overall layout of the collider ring and location of surface facilities along the ring. Site-specific impacts to floodplain and wetland areas potentially affected by the SSC will be assessed in the Supplemental EIS after initial site layout and facility design are determined. DOE will modify the final design of the facility to avoid floodplain and wetland areas to the extent practicable.

Construction of ancillary facilities, such as access roads and utility lines, and diposal of tunnel spoils, could disturb small areas of floodplains or wetlands. Because the exact location of these activities has not yet been determined, site-specific impacts and mitigation required will be assessed in the Supplemental EIS. At the Texas site about 550 acres will be disturbed by constructing ancillary facilities. DOE anticipates that access roads and utility lines can be located to avoid wetlands and to minimize encroachment upon floodplains. Spoils disposal will be in existing quarries and is not expected to affect either floodplains or wetlands.

The final EIS indicated the potential for adverse impacts to floodplains or wetlands if construction occurs in the future development areas. DOE will prepare additional NEPA documents if specific uses are proposed for these areas. Site-specific impacts, and potential mitigation for adverse effects, would be determined at that time.

Conclusion

Based on careful consideration of the environmental impacts associated with the proposed action and alternatives as analyzed in the SSC EIS, comments received on the EIS, and the anticipated benefits and costs associated with the proposed action and its various alternatives, the DOE has decided to proceed with the SSC at the site proposed by the State of Texas.

Issued at Washington, DC on January 18, 1989.

John S. Herrington,

Secretary of Energy.

[FR Doc. 89–1689 Filed 1–24–89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Coordinating Subcommittee on Petroleum Storage & Transportation, Committee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council

Date and Time: Tuesday, February 21, 1989, 1:00 p.m.; Wednesday, February 22, 1989, 8:00 a.m.

Place: National Petroleum Council, Conference Room, 1625 K Street, NW., Suite 600, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585. Telephone 202/586–4695

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review draft volumes.

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.

—Review the drafts of Volume I, *Summary* and Volume II, *System Dynamics.*

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on: January 19, 1989.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 89–1688 Filed 1–24–89; 8:45 am]

BILLING CODE 6450-01-M

Office of Nuclear Energy

Certification of the Radiological Condition of Twenty-Six Private Properties Located in Maywood, Rochelle Park, and Lodi, NJ

AGENCY: Office of Remedial Action and Waste Technology, DOE.

ACTION: Notice of certification.

SUMMARY: The Department of Energy has completed radiological surveys and taken remedial action to decontaminate 10 properties in Rochelle Park, New Jersey; 8 properties in Lodi, New Jersey; and 8 properties in Maywood, New Jersey. The properties were found to contain quantities of radioactive material from thorium processing activities conducted at the former Maywood Chemical Works.

FOR FURTHER INFORMATION CONTACT: J.J. Fiore, Director, Division of Facility and Site Decommissioning Projects, Office of Remedial Action and Waste Technology, U.S. Department of Energy, Washington, DC 20545, (301) 353–5272.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), Office of

Nuclear Energy, Office of Remedial Action and Waste Technology, Division of Facility and Site Decommissioning Projects, has implemented a remedial action project in the Maywood, New Jersey, area as part of a specially authorized research and development project (The Energy and Water Appropriations Act for FY 1984). The ultimate objective of the program is to ensure that any properties contaminated as a result of activities at the former Maywood Chemical Works can be certified to be within current radiological guidelines and applicable standards established to project the general public.

The Maywood Chemical Works was founded in 1895. In 1916, the company begain processing thorium from monazite sand for use in manfacturing gas mantles for various lighting devices. The company continued this work until 1956. Process wastes from manufacturing operations were pumped to an area west of the plant (now divided by Route 17). Subsequently, some of the contaminated wastes migrated onto adjacent properties on Grove Avenue and Parkway in Rochelle Park.

Over a period of time, some of the residues from the processing operations were moved from the company's property and used as landfill in nearby low-lying areas. The contamination at the Davison and Latham properties in Maywood resulted from the use of fill taken from the Maywood Chemical Works.

Unlike the Davison and Latham properties in Maywood, it is not known for certain how the properties in Lodi were contaminated. According to an area resident, fill from an unknown source was brought to Lodi and spread over large portions of the previously low-lying and swampy area. For several reasons, however, a more plausible explanation is that the contamination migrated along a drainage ditch originating on the Maywood Chemical Works property. It can be seen from old photographs and tax maps of the area that the course of a previously existing stream known as Lodi Brook, which originated at the former Maywood Chemical Works, generally coincides with the path of contamination in Lodi. The brook was subsequently replaced by a storm drain system as the area was developed. Secondly, samples taken from Lodi properties indicate elevated concentrations of a series of elements known as rare earths. Rare earth elements are typically found in monazite sands, which also include thorium. This type of sand was feedstock at the Maywood Chemical Works, and elevated levels are known to exists in the byproduct of the extraction process. Third, the ratio of thorium to other radionuclides found in Lodi is comparable to the ratio of those found in Maywood and Rochelle Park. And finally, long-time residents of Lodi recall chemical odors in and around the brook in Lodi, and have seen steam rising off the water. These observations suggest discharges of contaminants occurring upstream.

In 1954, the Atomic Energy Commission (AEC) issued a license to the Maywood Chemical Works to possess, process, manufacture, and distribute radioactive materials. This license allowed manufacturing activites to continue under the Atomic Energy Act of 1954.

The Stepan Chemical Company (now called the Stepan Company (SC)) purchased Maywood Chemical Works in 1959. The Stepan Company itself has never been involved in the manufacture or processing of any radioactive materials.

In 1961, the SC was issued an AEC radioactive materials storage license. Based on AEC inspections of and information related to the property on the western side of Route 17, the SC agreed to take remedial action in that area and began in 1963 to clean up piles of thorium waste. As result, residues and tailings on the property west of Route 17 (referred to as the Ballod property) were partially stabilized. From 1966 to 1968, the Stepan Company moved contaminated material from west of Route 17 to various places on the site.

At the request of the SC, a radiological survey of the company's property east of Route 17 was made by the AEC in 1968. Based on the findings of that survey, clearance was granted for unrestricted release of the property. At the time of the survey, however, the AEC was not aware of waste material still present west of Route 17. In late 1980, a resident's report that the area west of Route 17 was contaminated initiated a series of radiological characterizations that identified contaminated areas in Maywood, Lodi, and Rochelle Park, New Jersey.

The enactment of the 1984 Energy and Water Appropriations Act authorized DOE to conduct a decontamination research and development project at four sites throughout the nation, including the site of the former Maywood Chemical Works and its vicinity properties in the Boroughs of Maywood and Lodi and Township of Rochelle Park, New Jersey. Remedial action at these properties is being performed under the direction of the Formerly Utilized Sites Remedial Action Program (FUSRAP), a DOE effort to identify, decontaminate, or otherwise control sites where low-level radioactive contamination (exceeding current guidelines) remains from either the early years of the nation's atomic energy program or commercial operations causing conditions that Congress has mandated DOE to remedy.

On the basis of the 1984 Congressional authorization, DOE developed a remedial action plan to remove the contamination from 26 vicinity properties in Maywood, Lodi, and Rochelle Park, New Jersey. The first priority for the remedial action was to remove contaminated materials from residential properties, and then from commercial properties. These materials are stored at the Maywood Interim Storage Site. These 26 properties represent the first group of properties for which removal actions were taken under the Maywood project.

DOE coordinated its activities with the New Jersey Department of Environmental Protection, the Borough of Maywood, the Borough of Lodi, and the Township of Rochelle Park.

From May 1984 to November 1985, the 26 properties were decontaminated. Post-remedial action surveys have demonstrated and DOE has certified that radiological conditions on the affected properties are consistent with applicable criteria and that the use of the 26 properties presents no radiological hazard to the general public or to site occupants. These findings are supported by the DOE Certification Docket for the Remedial Action Performed at Properties in Maywood, Rochelle Park, and Lodi, New Jersey, in 1984 and 1985. Accordingly, these properties are released from the Formerly Utilized Sites Remedial Action Program.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the Department of Energy Public Reading Room located in Room 1E-190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC. The certification docket will also be available at the Maywood Public Library, 459 Maywood Avenue, Maywood, New Jersey 07607.

The Department of Energy, through the Oak Ridge Operations Office, Technical Services Division, has issued the following statement:

Statement of Certification: Twenty-Six Properties Associated with the Former Maywood Chemical Works

The U.S. Department of Energy, Oak Ridge Operations Office, Technical Services Division, has reviewed the radiological data obtained following remedial action at the 26 subject properties. Based on this review, DOE has certified that the properties listed below are in compliance with all applicable decontamination criteria and standards. This certification of compliance provides assurance that use of the properties will result in no radiological exposure above DOE criteria and standards to members of the general public or to site occupants. Accordingly, the following properties are released from the Formerly Utilized Sites Remedial Action Program:

Parcel 1 located on 454 Davison Street, Borough of Maywood, identified as Block 124A, Lots 22, 23.
Parcel 2 located on 459 Davison Street, Borough of Maywood, identified as Block 123, Lots 18, 19, 20A.
Parcel 3 located on 460 Davison Street, Borough of Maywood, identified as Block 124, Lots 24, 25.
Parcel 4 located on 464 Davison Street, Borough of Maywood, identified as Block 124, Lots 26, 27.
Parcel 5 located on 468 Davison Street, Borough of Maywood, identified as Block 124, Lots 28, 29.
Parcel 6 located on 459 Latham Street, Borough of Maywood, identified as Block 124, Lots 18, 19.
Parcel 7 located on 461 Latham Street, Borough of Maywood, identified as Block 124, Lots 16 17.
Parcel 8 located on 467 Latham Street, Borough of Maywood, identified as Block 124, Lots 14, 15.
Parcel 9 located on Ballod Associates property (up to the toe of the Route 17 embankment), Township of Rochelle Park, identified as Block 18, Lot 1, and Block 19A, Lot 1.
Parcel 10 located on 10 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 42, 43.
Parcel 11 located on 22 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 48, 49.
Parcel 12 located on 26 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 50, 51.
Parcel 13 located on 30 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 52, 53.
Parcel 14 located on 34 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 54, 55.
Parcel 15 located on 38 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 56, 57.
Parcel 16 located on 42 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 58, 59.
Parcel 17 located on 86 Park Way, Township of Rochelle Park, identified as Block 17, Lots 36, 37, 38, 39B.
Parcel 18 located on 90 Park Way, Township of Rochelle Park, identified as Block 17, Lots 39A, 40, 41.
Parcel 19 located on 58 Trudy Drive, Borough of Lodi, identified as Block 176G, Lot 15.
Parcel 20 located on 59 Trudy Drive, Borough of Lodi, identified as Block 176H, Lot 5.
Parcel 21 located on 61 Trudy Drive, Borough of Lodi, identified as Block 176I, Lot 6.
Parcel 22 located on 64 Trudy Drive, Borough of Lodi, identified as Block 176L, Lot 3.
Parcel 23 located on 3 Hancock Street, Borough of Lodi, identified as Block 176H, Lot 4.
Parcel 24 located on 121 Avenue F, Borough of Lodi, identified as Block 223A, Lots 60, 61.
Parcel 25 located on 123 Avenue F, Borough of Lodi, identified as Block 223A, Lots 60, 63.
Parcel 26 located on 59 Avenue C, Borough of Lodi, identified as Block 212, Lots 11, 12, 13.

Dated: December 21, 1988.

J.E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy, U.S. Department of Energy.

[FR Doc. 89-1690 Filed 1-24-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-586-000, et al.]

Trunkline Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP89-586-000]

January 13, 1989.

Take notice that on January 10, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251-1642 filed in Docket No. CP89- 586-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Unicorp Energy, Inc. (Unicorp), a marketer, pursuant to a transportation agreement dated November 1, 1988. Trunkline explains that service commenced December 9, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1575. Trunkline further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 40,000 dekatherms, and that the annual quantity would be 14,600,000 dekatherms. Trunkline explains that it would receive natural gas for Unicorp's account at points of receipt in Illinois, Louisiana, Texas and offshore Louisiana. Trunkline states that it would transport and redeliver the natural gas to Consumers Power Company in Elkhart, Indiana.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89-577-000]

January 13, 1989.

Take notice that on January 10, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-577-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of LaSER Marketing Company (LaSER), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 103,000 MMBtu of natural gas per day for LaSER from receipt points located in Louisiana, Mississippi and Texas to delivery points located in Alabana, Florida, Louisiana, Mississippi and Texas. United anticipates transporting on an average day 103,000 MMBtu and an annual volume of 37,595,000.

United states that the transportation of natural gas for LaSER commenced October 25, 1988, as reported in Docket No. ST89-1407-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89-585-000]

January 13, 1989.

Take notice that on January 10, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-585-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amoco Production Company (Amoco) under its blanket certificate issued in Docket No. CP87-115-000

pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 25, 1988, as amended, it would transport natural gas for Amoco, a producer, from points of receipt located Offshore Louisiana and in the states of Arkansas, Louisiana, New York and Texas to various delivery points located in multiple states. Tennessee further states that the maximum daily quantity of natural gas that would be transported for Amoco would be 200,000 dekatherms.

Tennessee indicates that it commenced the transportation of natural gas for Amoco on November 1, 1988, as reported in Docket No. ST–1076–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89–578–000]

January 13, 1989.

Take notice that on January 10, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–578–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Energy Buyers Service Corporation (Energy Buyers) under the blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 10,000 MMBtu of natural gas for Energy Buyers, with an estimated average daily quantity of 1,000 MMBtu. On an annual basis, Energy Buyers estimates a volume of up to 2,000,000 MMBtu. The ultimate consumer of the gas would be Energy Buyers as Lake Side Hospital, *et. al.*

It is stated that transportation service for Energy Buyers commenced November 23, 1988, under the 120-day period automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1385.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Carnegie Natural Gas Company

[Docket No. CP87–473–004]

January 13, 1989.

Take notice that on January 11, 1989,[1] Carnegie Natural Gas Company (Applicant), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP87–473–004, a petition to amend the certificate of public convenience and necessity issued in Docket No. CP87–473–000, on January 14, 1988 so as to authorize Applicant to substitute two alternative delivery points for one previously authorized delivery point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant proposes to amend the certificate issued to Applicant by Commission order of January 14, 1988, in Docket No. CP87–473–000, to substitute two alternative delivery points, station 2637 in Pickaway County, Ohio (Pickaway delivery point), and measuring station 1275 at Waynesburg in Greene County, Pennsylvania (Waynesburg delivery point) for measuring station 007, the Hooker delivery point, as points of delivery from Applicant to Columbia Gas of Ohio, Inc. (Columbia Gas of Ohio).

It is indicated that the Commission, by order dated January 14, 1988, authorized Applicant to sell natural gas for resale on a firm basis to Columbia Gas of Pennsylvania, Inc. and Columbia Gas of Ohio. It is further indicated that the Commission conditioned Applicant's authorization for service to Columbia Gas of Ohio upon the receipt by Texas Eastern Transmission Corporation (Texas Eastern) of appropriate authorization to deliver gas to Applicant at the Hooker delivery point.

Applicant states that, since the issuance of the certificate, construction by Columbia Gas of Ohio of a new line to serve its Columbus, Ohio market which interconnects with the Texas Eastern system requires location of the delivery point for Columbia Gas of Ohio at a different delivery point. Applicant further states that, as part of the general restructuring of Texas Eastern's sales and transportation services, Texas Eastern has agreed to designate deliveries to Columbia Gas of Ohio, for Applicant's new delivery point for sales service to Applicant at measuring station 2637 at Pickaway, Ohio. It is submitted that Applicants sales to Columbia Gas of Ohio, in turn, would be made from this delivery point. Applicant submits that this station is in the process of design and construction by Columbia Gas of Ohio and would be operational in the near future.

Applicant states that, prior to Applicant's being able to make the sale to Columbia Gas of Ohio at the Pickaway delivery point, the new station must be constructed by Columbia Gas of Ohio, and the Pickaway delivery point must be added to Applicant's service agreement with Texas Eastern. It is indicated that certificate authority must be granted to both Carnegie and Texas Eastern to utilize that point as, respectively, a sales point for the sale from Applicant to Columbia Gas of Ohio, and a delivery point for the delivery from Texas Eastern to Applicant. Applicant submits that it is imperative that alternative delivery points be specified in order to protect itself from any further delays in commencing sales. Applicant requests that the Commission amend its order to allow deliveries to be made at the alternative, existing delivery point that Applicant has Texas Eastern at Waynesburg. Applicant states that the addition of the Waynesburg delivery point would not require any additional filings by Texas Eastern. Applicant further states that the addition of this delivery point would provide Applicant with the opportunity to commence sales to Columbia Gas of Ohio on an interim basis until authorization for Texas Eastern to add the Pickaway delivery point to Applicant's service agreement is granted.

Applicant requests that the time by which sales service to Columbia Gas of Ohio must commence be extended to a date no earlier than three months from the date on which the Commission issues an order authorizing the Amendment. Applicant indicated that the Commission order required sales service related to the construction of facilities to commence within one year from the date of the Commission's order. It is indicated that, although the construction authorized in the order related solely to the proposed service to Columbia Gas of Pennsylvania, Inc., Applicant wishes to ensure that its certificate to serve Columbia Gas of Ohio would not expire before sales can commence.

Comment date: February 3, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] The petition to amend was tendered for filing on December 27, 1988; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until January 11, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-591-000]

January 17, 1989.

Take notice that on January 10, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-591-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for Mountain Iron and Supply Company (Mountain Iron), a marketer of natural gas, under Panhandle's blanket transportation certificate authority issued November 20, 1987, in Docket No. CP86-585-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states it will receive the gas at various existing points on its system in the States of Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois and deliver the gas for the account of Mountain Iron to Central Illinois Light Company in Tazewell, Edgar, Moultrie, Douglas, Vermillion, Logan, Champaign, Sangamon, Peoria and Knox Counties, Illinois.

Panhandle proposes to transport up to 300 dt of gas per peak day and approximately 100 dt and 36,500 dt of gas per average day and annually, respectively, Panhandle states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on December 1, 1988, pursuant to a transportation agreement dated October 14, 1988. Panhandle notified the Commission of the commencement of the transportation service in Docket No. ST89-1573-000.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-560-000]

January 17, 1989.

Take notice that on January 10, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Steet, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-560-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Oxy USA Inc. (Oxy), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Northern states that it would transport natural gas for Oxy from points of receipt located offshore Louisiana, Mississippi and Texas and in the state of Texas. Northern further states that the points of delivery would be located offshore Louisiana and Texas and in the states of Louisiana and Texas. Northern indicates that the maximum daily volume of natural gas that would be transported for Oxy would be 50,000 MMBtu.

Northern states that it commenced the transportation of natural gas for Oxy on November 21, 1988, as reported in Docket No. ST89-1418-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a).

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP89-553-000]

January 17, 1989.

Take notice that on January 6, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-553-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide for The Quaker Oats Company (Quaker) under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

WNG requests authorization to transport, on an interruptible basis, up to a maximum of 2,000 MMBtu of natural gas per day for Quaker from various receipt points in Colorado, Kansas, Oklahoma, Texas and Wyoming to various delivery points on WNG's pipeline system located in Missouri. WNG anticipates transporting 1,000 MMBtu on an average day and 730,000 MMBtu on an annual basis.

WNG states that the transportation of natural gas for Quaker commenced on September 25, 1988, as reported in Docket No. ST89-1571-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86-631-000. WNG proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Trunkline Gas Company

[Docket No. CP89-547-000]

January 17, 1989.

Take notice that on January 6, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-547-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Entrade Corporation (Entrade), a marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specifically, Trunkline requests authority to transport up to 7,000 Dt. per day, on an interruptible basis, on behalf of Entrade, pursuant to a Transportation Agreement dated September 20, 1988 (Agreeement). Trunkline states that the Agreement provides for Trunkline to receive gas on behalf of Entrade at various existing points of receipt on its system and deliver subject gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana. Peak day and average day transportation quantities are both estimated to be 7,000 Dt. and based thereon, the annual transportation quantity is expected to be 2,555,000 Dt. Trunkline advises that the service commenced on October 4, 1988, as reported in Docket No. ST89-0533-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Texas Gas Transmission Corporation

[Docket No. CP89-581-000]

January 17, 1989.

Take notice that on January 10, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-581-000 a request pursuant to §§ 57.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Southern Gas Company, Inc. (Southern) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the

request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 200,000 MMBtu of natural gas for Southern, with an estimated average daily quantity of 20,000 MMBtu. The ultimate consumer of the gas has been identified by Southern as various end-users behind Western Kentucky Gas Company.

Transportation service for Southern commenced November 24, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1379.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP89–538–000]

January 17, 1989.

Take notice that on January 5, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251, filed in Docket No. CP89–538–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Graham Marketing Company (Shipper) under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport for Shipper 123,600 dt on a peak day 123,600 dt on an average day and 45,114,000 dt on an annual basis. United also states that pursuant to a Transportation Agreement dated November 9, 1988 between United and Shipper (Transportation Agreement) proposes to transport natural gas for Shipper from points of receipt located in various counties in Louisiana. The points of delivery and ultimate points of delivery are located in multiple state.

United further states that it commenced their service November 9, 1988, as reported in Docket No. ST89–1350–000.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP89–541–000]

January 17, 1989.

Take notice that on January 5, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–541–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Clinton Gas Marketing, Inc. (Clinton) under its blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 25, 1988, it would transport natural gas for Clinton, a marketer, from points of receipt located offshore Louisiana and in the states of Texas, Louisiana and New York. Tennessee further states that the point of delivery would be located in the state of Louisiana. Tennessee indicates that the ultimate delivery point of the natural gas would be the state of Ohio. Tennessee states that the maximum daily quantity of natural gas that would be transported for Clinton would be 16,800 dekatherms.

Tennessee indicates that it commended the transportation of natural gas for Clinton on December 1, 1988, as reported in Docket No. ST89–1427–000, for a 120-day period pursuant to § 284.223(a) of the Regulations (18 CFR 284.223(a)).

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Northwest Pipeline Corporation

[Docket No. CP89–567–000]

January 17, 1989.

Take notice that on January 9, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–567–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Weyerhauser Company (Weyerhauser), an end-user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 39,370,000 MMBtu equivalent of natural gas on a peak day, 300 MMBtu equivalent on an average day and 120,000 MMBtu equivalent on an annual basis for Weyerhauser. It is stated that Northwest would receive the gas for Weyerhauser's account at various existing points on Northwest's system and would deliver equivalent volumes at existing interconnections between Northwest and Cascade Natural Gas Corporation, Washington Natural Gas Company and Northwest Natural Gas Company in Washington and Oregon. It is asserted that the service would be effected using existing facilities and that no construction of facilities would be required. It is explained that the transportation service commenced November 24, 1988, under the self-implementing authorization of § 284.223 of the Commission's Regulations as reported in Docket No. ST89–1317.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Northern Natural Gas Company

[Docket No. CP89–559–000]

January 17, 1989.

Take notice that on January 9, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–559–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Union Texas Petroleum Corporation (Union Texas Petroleum), a producer of natural gas, under its blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport natural gas on behalf of Union Texas Petroleum between numerous points of receipt and delivery located in offshore Louisiana, offshore Texas, Louisiana, Texas and offshore Mississippi.

Northern further states that the maximum daily, average and annual quantities that it would transport on behalf of Union Texas Petroleum would be 30,000 MMBtu equivalent of natural gas, 22,500 MMBtu equivalent of natural gas and 10,950,000 MMBtu equivalent of natural gas, respectively.

Northern indicates that in Docket No. ST89–1416, filed with the Commission on December 22, 1988, it reported that transportation service on behalf of Union Texas Petroleum had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corporation

[Docket No. CP89-565-000]

January 17, 1989.

Take notice that on January 9, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-565-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Ball-Incon Glass Packaging Corporation (Ball-Incon), an end-user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 4,000 MMBtu equivalent of natural gas on a peak day, 80 MMBtu equivalent on an average day and 30,000 MMBtu equivalent on an annual basis for Ball-Incon. It is stated that Northwest would receive the gas for Ball-Incon's account at various existing points on Northwest's system and would deliver equivalent volumes at existing interconnections between Northwest and Washington Natural Gas Company in Washington. It is asserted that the service would be effected using existing facilities and that no construction of facilities would be required. It is explained that the transportation service commenced November 24, 1988, under the self-implementing authorization of § 284.223 of the Commission's Regulations as reported in Docket No. ST89-1321.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Southern Natural Gas Company

[Docket No. CP89-571-000]

January 17, 1989.

Take notice that on January 9, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-571-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Rangeline Corporation (Rangeline) pursuant to Rate Schedule IT. Southern explains that service commenced November 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1543. Southern explains that the peak duty quantity would be 15,500 MMBtu, the average daily quantity would be 5,150 MMBtu, and that the annual quantity would be 1,879,750 MMBtu. Southern explains that it would receive natural gas for Rangeline's account at existing receipt points in Louisiana, offshore Louisiana, Texas, Mississippi, offshore Texas, and Alabama for delivery at various delivery points in Mississippi.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Southern Natural Gas Company

[Docket No. CP89-573-000]

January 17, 1989.

Take notice that on January 9, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-573-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Sonat Marketing Company (Sonat) pursuant to Rate Schedule IT. Southern explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1548. Southern explains that the peak duty quantity would be 1,000 MMBtu, the average daily quantity would be 200 MMBtu, and that the annual quantity would be 73,000 MMBtu. Southern explains that it would receive natural gas for Sonat's account at receipt points in Louisiana, offshore Louisiana, Texas, Mississippi, offshore Texas, and Alabama for delivery at a delivery points in Alabama.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Williams Natural Gas Company

[Docket No. CP89-551-000]

January 17, 1989.

Take notice that on January 6, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-551-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Kansas Industrial Energy Supply Company (Kansas Industrial), under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that it would transport, on an interruptible basis, up to a maximum to 15,000 MMBtu of natural gas per day for Kansas Industrial. WNG states that various receipt points would be located in Kansas, Missouri, Oklahoma, Texas and Wyoming and the delivery points would be on WNG's pipeline system in Kansas. WNG indicates that the total volume of gas to be transported for Kansas Industrial on a peak day would be 15,000 MMBtu; on an average day would be 15,000 MMBtu; and an annual basis would be 5,475,000 MMBtu. WNG indicates it would perform the proposed transportation service for Kansas Industrial pursuant to a service agreement dated August 15, 1988, between WNG and Kansas Industrial.

WNG states that it commenced the transportation of natural gas for Kansas Industrial on November 18, 1988, as reported in Docket No. ST89-1378-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. WNG states that it proposes to continue this service in accordance with §§ 284.221 and 284.223.

WNG also states that it has no knowledge of any agency relationship under which a local distribution company or an affiliate of Kansas Industrial will receive natural gas on behalf of Kansas Industrial.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-593-000]

January 17, 1989.

Take notice that on January 11, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-593-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Seagull Marketing Services, Inc. (Seagull), a marketer of natural gas,

under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 220,000 MMBtu/day for Seagull. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportatin volumes would be approximately 220,000 MMBtu, 165,000 MMBtu and 80,300,000 MMBtu, respectively.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Ozark Gas Transmission System

[Docket No. CP89–594–000]

January 17, 1989.

Take notice that on January 12, 1989, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, First City Center, Dallas, Texas 75201, filed in Docket No. CP89–594–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark claims that in February 1982, it began operating three 620 horsepower 2-stage compressor units at the Price Compressor Station, located adjacent to its mainline in Pope County, Arkansas. It is asserted that this station is used to compress natural gas produced from wells connected to the Price Lateral. It is further asserted that after compression, the gas is transported through the Price Lateral for delivery into Ozark's 20-inch main transmission line. Ozark claims that due to the significant decrease in production of wells connected to the Price Lateral, continued operation of three compressor units at the Price Compressor Station is no longer necessary or economical. It is alleged that abandonment of one of the compressor units at the Price Lateral and would not have an adverse effect on Ozark's shippers. It is istated that in contrast to the situation at the Price Station, Ozark has a demonstrable need for additional compression on the Tobey Lateral, in Franklin County, Arkansas where it currently operates two 620 horsepower compressor units at the Tobey Compressor Station.

It is requested that the Commission grant permanent abandonment authority pursuant to section 7(b) for one of the compressor units (Unit No. 34036) at the Price Compressor Station. It is asserted that the proposed abandonment would not affect Ozark's ability to provide service to its two firm shippers, nor would it affect the producers' ability to deliver the remaining gas into Ozark. It is alleged that by abandoning and relocating the 620 horsepower compressor unit, Ozark would be able to operate its system more efficiently and increase its ability to provide efficient service at the Tobey Lateral.

Comment date: February 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

21. Northwest Pipeline Corporation

[Docket No. CP89–600–000]

January 18, 1989.

Take notice that on January 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–600–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act for Union Oil Company of California (Union Oil), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Union Oil pursuant to a transportation agreement dated October 11, 1988. Northwest explains that service commenced November 3, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1098. Northwest further explains that the peak day quantity would be 12,500 MMBtu, the average daily quantity would be 3,700 MMBtu, and that the annual quantity would be 1,370,000 MMBtu. Northwest explains that it would receive natural gas for Union Oil's account from the Ignacio Plant receipt point in La Platta County, Colorado, the North Douglas Creek receipt point in Rio Blanco County, Colorado and the Sumas receipt point in Whatcom County, Washington and would redeliver the gas to the Union Oil Parachute Plant delivery point in Garfield County, Colorado.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Southern Natural Gas Company

[Docket No. CP89–570–000]

January 18, 1989.

Take notice that on January 9, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 3502–2563, filed in Docket No. CP89–570–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas, on a firm basis, for ARCO Oil and Gas Company, a Division of Atlantic Richfield Company (Arco), under Southern's blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it would perform the proposed transportation service for ARCO, a producer, under Southern's Rate Schedule FT, pursuant to a service agreement dated October 11, 1988. Southern further states that the service agreement is for a primary term through March 31, 1989, with successive terms of one month thereafter unless cancelled by either party. Southern expects to transport 50,000 Mcf of gas on both peak and average days and according thereto, 18,250,000 Mcf would be transported on an annual basis. Southern proposes to receive gas on behalf of ARCO, at a point of interconnection between the facilities of Matagorda Offshore Pipeline System (MOP) and ARCO located offshore Texas and deliver the gas to a point of interconnection between the jointly owned facilities of Southern and others near the terminus of MOP in Refugio County, Texas. Southern explains that, as a joint owner in MOP, it is entitled to 40 percent of MOP's capacity and would use such capacity to transport ARCO's gas. Finally, Southern advises that the transportation service commenced on November 1, 1988, as reported in Docket No. ST89–1545–000, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Colorado Interstate Gas Company

[Docket No. CP89–602–000]

January 18, 1989.

Take notice that on January 12, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–602–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Union Pacific Resources Company (Union Pacific) under CIG's blanket certificate issued in Docket No. CP86–589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with

the Commission and open to public inspection.

CIG proposes to transport for Union Pacific 50,000 Mcf of natural gas on a peak day, 45,000 on an average day and 16,425 Mcf on an annual basis. CIG states that it would perform the transportation service for Union Pacific under CIG's Rate Schedule TI-1 for a primary term extending until September 1, 1990, and continue on a monthly basis thereafter. CIG indicates that it would receive the gas at several points in Sweetwater and Uinta Counties, Wyoming and Kearny County, Kansas, for delivery at a point in Moore County, Texas.

It is explained that the service commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-342-000. CIG indicates that no new facilities would be necessary to provide the subject service.

In its request for authorization, CIG also petitions the Commission for a waiver of the 120-day limit on self-implementing transportation imposed by § 284.223(a)(1) of the Commission's Regulations. CIG states that it has been advised by Union Pacific that due to administrative burdens, Union Pacific was unable to return a signed copy of the service agreement to CIG in a timely manner. CIG states that it therefore was unable to comply with § 284.223(c)(3) of the Regulations for the completion of the prior notice request. CIG reasons that the potential hardship to shippers in interrupting the transportation service outweighs the potential benefit of adherence to the 120-day limitation in § 284.223(a)(1) of the Regulations.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. United Gas Pipe Line Company

[Docket No. CP89-561-000]

January 18, 1989.

Take notice that on January 9, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251-1478, filed in Docket No. CP89-561-000, request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-6-000, pursant to section 7 of the Natural Gas Act for Texican Natural Gas Company (Texican), a marketer, all as more fully set forth in the requests on file with the Commission and open to public inspection.

United proposes to transport up to a maximum of 10, 300 MMBtu of natural gas per day for Texican from the existing interconnection between United and the production facilities in Houma Field, Lafourche Parish, Louisiana, to other specific delivery points also in the state of Louisiana. United anticipates transporting up to 10,300 MMBtu on a peak day and average day, 3,759,500 MMBtu annually for Texican. United explains that service commenced December 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1273.

Comment date: March 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

25. Natural Gas Pipeline Company of America

[Docket No. CP89-606-000]

January 18, 1989.

Take notice that on January 13, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-606-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for International Paper Company (IPC), an end-user, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated October 3, 1988, under its Rate Schedule ITS, it proposes to transport for IPC up to 40,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at existing receipt points in Texas, offshore Texas, Oklahoma, Iowa, Kansas, and offshore Louisiana, and that it would transport and deliver the gas for ITS' account to MidVen Pipeline Company in Cass County, Texas.

Natural advises that service under § 284.223(a) commenced November 23, 1988, as reported in Docket No. ST89-1726. Natural further advises that it would transport 15,000 MMBtu on an average day and 5,475,000 MMBtu annually.

Comment date: March 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

26. Williams Natural Gas Company

[Docket No. CP89-575-000]

January 18, 1989.

Take notice that on January 9, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-575-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Natural Gas Gathering Company of Texas, Inc. (NGGCT), a marketer, under the blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on an interruptible basis for NGGCT up to 12,000 MMBtu of natural gas on a peak day, approximately 12,000 MMBtu on an average day, and 4,380,000 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Kansas to various deliverly points on Williams' system in Kansas. Williams explains that service commenced under the automatic authzorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-1184-000.

Comment date: March 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

27. Southern Natural Gas Company

[Docket No. CP89-595-000]

January 18, 1989.

Take notice that on January 12, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303-2563, filed in Docket No. CP89-595-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Chevron U.S.A. Inc. (Chevron) under the authorization issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Chevron, a producer of natural gas, pursuant to a service agreement dated October 12, 1988, under Southern's Rate Schedule IT. It is stated that the term of the service agreement is for a primary term of one month, to continue and remain in effect for successive terms of one month unless cancelled by either party. Southern proposes to transport on a

peak day up to 30,000 MMBtu; on an average day 30,000 MMBtu; and on an annual basis 10,950,000 MMBtu of natural gas for Chevron. Southern proposes to receive the gas at Mustang Island Block 658, offshore Texas for transportation to the interconnection between the jointly owned facilities of Southern and others with the 30 inch pipeline of Channel Industries near the terminus of the Matagorda Offshore Pipeline system near Tivoli, Refugio County, Texas. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service for Chevron pursuant to its Rate Schedule IT. It is further stated that Southern may agree from time to time to discount the rate charged Chevron for transportation services in accordance with the provisions of Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provisions of § 284.223(a)(1) of the Regulations. Southern commenced such self-implementing service on November 12, 1988, as reported in Docket No. ST89–1554–000.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. ANR Pipeline Company

[Docket No. CP89–580–000]

January 18, 1989.

Take notice that on January 10, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–580–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for PSI, Inc. (PSI) a marketer, under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement dated September 22, 1988, wherein ANR would to transport up to 25,000 dekatherms per day of natural gas on an interruptible basis for PSI. ANR further states that it would receive the gas at existing points of receipt located in onshore and offshore Louisiana and Texas, and in Kansas and Oklahoma and redelivery the gas for the account of PSI at existing interconnections located in the states of Kansas, Oklahoma, and Texas.

ANR states that it commenced service for PSI under § 284.223(a) on October 28, 1988, as reported in Docket No. ST89–795.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. Texas Gas Transmission Corporation

[Docket No. CP89–604–000]

January 18, 1989.

Take notice that on January 13, 1988, Texas Gas Transmission Corporation (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–604–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for Chevron USA, Inc. (Chevron). Texas Gas explains that the service commenced December 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1382. Texas Gas proposes to transport on a peak day up to 35,000 MMBtu; on an average day up to 19,500 MMBtu; and on an annual basis up to 7,117,500 MMBtu. Texas Gas proposes to receive the subject gas from various points of receipt in Louisiana, Kentucky, Texas, Offshore Louisiana, Tennessee, Illinois, Ohio, and Indiana and redeliver the volumes to Texas Eastern Transmission Corporation.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. Texas Gas Transmission Corporation

[Docket No. CP89–618–000]

January 19, 1989.

Take notice that on January 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–618–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for OXY USA Inc. (OCY), under the blanket certificate issued in Docket No. CP89–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated November 11, 1988, under its Rate Schedule IT, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for OXY from points of receipt listed in Exhibit "B" of the agreement to delivery points listed in Exhibit "C", which transportation service involves interconnections between Texas Gas and various transporters. Texas Gas advises that the ultimate consumer of the gas is Occidental Chemical.

Texas Gas advises that service under § 284.223(a) commenced December 1, 1988, as reported in Docket No. ST89–1387. Texas Gas further advises that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. Northern Natural Gas Company, Division of Eron Corp.

[Docket No. CP89–558–000]

January 19, 1989.

Take notice that on January 9, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston Texas 77251–1188 filed in Docket No. CP558–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of PSI, Inc., under the certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport up to 50,000 MMBtu of natural gas per day for PSI, Inc., on a peak day, 37,500 MMBtu on an average day and 18,250,000 MMBtu annually, under Rate Schedule IT–1. This service was reported to the Commission in ST89–1526–000. Northern further states that construction of facilities will not be required to provide the proposed service.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–605–000]

January 19, 1989.

Take notice that on January 13, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–605–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Helmerich & Payne, Inc. (H&P), a producer, pursuant to Northern's blanket certificate issued in Docket No. CP86–435–000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to transport up to 100 billion Btu of natural gas per day on an interruptible basis on behalf of H&P pursuant to an interruptible contract dated December 1, 1988. Northern states that the transportation agreement provides for Northern to receive gas from various existing points of receipt on its system in Oklahoma, Texas, Kansas, Minnesota, and North Dakota and to redeliver the gas into the facilities of various downstream transporters in the states of Texas, Kansas and Iowa.

Northern indicates it would provide the service for a primary term of five years from the date of initial delivery and from month to month thereafter unless terminated by either party upon thirty days written notice to the other party. Northern states that it would charge the rates under its Rate Schedule IT.

It is indicated that the estimated maximum daily volume, average volume, and annual volumes would be 100 billion Btu, 75 billion Btu, and 36,500 billion Btu, respectively. Northern states it commenced a 120-day transportation service for H&P on December 1, 1988, as reported in Docket No. ST89–1519–000.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. Florida Gas Transmission Company and Southern Natural Gas Company

[Docket No. CP87–415–002]

January 19, 1989.

Take notice that on December 29, 1988, Florida Gas Transmission Company (FGT) P.O. Box 1188, Houston Texas 77251–1188, and Southern Natural Gas Company (SNG) P.O. Box 2563, Birmingham, Alabama 35202–2563, (Applicant(s)), as successors in interest to Citrus Interstate Pipeline Company (CIPCO), filed in Docket No. CP87–415–002, an amendment pursuant to §§ 157.7 and 157.14 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.7 and 157.14), requesting authorization to construct and operate a total of approximately 52.5 miles of 30-inch pipeline, consisting of 51.3 miles and 0.6-mile segments, together with metering and appurtenant facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that the proposed pipeline (Mobile Bay Pipeline) is the pipeline proposed previously herein by CIPCO (Docket No. CP87–415–000) and is designed to connect reserves to be produced in the vicinity of Mobile Bay. Applicants state that the Mobile Bay Pipeline would extend from a point near Bayou La Batre, Mobile County, Alabama on the west bank of Mobile Bay, where it would connect with the tailgate of the gas processing plants of Mobil Oil Exploration and Producing Southeast, Inc. (MOEPSI) and the plants proposed to be constructed by Jubilee Pipeline Company (Jubilee) and Shell Offshore Inc. (Shell), to points on FGT's 24-inch and 30-inch mainlines, approximately seven miles west of Citronelle, all in Mobile County, Alabama. Further, the Mobile Bay Pipeline would also connect to the gas processing plant to be constructed by Exxon Corporation (Exxon), to be located west of the junction of Fowl River and East Fowl River, approximately 3 miles north of MOEPSI's plant near the west bank of Mobile Bay. Applicants state that the metering facilities would be located at the tailgates of the MOEPSI, Shell, and Exxon plants and at the interconnect with the FGT system. (Jubilee has proposed to construct and operate the metering facilities to be located at the tailgate of its plant.)

Applicants assert that the Mobile Bay Pipeline would connect gas reserves to be produced generally from the Mobile and Viosca Knoll Areas, Federal Offshore Alabama. Applicants state that estimates of proven and probable reserves in the Mobile Bay Area range from 3.5 Tcf to 10 Tcf. It is anticipated that over 1,000 MMcf/d be produced within a few years from the deep Jurassic-Norphlet formation alone. Estimates of the shallow Miocene production currently indicate a maximum production of 443 MMcf/d. Applicants state, and proven and probable reserves are now estimated at 680 Bcf.

Applicants state the proposed pipeline is designed to transport 550 Mcf of natural gas per day, and initial throughout for the proposed system is expected to be approximately 350 MMcf/d in 1990, increasing to full design capacity by 1992.

Applicants assert that the total estimated cost of the Mobile Bay Pipeline is $35.77 million. Applicants state that the facilities are scheduled to be constructed and in service by October 1, 1990 assuming all regulatory approvals are received before October 1, 1989.

No new rates or services are proposed by Applicants, and each would render transportation services for shippers requesting such under the terms and conditions of its respective FERC Gas Tariff.

Applicants state that the Mobile Bay Area is expected to prove a significant source of long-term domestic gas supplies in the near future, and the proposed pipeline would provide facilities to move this gas to markets of Applicants and to other pipeline systems for distribution to markets throughout the country; construction of the line would encourage further development of the reserves in the Mobile Bay Area.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

34. Texas Eastern Transmission Corporation and ANR Pipeline Company

[Docket No. CP89–511–000]

January 19, 1989.

Take notice that on December 30, 1988, Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas, 77252–2521, and ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243 (Applicants) filed in Docket No. CP89–511–000 an application pursuant to § 157.7 of the Commission's Regulations (18 CFR § 157.7) requesting authority to construct and operate natural gas pipeline facilities, all as more fully set forth in the application which is on file with the Commission, and open to public inspection.

Applicants request that the Commission issue a certificate of public convenience and necessity authorizing: (1) Texas Eastern's construction, in two phases, and the operation of pipeline facilities to be used in the transportation of up to approximately 600,000 dth per day of natural gas from the Mobile Bay Area; (2) joint and undivided ownership by Texas Eastern and ANR of those pipeline facilities; (3) establishment of a new point of delivery under an existing exchange arrangement between Texas Eastern and ANR; (4) approval of a new

transportation arrangement between Texas Eastern and ANR and/or ANR's transportation customers permitting the redelivery to ANR's system, through Texas Eastern's existing system, of volumes transported through ANR's capacity in the proposed pipeline; (5) rolled-in rate treatment for the portion of the facilities to be owned by Texas Eastern; (6) construction and operation by ANR of an interconnection with existing Texas Eastern facilities in West Carroll Parish, Louisiana; and (7) the proposed rates to be utilized by ANR for transportation services provided through ANR's capacity in the proposed pipeline.

Applicants propose the construction and operation of a 204-mile, 30-inch pipeline, to be operated by Texas Eastern, extending from existing and future Mobile Bay treating plants, in Mobile County, Alabama to Texas Eastern's existing main line transmission system at its Kosciusko Compressor Station in central Mississippi. In order to match the anticipated development of Mobile Bay Area reserves with available pipeline capacity, Applicants propose to construct the facilities in two phases. Applicants state that the proposed Phase I facilities would have a maximum capacity of approximately 400,000 dth of natural gas per day and the proposed Phase II facilities would provide additional capacity of approximately 200,000 dth of natural gas per day. Applicants request that the Phase I facilities be approved in time for their installation prior to April 1, 1992, the projected date for operation of the Exxon's Mobile Bay plant. Applicants also request approval of the Phase II facilities for start-up on April 1, 1994.

Applicants state that they would own the proposed facilities in undivided interests. During Phase I, Texas Eastern and ANR would have the right to use up to 300,000 dth and 100,000 dth, respectively, of the available daily capacity. The 200,000 dth per day of additional capacity provided by Phase II construction would be shared equally between Applicants, bringing Texas Eastern's share of the capacity to 400,000 dth per day and ANR's to 200,000 dth per day.

Applicants also seek approval of certain transportation and exchange arrangements. Volumes that ANR transports to Kosciusko through its capacity in the proposed facilities would be redelivered, at ANR's election, to ANR's system by transportation or exchange, requiring authorization for the amendment of an existing exchange arrangement and an agreement for the initiation of a new transportation service. Implementation of the latter agreement would require authorization for ANR to construct an interconnection and related facilities between the systems of Texas Eastern and ANR in West Carroll Parish, Louisiana (West Carroll Interconnection). Applicants state that a significant amount of the natural gas produced from a Mobile Bay Area requires onshore treating to become pipeline quality.

Applicants state they are willing to connect their proposed facilities to existing or future treating plants in the Mobile Bay Area as well as to other sources of gas produced in the Mobile Bay Area. Applicants designed the proposed facilities to terminate at the planned Exxon Plant, but are requesting authority to connect the proposed facilities to both existing and future treating plants located in that vicinity. Applicants state that negotiations are currently underway with producers in the Mobile Bay Area for the acquisition of reserves that would be available for system supply and/or transportation through the proposed pipeline. As these negotiations result in the execution of commitments of such volumes, Applicants will notify the Commission by supplementing this Application.

Applicants state the estimated costs of the proposed jointly owned Phase I and Phase II facilities are $153,307,000 and $27,500,000, respectively, for an estimated total cost of $180,807,000. The cost of proposed interconnection facilities for which ANR seeks authorization, which are to be constructed as part of Phase II, is estimated to be $483,000.

Texas Eastern stated that the primary use of the proposed facilities would be for the delivery of natural gas purchased for its system supply to meet existing certificated service obligations. Texas Eastern states it maintains an aggressive gas acquisition progam in an effort to offset expected deliverability deficiency and views the Mobile Bay Area reserves as an important source of the gas supplies it will require to satisfy the demands of its customers. To the extent that the capacity in the proposed facilities is not fully utilized for the purchase of system supply, Texas Eastern also would provide, on an open access, non-discriminatory basis, firm and interruptible transportation pursuant to its Rate Schedules FT-1 and IT-1, as such rate schedules shall exist from time to time in the future.

ANR states it is an "open access" transporter and has been issued a Part 284 blanket certificate. ANR would utilize its capacity in the proposed facilities to provide transportation services for existing and potential transportation customers that desire to purchase Mobile Bay Area gas reserves. ANR also would, as the need arises, utilize such capacity to meet requirements for sales services.

Applicants state that Texas Eastern does not propose to establish any new services or rates, other than the transportation arrangement. For the volumes expected to be purchased for Texas Eastern's system supply, Texas Eastern proposes to utilize its sales rate schedules and related sales rates, as they exist at the time volumes are purchased and sold. Texas Eastern states it would provide firm and interruptible transportation service pursuant to its then effective Rate Schedules FT-1 and IT-1 and the general terms and conditions of its FERC Gas Tariff.

Texas Eastern requests a Commission determination that Texas Eastern may roll its share of the cost of constructing and operating the proposed Mobile Bay facilities into the cost of service of Texas Eastern's rate cases filed after the new pipeline facilities are built. Texas Eastern believes that rolled-in treatment is appropriate because a substantial portion of Texas Eastern's capacity in the proposed facilities will be used for Texas Eastern's system supply purchases and the remainder is likely to be used for the transportation of volumes purchased from suppliers in the Mobile Bay Area by Texas Eastern's customers.

ANR proposes to establish a new rate, in its Volume 1-A Tariff, which would be applicable to transporation services performed through the facilities proposed in this application. ANR also proposes that the new facilities to be jointly owned with Texas Eastern will comprise a new area of its system to be known as the Mobile Bay Area. ANR further proposes that the costs associated with such facilities would be incremental and unbundled from all of its existing services and its existing rates. ANR proposes to render non-discriminatory transportation services for others through its share of the capacity at the rates shown in Exhibit P, to the application, which rates would be made a part of its FERC Gas Tariff Volume No. 1-A. Both firm and interruptible transportation would be made available to prospective shippers, pursuant to Rate Schedules FTS-1, FTS-2 and ITS of ANR's Volume 1-A Tariff. ANR proposes no changes to any of its existing rates in view of the above-described incremental rate and in view of the fact that the cost associated with

the proposed West Carroll Interconnection to be constructed in ANR's existing Mainline Area is minimal.

ANR states that, since it does not intend to utilize its capacity in the proposed Mobile Bay Area to transport gas purchased for its system supply to serve its sales for resale customers, the costs of its shared Mobile Bay Area facilities and operations should not affect its existing sales rates. ANR reserves the right to utilize its capacity for any certificated service and apply such costs accordingly in a future rate proceeding.

Applicants state they have observed that, in addition to serving their needs, the route proposed also provides the potential for satisfying the requirements of other markets for Mobile Bay Area production that may be substantiated as part of the "open season" proceeding. Applicants state that to their knowledge, the pipeline proposed herein is the only one that will connect the Mobile Bay Area to Texas Eastern's system, provide the opportunity for connections to pipelines owned by United Gas Pipe Line Company (United), Florida Gas Transmission Company (Florida Gas) and Tennessee Gas Pipeline Company (Tennessee), and provide access to the Mobile Bay Area for ANR and its customers.

Applicants submitted an analysis of a pipeline that would follow the same route as that proposed by Applicants and which would, with relatively small modifications to the Applicants' proposal permit (a) the delivery of 1,000,000 dth per day, (b) deliveries to United, Florida Gas and Tennessee, in addition to those proposed to Texas Eastern and ANR, and (c) all the efficiencies of a large capacity facility, including reduced rates.

Additional delivery capacity of up to 400,000 dth per day (above the 600,000 dth per day in Applicant's proposal) could be created by the installation of 48.7 miles of 36-inch pipe on the southern end of Applicant's proposed route (in substitution for the 30-inch pipe Applicants proposed to use in that segment) and construction of various measurement and interconnection facilities. The total cost of such a project is estimated to be $202,203,000, approximately $21.4 million more than the cost of Applicants' proposed facilities.

Applicants state that they believe that facilities for which they authorize provide an efficient an efficient and cost-effective means of satisfying their needs and those of their customers. Nevertheless, should the Commission conclude that for economic, environmental or other reasons the needs of the Applicants and other securing natural gas in the Mobile Bay Area are best met by the construction of a single, large capacity pipeline facility, Applicants believe that consideration should be given to the route and facilities.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

35. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-523-000]

January 19, 1989.

Take notice that on December 30, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-523-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing (1) operation of Transco's existing onshore pipeline (2) transportation of natural gas through the onshore pipeline, (3) construction and operation of a proposed pipeline from a gas treatment plant to be owned by Exxon Corporation (Exxon), and (4) construction and operation of proposed compression facilities to be associated with the Exxon gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that in 1987 it constructed a 124-mile, 30-inch diameter pipeline from the tailgate of Mobil Oil Exploration & Producing Southeast Inc.'s (MOEPSI) treatment plant near Coden, Alabama, to an interconnection with Transco's existing main pipeline system near Butler, Choctaw County, Alabama (Onshore Pipeline). Transco states that it constructed the Onshore Pipeline pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 (NGPA). Transco states that because it constructed the Onshore Pipeline pursuant to section 311(a)(1), all gas transported through such pipeline must be "on behalf of" either a local distribution company or an intrastate pipeline. Transco states that because (1) it is concurrently filing an application for a certificate of public convenience and necessity to construct and operate pipeline facilities primarily in the offshore Mobile Bay area (Offshore Pipeline), and (2) other companies have indicated their intention to deliver gas into the Onshore Pipeline, Transco must seek certificate authority to operate the Onshore Pipeline and transport gas through same to ensure that once the gas reaches the Onshore Pipeline, Transco will have all requisite legal authority to transport all gas through the Onshore Pipeline.

Transco further states that in addition to the Onshore Pipeline for which it is concurrently filing an application, there are other current and potential sources of gas to be transported through the Onshore Pipeline: (1) Gas owned by MOEPSI and other small interest owners in the Mary Ann Field in Mobile Bay is currently being transported through the Onshore Pipeline pursuant to section 311(a)(1) of the NGPA. (2) In Docket No. CP88-646-000 Jubilee Pipeline Company filed an application with the Commission for a certificate of public convenience and necessity to construct and operate a pipeline in the Mobile Bay area. Such application proposed that the Jubilee pipeline interconnect with the Onshore Pipeline. (3) Other companies may propose that their pipelines also interconnect with the Onshore Pipeline.

Transco requests authority to operate the Onshore Pipeline pursuant to section 7(c) of the NGA and to transport gas through the Onshore Pipeline for those shippers which request transportation services. Transco states that it would render such transportation services pursuant to its existing Rate Schedules IT (interruptible) and FT (firm).

Transco further states that Exxon has reserves within a block of twenty-five (25) state and federal leases in the Mobile Bay area. Transco states it has had the opportunity to review geological data on 15 of Exxon's 25 leases, and Transco's preliminary calculations indicate total potential reserves in place of 2.8 Tcf for those 15 leases, with 2.3 Tcf net to Exxon's working interest in those blocks. Transco states that Exxon plans to build a gathering line to collect the gas from such blocks and move it to a treatment plant which Exxon will build onshore to remove sulphur from its gas. Transco states that it requests authority to construct and operate three and one-half miles of 24-inch diameter pipeline to connect the tailgate of the Exxon plant to the Onshore Pipeline and transportation service pursuant to its existing Rate Schedules IT and FT.

Transco states that compression would also be needed to enable the gas from the Exxon plant to move into Transco's mainline system near Butler, Alabama. Accordingly, Transco requests authority to construct and operate such compression facilities.

Transco states that it seeks authorization to move Mobile Bay offshore volumes, and any other

supplies which may require section 7(c) authority, to market. By the instant application, Transco seeks section 7(c) authority to operate its Onshore Pipeline without the "on behalf of" limitation prescribed by section 311(a)(1) of the NGPA. Compared to other proposals, Transco states that its Onshore Pipeline is the only logical choice to move gas from the Mobile Bay area to interstate pipeline systems in the United States because the Onshore Pipeline is already built. Transco asserts that it would not be economically efficient for the Commission to authorize other expensive and duplicative facilities when the Onshore Pipeline is already in place and ready to provide the necessary transportation service. Accordingly, Transco submits that the public convenience and necessary requires that Transco's requested authorizations be granted.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

36. Chandeleur Pipe Line Company

[Docket No. CP89–518–000]

January 19, 1989.

Take notice that on December 30, 1988, Chandeleur Pipe Line Company (Chandeleur), P.O. Box 7141, San Francisco, California 94120–7141, filed in Docket No. CP89–518–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of new offshore pipeline facilities as well as onshore compression, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chandeleur states that it operates an existing offshore pipeline system which consists of approximately 80 miles of 12 and 16-inch main transmission line along with an 11-mile 12-inch diameter lateral. It is indicated that the main line extends from Main Pass area block 41 (MP 41), offshore Louisiana to a terminus at Chevron Oil Company's (Chevron) Pascagoula Refinery at Pascagoula Mississippi. It is further indicated that the lateral extends from Mobile area block 861 (Mobile 861) to the vicinity of the main line in Mobile 902. Chandeleur notes that the lateral, although certificated, is currently unconnected to the main line. Chandeleur explains that it uses its system to transport approximately 173,000 Mcf per day for its two transportation customers, Chevron (an affiliate) and Mississippi Power and Light Company. Chandeleur states that it has no authority to sell gas and is exclusively a transporter.

Chandeleur proposes to undertake a three-phase extension of its existing system in order to transport for its existing shippers reserves being developed in new fields. It is indicated that the specific facilities are as follows.

- *Phase I:* 7.4 miles of 20-inch lateral extending from the terminus of the existing 11-mile lateral in Mobile 861 to an interconnection with anticipated 1990 production in Mobile 907.
- *Phase II:* 29.6 miles of 20-inch pipeline from Mobile 907 to Mobile 961 to be constructed in 1991 consistent with the anticipated timing of Mobile 961 area production.
- *Phase III:* 16.6 miles of 20-inch pipeline from Mobile 861 to Pascagoula. This phase would be constructed in 1992 and would enable the transportation of sour gas from offshore to a processing plant onshore which would extract carbon dioxide and sulphur.

Chandeleur states that it would operate its existing and the proposed extensions in accordance with the provisions of Order No. 509. Chandeleur insists that such operations would promote the Commission's policies as embodied in Order Nos. 436 and 500. Chandeleur states that the fact that it is exclusively a transporter would allow maximum flexibility to potential shippers.

Chandeleur notes that it has been issued a blanket certificate pursuant to § 284.301 and that it will shortly request a blanket certificate pursuant to § 157.201 of the Commission's Regulations. Chandeleur explains that these activities are likely to affect transportation on its system and ultimately will have a bearing on the subject application.

Chandeleur states that the timing of the subject application has been based on its interpretation of the Commission's order in Docket No. CP88–570–000, which established a time frame for applications involving transportation of gas out of the Mobile Bay area. Chandeleur indicates that its application has been made out of an abundance of caution so that Chandeleur would not be precluded from requesting authority to construct facilities in the future due to failure to comply with the Commission's order in Docket No. CP88–570–00.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

37. Panhandle Eastern Pipe Line Company

[Docket No. CP89–589–000]

January 19, 1989.

Take notice that on January 10, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–589–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Amgas, Inc. (Amgas or Shipper), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle requests authority to transport up to 4,000 dekatherms (dt) per peak day, on an interruptible basis, on behalf of Amgas pursuant to a transportation agreement dated September 19, 1988, between Panhandle and Amgas. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. Panhandle states that it will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Central Illinois Light Company (CILCO) in Tazewell County, Illinois. It is stated that Shipper estimates that average day and estimated annual quantities would be 2,000 dt and 730,000 dt, respectively. It is stated that service under § 284.223(a) commenced on December 1, 1988, as reported in Docket No. ST89–1513. Panhandle states that no new facilities nor expansion of existing facilities are required to provide this service.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

38. Southern Natural Gas Company

[Docket No. CP89–517–000]

January 19, 1989.

Take notice that on December 30 1988, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–517–000, an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to construct, install and operate certain pipeline facilities, all as more fully set forth in the application on

file with the Commission and open to public inspection.

In the application, Southern requests authorization to construct a pipeline and appurtenant measurement facilities to provide access on its system to gas supplies to be produced in Main Pass Area Blocks 252 and 254, offshore Louisiana. Specifically, the facilities would include approximately 34 miles of 12-inch pipeline extending from a production platform to be constructed by Shell Offshore, Inc. (Shell) in Main Pass Block 252, to the existing facilities of Southern located at Shell's platform in Main Pass Block 289. Southern also proposes to construct approximately 4.9 miles of 6-inch pipeline from a subsea tap interconnecting owned by Hughes Eastern Petroleum Inc. (Hughes Eastern), in Main Pass Block 254. In addition, Southern plans to install a receiving station on the Shell Main Pass Block 252 platform and on the Hughes Eastern Block 254 platform. Southern states that the proposed facilities would be used to obtain access to gas supplies located in an around Main Pass Area Blocks 252 and 254. Southern states that such access would benefit Southern's customers by making additional gas supplies available and it would impact the producers in this area by providing a means to interconnect their gas reserves with an interstate pipeline system.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

39. Southern Natural Gas Company

[Docket No. CP89–513–000]

January 19, 1989.

Take notice that on December 29, 1988, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–513–000 an application pursuant to section 7(c) of the Natural Gas Act as amended, and the rules and regulations of the Federal Energy Regulatory Commission (Commission) seeking a certificate of public convenience and necessity authorizing Southern to construct, install and operate certain facilities, all as more fully described in the application which is on file with the Commission and open to public inspection.

Southern states that this application is being submitted in conjunction with the joint filing of Southern and Florida Gas Transmission Company (Florida) in Docket No. CP87–415–002, wherein Southern and Florida request issuance of a certificate of public convenience and necessity authorizing them to construct, install, and operate the facilities initially proposed by Citrus Interstate Pipeline Company in the vicinity of Mobile Bay, Alabama, in Docket No. CP87–415–000. Specifically, to ensure access for their customers to the vast natural gas reserves of Mobile Bay, Southern and Florida are proposing to construct approximately 52 miles of 30-inch pipeline together with metering and appurtenant facilities extending from a point near various existing and proposed onshore gas processing plants near Bayou La Batre, Alabama, on the west bank of Mobile Bay to a point of interconnection with Florida's interstate pipeline system and the facilities proposed herein by Southern near Citronelle, Mobile County, Alabama (Mobile Bay Pipeline).

Southern states that it requests a certificate of public convenience and necessity authorizing the construction, installation, and operation of the facilities hereinafter specified to complete its pipeline facilities from Mobile Bay to its existing pipeline system. Such facilities would extend from the terminus of the Mobile Bay Pipeline in Mobile County to Southern's Enterprise Compressor Station in Clarke County, Mississippi. Specifically, Southern proposes to construct, install, and operate a compressor station, consisting of two 2,000 horsepower reciprocating compressor units and necessary appurtenances, a receiving station, and approximately 86 miles of 24-inch pipeline which would extend from the proposed Mobile Bay Pipeline to Southern's Enterprise Compressor Station. The capacity of the proposed facilities is 300 MMcf per day. Southern states further that the construction and operation of the proposed receiving station and compressor station would have no significant adverse impact on the quality of the human environment.

Southern states the present and future public convenience and necessity require the construction, installation, and operation of the facilities proposed herein because its plan for direct access to its existing pipeline system from Mobile Bay would provide benefits for both its sales and transportation customers. With further decreases in this general system supply expected in the future, the substantial volumes of natural gas in the Mobile Bay area would help ensure that Southern has an opportunity to attract adequate supplies to fulfill the merchant services demanded by its customers. Southern states that direct access to the Mobile Bay gas reserves is equally important to its transportation customers. Such customers rely on diversity of supplies in undertaking the responsibility for their gas supply and the facilities proposed herein in conjunction with the Mobile Bay Pipeline make the Mobile Bay reserves as accessible as any other supply source on Southern's pipeline system. Additionally, since Southern is an open access transporter under both section 311 of the Natural Gas Policy Act of 1978 and Order No. 500, the Mobile Bay reserves would be readily accessible to all shippers—Southern's customers, their customers, the interstate pipelines with which Southern interconnects, and all of the shippers connected to those pipelines.

Southern states that its applications filed in Docket No. CP87–415–002 for the proposed Mobile Bay Pipeline and in this proceeding to extend said pipeline to its existing system offer a cost effective proposal for linking the Mobile Bay reserves with the country's natural gas markets and nationwide pipeline grid. A direct connection with Mobile Bay would help ensure economical and reliable natural gas service well into the future.

Southern states that this application is being submitted in conjunction with the joint filing of Southern and Florida in Docket No. CP87–45–002 in order to extend Southern's pipeline facilities from Mobile Bay to its existing system. Southern requests that the Commission evaluate the joint application and this application in tandem and, accordingly, requests that the Commission consolidate the two dockets into one proceeding.

Additionally, Southern states that Southern Florida, and Tennessee Gas Pipeline Company (Tennessee) have filed with the Commission in Docket No. CP89–464–000 a joint application to construct and operate certain facilities in the Mobile Bay area. As stated therein, the three parties consider that application as their primary and preferred proposal for consideration by the Commission during the "open season" for Mobile Bay pipeline facilities it established in Docket No. CP88–570–000. To ensure eligibility for construction as provided in that proceding, however, Southern has filed this application as well as that in Docket No. CP87–415–002. Upon receipt by Southern, Florida, and Tennessee of the authorization requested in Docket No. CP89–464–000, Southern states it will withdraw this application.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

40. Texas Eastern Transmission Corporation

[Docket No. CP89–512–000]

January 19, 1989.

Take notice that on December 30, 1988, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252 filed an application pursuant to section 7(c) of the Natural Gas Act as amended, and § 157.7 of the Regulations of the Federal Energy Regulatory Commission thereunder, for a Certificate of Public Convenience and Necessity authorizing Applicant to construct and operate facilities to transport up to 287,000 dth per day of natural gas for Applicant's system supply from the Mobile Bay Area to Applicant's existing and proposed pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes a project to construct and operate facilities to permit the transportation of natural gas from the Mobile Bay area to the terminus of a proposed 24-inch line located in Viosca Knoll Area Block 203.

Applicant requests authorization to construct and operate facilities required to connect additional sources of natural gas to be used for Applicant's system supply:

(a) 55 miles of 24-inch pipeline, together with related facilities, extending from the location of existing and/or future Mobile Bay treating plants, located onshore near the West side of Mobile Bay to the terminus of Applicant's proposed pipeline to be located in Viosca Knoll Area Block 203, offshore Louisiana.

(b) 9.0 miles of 12-inch pipeline, together with related facilities, extending from the above proposed 24-inch line in Mobile Area Block 867, offshore Alabama to Mobile Area Block 821, offshore Alabama.

(c) 11.15 miles of 24-inch pipeline looping of Applicant's existing Line No. 40–B–3 from Main Pass Block 95, offshore Louisiana to Applicant's 24-inch line No. 40–B.

(d) Measurement facilities and a compression facility of up to 4,000 horsepower to be located at the tailgate of existing and/or future treating plants, located on the West side of Mobile Bay.

Applicant anticipates that additional reserves from Mobile Bay and adjacent areas will be identified and made available as pipelines are extended into these areas.

Applicant states that a significant amount of the natural gas produced from the Mobile Bay Area is heavy sulphur gas and therefore requires onshore treating to become pipeline quality. The only currently operating onshore treating facility in the Mobile Area is owned and operated by Mobile Oil Exploration and Producing Southeast, Inc. (MOEPSI) and located on the West side of Mobile Bay. Considerable additional treating capacity will be required for the development of the Mobile Bay Area reserves. As indicated in the Petition for Declaratory Order filed in Docket No. CI89–27–000, Exxon proposed to construct a natural gas treating plant which would also be located on the West side of Mobile Bay. Applicant anticipates other treating plants also will be constructed within the immediate vicinity of the existing MOEPSI and planned Exxon plants. Applicant states it is willing to connect its proposed facilities to any treating plant located in this general area. Applicant states it designed the proposed facilities to terminate at the planned Exxon treating plant, but requests authority to connect the proposed facilities to both existing and future treating plants located in that vicinity.

In addition, applicant states reserves have been discovered in the Mobile Bay Area that do not require onshore processing to make them pipeline quality. Applicant's proposed route would provide access to most discoveries already made in the area, including both treated gas and gas not requiring treatment. Applicant proposed to construct facilities to connect reserves owned by Standard Oil Production Company (Standard Oil) in Mobile Bay Area Block 821. Reserves underlying this block are estimated at over 130 Bcf and would require only minor treatment at the platform to make it pipeline quality. Applicant states it is negotiating with Standard Oil regarding the Mobile Area Block 821 reserves and is continuing negotiations with other producers in the Mobile Bay area.

Applicant states that delivery into its system of the volumes of natural gas to be purchased from Mobile Bay Area producers would be accomplished by the construction of a 55-mile, 24-inch pipeline extending from the location of future Mobile Bay treating plants on the west side of Mobile Bay in Mobile County, Alabama to the proposed terminus of Applicant's 24-inch pipeline in Viosca Knoll Area Block 203. Applicant states that construction of the proposed facilities would commence upon receipt of authorization from the Commission. Applicant proposes to complete construction in sufficient time to commence service by November 1, 1991. The proposed facilities would have a design capacity of approximately 287,000 dth of natural gas per day. Applicant would finance the proposed facilities initially from funds on hand or short-term borrowings. Permanent financing would be undertaken as part of Applicant's overall long-term financing program at a later date.

Applicant states that Mobile Bay gas reserves are a significant and important source of future domestic gas supplies and their instant proposal would allow Applicant to extend facilities to this long-term source of supply and thereby expand its portfolio of dedicated natural gas reserves which would be utilized by Applicant to meet existing certificated service obligations. Applicant projects that by 1991 the annual deliverability available from reserves committed to it would be approximately 120 Bcf less than its 700 Bcf estimated market requirements. Applicant would require approximately 1.1 Tcf of annual reserves to meet current certificated sales obligations thus indicating a far greater deliverability deficiency. Applicant states that it maintains an aggressive gas acquisition program in an effort to offset this expected deliverability deficiency and views the Mobile Bay Area reserves as an important source of the gas supplies it would require to satisfy the demands of its customers.

At such times as the capacity of the proposed facilities is not fully utilized, Applicant states it also would provide, on an open access, non-discriminatory basis, interruptible transportation pursuant to its Rate Schedule IT-I, as such rate schedule shall exist from time to time in the future.

Applicant does not propose to establish any new services or rates in this application. Because the volumes to be moved through the proposed facilities are expected to be purchased for Applicant's system supply, Applicant proposes to utilize its existing rate schedules as applicable and related rates, as they exist at the time the services are rendered. To the extent that the facilities are not fully utilized to provide system supply gas, Applicant states it would also provide interruptible transportation service pursuant to its then effective Rate Schedule IT-I.

Applicant proposes that the costs associated with this project be treated for rate purposes on a rolled-in basis to be included in the cost of service of Texas Eastern's subsequent rate cases filed after the new facilities are built. Applicant feels incremental treatment is inappropriate because Applicant proposes to utilize these facilities for acquisition of additional system supplies that would benefit all sales customers of Applicant. Applicant's

proposed facilities would provide a readily available system that would make possible the delivery of significant volumes of Mobile Bay Area natural gas into the interstate natural gas market.

Applicant submits that construction of the proposed facilities would be an effective and cost-efficent method of expanding Applicant's pipeline system to the benefit of its customers, and the proposed 24-inch line is a normal and logical extension of Applicant's existing and proposed gas supply facilities which would extend into an area where Applicant currently has no facilities and adds an additional advantage of assuring continued heavy utilization of Applicant's existing offshore Main Pass System.

Applicant states that the proposed pipeline could provide interruptible transportation opportunities for Applicant's existing or new customers, thus allowing these customers access to a wider variety of natural gas sources.

Applicant states that the route selected for the proposed pipeline was selected to avoid potentially environmentally sensitive areas. The pipeline follows a route which, within engineering feasibility parameters, maximizes environmental protection. Applicant states that installation and operation of the proposed facilities will not have a significant environmental impact and granting the requested authorization will not constitute a major federal action significantly affecting the quality of the human environment.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

41. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-522-000]

January 19, 1989.

Take notice that on December 30, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-522-000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing (1) construction and operation of certain pipeline and compression facilities, and (2) transportation of natural gas through such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Transco is applying for a certificate to construct and operate certain pipeline and compression facilities which would enable the new gas reserves which have been discovered in the Mobile Area, Viosca Knoll Area and Main Pass Area East Addition, offshore Alabama, to move to markets. Transco proposes to construct and operate the following:

(1) 17.97 miles of 24-inch diameter pipeline from an onshore interconnection with Transco's existing pipeline near Coden, Mobile County, Alabama to a junction platform to be constructed by Transco in Block 109, Mobile Area. Transco would construct and operate separation and dehydration facilities on such junction platform. The facilities described in this Paragraph (1) will be hereinafter referred to as the "Phase I facilities". Transco plans to construct the Phase I facilities during the 1989 construction season. It is anticipated that producers and/or others would construct gathering lines to bring gas to the junction platform from Blocks 109, 908, and 960.

(2) 27.07 miles of 20-inch diameter pipeline from the Block 109 junction platform to a junction platform to be constructed by Transco in Block 206, Viosca Knoll Area, and 1,200 HP of onshore compression. Transco would construct and operate separation and dehydration facilities on such junction platform. The facilities in this Paragraph (2) will be hereinafter referred to as the Phase II facilities". Transco plans to construct the Phase II facilities during the 1990 construction season. It is anticipated the producers and/or others will construct gathering lines to bring gas to the junction platform from Blocks 203, 209, and 294, Viosca Knoll Area and from Block 187, Main Pass Area East Addition.

(3) 30.74 miles of 20-inch diameter pipeline from the Block 206 junction platform to a junction platform to be constructed by Transco in Block 249, Main Pass Area East Addition and 11,000 HP of onshore compression. Transco would construct and operate separation and dehydration facilities on such junction platform. The facilities described in this Paragraph (3) will be hereinafter referred to as the "Phase III facilities". Transco plans to construct the Phase III facilities during the 1991 construction season. It is anticipated that producers and/or others would construct gathering lines to bring gas to the junction platform from Block 280, Main Pass Area East Addition and Block 698, Viosca Knoll Area.

Transco states that the maximum capacity of Phase I under the pressure conditions shown in Exhibit G of this proceeding is 231,235 Mcf per day; that the maximum capability of Phase II (including the Phase I facilities) under the pressure conditions shown in Exhibit G is 457,100 Mcf per day; and that the maximum capability of Phase III (including the Phases I and II facilities) under the pressure conditions shown in Exhibit G is 515,507 Mcf per day.

Transco states that the estimated facilities cost of Phase I is $23,126,884; of Phase III is $21,565,871; and of Phase II is $29,445,689, for a total project cost of $74,138,444. Transco states that the proposed facilities would be financed initially through short-term loans and funds on hand, and permanent financing would be undertaken as part of Transco's overall long-term financing program at a later date.

Transco further states that it would transport gas for others through subject facilities. Transco states it is willing to transport for all shippers requesting service. Transco states that it does not currently know the identity of all shippers for which it would render transportation services because such shippers may be a mix of (1) the producers that own the reserves discovered in the offshore areas described above, (2) local distribution companies, (3) pipeline companies, (4) end users, and (5) marketers. Transco states it would provide such transportation services pursuant to its existing Rate Schedules IT (interruptible) and FT (firm).

It is stated that Phases I, II and III of the proposed facilities would enable the new gas reserves which have been discovered in the offshore areas described (all commonly referred to as the "Mobile Bay Area") to move to markets. The gas discoveries in the Mobile Bay Area have been described as some of the most potentially significant discoveries in the Lower 48 States during the past 20 years. Proven and probable gas reserves in such area are estimated to be approximately 5.4 trillion cubic feet. Producers in the Mobile Bay area are now nearing the stage where they will be ready to commerce production of their substantial gas reserves. Transco states that its proposed Phases I, II and III would enable such reserves to flow to markets in a timely manner. Transco states that because of declining drilling in recent years, gas reserves in the United States are depleting; therefore, it is stated that the Mobile Bay supplies will be a signficant and timely addition to reserves available for gas customers in the United States. Transco submits that the public convenience and necessity require that Transco's requested authorizations be granted.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

42. Florida Gas Transmission Company, Southern Natural Gas Company and Tennessee Gas Pipeline Company)

[Docket No. CP89-464-000]

January 19, 1989.

Take notice that on December 21, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, Southern Natural Gas Company (SNG), P.O. Box 2563, Birmingham, Alabama 35202-2563, and Tennessee Gas Pipeline Company (TGP), P.O. Box 2511, Houston, Texas 77252, (Applicant(s)), filed in Docket No. CP89-464-000 pursuant to sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act, for authorization to construct and operate certain pipeline and related facilities and approval to acquire and abandon certain leaseholds, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern and Tennessee propose to construct and operate a total of approximately 52.5 miles of 36-inch pipeline, consisting of 51.3 miles and 0.6-mile segments, together with metering and appurtenant facilities, in Mobile County, Alabama to connect reserves to be produced in the vicinity of Mobile Bay. The proposed pipeline (Mobile Bay Pipeline) would extend from a point near Bayou La Batre, Alabama on the west bank of Mobile Bay, where it would connect with the tailgate of the gas processing plants of Mobile Oil Exploration and Producing Southeast, Inc. (MOEPSI) and the plants proposed to be constructed by Jubilee Pipeline Company and Shell Offshore Inc., to points on FGT's 24-inch and 30-inch mainlines, approximately seven miles west of Citronelle, all in Mobile County, Alabama. The Mobile Bay Pipeline would also connect to the gas processing plant to be constructed by Exxon Corp. (Exxon), to be located west of the junction of Fowl River and East Fowl River, approximately 3 miles north of MOEPSI's plant near the west bank of Mobile Bay.

The Mobile Bay Pipeline is proposed to connect gas reserves to be produced generally from the Mobile Bay and Viosca Knoll Areas, offshore Alabama. Applicants state that estimates of proven and probable reserves in the Mobile Bay Area range from 3.5 Tcf to 10 Tcf, and it is anticipated that over 1,000 MMcf/d may be produced within a few years from the deep Jurassic-Norphlet formation alone. Estimates of the shallow Miocene production currently indicate a maximum production of 443 MMcf/d, Applicants state, and proven and probable reserves are now estimated at 680 Bcf.

Applicants state the proposed pipeline is designed to transport 900 MMcf of natural gas per day, with throughput available to the proposed system in the first full year of production expected to be approximately 310 MMcf/d, increasing to over 900 MMcf/d by the third full year of production.

The total estimated cost of the Mobile Bay Pipeline is $47.1 million. TGP proposes to finance its portion from general funds and/or revolving credit, SNG states its exact plan of financing has not been determined. Applicants state that the facilities are scheduled to be constructed and in service by October 1, 1990 assuming all regulatory approvals are received before October 1, 1989.

Applicants also request approval of the following activities: (1) For Tennessee and Southern to abandon by lease, and FGT to acquire, a total firm capacity of the Btu equivalent of 300 MMcf/d in the Mobile Bay Pipeline; (2) for FGT to abandon by lease, and Southern and Tennessee to acquire, a total firm capacity of the Btu equivalent of 600 MMcf/d in a portion of FGT's system west of the FGT-Mobile Bay Pipeline interconnection; (3) for Southern and Tennessee to include in their respective rate bases as gas plant-in-service the lease payments paid to FGT for such capacity and their contributions in aid of construction and related taxes paid to FGT for reimbursement of the costs of certain facilities required by FGT, in connection with such leases; and for FGT to include, as accredit to its rate base, such lease payments; (4) for Southern's and Tennessee's investment in the Mobile Bay Pipeline and leased capacity (including related facilities) in FGT's lines to receive rolled-in treatment for rate purposes; (5) for the cost free exchange of leases, covering 150 MMcf/d of capacity, between FGT and Southern and between FGT and Tennessee; (6) for FGT, Southern, and Tennessee to construct and operate certain interconnecting facilities—by Southern with FGT at Franklinton, Louisiana; by Tennessee with FGT at Carnes, Mississippi; and by FGT with the Mobile Bay Pipeline, and with Southern and Tennessee; and (7) pre-granted abandonment and reacquisition of the leased capacity upon termination of the Lease Agreements between the parties. In addition, if approval is required, FGT requests authorization to back-flow gas west of the proposed FGT-Mobile Bay Pipeline interconnect located in Mobile County, Alabama.

With regard to the proposed leases of capacity, FGT proposes to lease firm capacity in a portion of its system to Southern and Tennessee. The respective capacity rights to be leased by FGT would equal Southern's and Tennessee's unleased capacity in the proposed Mobile Bay Pipeline of 300 MMcf/d each. Although FGT would continue to operate the facilities, Southern and Tennessee propose to move gas purchased for system supplies and to render open access transportation services by means of their leased capacity in FGT's line. Southern would lease capacity from FGT between the proposed FGT-Mobile Bay Pipeline interconnect and the proposed FGT-Southern interconnect at Franklinton, Louisiana; while Tennessee would lease capacity between the proposed FGT-Mobile Bay Pipeline interconnect and the proposed FGT-Tennessee interconnect at Carnes, Mississippi.

It is proposed that in exchange for the lease by FGT of 150 MMcf/d capacity each to Southern and Tennessee, they would each lease 150 MMcf/d of firm capacity (a total of 300 MMcf/d) to FGT in the Mobile Bay Pipeline, and in exchange for FGT's lease of an additional 150 MMcf/d each to Southern and Tennessee, they would each pay FGT the sum of $9 million, for a total of $18 million.

No new rates or services are proposed by Applicants, and each would render transportation services under the terms and conditions of its respective FERC Gas Tariff.

Applicants state that the Mobile Bay Area is expected to prove a significant source of long-term domestic gas supplies in the near future, and the proposed pipeline would provide facilities to move this gas to other pipeline systems for distribution to markets throughout the country.

Applicants state that approval of the instant proposals would allow the Mobile Bay Area gas to be made available both to shippers and to sales customers of each Applicant on a competitive basis, which should maximize its efficient allocation. By using existing facilities to the fullest extent possible, Applicants assert, the cost of making Mobile Bay gas available is reduced, resulting in a lower overall cost at the burner tip. If the proposals herein are approved, Applicants assert they would realize a net capital investment benefit of from $25 to $30 million each, which would accrue to the ratepayers of each Applicant. Further,

Applicants submit that the utilization of existing facilities minimizes the construction of new facilities, thereby reducing the impact on the environment.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

43. Gateway Pipeline Company

[Docket No. CP89-471-000]

January 19, 1989.

Take notice that on December 22, 1988, Gateway Pipeline Company (Gateway) 600 Travis, Houston, Texas 77002, filed in Docket No. CP89-471-000, an application pursuant to section 7(c) of the Commission's Regulations, for a certificate of public convenience and necessity authorizing Gateway to construct, own, and operate a natural gas pipeline and appurtenant facilities under the optional procedures contained therein, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Gateway filed an application requesting authorization to construct and operate a total of approximately 25.75 miles of 30-inch and 20-inch diameter pipeline in Mobile County, Alabama. Pursuant to § 157.103(f)(1) of the Commission's Rules and Regulations, Gateway requests pregranted authority to abandon any facilities authorized under this certificate application that Gateway determines are no longer needed upon the termination of Gateway's contractual obligations underlying the service. Gateway states that the purpose of this proposed pipeline is to transport natural gas produced in the Mobile Bay Area from gas treatment plants to United Gas Pipe Line Company's (United) interstate pipeline system.

Gateway proposes to construct the pipeline and related facilities in order to provide open-access transportation service for all potential shippers of Mobile Bay Area gas. Gateway states that the proposed pipeline would connect natural gas treatment plants in Mobile County, Alabama, with United's existing Lirette, Louisiana, to Mobile, Alabama, 30-inch pipeline at a point in Mobile County. The estimated cost to construct these facilities if financing $20,413,000. Gateway proposes to finance this proposed construction using funds on hand. Gateway states that additional compression facilities are not anticipated as the expected pressures from each of the three treatment plants would be sufficient to deliver gas into United's system.

Gateway states that on May 13, 1988, it filed an application under section 7(c) of the NGA in Docket No. CP88-393-000, requesting authorization to construct and operate approximately 25.75 miles of 30-inch and 20-inch diameter pipeline plus related facilities. Since then, the Commission has announced its intention to examine the Gateway project and several other proposed Mobile Bay Area pipelines in 1989, if their certificate applications are completed by December 30, 1988. Gateway states it remains convinced that its 7(c) application filed in Docket No. CP88-393-000 represents an economic alternative for transporting Mobile Bay Area gas volumes to the Nation's pipeline grid. Gateway believes that the optional certificate procedures would provide an expeditious alternative for constructing the proposed pipeline as it will hasten what otherwise may be lengthy consideration of its current abbreviated 7(c) certificate application.

Although Gateway states it intends to build only one pipeline in the Mobile Bay Area, Gateway emphasizes that this optional certificate application is not intended to prejudice or delay Gateway's application pending in Docket No. CP88-393-000. By concurrently applying for and seeking an optional certificate along with the traditional 7(c) application, Gateway states it intends to maintain both certificate options while permitting expeditious Commission review and action in each docket. Gateway states that upon approval of the project in either docket, Gateway will withdraw its application in the pending docket.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1671 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-50-000]

Florida Gas Transmission Co.; Proposed Changes in Rates and Charges

January 19, 1989.

Take notice that on January 13, 1989, Florida Gas Transmission Company (FGT) tendered for filing proposed changes in its FERC Gas Tariff, Volume Nos. 1, 2, and 3, pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717(c) and the Commission's regulations thereunder to reflect a major rate increase as defined in 18 CFR 154.63, to be effective February 13, 1989.

FGT states that this filing is one of four interrelated proposals that FGT is filing concurrently to provide self-

implementing, open-access transportation and to restructure its rates and contractual relationships with its customers. FGT states that it has filed in Docket No. CP89–555 for a blanket certificate pursuant to Order Nos. 436 and 500, and Subpart G of the Commission's Regulations, and for approval of new transportation Rate Schedules FTS–1, PIT–1 and ITS–1. FGT states that it also has filed in Docket Nos. CP68–179, *et al.*, to permit its customers to establish appropriate certificated levels of service, including daily and annual contract quantities for firm service. FGT states that all existing customers will be permitted to renominate levels of contract quantities and D–2 billing determinants by March 15, 1989. Jurisdictional sales service will be provided pursuant to revised Rates Schedules G and I and a new Rate Schedule SGS for customers purchasing less than 11,000,000 therms of natural gas on an annual basis.

FGT states that it also has filed in Docket No. CP89–556 for a blanket certificate of public convenience and necessity to make interruptible sales of natural gas in interstate commerce to on- and off-system customers pursuant to a new Rate Schedule ISS–1.

FGT states that the rates and charges filed in this docket are based on the overall cost of service for the test period consisting of actual experience for the twelve months ended September 30, 1988, adjusted for known and measurable changes through June 30, 1989. FGT states that the filing reflects an increase in the total cost of service for both jurisdictional and nonjurisdictional service, excluding purchase gas costs, of approximately $31.8 million.

FGT states that it has continued the historical practice of cost allocation embodied in Opinion Nos. 611 and 611–A issued on February 16, 1972 and January 19, 1973, respectively. However, FGT states that it has adopted the modified fixed variable method for cost classification and rate design.

FGT states that the proposed restructured rates being filed are designed to comply with the ratemaking principles embodied in Order Nos. 436 and 500. Firm jurisdictional sales and transportation will include demand/commodity rate design. Rates for jurisdictional preferred interruptible sales and transportation will include a commodity charge and an Entitlement Charge to recover a portion of the fixed charges associated with this service.

FGT states that although it does not propose time-differentiated rates, it has included seasonally-differentiated maximum daily contract quantities for each customer receiving firm service.

FGT states that it also has submitted revised tariff sheets to make its election under § 154.310(d) of the Commission's Regulations to utilize a unit of sales methodology in its PGA clause because it is more appropriate in an open access environment. These tariff sheets also include the revised definition of gas costs that is currently pending before the Commission in the Stipulation and Agreement filed by FGT in Docket No. RP89–44–000, which would permit FGT to recover through its PGA mechanism a portion of the fixed charge allocation of take-or-pay costs flowed through by FGT's upstream supplier, Southern Natural Gas Company.

FGT states that it also has submitted a pro forma tariff sheet which would establish a new section 26 to the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1, which would permit FGT to revise its jurisdictional sales and transportation rates to reflect increases or decreases in the Federal income tax rate.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation services under its FERC Gas Tariff, to its affected direct sales customers and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before January 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1682 Filed 1–24–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–26–001]

Natural Gas Pipeline Co. of America; Filing

January 18, 1989

On January 9, 1989, Natural Gas Pipeline Company of America (Natural) filed Substitute Alternate Forty-third Revised Sheet No. 5A to its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that this tariff sheet is being filed to correct a typographical error reflected on Alternate Forty-third Revised Sheet No. 5A included in its original filing on December 30, 1988. Natural states that the total rate as filed did not change as a result of this calculation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission' Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before January 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1672 Filed 1–24–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–29–011]

Odeco Oil & Gas Co.; Application for Extension of a Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

January 19, 1989.

Take notice that on January 9, 1989, Odeco Oil & Gas Company (Odeco) of P.O. Box 61780, New Orleans, Louisiana 70161, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term abandonment and blanket limited-term certificate with pregranted abandonment in Docket No. CI85–2–9–010 to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By order issued March 31, 1988, in Docket No. CI85–685–003, *et al.*, the Commission extended Odeco's blanket limited-term abandonment and blanket limited term certificate with pregranted abandonment for a term expiring March

31, 1989. The Commission also consolidated Odeco's authorization in Docket No. CI87-776-000 pertaining to the sale of contractually uncommitted gas in Docket No. CI85-29-010 and extended it for a term expiring March 31, 1989. Odeco now seeks to extend such authorizations for an unlimited term.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Odeco to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1673 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-154-000]

Shell Offshore, Inc.; Petition for Declaratory Order

January 18, 1989.

Take notice that on December 5, 1988, Shell Offshore Inc. (SOI) filed a petition requesting the Commission to issue a declaratory order stating that it has no jurisdiction over certain facilities SOI proposes to construct. Those facilities consist of a bundle of pipelines that will deliver sour gas produced from the Norphlet formation underlying Blocks 113 and 132 in the Northwest Gulf Unit area of Mobile Bay in Alabama state waters (Fairway Field) to an onshore gas treating facility which will be constructed and operated by SOI in South Mobile County, Alabama. In the future, SOI may extend the Fairway Field system to gather gas from other nearby leaseholds in Alabama state waters. SOI contends that the facilities are gathering facilities under section 1(b) of the Natural Gas Act (NGA) and are therefore exempt from the certificate requirements of section 7(c) of the NGA. Further, SOI contends that the facilities perform a gathering function under the primary function test set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). SOI requests expedited consideration of its petition because of the relationship between the subject facilities and the proceedings in Docket No. CP88-570-000.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, within 15 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1674 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-52-000]

West Texas Gathering Co.; Tariff Filing

January 18, 1989.

Take notice that on January 10, 1989, West Texas Gathering Company, ("West Texas") 550 Westlake Park Blvd., Suite 170, Houston, Texas 77079, submitted for filing Original Sheet Nos. 1-37 of its FERC Gas Tariff, Revised Original Volume No. 2. The Tariff filing sets forth rates, terms and conditions for gas transportation service.

West Texas states that its tariff filing is designed to open access to West Texas' services, within the contemplation of Part 284 of the Commission's Regulations, 18 CFR Part 284. West Texas' tariff filing sets out transportation rates which include minimum and maximum rates separately identifying cost components attributable to transportation and gathering costs, includes a cost basis for rates, and expresses rates on an MMBtu basis, all as required by the Commission's Regulations.

West Texas states that these tariff sheets are filed to be made effective on January 10, 1989. West Texas has requested such waiver of the Commission's regulations as may be required in order to permit the proposed effective date.

On January 10, 1989, West Texas petitioned the Commission for waiver of the filing fee required by Part 381 of the Commission's Regulations, 18 CFR Part 381, to be submitted with West Texas' open access tariff filing of January 10, 1989.

West Texas originally filed its application for authority to commence open-access transportation and accompanying tariff sheets on November 21, 1988. The Commission accepted the filing feet but, by order dated December 21, 1988, rejected West Texas' tariff filing, citing numerous technical inconsistencies with Commission policy and regulations. West Texas states that the refiling of its open access tariff is in the nature of a nonsubstantial amendment to its initial November 21, 1988 filing, as defined in § 381.110 of the Commission's Regulations, 18 CFR 381.110.

West Texas points out that it is subject to "economic hardship" sufficient to justify waiver of the filing fee for its tariff filing. West Texas states that it is a small company depending on revenues from gathering services and that requiring West Texas to pay another filing fee for its January 10 filing would place an undue and disproportionate burden on West Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before January 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1675 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2525, Wisconsin]

Wisconsin Public Service Corp.; Intent To File an Application for a New License

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service

Corporation, the existing licensee for the Caldron Falls Hydroelectric Project No. 2525, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2525 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette and Oconto Counties, Wisconsin. The principal works of the Caldron Falls Project include a 30-foot-high, 1,250-foot-long concrete dam; a reservoir of 1,180 acres at elevation 982.0 feet NGVD; two 10-foot-diameter steel penstocks; a powerhouse with an installed capacity of 6,400 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307–9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1676 Filed 1–24–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2581, Wisconsin]

Wisconsin Public Service Corp.; Intent To File An Application For A New License

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Peshtigo Hydroelectric Project No. 2581, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2581 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette County, Wisconsin. The principal works of the Peshtigo Project include a 20-foot-high, 357.5-foot-long concrete gravity dam; a reservoir of 460 acres at elevation 603 feet NGVD; a powerhouse with an installed capacity of 584 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307–9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1677 Filed 1–24–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2522, Wisconsin]

Wisconsin Public Service Corp.; Intent To File An Application For A New License

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Johnson Falls Hydroelectric Project No. 2522, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2522 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette County, Wisconsin. The principal works of the Johnson Falls Project include a 509-foot-long dam with a concrete section and an earthfill section; a reservoir of 130.5 acres at elevation 814.0 feet NGVD; a powerhouse with an installed capacity of 3,520 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307–9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1678 Filed 1–24–89; 8:45 am]

BILLING CODE 6717–01–M

Wisconsin Public Service Corp.; Intent to File an Application for a New License

[Project No. 2433, Wisconsin]

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Grand Rapids Hydroelectric Project No. 2433, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2433 was issued effective August 1, 1965, and expires December 31, 1993.

The project is located on the Menominee River in Marinette County, Wisconsin and Menominee County, Michigan. The principal works of the Grand Rapids Project include a dam with a 24-foot-high, 490-foot-long concrete section and a 900-foot-long earthfill section; a reservoir of 300 acres at elevation 664.75 feet NGVD; a 3,200-foot-long power canal; a powerhouse with an installed capacity of 7,020 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the

rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307–9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood W. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1679 Filed 1–24–89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2595, Wisconsin]

Wisconsin Public Service Corp.; Intent To File an Application for a New License

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the High Falls Hydroelectric Project No. 2595, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2595 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette County, Wisconsin. The principal works of the High Falls Project include a 38-foot-high, 878-foot-long concrete dam with earth dikes extending 1,425 feet east and 2,600 feet west from the dam; a reservoir of 1,670 acres at elevation 897.0 feet NGVD; a powerhouse with an installed capacity of 7,000 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307–9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1680 Filed 1–24–89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of December 16 Through December 23, 1988

During the Week of December 16 through December 23, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Inadvertently omitted from earlier listes have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

January 17, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 16 through December 23, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 16, 1988	Cone Mills Corporation, Greensboro, NC	RR272-21	Request for Modification/Rescission. If granted: The November 14, 1988 Decision and Order issued to Cone Mills Corporation (Case No. RF272-22264) would be rescinded and the firm would receive a refund in the crude oil refund proceeding.
Dec. 19, 1988	Anthony Mechanical Contractor, Kansas City, KS	KFA-0249	Appeal of an information Request Denial. If granted: The November 14, 1988 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded and Anthony Mechanical Contractor would receive access to information regarding the bid submitted by Consolidated Design, Inc.
Dec. 21, 1988	Economic Regulatory Administration, Washington, DC.	KRZ-0088	Interlocutory. If granted: The Office of Hearings and Appeals would amend the April 27, 1984 Proposed Remedial Order (HRO-0230) issued to Compton Corporation and Gratex Corporation to dismiss Gratex Corporation as a party in the proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
11/28/88	Amoco/Oklahoma	RQ251-489.
11/28/88	Vickers/Oklahoma	RQ1-490.
11/28/88	OKC/Oklahoma	RQ12-491.
12/16/88 through 12/23/88	Crude Oil Refund, applications received.	RF272-75161 through RF272-75176.
12/16/88 through 12/23/88	Exxon Refund, applications received.	RF307-7195 through RF307-7299.
12/16/88 through 12/23/88	Atlantic Richfield Co., applications received.	RF304-7548 through RF304-7579.
12/16/88 through 12/23/88	Murphy Oil Refund, applications received.	RF309-679 through RF309-699.
12/19/88	Jarrell Oil Co., Inc	RF313-3.
12/19/88	Bee's Super Service, Inc.	RF313-4.
12/19/88	Kern's Car Care Center.	RF300-10644.
12/19/88	Vernelle Steinke	RC272-15.
12/20/88	Amoco I/New York	RQ21-492.
12/20/88	Amoco II/New York.	RQ251-493.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
12/20/88	Richards Fuel Oils, Inc.	RF313-5.
12/20/88	Davis Oil Co	RF313-6.
12/20/88	Econoco, Inc	RF313-7.
12/20/88	Cato's Crown Service Station.	RF313-8.
12/21/88	Heflin's Garage	RF313-9.
12/21/88	Capitol Oil Co., Inc	RF313-10.
12/21/88	Cooper Oil Co	RF313-11.
12/21/88	Wiener's Gulf Service #1.	RF300-10645.
12/21/88	Wiener's Gulf Service #2.	RF300-10646.
12/21/88	Berwick Bay Oil Co	RF314-3.
12/21/88	Delta Oil Co., Inc	RF314-4.
12/22/88	Vicksburg Petroleum Products.	RF314-2.
12/22/88	Kivett Oil Co	RF313-12.

[FR Doc. 89-1687 Filed 1-24-89; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of December 23 Through December 30, 1988

During the Week of December 23 through December 30, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 17, 1989.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 23 through Dec. 30, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 27, 1988	Restrepo & Associates, El Paso, TX	KFA-0250	Appeal of an Information Request Denial. If Granted: The Nov. 7, 1988, Freedom of Information Request Denial issued by the Chief of FOI and Privacy Acts, would be rescinded and Restrepo & Associates would receive access to information relating to Mr. Jose Arreola's allegations and statements attributed to DOE/Albuquerque Operations Office employee Mr. Roy Chavez.
Dec. 29, 1988	Osan Petroleum Co., Inc., Macon, GA	KEE-0169	Exception to the Reporting Requirements. If Granted: Osan Petroleum Co., Inc. would no longer be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Dec. 30, 1988	Barton J. Bernstein, Stanford, CA	KFA-0251	Appeal of an Information Request Denial. If Granted: The Dec. 9, 1988, Freedom of Information Request Denial would be rescinded and Barton J. Bernstein of Stanford University would receive access to a complete copy of Edward Teller's Comments on the Bethe Thermonuclear History, Aug. 14, 1952.

REFUND APPICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
10/21/87	Ram Fuel Corp	RF300-10649.
10/21/87	do	RF300-10650
10/21/87	L.S. Riggins Oil Co	RF300-10651.
7/5/88	AP Propane, Inc	RF272-75187.
7/5/88	Amerigas, Inc	RF272-75188.
12/23/88 through 12/30/88	Murphy Oil Refund, applications received.	RF309-700 through RF309-717
12/23/88 through 12/30/88	Atlantic Richfield Co., applications received.	RF304-7580 through RF304-7603.
12/23/88 through 12/30/88	Exxon Refund, applications received.	RF307-7300 through RF307-7382.
12/27/88	Monmouth College	RF272-75177.
12/27/88	Concrete, Inc	RF272-75178.

REFUND APPICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
12/27/88	Chappell E-Z Go, #33.	RF272-75179.
12/27/88	Chappell E-Z Go, #43.	RF272-75180.
12/27/88	Botsford Ready Mix Co.	RF272-75181.
12/27/88	Sherman Conrad	RF300-10647.
12/27/88	Three M Service Station.	RF313-13.
12/29/88	Willie's E-Z Go	RF272-75189.
12/30/88	Bizzack Bro. Construction.	RF272-33336.
12/30/88	Gold Bond Building Products.	RF272-63111.

REFUND APPICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
12/30/88	The L.E. Meyers Co.	RF272-64347.
12/30/88	Las Vegas Paving Construction.	RF272-74755.
12/30/88	Arundel Asphalt Products.	RF272-74858.
12/30/88	MacMillan's Mobil	RF272-75190.
12/30/88	SOS Truck Stop, Inc.	RF314-5.
12/30/88	CLK Assoc. Ltd	RF313-14.

[FR Doc. 89-1686 Filed 1-24-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of July 4 through December 2, 1988

During the period of July 4 through December 2, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings [10 CFR Part 205, Subpart D], any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays.

January 17, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Guam Energy Office, 11/28/88, KEF-0167

The Guam Energy Office filed an Application for Exception from the provisions of the Institutional Conservation Program (ICP), 10 CFR Part 455. If the exception request were granted, Guam would receive an exception from the requirement of 10 CFR Part 455, that buildings eligible for grants under the ICP be heated or cooled by mechanical means. On November 28, 1988, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be granted.

[FR Doc. 89-1685 Filed 1-24-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of November 14 through November 18, 1988

During the week of November 14 through November 18, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Intercontinental Oil Company, Inc., 11/16/88, KRO-0660

Intercontinental Oil Company, Inc. filed a Notice of Objection to a Proposed Remedial Order (PRO) that the DOE's Economic Regulatory Administration (ERA) issued to the firm on October 6, 1987. The firm did not, however, file a Statement of Objections. In the PRO, the ERA found that the firm had committed violations of, inter alia, 10 CFR 212.131 (the certification rule), § 212.183 (the crude oil resale rule), and § 212.186 (the layering rule). After reviewing the PRO and the firm's Notice of Objection, the DOE concluded that the PRO stated a prima facie case of regulatory violations that were not rebutted by the Notice of Objection. The DOE further concluded, however, that the miscertification portion of the PRO did not contain sufficient findings to support the full violation amount sought. Accordingly, the DOE remanded this portion of the PRO to the ERA and issued the remainder of the PRO as a final Remedial Order.

Petition for Special Redress

Maryland 11/15/88, KEG-0035

The DOE issued a Decision and Order concerning the Petition for Special Redress filed by the State of Maryland. Maryland sought approval to use Stripper Well funds for a project which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's proposal to use $49,500 for the Howard County Department of Public Works' Water and Energy Conservation Program, a project to inspect plumbing fixtures, repair water leaks, and install water saving retrofit kits in low income and elderly residences. The DOE determined that the residences would use less water, saving energy which would otherwise be used by Howard County and its citizens to pump, purify, and heat water. The DOE also found that the project was timely and part of a well-balanced restitutionary plan. In conclusion, the DOE found that Maryland's program was permissible under the terms of the Settlement Agreement and OHA precedent. Accordingly, Maryland's Petition for Special Redress was approved.

Refund Applications

Alpo Petfoods, Inc., et al., 11/14/88, RF272-19843, et al.

The DOE issued a Decision and Order denying nine Applications for Refund submitted in the crude oil refund proceeding. The DOE determined that each applicant had waived its rights to a Subpart V crude oil refund when it filed for a refund from the Surface Transporters Escrow account created by the Stripper Well Settlement Agreement. Accordingly, the DOE concluded, each applicant was ineligible to receive a Subpart V crude oil refund.

Aminoil U.S.A., Inc./Amerada Hess Corporation et al., 11/16/88, RF139-178, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed in the Aminoil U.S.A., Inc. special refund proceeding. In considering the Applications, the DOE noted that all of the applications were filed over three years after the deadline established in the Aminoil proceeding. The DOE found that the applications were filed by firms and/or a representative with experience before the DOE and that eleven of the applications were incomplete upon filing. Under these circumstances and because the proceeding is approaching completion, the applications were denied.

Aminoil U.S.A., Inc./Evans Oil & Gas, Inc. Williams Gas Service, 11/15/88, RF139-100, RF139-177

The DOE issued a Decision and Order concerning Applications for Refund filed by Evans Oil & Gas, Inc. and Williams Gas Service in the Aminoil U.S.A., Inc. special refund proceeding. Evans was a direct purchaser of Aminoil products and made a demonstration of injury which showed that it absorbed Aminoil price increases, including any overcharges, in an amount in excess of its maximum volumetric refund. After examining the firm's application and

supporting documentation, the DOE concluded that Evans should receive a refund of $718,594, representing $405,696 in principal and $312,898 in interest. Williams, an indirect purchaser of Aminoil products resold by Evans, stated, as the basis for its claim, price increases which were alleged to have been implemented by Evans (rather than Aminoil) prior to both the period of Federal price regulations and the Aminoil consent order period. Since these alleged price increases could not have constituted violations and, in any case, were not Aminoil increases, the Williams claim was denied.

Arnold A. Spindler, et al., 11/18/88, RF272-33619, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 16 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for various activities, including farming, manufacturing, and heating public school facilities, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $1,487.

Atlantic Richfield Company/Belen Butane Supply, Inc., 11/17/88, RF304-687

The DOE issued a Decision and Order concerning an Application for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding by Belen Butane Supply, Inc., a reseller. The applicant requested a refund based on purchases of 20,647,810 gallons of ARCO propane. The applicant did not attempt to demonstrate injury and elected to limit its refund to 41% of its full volumetric allocation of the ARCO consent order funds. The refund granted in this Decision was $7,832 ($6,222 in principal and $1,610 in interest).

Atlantic Richfield Company/ Commissioners of Berk County et al., 11/16/88, RF304-901, et al.

The DOE issued a Decision and Order concerning 65 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As end-users of reseller/retailers claiming refunds of less than $5,000 in principal, each applicant was presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds of $74,241 ($58,982 in principal and $15,259 in interest).

Atlantic Richfield Company/Earl R. Kimble et al., 11/14/88, RF304-475, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were resellers or retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $1,991 ($1,582 in principal and $409 in interest).

Central Louisiana Electric Co. et al., 11/14/88, RF272-27830, et al.

The DOE issued a Decision and Order denying 12 Applications for Refund in the crude oil refund proceeding. Each of the applicants was a utility which also participated in the Stripper Well Utilities Escrow. In receiving money from the Stripper Well Utilities Escrow, each of the applicants signed an irrevocable waiver which rendered it ineligible to participate in any future refund proceedings involving crude oil monies, including the OHA's Subpart V crude oil refund proceeding. Accordingly, the 12 Applications for Refund were denied.

Easton Utilities Commission, City of Holyoke Gas & Electric Dep't, Taunton Municipal Lighting District, 11/17/88, RF272-8609, FR272-8815, FR272-9474

The DOE approved Subpart V crude oil refunds for three municipal utilities in the business of supplying electrical power and/or natural gas. The DOE considered comments which contended that the utilities were state entities, and that state entities could only receive refunds pursuant to the portion of the Stripper Well Settlement Agreement that reserved 80% of the fund for governmental agencies. The DOE found that there was no showing that the applicants were state entities and that, in any event, the states did not waive their right to direct restitution with respect to their own purchases of refined products. The refunds approved totalled $46,253.

Exxon Corporation/Daniels Oil Company, Inc., Roy A. Breaud, Kunkle Oil Co., 11/14/88, RF307-2124, FR307-2467, FR307-2588

The DOE issued a Decision and Order concerning three Applications for Refund files in the Exxon Corporation special refund proceeding. The applicants, wholesale distributors of Exxon products, each had an allocable share in excess of $5,000. Each applicant was eligible to receive as its refund the larger of $5,000 or 40% of its allocable share up to $50,000. Each applicant was granted a refund of $5,000 plus interest. The sum of the refunds granted in this Decision is $17,040 ($15,000 in principal and $2,040 in interest).

Exxon Corporation/George Hodak et al., 11/18/88, FR307-2303, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund files in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $10,078 ($8,816 in principal and $1,262 in interest).

Exxon Corporation/Shark Hills Exxon et al., 11/16/88, FR307-3700, et al.

The DOE issued a Decision and Order concerning 72 Applications for Refund files in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $50,556 ($44,228 in principal and $6,328 in interest).

Exxon Corporation/William Ferguson et al., 11/14/88, FR307-1652, et al.

The DOE issued a Decision and Order concerning 36 Applications for Refund files in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $41,873 ($36,631 in principal and $5,242 in interest).

Gary's Shell Service, Lindsey Oil Corporation, 11/14/88, FR272-9095, FR272-9168

The DOE issued a Decision and Order denying two Applications for Refund files in connection with the Subpart V crude oil refund proceeding. Each applicant was either a reseller or a retailer during the period August 19,

1973 through January 27, 1981. Because neither of the applicants demonstrated that it was injured due to crude oil overcharges, both were ineligible for a crude oil refund.

Getty Oil Company/DeMeyers Service Station, 11/17/88, RF265–2683

DeMeyers Service Station (DeMeyers) filed an application for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. DeMeyers documented the volume of the Getty motor gasoline which it purchased indirectly through the Don Sheetz Oil Company, a Getty jobber. Utilizing the procedures outlined in *Pioneer Corp./E.I. du Point de Nemours & Co.*, 14 DOE ¶ 85,190 (1986), we calculated DeMeyers' allocable share. The total amount of the refund approved in this Decision and Order is $1,714 ($832 in principal and $882 in interest).

Getty Oil Company/Rays Skelly Station, 11/18/88, RF265–2638

Rays Skelly Station (Rays) filed an Application for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Rays documented the volume of Getty motor gasoline which it purchased indirectly through the Roger Oil Company, a Getty jobber. Utilizing the procedures outlined in *Pioneer Corp./E.I. du Point Nemours & Co.*, 14 DOE ¶ 85,190 (1986), we calculated Ray's allocable share. The total amount of this refund is $4,190 ($2,034 in principal and $2,156 in interest).

Glen Tofsrud et al., 11/18/88, RF272–33510, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 13 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for various activities including farming, manufacturing, and heating public school facilities, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Because each applicant was an end-user of the products it claimed, it was presumed by the DOE to have been injured. The sum of the refunds granted in this decision is $2,796.

Gulf Oil Corporation/Belcher's Grocery Store et al., 11/17/88, RF300–1458, et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $26,649.

Gulf Oil Corporation/Blue Ridge Transfer Co., Inc., et al., 11/16/88, RF300–4100, et al.

The DOE issued a Decision and Order concerning 154 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $821,037.

Gulf Oil Corporation/Guardian Oil Corporation et al., 11/17/88, RF300–1547, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $122,713.

Gulf Oil Corporation/Guilbeau, Inc., et al., 11/17/88, RF300–800, et al.

The DOE issued a Decision and Order granting 38 Applications for Refund in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $74,617.

Gulf Oil Corporation/Guy W. Ward et al., 11/14/88, RF300–2800, et al.

The DOE issued a Decision and Order concerning 85 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $115,297.

Gulf Oil Corporation/Jos. Dibattista, Polar Industries, Inc., Standard Oil of Connecticut, Inc., 11/15/88, RF300–10568, RF300–10569, RF300–10570

The DOE issued a Supplemental Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each of these three applicants had previously received $5,000 in principal. *See Buckley and Scott, et al.*, 18 DOE ¶ 85,067 (1988). Because the earlier Decision and Order failed to refund interest on that amount, each of the applicants received $1,328 in interest in the Supplemental Order.

Gulf Oil Corporation/Lil Roundup et al., 11/17/88, RF300–880, et al.

The DOE issued a Decision and Order concerning 47 Applications for Refund in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $69,219.

Gulf Oil Corporation/M.G., Inc., et al., 11/18/88, RF300–803, et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $53,670.

Gulf Oil Corporation/Nugent's Cen. Ser., Inc., et al., 11/18/88, RF300–5269, et al.

The DOE issued a Decision and Order concerning 99 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $166,711.

Gulf Oil Corporation/Tuck's Chevron Service et al., 11/14/88, RF300–7500, et al.

The DOE issued a Decision and Order concerning 63 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $123,978.

Hardin County, Highway Dept. et al., 11/16/88, RF272–16175, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 48 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant documented its purchase volumes either by actual purchase records or by reasonable, conservative estimating procedures. Because each applicant was an end-user of the products purchased, it was presumed to have been injured. The sum of the refunds granted in this Decision is $18,445.

Jenkins Oil Co. et al., 11/18/88, RF272–61332, et al.

The DOE issued a Decision and Order denying 25 Applications for Refund filed in the crude oil refund proceeding. Each applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

Kruepke Trucking, Inc., et al., 11/16/88, RF272–30948, et al.

The DOE issued a Decision and Order approving 30 Applications for Refund filed in the crude oil refund proceeding. The DOE found that the applicants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the applicants a total refund of $23,694.

Madison County, Highway Department et al., 11/15/88, RF272–15353, et al.

The DOE issued a Decision and Order, granting refunds from crude oil overcharge funds to 10 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $40,169.

Marlene C. Clark et al., 11/15/88, RF272–30440, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 16 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for various activities including farming, manufacturing, and heating public school facilities, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $7,528.

McCreery Aviation Company, Inc., et al., 11/14/88, RF272–15815, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed in the crude oil refund proceeding. The applicants, resellers of petroleum products, failed to demonstrate that they were injured by alleged crude oil overcharges. Accordingly, all 11 applications were denied.

MCO Holdings, Inc., MGPC, Inc./Butane Power and Equipment Co., Eighty-Eight Oil Co., McPherson Propane, RF312–1, RF312–2, RF312–3

The DOE issued a Decision and Order granting refunds from the MCO Holding, Inc./MGPC, Inc. consent order fund to Butane Power and Equipment Co. (Butane), Eighty-Eight Oil Co. (Eighty-Eight), and McPherson Propane (McPherson). Each firm was a reseller of MGPC NGLs and NGLPs with an allocable share greater than $5,000. According to the procedures established in *MCO Holding, Inc.*, 17 DOE ¶ 85,696 (1988), a reseller with an allocable share greater than $5,000 may elect to receive 60 percent of its allocable share, or $5,000 may elect to receive 60 percent of its allocable share, or $5,000, whichever is greater, without making a detailed demonstration of injury. For both Butane and Eighty-Eight, 60 percent of their allocable share was greater; for McPherson $5,000 was greater. Accordingly, the applicants were granted a total refund of $45,995 ($40,487 in principal and $5,508 in interest).

Robert J. Lothspeich, William Moehrle., 11/14/88, RF272–75066, RF272–75067

The DOE issued a Supplemental Decision and Order to Robert J. Lothspeich (Lothspeich) and William Moehrle (Moehrle) in the crude oil refund proceeding. In *Pepsi Cola Bottling of Bennettsville*, 18 DOE ¶ 85,090 (1988), the DOE granted Lothspeich and Moehrle refunds based on their purchases of petroleum products. However, these applicants had prevously been granted refunds for the same volumes in *Steven E. Schroeder*, Case No. RF272–30000 (August 18, 1988). Therefore, the DOE rescinded the duplicate refunds granted in the *Pepsi* Decision.

Standard Oil Co. (Indiana) Colorado Vickers Energy Corp./Colorado, 11/15/88, RF251–122, RQ1–478

The DOE issued a Decision and Order granting the Motion for Modification and second-stage refund application filed by the State of Colorado in the Standard Oil Co. (Indiana) special refund proceedings. Colorado requested permission to use its previously approved $54,261 in Amoco II funds, and $151,360 in Vickers funds, for the State's Oil Inspection Unit. The Unit investigates complaints by Colorado residents about the quality of the liquid fuels they use. The Unit tests the fuel and takes any necessary action against the supplier to correct any problems that are found. The funds would buy new testing equipment for the Unit to increase the accuracy of the tests. The second-stage monies would supplement, not supplant, the Unit's current level of funding. The DOE found that this program provided restitution to injured consumers of petroleum products. Accordingly, Colorado's requests were granted.

Suburban Propane Gas Corporation/Monarch Service Station, 11/16/88, RF299–55

The DOE issued a Decision and Order granting an Application for Refund filed by Monarch Service Station, a purchaser of refined petroleum products, in the Suburban Propane Gas Corporation special refund proceeding. According to the procedures set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987), Monarch was found to be eligible for a refund based on the volume of product it purchased from Suburban. The total refund approved in this Decision is $13 ($146 in principal and $27 in interest).

Vanguard Petroleum Corp., 11/14/88, RF272–67019

The DOE issued a Decision and Order denying, on two independent grounds, a reseller's Application for Refund in the crude oil Subpart V refund proceeding. First, the DOE found that the applicant had waived its right to a Subpart V crude oil refund by signing a waiver and release and receiving a refund in the Resellers Escrow. Second, The DOE found that the applicant failed to demonstrate that it was unable to pass through the effects of crude oil overcharges to its own customers.

W & F Manufacturing Company, 11/16/88, RF272–10774

The DOE issued a Decision and Order granting an Application for Refund filed by W & F manufacturing Company, a purchaser of refined petroleum products, including paraffin and microcrystalline waxes, in the Subpart V crude oil refund proceeding. W & F was found to be eligible for a refund based on an estimated purchase volume of 6,356,721 gallons. The total refund approved in this Decision is $1,271.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of Applicants	Total Refund
Ronald Smith et al.	RF272-17600	11/16/88	97	$33,833
Waterbury Hospital et al.	RF272-9315	11/18/88	26	$9,341

Dismissals

The following submissions were dismissed:

Name and Case No.

Adee Tower Apartments, Inc.—RF272-28634
Best Oil Company—RF307-3678
Cacioppo Service Station—RF304-3494
Chiquita Brands, Inc.—RF272-74819
Don's Exxon Service—RF307-252
Grand Rapids Veterans Taxicab Company—RF270-2516
Greg's ARCO—RF304-3502
Howard's Butane-Propane—RF304-1183, RF304-1234, RF304-1310, RF304-1353
K Mart Corp.—RF272-14092
Ken Lockes Exxon Service—RF307-1005
Petrolane Transport Petrolane, Inc.—RF304-675
Tennessee Valley Authority—RF304-6407
University Arco Station—RF304-6543
W.R. Grace & Company—RD272-30836
Witco Chemical Corp.—RF307-4444, RF307-5390

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 17, 1989.

[FR Doc. 89-1684 Filed 1-24-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3508-7]

Transfer of Data to Department of Justice

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to the U.S. Department of Justice, Antitrust Division, information which has been submitted to the EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA) as part of the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR Survey). Some of the information may have a claim of business confidentiality. The Department of Justice has requested EPA to provide selected data from the TSDR Survey to assist the Department in investigating whether a proposed acquisition may violate federal antitrust laws. The specific data EPA proposes to transfer to the Antitrust Division consists of capacity data for facilities that use incineration, and/or use hazardous waste as fuel to manage hazardous waste. Such facilities may include industrial boilers, industrial furnaces, and cement kilns which may burn hazardous waste as fuel, as well as incinerators. The transfer of the confidential data submitted to EPA will occur no sooner than February 6, 1989.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

Transfer of Data

The Hazardous and Solid Waste Amendments (HWSA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, require the Agency to promulgate regulations that restrict the land disposal of hazardous waste. Land disposal restrictions may be delayed under a national capacity variance based upon EPA determination of inadequate capacity of alternative treatment/recovery technologies and the quantity of restricted waste being land disposed. Data to be used in this determination include data derived from the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR Survey), collected under the authority of section 3007 of RCRA.

The Department of Justice has requested EPA to provide selected data from the TSDR Survey to assist the Department in investigating whether a proposed aquisition may violate federal antitrust laws.

The information proposed to be transferred to the Antitrust Division of the U.S. Department of Justice (AD/DOJ), is a subset of the TSDR Survey consisting of capacity data for facilities that use incineration and/or use hazardous waste as fuel to manage hazardous waste. Such facilities may include industrial boilers, industrial furnaces, and cement kilns which may burn hazardous waste as fuel, as well as incinerators. Data to be provided includes capacity data of all hazardous waste management activities at the facility.

In accordance with 40 CFR 2.209(c)(3), EPA is issuing this notice to inform submitters of TSDR Survey questionnaires and any related follow-up data that EPA may transfer to AD/DOJ information claimed to be confidential business information relating to capacity at facilities with incinerators, industrial boilers, and industrial furnaces burning hazardous waste.

The Antitrust Division has agreed to limit disclosure of confidential business information to employees of the Department of Justice involved in its investigation as provided for in 40 CFR 2.209(c)(5). EPA has determined that such assurances meet the requirements of its rules for transfer of confidential business information.

Date: January 10, 1989.

Jonathon Cannon,

Acting Assistant Administrator.

[FR Doc. 89-1588 Filed 1-24-89; 8:45 am]

BILLING CODE 6560-350-M

[OPP-00272; FRL-3509-2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of

scientific issues being considered by the Agency in connection with the Special Review of carbofuran; a set of scientific issues being considered by the Agency on a Standard Evaluation Procedure (SEP) on Terrestrial Field Dissipation Studies; a set of scientific issues being considered by the Agency in connection with the peer review classifications of the pesticides Cinch as a Class D oncogen and paraquat as a Class E oncogen. An informational briefing will be provided for the Panel on the FIFRA 88 amendment as well as changes that will be needed for Part 158.

DATE: The meeting will be held on Wednesday, February 15, 1989 from 8:30 a.m. to 4:00 p.m.

ADDRESS: The meeting will be held at Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–769C), 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm 1121, Crystal Mall Building No. 2, Arlington, VA. (703–557–4369).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of a set of scientific issues in connection with the Agency's preliminary determination to cancel all granular carbofuran products used on all sites. The Agency has made a determination that the use of carbofuran will result in unreasonable adverse effects to birds on all sites. In weighing the risks and benefits, the Agency reviewed a number of options other than cancellation to reduce the risk to birds. Among these measures were additional precautionary labeling regarding the hazard to birds, limiting carbofuran use to certain months of the year, limiting application geographically, and implementing a risk reduction program. The Agency evaluated these measures and determined that they would not adequately mitigate the risk.

2. Review of a set of scientific issues in connection with the Agency's Standard Evaluation Procedures for Terrestrial Field Dissipation Studies. This SEP is to be used as an aid for the Environmental Fate and Ground Water Branch data reviewers in their evaluations of the terrestrial field dissipation studies submitted by registrants in support of pesticide registration. Terrestrial field dissipation studies are required by 40 CFR 158.290 in support of registration of an end-use product intended for terrestrial use or domestic outdoor use (as defined by Subdivision N Guidelines) and to support registration of a manufacturing-use product which may also be legally used to formulate such an end-use product. Section 1,64–1 in Subdivision N Guidelines describes this study and provides a protocol for conducting it.

3. Review of a set of scientific issues in connection with the Agency's classification of the peer review of Cinch as a Class D oncogen (inadequate evidence). The classification of Cinch was based on the weight of evidence that there was no substantial biological evidence of tumor formation in either the rat or mouse study and the dosing in both was inadequate for determining oncogenic potential of Cinch.

4. Review of a set of scientific issues in connection with the Agency's classification of the peer review of paraquat as a Class E oncogen (no evidence). The classification of paraquat as a Class E oncogen was based on no evidence of carcinogenic effects in female Fischer 344 rats and, at best, equivocal evidence of carcinogenicity in male Fisher 344 rats. It was concluded that this equivocal evidence could not be associated with oral exposure but was possibly the result of dermal exposure.

5. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to items 1–4 may be obtained by contacting: By mail: Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm 1006, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA., (703–557–2805).

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit ten copies to a summary no later than February 8, 1989, in order to ensure appropriate consideration by the Panel.

Dated: January 17, 1989.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89–1583 Filed 1–24–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 17, 1989.

On November 16, 1988, the Federal Communications Commission submitted the following information collection requirement to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*) In error the Commission did not publish a notice in the Federal Register at the time of submission. This notice is being published to provide the public with proper notice of the submission.

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, (202) 632-7513.

Comments already received by OMB on this information collection are currently being reviewed. Only new comments need be submitted to OMB for this review. OMB has extended the deadline for comments since this notice was not published at the time it was submitted to OMB.

OMB Number: None.

Title: Amendment of Part 22 of the Commission's Rules to Revise Certain Filing Procedures for Mobile Services Division Applications.

Action: New collection.

Respondents: Businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 158,400 responses; 52,272 total hours; 20 minutes each.

Needs and Uses: Application forms are used by common carrier applicants (telephone companies, radio and other miscellaneous carriers) to request authority to construct or modify a radio station or assign or transfer a permit or license. Such filings are required by law under the provisions of the Communications Act and FCC Rules, Part 22. The change to microfiche results from acute lack of space and the labor intensive paper records storage and retrieval system. The use of microfiche will not only provide a better storage and retrieval system but will also provide a more secure method of protecting records.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1567 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-813-DR]

Amendment to Notice of a Major Disaster Declaration; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA-813-DR), dated March 11, 1988, and related determinations.

DATED: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Alaska, dated March 11, 1988, is hereby amended to include the following type of assistance for those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1988:

North Slope Borough for Public Assistance for certain eligible costs of Early Childhood Education facilities not eligible under Department of Education programs.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 89-1582 Filed 1-24-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-819-DR]

Major Disaster and Related Determinations; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-819-DR), dated January 13, 1989, and related determinations.

DATED: January 13, 1989.

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 January 13, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms and tornadoes beginning on January 7, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended by Public Law 100-707). I therefore declare that such a major disaster exists in the State of Illinois.

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 Individual Assistance and Public Assistance in the affected areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93-288, as amended by Public Law 100-707, for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

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, I hereby appoint Ronald Buddecke 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 Illinois to have been affected adversely by this declared major disaster: Edwards, Wabash, Wayne, and White Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance.)

Robert H. Morris,

Deputy Director, Federal Emergency Management Agency.

[FR Doc. 89-1581 Filed 1-24-89; 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 No.: 224-200085-001.

Title: Port of Portland Terminal Agreement.

Parties:

Port of Portland

Pacific Commerce Line (PCL)

Synopsis: The Agreement provides that PCL will exercise its option to extend the term of Agreement No. 224-200085, a terminal use agreement, for

one year. The Agreement also provides for a change in lumber rates pursuant to the basic agreement.

Agreement No.: 224–200208–001.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Hapag-Lloyd A.G., Gulf Container Line B.V. and Compagnie Generale Maritime (referred to collectively as Sagumex) Georgia Ports Authority (GPA)

Synopsis: The Agreement provides a schedule of rates Saqumex will pay GPA for rail loading and unloading. The Agreement also provides a stack utilization fee and computer service charge Hapag-Lloyd will pay GPA.

Agreement No.: 224–200210.

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties:

Port Authority of New York and New Jersey (Authority)

Hapag-Lloyd (America), Inc. (HL)

Synopsis: The Agreement provides that the Authority will pay HL $25.00 per import container and $50.00 per export container unloaded from or loaded on HL's vessels at a marine terminal in the Port of NEW York/New Jersey (Port). The payment applies only to loaded containers for which HL is required to pay a railroad for transportation by rail to or from points more than 260 miles from a terminal within the port and have a prior or subsequent move by water through a marine terminal in the Port.

Agreement No.: 224–200211.

Title: Port of Charleston Terminal Agreement.

Parties: Southeast Atlantic Cargo Operations (SACO) and Smith and Kelly (SK).

Synopsis: The Agreement provides that SACO will furnish SK with supervision, labor and equipment to perform marine terminal/stevedoring services at the Port of Charleston and elsewhere at such rates, terms and conditions as may be agreed upon by the parties when SK requests such services and equipment from SACO.

By Order of the Federal Maritime Commission.

Dated: January 19, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–1633 Filed 1–24–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N–0015]

Drug Export; Tandem® Icon® HBsAG Assay Test Kits

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hybritech, Inc., has filed an application requesting approval for the export of the biological product Tandem® Icon® HBsAg Assay test kits to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Iceland, Ireland, Italy, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Hybritech, Inc., 11095 Torreyana Rd., San Diego, CA 92121–1104 has filed an application requesting approval for the export of the biological product Tandem® Icon® HBsAg Assay test kits (Murine Monoclonal Antibodies to Hepatitis B Surface Antigen Immunoconcentration—EIA), to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Iceland, Ireland, Italy, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The Tandem® Icon® HBsAg Assay test kits contain an enzyme immunoconcentration assay intended for the qualitative detection of hepatitis B surface antigen (HBsAg) in human serum and plasma, and as a HBsAg confirmatory assay used for confirmatory neutralization of Tandem® Icon® HBsAg Assay reactive specimens. The application was received and filed in the Center for Biologics Evaluation and Research on December 23, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 6, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: January 3, 1989.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 89–1564 Filed 1–24–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC-463-NC]

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1988; Correction

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

ACTION: Notice with comment period; correction.

SUMMARY: In the October 18, 1988 issue of the **Federal Register** (FR Doc. 88-23906) beginning on page 40771, we set forth an updated schedule of limits on home health agency costs that may be reimbursed under the Medicare program. This updated schedule of limits applies to cost reporting periods beginning on or after July 1, 1988. Although editorial corrections of the notice were prepared by the Office of the Federal Register and issued on November 15, 1988 (53 FR 46015), the preamble, wage index, and addendum contain several technical errors. This notice corrects those errors.

FOR FURTHER INFORMATION CONTACT: Ann Pash, (301) 966-4601.

SUPPLEMENTARY INFORMATION:

We are making the following corrections to the October 18, 1988 document:

1. On page 40771, in the third column, in the sixth line in the summary, "scheduled" is changed to read "schedule".

2. On page 40772, in the second column, in the fifth line, "extension" should read "section".

3. On page 40779, in the table, in the middle column, the first entry under "Wage index" (that is, the value for Houston, TX) should read 1.0668.

4. On page 40782, in the table, in the first column, the tenth entry under "Wage index" (that is, the value for Washington, DC-MD-VA) should read 1.1965.

5. On page 40785, in the addendum, the fourteenth entry from the bottom in the last column under "Percentage change" (that is, the percentage change for Gainesville, FL) should read 28.531.

(Catalogue of Federal Domestic Assistance Programs No. 13.773; Medicare Hospital Insurance)

Dated: January 18, 1989.

James E. Larson,

Acting, Deputy Assistant Secretary for Information and Resource Management.

[FR Doc. 89-1654 Filed 1-24-89; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Final Funding Preferences for Grants for Geriatric Education Centers

The Health Resources and Services Administration announces the final funding preferences for Grants for Geriatric Education Centers which will be used in addition to other criteria in making grant awards in Fiscal Year 1989.

To be eligible for a grant under section 789(a) (formerly section 788(d)) of the PHS Act, the applicant must meet the requirements of a health professions school as defined by section 701(4), program for the training of physician assistants as defined in section 701(8) or a school of allied health as defined in section 701(10). Applicants conducting projects to be administered in other types of organizational settings will be considered for geriatric education center grants under section 301 of the PHS Act.

All applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, or the Federated States of Micronesia.

Grants may be awarded to support the improvement and development of collaborative arrangements involving several health professions. These arrangements, called Geriatric Education Centers (GECs) are established to facilitate training of medical, dental, optometric, pharmacy, podiatric, nursing, and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged. Projects supported under these grants may address any combination of the statutory purposes below:

(a) Improve the training of health professionals in geriatrics;

(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(c) Expand and strengthen instruction in methods of such treatment;

(d) Support the training and retraining of faculty to provide such instruction;

(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and

(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Grant supported projects may be designed to accomplish the statutory purposes in a variety of ways, emphasizing multidisciplinary, as well as discipline specific approaches to the development of geriatric education resources. For example:

- Health professions schools within a single academic health center, or a consortium of several educational institutions, may share their educational resources and expertise through a Geriatric Education Center to extend a broad range of multidisciplinary educational services outward to other institutions, faculty, facilities and practitioners within a geographic area defined by the applicant.
- Institutions with limited geriatric education resources and traditional linkages with geographic areas with substantial geriatric education needs may seek to establish Geriatric Education Centers designed to enhance and expand the capability of collaborating professional schools to serve as a geriatric education resource for such areas.
- Projects may support the development of Geriatric Education Centers designed to focus on multidisciplinary geriatric education emphasizing high priority services and high risk groups among the elderly, minority aging, or other special concerns.

After a peer review group, as required by section 789(a)(2) of the Act, composed principally of non-Federal experts, makes recommendations concerning each application, the Secretary will consult with the National Advisory Council on Health Professions Education, established in section 702 of the Act, with respect to such applications. The Secretary will decide which applications to approve by considering, the following:

(1) The degree to which the proposed project adequately provides for the project requirements described in 42 CFR 57.3904;

(2) The adequacy of the qualifications and experience of the staff and faculty;

(3) The administrative and managerial ability of the applicant to carry out the proposal in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis.

In assigning merit scores to approved proposals, peer reviewers will give special consideration to the following:

- Projects which will provide training for faculty from four or more health professions, at least one of which must be allopathic or osteopathic medicine,

with respect to the treatment of health problems of the elderly by multidisciplinary teams of health professionals.

• Projects which currently have or plan to provide for a high degree of areawide collaboration.

• Projects which provide organizational or other arrangements for participation by the social and behavioral science disciplines.

Proposed funding preferences were published in the **Federal Register** of October 7, 1988 (FR 39528) for public comment. One comment was received during the 30-day comment period.

The respondent expressed concern with the importance of the development of multidisciplinary geriatric programs to enhance the education of health care providers in states which do not have schools of medicine or osteopathy and that preference be given to those institutions (with or without medical schools) that can develop/demonstrate a model for the delivery of geriatric education to rural and frontier health practitioners.

The GEC program guidelines do not limit the scope of funded projects to States or institutions with medical schools, and some existing centers are administratively based in other types of professional schools or organizational settings. However, the peer review process required by the authorizing legislation carefully considers the probable availability of resources which are critical to the feasibility of conducting projects identified under section 789(a) of the PHS Act, (formerly section 788(d) of the Act). Successful applicants have involved resources from many health professions, including medicine, through a wide range of collaborative arrangements between academic health centers, other education institutions, community organizations and health facilities, in some cases covering all or portions of several States. The Health Resources and Services Administration believes that projects responding to the needs of rural elderly should include allopathic or osteopathic medicine as a participating discipline.

Therefore, the proposed funding preference will be retained as follows:

In determining the order of funding of competing applications which have been recommended for approval, a funding preference will be given to applications for projects which will offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine. In addition, the priority scores of approved applications will be significantly improved for each of the criteria listed below:

• Applications which identify minority faculty or scholars with expertise in minority aging with substantial roles in carrying out the project. (Only individuals already employed or recruited may be included.)

• Applications documenting formal linkages (such as subcontracts, clinical teaching affiliation agreements, etc.) with predominantly minority educational institutions or health facilities to accomplish specific aspects of the project protocol (e.g., involving minority faculty, students, or practitioners, developing curricula or expanding teaching concerning minority elderly, providing trainees with experience in caring for minority elderly, etc.).

• Competing continuation applications or other applications from existing GECs which contain progress reports documenting that underrepresented minority enrollees (i.e., have participated or committed to participating in a focused/intensified GEC training program of 40 hours or more) were equal to or greater than representation of those minorities in the general population, or have increased annually for at least three years.

This program is listed at 13.969 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: January 18, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-1562 Filed 1-24-89; 8:45 am]

BILLING CODE 4160-15-M

Final Special Consideration for Professional Nurse Traineeship Grants

The Health Resources and Services Administration announces the final special consideration for the Professional Nurse Traineeship Program which will be used in making grant awards in Fiscal Year 1989.

Section 830 of the Public Health Service Act authorizes grants for:

(1) Traineeships to prepare registered nurses in masters' degree and doctoral degree programs which educate such nurses to serve as nurse administrators, nurse educators, nurse researchers or other professional nursing specialties determined by the Secretary to require advanced education; and

(2) Traineeships to educate nurses for practice as nurse midwives.

To be eligible to receive support, an applicant must be a public or nonprofit private institution providing registered nurses with full-time advanced education leading to a graduate degree in eligible professional nursing specialties, or a public or nonprofit private school of nursing or entity which prepares registered nurses to practice as nurse midwives. The nurse midwife program must be approved by the American College of Nurse Midwives.

Special Consideration

The Secretary shall give special consideration to applications for nurse practitioner traineeship programs which conform to guidelines established by the Secretary under section 822(a)(2)(B) of the PHS Act.

An additional special consideration was published in the **Federal Register** of October 11, 1988 (53 FR 39648) under Program Announcement for Nurse Anesthestist Traineeship Grants and Professional Nurse Traineeship Grants, for public comment. Two comments were received during the 30-day comment period.

One comment expressed support of the proposed special consideration concerning the enrollment of minority graduate nursing students but was also concerned with the requirement that eligible trainees be engaged in full time study. Section 830 of the Public Health Service Act which governs these traineeships was recently extended and amended by the Nursing Shortage Reduction and Education Extension Act of 1988 (Title VII Pub. L. 100-607). The new authority provides traineeship assistance, not only for full time students but also for students who are enrolled at least half time in programs offering a master's degree in nursing.

Another comment requested a change in the authority for Professional Nurse Traineeships to specify that Certified Registered Nurse Anesthetists (CRNAs) in master's degree and doctoral degree programs be eligible for support. CRNAs may be eligible for traineeship support under the current legislation if enrolled in participating master's degree and doctoral degree program which educate registered nurses to serve as nurse practitioners, nurse administrators, nurse educators, nurse researchers or other nursing specialties determined by the Secretary to require advanced education.

Since neither of the comments specifically addresses the proposed special consideration concerning enrollment of minority graduate nursing students, the special consideration as proposed will be retained as follows:

Special consideration will be given to schools which currently enroll minority students or can demonstrate an increase in enrollment of minority graduate nursing students.

The Department believes that continued efforts must be made to increase the number of minority students in schools of nursing.

A school will be considered as having met special consideration criteria if it can:

(1) Demonstrate a three year average enrollment of minority students in the graduate nursing program in excess of the national average; or

(2) Demonstrate an increase in the enrollment of full-time graduate minority students as of October 15 in the current school year from the number enrolled full-time as of October 15 in the preceding school year.

This program is listed at 13.358 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: January 18, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–1563 Filed 1–24–89; 8:45 am]

BILLING CODE 4160-15-M

Family Support Administration

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Availability of Funding for Grants for FY 1989 Targeted Assistance for Services to Refugees [1] in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Notice of proposed availability of funding for grants for FY 1989 targeted assistance for services to refugees [1] in local areas of high need.

SUMMARY: This notice announces the proposed availability of funds and award procedures for FY 1989 targeted assistance project grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provisions in localities with large refugee populations, high refugee concentrations, and high use of assistance, and where specific needs exist for supplementation of currently available resources.

This notice proposes that the qualification of counties for the targeted assistance program (TAP) be based on refugee and entrant arrivals during the period from calendar year (CY) 1983 through fiscal year (FY) 1988. Under this proposal, no new counties qualify for targeted assistance, and 26 counties which previously received targeted assistance grants on the basis of arrivals during FY 1980–1982 no longer qualify but would be allocated FY 1989 funds to permit an orderly phaseout of their targeted assistance programs.

DATE: Comments on the proposals contained in this notice must be received by February 24, 1989.

ADDRESS: Address written comments, in duplicate, to: Bill F. Gee, Director, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Ron Munia, (202) 252–4559, or Dr. Linda W. Gordon, (202) 252–4568.

APPLICATION DEADLINE: Applications from States for grants under this notice must be received on time.

An application will be considered to be received on time under either of the following two circumstances:

A. The application was sent via the U.S. Postal Service or by private commercial carrier not later than 45 days after publication of the final notice, unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

B. The application is hand-delivered on or before the closing date to the Office of Grants Management, FSA, 6th floor, 901 D Street, SW., Washington, DC 20447. Hand-delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up through the closing date.

Late applications will be returned to the sending agency.

To be considered complete an application package must consist of a signed original and two copies of Standard Form 424, Parts I through IV.

GRANT REGULATIONS: FY 1989 grants will be subject to new HHS regulations on Grants Administration in 45 CFR Part 92. These regulations were published in the **Federal Register** of March 11, 1988, and became effective October 1, 1988. Part 92 is the HHS version of OMB Circular A–102 Common Rule.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the proposed availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusally large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

A total of $34,052,000 in FY 1989 funds is available for targeted assistance under the FY 1989 appropriations for the Department of Health and Human Services (Pub. L. 100–436).

The Conference Report on appropriations reads as follows with respect to the targeted assistance funds (H. Rept. 100–880, p. 28):

> The amount agreed to includes $10,531,000 for 12 months of additional special targeted assistance to Dade County schools and Jackson Memorial Hospital. For other targeted assistance grantees the conference agreement provides additional funding at the current rate of operations through fiscal year 1989.

Subsequent to the Conference Report, the amounts appropriated were reduced 1.2%.

Of that funds available, $10,404,700 (the $10,531,000 referred to in the Conference Report minus the 1.2% reduction) will be awarded for the Dade County schools and Jackson Memorial Hospital; $400,000 will be awarded to Massachusetts for the Lowell school system which has received a recent influx of refugees and has demonstrated a specific need for supplementation of available resources for services; and the remaining $23,247,300 is proposed for allocation as set forth in this notice.

Except as specified in this notice, requirements regarding the use of the FY 1989 targeted assistance funds remain unchanged from those applied to FY 1989 targeted assistance funds as set forth in a notice to States of March 4, 1988.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

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[1] In addition to persons admitted to the United States as refugees, eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section II of this notice on "Authorization.") The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

Services funded under targeted assistance are required to focus primarily on those refugees who, either because of their considerable and protected use of public assistance or continued difficuly in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to assure sufficient emphasis on service to appropriate clients, each State would be required to assure that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) would make up a percentage of the FY 1989 targeted assistance clientele which is not less than the State's final FY 1987 dependency rate.

Funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B) of the INA). Therefore at least 85% of targeted assistance funds would be required to support projects which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less the one year's participation in the targeted assistance program. Innovative approaches to this objective, including strategies which address the employment potential of more than one wage earner in a household unit simultaneously, would be encouraged. Longer-term activities of general or remedial education which were not directed toward the achievement of a specific employment objective within less than one year would be outside the scope of the targeted assistance program, and TAP funds could not be used for those purposes. Examples of such activities not intended to be supported by TAP funds would include adult basic education, preparation for a high school equivalency diploma, and general English language training which is not job focused.

In order to meet extreme and unusual needs, up to 15% of a local area's allocation could be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State, or by ORR in the case of State-administered local programs.

A State could request a waiver in order to be able to allow a county to use more than 15% for non-employment-related services. ORR would approve such a request only in the most extreme circumstances of need.

Cases in which a county plan contained proposed program activities not allowable under section VI, below, could be entertained by a State only where extreme and unusual need exists and is clearly demonstrated in the county's proposed plan. Such cases would be considered to involve a change in program scope or objectives and would therefore be subject to ORR prior approval.

The award of funds to States under this notice would be contingent upon the completeness of a State's application as described in section VIII, below.

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub.L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugee established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Exporting Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100–461).

III. Eligible Grantees

The Director of ORR proposes to determine the eligibility of counties for inclusion in the FY 1989 targeted assistance program (TAP) as described in section V of this notice.

The following requirements, which have previously applied to TAP, would continue to apply with respect to FY 1989 awards:

Eligible grantees would be those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1989 targeted assistance awards. The use of targeted assistance funds for services to Cuban and Haitian entrants would be limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency would submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans would be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county would be permitted, but not required, to determine the allocation amount for each qualified county within the State.

Applications submitted in response to this notice would not be subject to review by State and areawide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

IV. Qualification and Allocation Formula

The Director of ORR proposes that a new basis be adopted for the FY 1989 TAP to determine which counties qualify for awards and in what amount.

Formula Used to Date

The Department has used a two-stage formula for qualification for, and allocation of, TAP funds since the inception of the refugee targeted assistance program in FY 1983. The first stage of the formula defines the qualification of counties for TAP through the use of four equally-weighted criteria which were selected to collectively indicate local conditions and problems which the program was intended to address.

In order to qualify for TAP funds, a county (or group of adjacent counties within the same Standard Metropolitan Statistical Area, or SMSA) was required to be above the median or above a specified cutoff point of jurisdictions for

which data were reviewed in three of the four following criteria: (1) The number of refugees placed in the county during FY 1980–1982; (2) the ratio of the overall county population to the refugees in item (1), above; (3) the number of refugees in the county who were receiving cash assistance under the programs of aid to families with dependent children (AFDC) and refugee cash assistance (RCA) on October 1, 1982; and (4) the ratio of refugees in item (3) to the number of refugees in item (1). A county which placed above the cutoff point in any three of the above categories was determined to be qualified to apply for targeted assistance funds and was included in the list of qualifying localities for determination of its targeted assistance allocation.

The median for Criterion 1, above, was 2,066.5. The median for Criterion 2 was 244.5. The cutoff point for Criterion 3 was 1,000. The cutoff point for Criterion 4 was established at 50%, the approximate national average dependency rate. Counties which met three of the four criteria qualified for the program.

The second stage of the formula consisted of the number of refugees in a qualified county who had been in the U.S. 36 months or less and who were receiving AFDC or RCA on October 1, 1982. Some adjustments were made for State-to-State differences in assistance programs. These adjusted figures on the use of assistance then comprised the formula base for the allocation of funds. (A more detailed description of this formula was published in the **Federal Register** of June 3, 1983, 48 FR 24986.)

Targeted assistance related to the needs of Cuban and Haitian entrants was based on county populations of entrants who also arrived during FY 1980–1982. (See the **Federal Register** of July 27, 1983, 48 FR 34127.)

The results of these formulas provided the basis for the allocation of TAP funds during each fiscal year in which such funds were appropriated—FY 1983, 1984, 1985, 1986, and 1988.

Proposed Revised Formula

More than 9 years have passed since the first—and more than 6 years since the last—of the arrivals during FY 1980–1982 (October 1, 1979–September 30, 1982) on which TAP has been based to date. More than $270,000,000 in TAP funds have been provided to address the needs of those refugees and entrants.

The Director believes that it is no longer appropriate to make TAP funds available on the basis of the needs of refugees and entrants who arrived during the period October 1, 1979–September 30, 1982, and proposes that the qualification of counties for FY 1989 TAP funds, and the allocation of those funds, be based on needs related to more recent arrivals.

For the FY 1989 targeted assistance program, the Director proposes to base county eligibility and funding on refugee and entrant placements during CY 1983–FY 1988, on the receipt of AFDC, RCA, and general assistance (GA) by time-eligible refugees and entrants as of March 31, 1988 (the most recent county data available to ORR), and on cash assistance dependency rates as of September 30, 1987 (ORR's most recent final dependency-rate data). The same four criteria used previously, including the same cutoff points, would be applied to this new information. As before, a county would have to meet three out of the four criteria in order to continue to qualify.

The Director proposes the following:

1. *Counties not continuing to qualify for TAP:* A currently participating county which no longer qualifies, and whose present project-period end-date, as specified in the FY 1988 TAP grant award and any subsequent no-cost extensions, is earlier than September 30, 1989, would be provided with a final TAP allocation in order to implement an orderly phaseout of its targeted assistance program. This phaseout allocation would not be intended to fund all current contracts, activities, or programs within a county through September 30, 1989, but rather to permit an orderly reduction and termination of TAP. No allocation would be made to a county whose project-period end-date is September 30, 1989, or later. For counties with project-period end-dates between October 1, 1988, and September 30, 1989, allocations would be based on the existing formula and would be prorated on the basis of the number of months between the project-period end-date and September 30, 1989.

2. *Counties continuing to qualify for TAP:* The allocation to a currently participating county which continues to qualify would be based on the number of initial placements in the county during CY 1983–FY 1988 multiplied by the State's time-eligible [2] dependency rate as of September 30, 1987, after taking into account the county's present project-period end-date. The result of this procedure would then be used to determine each county's share of the funds available for those counties that continue to qualify. We believe that, in the absence of additional data, the number of initial placements and the time-eligible dependency rates provide good indicators of relative need.[3]

3. *Counties not currently participating in TAP:* No county not currently participating in TAP has been found to meet at least three out of the four proposed criteria.

V. Proposed Allocations

ORR has screened data on all counties that have been receiving awards for targeted assistance since FY 1983 and on all other counties that could potentially qualify for TAP funds based on the criteria proposed in this notice. The same medians and cutoff points which were used previously were applied to this more recent information.

Analysis of these data indicated that no new counties would meet at least three of the four criteria, that 26 counties which have previously received targeted assistance grants would no longer qualify, and that 15 counties would continue to qualify.

Table 1 provides a list of the proposed qualifying counties, the number of placements in those counties, and the proposed funding based on each county's portion of the total arrivals in the qualifying counties, after taking into consideration the county's project-period end-date based on its current TAP funding.

Although Table 1 shows an amount for each county, the Director proposed, in the case of a State which contains more than one qualified county, to continue to permit the State to determine (in accordance with the requirements set forth in this notice) the appropriate allocation of the State's targeted assistance award among the qualified counties in the State. The Director sees this as continuing ORR's practice of providing as much authority and flexibility as possible to States in determining the relative needs of the qualified counties within a State. Thus each State, as in the FY 1988 TAP, would be responsible for determining an appropriate and equitable basis for allocating the funds among the qualified counties in the State and for including in its application for approval by ORR a

[2] The term "time-eligible" means refugees in their first 31 months in the U.S., the time-period for which States could claim cash and medical assistance costs against ORR's grants to the States as of the end of FY 1987. "Time-expired" refers to refugees who have been in the U.S. more than 31 months.

[3] More specific data might include the estimated county populations of refugees who arrived during CY 1983–FY 1988 and actual numbers of time-expired refugees who are receiving cash assistance. However, it is not possible to estimate county refugee populations reliably because of lack of county-level information on secondary migration. Data are not universally available on the receipt of cash assistance by time-expired refugees.

description of this allocation basis and the data to be used.

Table 2 provides a list of the currently participating counties that would no longer qualify, the number of placements in those counties, and the proposed funding based on the existing formula, after taking into consideration the county's current project-period end-date. Under this proposal, the closeout allocation for each of these counties would be the amount shown. A State with more than one TAP county could not adjust these closeout allocations among counties without the prior approval of ORR.

Table 3 provides State totals for the allocations proposed in Tables 1 and 2.

The following is a more detailed description of Tables 1 and 2:

Columns A–G are common to both tables. *Col. A*, representing Criterion 1, shows total initial placements of refugees and entrants by county according to the ORR Refugee Data System and data on Cuban and Haitian entrants maintained by ORR's Florida Office in Miami. The cutoff point for Criterion 1 is 2,066.5. *Col. B* consists of the Census Bureau's 1985 estimates of total county populations. *Col. C*, representing Criterion 2, consists of the county population in Col. B divided by the number of initial placements in Col. A. Col. C may thus be interpreted as persons per refugee. The cutoff point for Criterion 2 is 244.5; figures smaller than 244.5, showing greater concentrations of refugees, meet this criterion. *Col. D*, showing States' dependency rates of time-eligible refugees, comprises Criterion 4; the cutoff point is 50%. *Col. E* represents Criterion 3; it shows the number of time-eligible refugees receiving assistance under the following programs as of March 31, 1988: Aid to families with dependent children (AFDC), refugee cash assistance (RCA), and general assistance (GA). The cutoff point is 1,000. A figure indicating less than 1,000 ("<1,000") or more than 1,000 (">1,000") represents an estimate; actual data would be substituted in the final notice if provided by the State or county. *If a county which is proposed for phaseout would meet Criterion 3 by including in its cash assistance count time-expired AFDC and GA recipients who arrived in the U.S. no earlier than CY 1983, the Director proposes to count such recipients if the State or county provides this information by no later than the closing date for comments on this notice. Col. F* indicates the number of criteria met, and *Col. G* the current project-period end-date.

As indicated previously, for each county that would continue to qualify for TAP, the county's number of initial placements (Col. A) was multiplied by the State's dependency rate (Col. D) to determine relative funding weights among these counties. These weights were then adjusted according to the number of months between each county's current project-period end-date and March 31, 1991, the project-period end-date proposed in this notice. This is reflected in Table 1, Cols. G–I.

For counties that would *not* continue to qualify, the proposed phaseout allocation is the amount which the existing formula would yield when adjusted according to the number of months between each county's current project-period end-date and September 30, 1989, the end-date proposed in this notice to provide an orderly phaseout of TAP in these counties. This is reflected in Table 2, Cols. G–I.

The basic intent of the proposed targeted assistance program remains: To concentrate available funds in those areas where there are appreciable numbers of unemployed and dependent refugees on whose behalf special self-support efforts are required.

TABLE 1.—TARGETED ASSISTANCE COUNTIES PROPOSED FOR CONTINUATION

	Arrivals Jan. 1983—Sept. 1988 (A)	1985 Census Bureau estimate (000) (B)	Population ratio (C)	Percent receiving assistance (D)	Number receiving assistance (E)	Number of criteria met (F)	FY 1988 project—period end-date (G)	Additional months to Mar 31, 1991 (H)	Proposed allocation (I)
County and State:									
Alameda, CA	* 7,812	1,195.7	* 153.1	* 77.1	* 2,350	4	3/31/89	24	$985,119
Fresno, CA	* 4,845	580.0	* 119.7	* 77.1	* 3,223	4	3/31/89	24	610,971
Los Angeles, CA	* 50,390	8,108.7	* 160.9	* 77.1	*13,495	4	3/31/89	24	6,354,351
Orange, CA	* 15,940	2,122.7	* 133.2	* 77.1	* 3,352	4	3/31/89	24	2,010,088
Sacramento, CA	* 4,099	892.0	* 217.6	* 77.1	* 1,403	4	3/31/89	24	516,897
San Diego, CA	* 10,163	2,132.7	* 209.8	* 77.1	* 2,175	4	3/31/89	24	1,281,589
San Francisco, CA	* 9,576	1,576.0	* 164.6	* 77.1	* 1,365	4	3/31/89	24	1,207,567
San Joaquin, CA	* 4,618	418.3	* 90.6	* 77.1	* 1,404	4	3/31/89	24	582,346
Santa Clara, CA	* 13,095	1,398.5	* 106.8	* 77.1	* 3,465	4	3/31/89	24	1,651,324
Middlesex, MAS	* 2,803	1,371.4	489.3	* 73.6	* 1,031	3	3/31/90	12	168,711
Suffolk, MAS	* 7,463	* 667.2	* 89.4	* 73.6	* 1,546	4	3/31/90	12	449,194
Hennepin, MN	* 3,951	979.4	247.9	* 66.1	* 1,049	3	7/31/89	20	355,959
Ramsey, MN	* 4,361	471.4	* 108.1	* 66.1	* 1,690	4	9/30/89	18	353,607
New York, NY	* 23,791	1,479.8	* 111.2	40.2	* 3,828	3	9/30/89	18	1,173,201
King/Snohomish, WA	* 9,345	1,724.0	* 184.5	* 65.5	* 1,564	4	3/31/89	24	1,001,136
Total	172,252	25,117.8	145.8		42,940				18,702,060

Note.—An asterisk (*) to the left of a figure indicates county meets that criterion.

TABLE 2.—TARGETED ASSISTANCE COUNTIES PROPOSED FOR PHASEOUT

	Arrivals Jan. 1983–Sept. 1988 (A)	1985 Census Bureau estimate (000) (B)	Population ratio (C)	Percent receiving assistance (D)	Number receiving assistance (E)	Number of criteria met (F)	FY 1988 project—period end-date (G)	Additional months to Sept. 30, 1989 (H)	Proposed phaseout allocation (I)
County and State:									
Contra Costa, CA	2,033	712.2	1350.3	*77.1	620	1	3/31/89	6	$84,418

TABLE 2.—TARGETED ASSISTANCE COUNTIES PROPOSED FOR PHASEOUT—Continued

	Arrivals Jan. 1983–Sept. 1988 (A)	1985 Census Bureau estimate (000) (B)	Population ratio (C)	Percent receiving assistance (D)	Number receiving assistance (E)	Number of criteria met (F)	FY 1988 project—period end-date (G)	Additional months to Sept. 30, 1989 (H)	Proposed phaseout allocation (I)
Merced, CA	1,813	158.7	*87.5	*77.1	968	2	3/31/89	6	198,998
Riverside/San Bernardino, CA	*2,512	1906.7	759.0	*77.1	990	2	3/31/89	6	84,221
Stanislaus, CA	1,800	305.8	*169.9	*77.1	826	2	3/31/89	6	46,136
Denver, CO	*2,928	1372.1	468.6	37.3	742	1	12/31/88	9	149,404
Broward, FL	552	1,125.2	2,038.4	45.4	<1,000		5/31/89	4	109,990
Dade, FL	*3,255	1,753.1	538.6	45.4	*>1,000	2	3/31/89	6	13,282,988
Hillsborough, FL	976	754.1	772.6	45.4	<1,000		3/31/89	6	51,849
Palm Beach, FL	325	723.1	2,224.9	45.4	<1,000		3/31/90		
Honolulu, HI	1,681	814.6	484.6	*54.4	429	1	3/31/90		
Cook/Kane, IL	*12,660	5,600.7	442.4	30.4	*>1,000	2	6/30/89	3	257,603
Sedgwick, KS	1,854	387.8	*209.2	41.6	547	1	12/31/88	9	184,158
Orleans, LA	1,971	1,031.7	523.4	18.8	216		6/30/89	3	41,936
Montgomery/Prince Georges, MD	*3,179	1,321.5	415.7	31.3	779	1	3/31/90		
Jackson, MO	1,218	806.4	662.1	23.8	227		6/30/89	3	23,856
Essex, NJ	1,431	835.3	583.7	24.3	549		7/31/89	2	9,204
Hudson, NJ	1,024	558.5	545.4	24.3	549		7/31/89	2	61,586
Union, NJ	322	507.0	1,574.5	24.3	549		7/31/89	2	12,363
Multnomah, OR	*4,868	1,295.6	266.1	43.9	591	1	9/30/89		
Philadelphia, PA	6,317	1,637.4	259.2	38.8	*>1,000	2	12/31/89		
Providence, RI	2,530	576.3	*228.6	41.2	363	2	12/31/89		
Harris, TX	9,078	2,794.7	307.9	14.3	*1,304	2	4/30/89	5	187,266
Salt Lake, UT	*3,675	1,105.4	300.8	17.5	141	1	1/31/89	8	91,086
Arlington, VA	1,533	157.6	*102.8	27.7	179	1	3/31/90		
Fairfax, VA	*3,619	825.1	*228.0	27.7	693	2	3/31/90		
Pierce, WA	*2,111	523.5	248.0	*65.5	298	2	3/31/89	6	72,878
Phaseout total	75,265	29,592.1	393.2		17,560				14,949,940

Notes.—The proposed allocation for Dade County, Florida, includes $10,404,700 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools. This is the amount specified in the Conference Report on the FY 1989 HHS appropriation (Pub.L. 100-436) less the 1.2% reduction in the final appropriation ($10,531,000 minus 1.2%). The amounts are $5,675,300 for Jackson Memorial and $4,729,400 for the Dade County schools.

An asterisk (*) to the left of a figure indicates county meets that criterion.

TABLE 3.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1989

Proposed Allocation by State:	
California	$15,614,025
Colorado	149,404
Florida	13,444,827
Hawaii	
Illinois	257,603
Kansas	184,158
Louisiana	41,936
Maryland	
Massachusetts	617,905
Minnesota	709,566
Missouri	23,856
New Jersey	83,153
New York	1,173,201
Oregon	
Pennsylvania	
Rhode Island	
Texas	187,266
Utah	91,086
Virginia	
Washington	1,074,014
Total	33,652,000

Note.—The proposed allocation for Florida includes $10,404,700 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools. (See note to Table 2.)

VI. Allowable Activities and Client Prioritization

At least 85% of a county's FY 1989 targeted assistance funds would be required to support activities permissible under section 412(c) of the INA which have specific employment objectives and are directly related to aiding refugees in finding and retaining jobs within less than one year's participation in the targeted assistance program. Examples of these activities are: Job development; job placement; job-related and vocational English; short-term job training specifically related to opportunities in the local economy; on-the-job training; business and employer incentives (such as on-site employee orientation, vocational English training, or bilingual supervisor assistance); and business technical assistance. Strategies which address the employment potential of more than one wage earner in a household unit simultaneously would be encouraged. Longer-term activities of general or remedial education which are not directed toward the achievement of a specific employment objective within less than one year would be outside the scope of this part of the targeted assistance program, and the 85% TAP funds could not be used for those purposes. Examples of such activities not intended to be supported by these 85% funds would include adult basic education, preparation for a high school equivalency diploma, and general English language training which is not job focused. These types of activities could, however, be supported with the 15% funds described below.

Up to 15% of a local area's allocation could be used for other services which are permissible under section 412(c) of the INA and which are identified and demonstrated in the county plan to be essential services in addressing extreme and unusual needs of the refugee population in the targeted assistance area even though they do not have the specific objective of job placement within less than one year. Subject to State review and approval, a maximum of 15% of the allocation amount for each area could be used in funding these services.

In the event that a State wished to grant a local area's request to allocate more than 15% of its funds for such non-employment-related services, the State would be required to obtain formal prior approval by the Director of ORR. Only

the most extreme needs would be considered adequate justification for a local area to use more than 15% of its TAP funds for these services. In order to justify the provision of services for extreme and unusual needs, a county plan would have to identify the target population, demonstrate clearly the nature and extent of the needs, and describe how the use of more than 15% of its targeted assistance funds to address such needs would contribute to the adjustment of the refugee population.

Services funded under TAP would be required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State would be required to provide an assurance in its application to ORR that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) would make up a percentage of the FY 1989 targeted assistance clientele which is not less than the State's final FY 1987 dependency rate as determined by ORR.

This client prioritization requirement does not apply to the 15% funds described above.

VII. Application and Implementation Process

Under the FY 1989 targeted assistance program, as in FY 1988, States would apply for and receive grant awards on behalf of qualified counties in the State. A single allocation would be made to each State by ORR on the basis of an approved State application. The State agency would, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

Although funding for educational services in Dade County, FL, and Lowell, MA, and for medical services at Jackson Memorial Hospital is part of the appropriation amount for targeted assistance, the scope of activities for those projects would be administratively determined. Application for those funds would therefore not be subject to provisions contained in this notice, but to other requirements which would be conveyed separately.

VIII. Application Requirements

The proposed State application requirements for grants for the FY 1989 targeted assistance program are as follows (applications are not requested until publication of the final notice):

States that are currently operating under approved management plans for their FY 1988 targeted assistance program and wish to continue to do so for their FY 1989 grants may provide the following in lieu of resubmitting the full FY 1986 or 1988 approved plan:

The State's application shall provide:

A. Assurance that the State's FY 1986 management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1989 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the previous plans. Any proposed modifications to the approved plan will be described separately in the application and are subject to ORR review and approval.

B. Timetables for awarding funds to the local areas consistent with the conclusion of services under the FY 1988 program as modified by carry-forward requests of FY 1984–1986 targeted assistance funds. Service periods can be for up to eighteen months but must conclude by no later than March 31, 1991.

C. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State.

D. Revised information and description of any proposed plan modifications. Any proposed changes must address and reference all appropriate portions of the FY 1986 and 1988 application content requirements to ensure complete incorporation in the State's existing management plan.

E. *This paragraph applies only to States administering the program locally*: States that have administered the program locally or provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, projected outcomes, and cost per placement. In addition, the program component summary should describe any ancillary services or subcomponents such as day care, transportation, or language training.

F. *This paragraph applies only to States with two or more counties receiving targeted assistance funds*: As in FY 1986, a State with two or more local areas which qualify for the program may choose to determine respective county allocations. If the State chooses to determine county allocations differently from the allocations of FY 1986, the State should provide a description of the State's proposed allocation plan. The allocation approach should be based upon existing FY 1988 funds, FY 1984–1986 funds carried forward, and indicators of refugee need for targeted assistance services. The application should contain a description of the allocation approach, data used in its determination, and the calculated allocation amount for each county. States are encouraged to revise allocation formulas to assure adequate funding to all eligible counties for the duration of the grant such that targeted assistance activities within the State conclude simultaneously. The allocation formula is subject to ORR approval. If the State chooses not to determine county allocation amounts, it will provide the allocations which will be specified in the final notice.

G. Assurance that, for each qualified local area, cash assistance recipients (time-eligible or time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1989 Targeted assistance clientele no less than the State's final FY 1987 dependency rate, as determined by ORR, unless a waiver of this requirement is granted by ORR.

IX. Review, Technical Assistance, and Award Procedure

Applications will be reviewed on a non-competitive basis to determine acceptability. Such determinations will be based on the completeness of the submission, satisfactory progress by the grantee, the receipt of required program and financial reports, and ORR's determination that continued funding is in the best interest of the Government. The Department will provide technical assistance to the applicant if it is necessary in order to develop a proposal which warrants the award of funds at the proposed allocation amount and if such assistance is requested by the applying State agency. Final determination as to the acceptability of applications is at the discretion of the Director of ORR.

X. Reporting Requirements

FY 1989 TAP grants must be tracked separately from previous TAP grants, both financially and programmatically. For the FY 1989 program, States are required to submit semiannual reports and one final report as in previous years

on the services provided in each targeted area. States are required to report on the number of job placements and retentions, cash assistance recipients placed on jobs, costs per placement, and other items specified in the "Reporting Requirements for Targeted Assistance Grants for Services for Refugees in Local Areas of High Need," OMB No. 0970–0042, expiration date February 28, 1991. Semiannual reports covering activity through September 30 and March 31 of each year are due on November 30 and May 31 of each year. A final cumulative report is due 120 days after the end of the full grant period.

Dated: January 18, 1989.

Bill F. Gee,

Director, Office of Refugee Resettlement.

[FR Doc. 89–1624 Filed 1–24–89; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

National Park Service

Legislative Environmental Impact Statement on the Exchange of Land Interests in Gates of the Arctic National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: The National Park Service (NPS) is beginning preparation of a legislative environmental impact statement (LEIS) for Gates of the Arctic National Park and Preserve. The purpose of the environmental impact statement is to evaluate a proposed land exchange agreement between the National Park Service and the Arctic Slope Regional Corporation, Nunamiut Corporation, and City of Anaktuvuk Pass. The land exchange agreement involves existing wilderness land and will require ratification by Congress.

This legislative environmental impact statement is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*) and its implementing regulations at 40 CFR Part 1500. Preparation of the LEIS will follow the procedures outlined under 40 CFR 1506.8 for the legislative statement required by statute to be included with a legislative recommendation to Congress.

The purpose of the land exchange agreement is to provide improved summertime subsistence access by allowing greater use of all-terrain vehicles (ATV) on specific lands within the park in exchange for development interests on certain native-owned lands within the park. In general, the agreement recommends the adjustment of current wilderness boundaries by removing approximately 74,800 acres from existing wilderness and requesting designation of 17,900 new acres; establishes permanent limits on the use of ATVs by qualified subsistence users from Anaktuvuk Pass on approximately 158,600 acres of park land; provides improved recreational access for the general public across approximately 120,300 acres of native land to federally-owned lands within the park; and protects park related values on approximately 127,100 acres of ASRC and Nunamiut lands by conveyance of conservation easements and surface development rights.

Alternatives to the proposed action include taking no action (leaving the linear ATV easements of the existing 1983 "Chandler Lake" Land Exchange Agreement in effect); a modification of the proposed alternative involving a fee simple exchange of specific federal tracts and native lands; and taking administrative action to modify park boundaries and expand authority for ATV use on all lands obtained by the NPS under the Chandler Lake Agreement.

Interested groups, organizations, individuals, and government agencies are encouraged to comment on the proposal at anytime.

A draft statement is expected to be available for public review by June 1989. A formal public comment period with hearings will follow the release of the draft legislative environmental impact statement.

FOR FURTHER INFORMATION CONTACT:

Paul F. Haertel, Associate Regional Director, Resource Services, National Park Service, 2525 Gambell St., Room 107, Anchorage, Alaska 99503–2892. Telephone: (907) 257–2684.

Dated: December 7, 1988.

Richard J. Stenmark,

Acting Regional Director, Alaska Region.

[FR Doc. 89–1630 Filed 1–24–89; 8:45 am]

BILLING CODE 4310–70–M

Draft Colorado River Management Plan and Environmental Assessment, Grand Canyon National Park, AZ; Extension of Public Review Period

SUMMARY: The Notice of Availability of the Draft Colorado River Management Plan and Environmental Assessment, Grand Canyon National Park, was announced in the **Federal Register**, Vol. 53, No. 228, Monday, November 28, 1988. The public review period for the Plan and Assessment has now been extended to January 20, 1989.

ADDRESSES: Comments on the Plan and Assessment or requests for copies should be addressed to the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

Date: December 16, 1988.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 89–1664 Filed 1–24–89; 8:45 am]

BILLING CODE 4310–70–M

Availability of Plan of Operations and Environmental Assessment Continued Operations; Mesa Limited Partnership, Lake Meredith Recreation Area; TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Mesa Limited Partnership, a Plan of Operations for continued operations of existing gas wells, Lake Meredith Recreation Area, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith Recreation Area, P.O. Box 1438, Fritch, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 347, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Date: January 12, 1989.

Richard Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 89–1629 Filed 1–24–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–429 (Preliminary)]

Mechanical Transfer Presses From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary

antidumping investigation No. 731–TA–429 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of mechanical transfer presses,[1] provided for in subheadings 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00 and 8466.94.50 of the Harmonized Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 27, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202–252–1198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Room 615–M, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on January 12, 1989, by Verson Division of Allied Products Corporation, Chicago, IL, the United Auto Workers of America, and the United Steelworkers of America (AFL–CIO–CLC).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended by 53 FR 33041 (August 29, 1988)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on Friday, February 3, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202–252–1198) not later than Wednesday, February 1, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before February 7, 1989, a written brief containing information and arguments pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than February 10, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: January 19, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–1670 Filed 1–24–89; 8:45 am]

BILLING CODE 7020–02–M

[1] For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

INTERSTATE COMMERCE COMMISSION

Motor Carrier Applications To Consolidate, Merge or Acquire Control; Coach Builders, Inc.

The following Applications seek approval to consolidate, purchase, merge lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway

eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6 MC–F–19295, filed November 22, 1988. Peter L. Picknelly, Sr. (Picknelly) (1776 Main Street, Springfield, MA 01103)—Control—Coach Builders, Inc. (Coach Builders) (2273 Main Street, Springfield, MA 01107). Representative: James M. Burns, 935 Main Street, Suite 304, Springfield, MA 01101. Picknelly, a noncarrier individual, seeks authority to acquire control of Coach Builders (MC–205751), a motor common carrier of passengers, through ownership of 100 percent of the common stock of Coach Builders. Picknelly owns 43.2 percent of the common stock of Peter Pan Bus Lines, Inc. (MC–61016), a motor common carrier of passengers.

Coach Builders has filed an application in No. MC–205751 for common carrier authority to transport passengers over irregular routes, in charter and special operations, between points in the United States. Coach Builders holds temporary authority under No. MC–205751 (Sub-No. E–1 TA) to transport passengers, in charter and special operations, between points in Connecticut, Massachusetts, New Hampshire, and New York, on the one hand, and, on the other, points in the United States. Because Picknelly, upon acquiring control of Coach Builders, will be a noncarrier individual in control of two or more carriers, his acquisition of control of Coach Builders is subject to our jurisdiction.

Decided: January 17, 1989.

By the Commission, Motor Carrier Board, Members Barnes, Guyton, and Hodge.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1607 Filed 1–24–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31273 [1]]

National Intergroup, Inc.; Control Exemption; the Permian Corp. D/B/A Western Oil Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: In Finance Docket No. 31273, the Commission is granting an exemption, *nunc pro tunc,* under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343 for the acquisition by National Intergroup, Inc. (NII), through it wholly owned subsidiary, NII Holdings, Inc. of the Permian Corp. d/b/a/ Western Oil Transportation, Inc. (TPC), a carrier operating under Certificate No. MC–115001. In Finance Docket No. 31274, an exemption under section 10505 from the prior approval requirements of section 11343 is granted for the continuance in Control by NII of Permian Operating Limited Partnership (POLP). In No. MC–FC–83265, the transfer of the operating rights of TPC and POLP under 49 U.S.C. 10926 is granted through publication of a notice in the *ICC Register.*

DATES: These exemptions and transfer approval will be effective on February 24, 1989. Finance Docket Nos. 31273 and 31274, petitions to stay must be filed by February 6, 1989, and petitions for reconsideration must filed by February 14, 1989. In No. MC–FC–83265, protests must be filed by February 14, 1989. Send pleadings referring to Finance Docket No. 31273, or No. MC–FC–83265 to:

(1) Office of the Secretary, Cases Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Mike Cotten, P.O. Box 1148, Austin, Texas 78767

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7246. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: January 12, 1989.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1608 Filed 1–24–89; 8:45 am]

BILLING CODE 7035–01–M

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[1] This proceeding embraces Finance Docket No. 31274, *National Intergroup, Inc.—Continunoce in Control Exemption— Permian Operating Limited Partnership;* and No. MC–FC–83265, *The Permian Corp., Inc.—Transfer Exemption—Permian Operating Limited Partnership.*

These cases were originally docketed as No. MC–F–18518, *National Intergroup, Inc.—Control Exemption—The Permian Corp. d/b/a/ Western Oil Transportation Co., Inc.,* and No. MC–F–18530, *The Permian Corp. d/b/a Western Oil Transportation Co., Inc., Transferor and Permian Operating Limited Partnership, Transferee.*

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Brodhead, KY, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 27, 1988, a proposed Consent Decree in *United States* v. *City of Brodhead, Kentucky and Commonwealth of Kentucky,* Civil Action No. 88–331, was lodged with the United States District Court for the Eastern District of Kentucky. The Complaint filed by the United States sought injunctive relief and the assessment of civil penalties under the Clean Water Act, as amended (the Act), against the City of Brodhead, Kentucky. The Complaint alleged that the City discharged pollutants from its sewage treatment plant in violation of its National Pollutant Discharge Elimination System (NPDES) permit and the Act.

Under the proposed Consent Decree, the City will pay a civil penalty of $2,500. The Decree requires the City to undertake numerous remedial measures to ensure that it complies with the Act in its operation of its sewage treatment plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S.

Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v.* City of Brodhead, Kentucky, et al., D.J. Ref. 90–5–1–1–3205.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Eastern District of Kentucky, Limestone and Barr Streets, Fourth Floor, Lexington, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $2.10 ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89–1613 Filed 1–24–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act; Wheelwright, KY, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 27, 1988, a proposed Consent Decree in *United States* v. *City of Wheelwright, Kentucky and Commonwealth of Kentucky,* Civil Action No. 88–436, was lodged with the United States District Court for the Eastern District of Kentucky. The Complaint filed by the United States sought injunctive relief and the assessment of civil penalties under the Clean Water Act, as amended (the Act), against the City of Wheelwright, Kentucky. The Complaint alleged that the City discharged pollutants from its sewage treatment plant in violation of its National Pollutant Discharge Elimination System (NPDES) permit and the Act.

Under the proposed Consent Decree, the City will pay a civil penalty of $2,600. The Decree requires the City to undertake numerous remedial measures to ensure that it complies with the Act in its operation of its sewage treatment plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *City of Wheelwright, Kentucky, et al.,* D.J. Ref. 90–5–1–1–2946.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Eastern District of Kentucky, Limestone and Barr Streets, Fourth Floor, Lexington, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW. Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totaling $1.90 ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89–1614 Filed 1–24–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–22,042]

H&S Drilling, Bradford, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), an investigation was initiated on November 18, 1988 in response to a worker petition dated November 14, 1988 and filed on behalf of workers and former workers engaged in contract drilling at H&S Drilling, Bradford, Pennsylvania.

There were no layoffs at H&S Drilling since 1984—almost a year prior to October 1, 1985, the earliest possible impact date. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 13th day of January 1989.

Marvin, M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–1618 Filed 1–24–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,874]

Hydril Co., Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition received on November 18, 1988 which was filed by the United Steelworkers of America, Local No. 5801 on behalf of workers at Hydril Company, Houston, Texas.

All workers were separated from the subject plant more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of January 1989.

Marvin, M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–1619 Filed 1–24–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–20,873]

Newcor, Inc., Bay City, MI; Negative Determination Regarding Application for Reconsideration

By an application dated November 10, 1988, Local #496 of the United Auto Workers together with company officials requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by the subject local on behalf of workers at Newcor, Inc., Bay City, Michigan. The denial notice was signed on October 14, 1988 and published in the **Federal**

Register on November 17, 1988 (53 FR 46509).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Office, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Newcor produce capital equipment—automated welding machinery for the auto and electronic industries. Bookings or sales increased in 1987 compared to 1986 and in the first seven months of 1988 compared to the same period in 1987. Production declined substantially in 1987 compared to 1986. The first seven months of 1988 saw an increase in production over the same period in 1987.

The union claims that sales and production of capital machinery at Newcor's Bay City plant declined steadily since 1984. The union states that the Department did not consider lost work to Newcor Canada and to ARP-LAS Europe or foreign owned domestic auto manufacturers' resistance to buying U.S. produced capital machinery.

The Department's denial was based on the fact that there was increased sales and production of capital machinery at Newcor's plant in Bay City in the first seven months of 1988 compared to the same period in 1987. Although sales increased in 1987 compared to 1986, production declined as the backlog of orders was reduced. The Department conducted a survey of the one company soliciting a large bid from Newcor in 1987. The survey showed that the bid was awarded to another domestic manufacturer. The value of the bid was large in relation to the Bay City's annual sales volume.

A review of the investigation file shows that Newcor Canada produced equipment only for the Canadian market and that the subject firm and Newcor Canada did not compete for the same projects. Also, ARP-LAS Europe is Newcor's manufacturing representative for Europe and there is no competition between ARP-LAS Europe and Bay City. Finally, there is no purpose in collecting data back to 1984 which is prior to the relevant period of the petition. Section 223(b)(1) of the Trade Act does not allow certification of workers separated more than one year prior to the date of the petition, which in this case is August 1, 1988.

A review of the findings on the Department's bid survey would not support a certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th Day of January, 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-1621 Filed 1-24-89; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22,074]

Summit Oil & Gas, Bradford, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), an investigation was initiated on November 18, 1988 in response to a worker petition dated November 14, 1988 and filed on behalf of workers and former workers engaged in the production of crude oil and natural gas at Summit Gas & Oil, Bradford, Pennsylvania.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) do not apply to workers who were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

There were no layoffs at Summit Gas & Oil since 1984—several years prior to November 14, 1987, one year prior to the date of the petition and the earliest possible impact date. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 13th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-1620 Filed 1-24-89; 8:45 am]

BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

National Film Preservation Board; Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces the first meeting of the National Film Preservation Board. This notice also describes the functions of the Board. Notice of this meeting is required in accordance with Pub. L. 100–446.

DATE: January 23, 1989, 10:30 a.m.

ADDRESS: Mumford Room, James Madison Memorial Building, Library of Congress, First Street and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, Library of Congress, Washington, DC 20540, telephone (202) 707–6316.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

The National Film Preservation Act of 1988 (2 U.S.C. 178) created the National Film Registry at the Library of Congress for the purpose of registering films that are culturally, historically, or aesthetically significant. The National Film Preservation Board, also created by the Act, is composed of 13 individuals, each selected by the Librarian of Congress from 13 organizations or institutions identified in the Act. The Board meets at least twice a year to nominate to the Librarian up to 25 films a year for inclusion in the National Film Registry. This is the first meeting of the Board.

Dated: January 11, 1989.

Arthur J. Lieb,

Executive Officer, Office of The Librarian.

[FR Doc. 89–1616 Filed 1–24–89; 8:45 am]

BILLING CODE 1410–01–M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before February 24, 1989.

ADDRESSES: Send comments to Mrs. Ingrid Reyes Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW. Washington, DC 20506 (202–786–0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0233 from whom copies of forms and support documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of hours needed to fill out the form. None of the entries are subject to 44 U.S.C. 3504(h).

Category: Extension

1. *Title:* Division of State Programs: Guidelines for Exemplary Award Proposals

Form Number: 3136–0114

Frequency of Collection: Annually

Respondents: State humanities councils applying for funding

Use: Application for benefits by state humanities councils to be used to produce humanities projects of an imaginative, exemplary nature which could serve as models to other state councils. Information will be used by reviewers, panelists and the Endowment's chairman to determine eligibility for funding

Estimated Number of Respondents: 23

Frequency of Response: Annually

Estimated Hours for Respondents to Provide Information: 120 hours per respondent or 2760 total hours for all respondents

Estimated Total Annual Reporting and Recording Burden: 3220

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 89–1617 Filed 1–24–89; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Southern California Edison Co., and San Diego Gas and Electric Co., San Onofre Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to change the power supply for motor-operated valve MOV–358 from motor control center 3 to the battery-supplied Uninterruptible Power Supply. MOV–358 is the inlet valve to reactor coolant loop "C" in the emergency core cooling recirculation system.

The Need for the Proposed Action

The proposed amendment is required to change the power supply to MOV–358 to eliminate a single failure vulnerability in the power supply arrangement for the recirculation system and thereby improve reliability and safety.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect

routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment 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 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 December 13, 1988 (53 FR 50143). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC 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 amendment.

Based upon the foregoing environmental assessment, the Commission concludes 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 November 7, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 17th day of January 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1637 Filed 1-24-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission [the Commission] is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, [the licensee], for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to raise the allowable diesel generator load from 5250 KW to 6000 KW. The loading is currently limited because the diesel generators have piston skirts that have a propensity to crack. The licensee proposes to change the piston skirts to a new design that does not have this problem, and thereby restore the diesel generators to their full power rating of 6000 KW.

The Need for the Proposed Action

The proposed amendment is required to raise the allowable diesel generator load from 5250 KW to the design rating of 6000 KW.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment 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 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 December 14, 1988 (53 FR 50340). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff 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 amendment.

Based upon the foregoing environmental assessment, the Commission concludes 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 November 11, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 13th day of January 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1638 Filed 1-24-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327, 50-328]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a temporary exemption from the requirements of § 50.46(a)(1) to 10 CFR Part 50 to the Tennessee Valley Authority (the licensee) for the Sequoyah Nuclear Plant, Units 1 and 2. The units are located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee in its letter dated November 3, 1988 and supplemented by letters dated December 2 and 5, 1988.

Environmental Assessment

Identification of Proposed Action

The exemption would allow the licensee relief from the provisions of § 50.46(a)(1), for the entire operating Cycle 4 for both units, with respect to the requirement that the Emergency Core Cooling System (ECCS) cooling performance analysis for an operating nuclear power reactor be calculated on a plant-specific basis using an approved ECCS evaluation model and plant operating conditions. The current calculated ECCS performance for the Sequoyah Nuclear Plant including the approved Upper Head Injection (UHI) Calculation Model for the facility, as referenced in § 15.4 of the Sequoyah Final Safety Analysis Report (FSAR), is not based on the actual operating conditions for the current operating Cycle 4 for Unit 1 and there are corrections needed to be made to the UHI calculation model. This will be true for the Unit 2 for upcoming operating Cycle 4 which is presently scheduled to begin on or about March 31, 1989. The relief would allow operation of Sequoyah Units 1 and 2, in their respective operating Cycle 4, without an ECCS performance analysis using an approved UHI calculation model and plant operating conditions. Because both units will have the UHI system in operation during operating Cycle 4, the ECCS performance analysis for both units for Cycle 4 would have to include an approved UHI calculation model without errors to be in conformance with 10 CFR 50.46(a)(1). Operating Cycle 4 for Unit 1 began in November 1988 and for Unit 2 is scheduled to begin on or about March 31, 1989.

In its application dated November 3, 1988 for relief, the licensee stated that it would submit for operating Cycle 5 a calculated ECCS cooling performance analysis using approved non-UHI models and Cycle 5 and beyond plant operating conditions. The licensee is planning to remove the UHI system during the Cycle 4 refueling outage, prior to operating Cycle 5, for each unit. The Cycle 4 refueling outages are scheduled for early and late 1990 for Units 1 and 2, respectively. Unit 1 is currently in operating Cycle 4, and Unit 2, is in operating Cycle 3 with the Cycle 3 refueling outage scheduled to begin in January 1989. Therefore, the relief requested is an exemption for each unit for operating Cycle 4 until their restart for operating Cycle 5.

The Commission, in its letter dated October 26, 1988, granted a temporary exemption to the above provisions of § 50.46(a)(1) for Unit 1. This temporary relief was granted until the licensee submitted to NRC the ECCS cooling performance analysis for Unit 1 using an approved UHI model and actual plant operating conditions for Cycle 4, but not later than May 31, 1989. The licensee had requested this temporary relief in its letter dated September 19, 1988 because it did not have an approved ECCS calculation for actual plant conditions for operating Cycle 4 for Unit 1. This was because of required Technical Specification (TS) changes in the UHI system that would change the water delivered to the reactor coolant system during an accident. The licensee requested the temporary relief to allow Unit 1 to startup and operate in operating Cycle 4 before the ECCS performance analysis was completed. The licensee has now requested the same TS changes in the UHI system for Unit 2 that would also change the water delivered to the reactor coolant system during an accident. Therefore, relief is needed from 10 CFR 50.46(a)(1) for Unit 2 to allow the unit to startup and operate in operating Cycle 4 because, as for Unit 1, the licensee does not have an acceptable UHI/ECCS analysis for Unit 2 for operating Cycle 4.

Since the above relief was granted for Unit 1, the licensee has reassessed the resources necessary to perform the required UHI/ECCS analysis for both units in operating Cycle 4 and concluded that the performance of the UHI/ECCS analysis for only one cycle creates a significant hardship. The licensee stated that the resources directed toward the performance of a UHI/ECCS analysis are inconsistent with its plans to remove UHI at Units 1 and 2 and would delay the availability of resources needed to support the UHI deletion from the units and could, therefore, delay the implementation of UHI deletion until later than the presently scheduled Cycle 4 refueling outages for the units. Additionally, the licensee stated that the performance of the UHI/ECCS analysis is a poor utilization of its resources, as well as NRC resources in reviewing the UHI/ECCS analysis, because of the age of the UHI model. The UHI model is not currently available for use and would require extensive resources to verify and validate the model on the current Westinghouse Corporation computer system and, therefore, the resources directed at the UHI/ECCS analysis would be directed toward "old" methodologies and technologies. The licensee further stated that Sequoyah is the last commercial plant utilizing the UHI design in this country and this would force the licensee to bear by itself the full burden for these resource expenditures.

During the duration of the relief granted by the exemption the heat flux hot channel factor, $F_Q(z)$ will be limited to a value of 2.15 as compared to the current value of 2.237 in the Sequoyah Units 1 and 2 Technical Specifications. By letters dated September 21 and December 2, 1988, the licensee proposed changes to the Technical Specifications to reduce the $F_Q(z)$ to 2.15 for Units 1 and 2, respectively.

The Need for the Proposed Action

The proposed exemption is required to permit the licensee to continue operation of Unit 1 beyond May 31, 1989 and for operating Cycle 4 for both Units 1 and 2. The restart for Unit 2 from its Cycle 3 refueling outage is presently scheduled for on or about March 31, 1989.

Environmental Impacts of the Proposed Action

With respect to the requested exemption, the relief from the above requirement of 10 CFR 50.46(a)(1) would permit the licensee to use evaluations based on sensitivity studies to demonstrate during operating Cycle 4 for both units that the calculated peak cladding temperatures (PCTs) remain below the acceptance criterion (2,200 °F) of 10 CFR 50.45(b)(1). Provisions of 10 CFR 50.46(a)(1) require that ECCS performance be calculated with an acceptable calculation model. The intent of the requirement is to ensure that the PCTs during a postulated accident do

not exceed 2,200 °F. The licensee has submitted the results of calculations with PCT penalties that demonstrate that the limiting PCT for both units resulting from the reduced minimum delivered UHI water volume is below the regulatory limit. Also, the licensee has accepted operating restrictions on the heat flux hot channel factor and steam generator tubes plugged for both units in operating Cycle 4 to provide an additional PCT margin of greater than 100 °F. This margin offsets any uncertainties of the licensee's sensitivity studies and ensures compliance with the 10 CFR 50.46 PCT acceptance criterion. Consequently, neither the probability of accidents nor the radiological releases from accidents will be increased. With regard to other potential radiological environmental impacts, the proposed exemption does not increase the radiological effluents from the facility and does not increase the occupational exposure at the facility. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological environmental impacts, the proposed exemption involves systems located 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.

Therefore, the proposed exemption does not significantly change the conclusions in the licensee's "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant Units 1 and 2," (FES) dated February 21, 1974. The Commission concluded that operation of the Sequoyah units will not result in any environment impacts other than those evaluated in the FES in its letter to the licensee dated September 17, 1980 which granted the facility operating license DPR–77 for Unit 1.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Sequoyah Nuclear Plant, Units 1 and 2," dated February 21, 1974.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and the licensee's supplemental letters that support the proposed exemption. The NRC staff 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 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 details with respect to this action, see the licensee's request for an exemption dated November 3, 1988 and the supporting information in the licensee's letters dated December 2 and 5, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 13th day of January 1989.

For the Nuclear Regulatory Commission.

Suzanne Black,

Assistant Director for Projects, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89–1639 Filed 1–24–89; 8:45 am]

BILLING CODE 7590–01–M

[NUREG–0800]

Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance and Availability

The U.S. Nuclear Regulatory Commission (NRC) has published revisions to section 6.5.2, "Containment Spray as a Fission Product Cleanup System," and section 6.5.4, "Ice Condenser as a Fission Product Cleanup System," and has issued a new section 6.5.5, "Pressure Suppression Pool as a Fission Product Cleanup System," of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The revision of SRP section 6.5.2 (Revision 2) eliminated overly conservative assumptions in estimating the effectiveness of post-accident fission product removal by containment spray system. SRP section 6.5.4 (Revision 3) was revised to incorporate the pH range specified in SRP section 6.5.2, Revision 2, for recirculating solutions. New SRP section 6.5.5 (Revision 0) resolved an inconsistency in NRC regulatory guidance by giving credit to pressure suppression pools at post-accident fission product cleanup systems in boiling water reactors.

A Notice of Availability and Request for public and industry comments on SRP sections 6.5.2 and 6.5.5 was published in the **Federal Register** on April 6, 1987.

The revised and new SRP sections are effective immediately. A copy will be available in the Commission's Public Document Room within two weeks. Copies of the revised and new SRP sections or of the complete Standard Review Plan, NUREG–0800, Accession No. PD–81–920199 are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650.

Dated at Rockville, Maryland this 11th day of January 1989.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 89–1636 Filed 1–24–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on December 28, 1988 (53 FR 249). Individual authorities established or revoked under Schedule A, B, or C between December 1, 1988, and

December 31, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, of each year.

Schedule A

No Schedule A authorities were established or revoked during December.

Schedule B

No Schedule B authorities were established or revoked during December.

Schedule C

Department of Agriculture

One Executive Assistant to the Assistant Secretary for Food and Consumer Services. Effective December 19, 1988.

Department of Commerce

One Confidential Assistant to the Director, Office of Business Liaison. Effective December 2, 1988.

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Affairs. Effective December 16, 1988.

One Private Secretary to the Director for Minority Business Development Agency. Effective December 28, 1988.

One Special Assistant to the Assistant Secretary for the National Oceanic and Atmospheric Administration. Effective December 29, 1988.

One Special Assistant to the Director General of the U.S. Foreign Commercial Service. Effective December 30, 1988.

One Executive Assistant to the Under Secretary for Export Administration. Effective December 30, 1988.

Department of Defense

One Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals. Effective December 14, 1988.

Department of Education

One Confidential Assistant to the Assistant Secretary for Educational Research and Improvement. Effective December 14, 1988.

One Staff Assistant to the Assistant Secretary for Educational Research and Improvement. Effective December 14, 1988.

One Special Assistant to the Director for the Office of Inter-governmental and Interagency Affairs. Effective December 14, 1988.

Department of Energy

One Secretary (Confidential Assistant) to the General Counsel. Effective December 16, 1988.

One Director to the Deputy Assistant Secretary and Staff Director for the Office of Special Projects. Effective December 23, 1988.

Department of Health and Human Services

One Special Assistant to the Deputy Commissioner for Policy and External Affairs. Effective December 9, 1988.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective December 14, 1988.

One Confidential Assistant to the Assistant Secretary for Legislation. Effective December 16, 1988.

Department of Interior

One Departmental Committee Management Officer to the Deputy Assistant Secretary for Policy and Analysis. Effective December 23, 1988.

Department of Justice

One Confidential Assistant to the Assistant Attorney General for the Office of Legislative Affairs. Effective December 14, 1988.

One Special Assistant to the Director for the Office of Public Affairs. Effective December 14, 1988

Department of Labor

One Deputy Liaison Officer to the Assistant Secretary for the Office of Congressional Affairs. Effective December 9, 1988.

One Special Assistant to the Assistant Secretary for the Office of Congressional Affairs. Effective December 9, 1988.

One Legislative Analyst to the Assistant Secretary for the Office of Congressional Affairs. Effective December 28, 1988.

One Senior Liaison Officer to the Assistant Secretary for the Office of Congressional Affairs. Effective December 28, 1988.

Department of Transportation

One Special Assistant to the Director for the Office of Commercial Space Transportation. Effective December 7, 1988.

One Special Assistant to the Administrator for the Federal Aviation Administration. Effective December 14, 1988.

One Congressional Liaison Officer to the Director for the Office of Congressional Affairs. Effective December 23, 1988.

Department of Treasury

One Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison. Effective December 16, 1988.

Action

One Special Assistant to the Associate Director. Effective December 9, 1988.

Commission on Civil Rights

One Special Assistant to the Commissioner. Effective December 19, 1988.

International Trade Commission

One Staff Assistant (Legal) to a Commissioner. Effective December 5, 1988.

One Confidential Assistant to a Commissioner. Effective December 7, 1988.

One Staff Assistant (Legal) to a Commissioner. Effective December 14, 1988.

Office of Science and Technology Policy

One Public Information Assistant to the Director. Effective December 19, 1988.

Small Business Administration

One Special Assistant to the Director of Private Sector Initiatives. Effective December 19, 1988.

Securities and Exchange Commission

One Staff Assistant to the Regional Administrator. Effective December 23, 1988.

United States Information Agency

One Special Assistant to the Director for the Office of International Visitors. Effective December 8, 1988.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective December 9, 1988.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

[FR Doc. 89–1632 Filed 1–24–89; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26470; File No. SR-MBS-88-17]

Self-Regulatory Organizations; MBS Clearing Corp.; Proposed Rule Change Regarding Election of Directors to MBSCC's Board of Directors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

A new Section 4A.2 has been added to MBSCC'S By-Laws providing for a Nominating Committee, composed of officers or partners of Participants, to choose nominees for the Board of Directors. In addition, a new Section 3.2 has been added directing the Nominating Committee to select candidates with a view towards fair representation of a cross section of Participants. Section 3.2 also allows Participants to directly nominate candidates by filing a petition signed by at least five Participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to assure Participants fair representation in the selection of Directors and administration of MBSCC's affairs. This is accomplished by the addition to the By-Laws of a new Section 4A.2 which provides for a Nominating Committee, composed of three members who are partners or officers of Participants, to choose nominees for the Board of Directors, and a new Section 3.2 which directs the Nominating Committee to select candidates with a view toward providing fair representation for the interests of a cross section of Participants. Section 3.2 also provides a mechanism allowing Participants to make nomination directly by filing a petition signed by at least five Participants. Conforming modifications are also made in existing Section 3.1.

In Release No. 24046 (File No. 600-22) dated February 2, 1987 the Securities and Exchange Commission (the "Commission") granted MBSCC temporary registration as a clearing agency under section 17A of the Securities Exchange Act of 1934, as amended (the "Act"). In that Release, the Commission stated that it expected MBSCC, as a condition to permanent registration, to file proposed Rule changes designed to satisfy the requirement of section 17A(b)(3)(C) that a clearing agency's rules assure fair representation to its participants in the selection of its directors and administration of its affairs. The proposed rule changes are intended to satisfy that requirement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-references self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 15, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1657 Filed 1-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26471; File No. SR-MBS-88-19]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing of Proposed Rule Change Modifying MBSCC's Clearing Division

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1988, MBS Clearing Corporation, Clearing Division, filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Self-Regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed changes to the Rules of the Clearing Division of MBS Clearing Corporation ("the Corporation") include: (1) Provisions for reporting of settlements to the Corporation by both

parties to an SBO Trade; (2) provisions for dealing with situations where the information submitted by both parties does not agree, or one party fails to submit settlement information; and (3) modifications to the SBO Cash Adjustment (formerly known as the SBO Amortized Value Adjustment), including addition of Broker Adjustments to be paid or received by the Dealers involved in an SBO Trade resulting from the netting of transactions originally entered through a Broker.

(1) *Two Sided Reporting and Comparison of SBO Trades.* Article II, Rule 6, Section 2, is amended to require the receiving Participant submit its receive ticket or a report of settlement through the Corporation's computer system (collectively referred to as an "SBO Settlement Notification") upon settlement of an SBO transaction, containing the same information that currently is required from the delivering Participant. Provisions that required the delivering and receiving Participants to verify the Notification of Settlement Report or submit a Withhold Instruction are deleted as no longer applicable under the two-sided reporting system. A new subparagraph (a) of Section 2 requires the Corporation to cancel the SBO Trade, furnish the delivering and receiving Participants with a Notification of Settlement Report, and completely or partially delete the SBO Trade from the Participants' respective Purchase and Sales Reports, Open Commitment Reports and Market Margin Differential Reports, if the SBO Settlement Notifications submitted by the two Participants agrees.

(2) *Failure to Return Agreeing Reports of SBO Trades.* A new subparagraph (b) of Article II, Rule 6, Section 2 requires the Corporation to furnish the delivering and receiving Participants with an Uncompared Advisory Report if the information in the SBO Settlement Notification does not agree or if only one Participant submits an SBO Settlement Notification, and provides that the SBO Trade will not be deleted from the reports until agreeing settlement information has been submitted or the Participant that has submitted unmatched settlement information deletes it. Article II, Rule 8, Section 2 and a provision of the new Section 2(b) of Rule 6 make clear that SBO Contra-Side Participants will continue to be subject to Market Margin Differential requirements until they have submitted agreeing SBO Settlement Notifications. Article II, Rule 8, Section 2, is amended to provide that, if the delivering and receiving Participants have not returned agreeing SBO Settlement Notifications, the Corporation will reflect the SBO Trades and any fines imposed for failure to respond in a timely manner to Uncompared Advisory Reports on a Delinquent SBO Advisory Report available as provided in the Procedures. References to the discontinued monthly SBO Fail Report are deleted. Article V, Rule 3, is amended to expressly authorize the Corporation to fine or otherwise sanction a Participant that has not timely responded to an Uncompared Advisory Report.

(3) *SBO Cash Adjustment.* Article II, Rule 3, Section 4 has been substantially revised. Section 4 will make it clear that the SBO Cash Adjustment (formerly the SBO Amortized Value Adjustment) will not be applied to Brokers whose SBO Trades net to a Net-Out Trade (formerly a Zero SBO Trade). Instead, the SBO Cash Adjustment of each Dealer on whose behalf the Broker has acted will include a Broker Adjustment equal to the SBO Market Differential multiplied by the percentage by which the amortized value of Securities delivered or received by the Dealer is greater or less than the quantity originally reported to the Corporation by the Broker following the Trade Date. The SBO Cash Adjustment will also include any fines or interest imposed on the Participant. Section 4 is further amended to remove from the Rules specific time frames for the delivery of the Cash Adjustment Report and for the payment of SBO Cash Adjustments. Those time frames will now be specified in the Procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule changes generally are intended to accommodate an enhancement of the Corporation's SBO System and to conform the terminology of the Rules to current usage. Capitalized terms herein have the meanings ascribed to them in the Corporation's Rules.

(1) *Two-sided Reporting and Comparison of SBO Trades.* Under the current Rules, settlements of SBO Trades are processed as follows: (a) Both the delivering and receiving Participants are furnished delivery/receive tickets at the time their netted SBO Trade is reported. (b) Following settlement, the delivering Participant returns its delivery ticket to the Corporation, reporting settlement of the SBO Trade and describing the Eligible Securities delivered. (c) On the next Business Day, the Corporation delivers a Notification of Settlement Report to both the delivering and receiving Participants based on the information submitted by the delivering Participant. (d) Before the end of the next Business Day: (i) If neither Participant has submitted a Withhold Instruction (indicating that the Notification of Settlement Report is erroneous), the Corporation deletes both sides of the SBO Trade from the Participants' Open Commitment Reports; or (ii) If either Participant has submitted a Withhold Instruction, the SBO Trade continues to be reflected on the Open Commitment Reports of both Participants until the discrepancy is resolved.

The proposed Rule changes require that both the delivering and the receiving Participants submit an SBO Settlement Notification, either by returning their delivery/receive tickets or by entering reports of settlements through the Corporation's computer system. The Corporation will compare the SBO Settlement Notifications and, if the information contained therein agrees within a prescribed range, will cancel the SBO Trade (wholly or in part) on the next Business Day and reflect such cancellation on the Participants' Notification of Settlement Reports, Purchase and Sale Reports, Open Commitment Reports and Market Margin Differential Reports.

(2) *Failure to Return Agreeing Reports of SBO Trades.* If SBO Settlement Notifications do not agree within the prescribed tolerances or if the Corporation has received an SBO Settlement Notification from only one SBO Contra-Side Participant, it will furnish both Participants with Uncompared Advisory Reports. Open Commitment Reports and Market Margin Differential Reports that continue to reflect the SBO Trade, until it has received SBO Settlement Notifications that do agree within the prescribed tolerances. If a Participant does not promptly respond to an Uncompared Advisory Report, it will also receive a Delinquent SBO Advisory Report (replacing the current SBO Fail

Report). In order to deter late submission of settlement reports, the proposed Rule changes include an express provision for fining or otherwise sanctioning a Participant that has not made timely response to an Uncompared Advisory Report, with any fines reflected in its Delinquent SBO Advisory Report.

(3) *SBO Cash Adjustment.* The current Rules require that the Corporation calculate an SBO Amortized Value Adjustment, which is owed by or to a delivering or receiving Participant in order to compensate for any difference in the amortized value of Securities that was originally reported to the Corporation following the Trade Date and the amortized value of Securities actually delivered at settlement. The proposed Rule changes add to elements to the formula for calculating the SBO Amortized Value Adjustment: (i) A Broker Adjustment (discussed below) and (ii) at the Corporation's option, any fines or interest imposed on the Participant. The SBO Amortized Value Adjustment will be renamed the SBO Cash Adjustment and will be reported and payable as prescribed in the Procedures.

The Broker Adjustment is intended to address the situation of a broker whose SBO transactions have resulted in a Net-Out Trade (formerly referred to as a Zero SBO Trade), in which the Broker has no delivery or receive obligation. Under the current Rules, a Broker, like any other Participant, would be required to pay or entitled to receive an SBO Cash Adjustment even though all deliveries and receipts of Securities are being made by the Dealers on whose behalf he is acting. The proposed Rule changes correct this by requiring that the Corporation calculate a Broker Adjustment which will be included in the SBO Cash Adjustment to be paid by or to the delivering and receiving Dealers on whose behalf the Broker has acted. The Broker Adjustment is calculated in the same manner as the SBO Cash Adjustment that otherwise would have been payable by the Dealers had no Broker been involved in the transaction.

The proposed Rule changes are consistent with section 17A of the Securities Exchange Act of 1934 ("the Act"), in that they facilitate the prompt and accurate settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Corporation has not received comments on the proposed Rule changes from Participants. However, the Corporation has kept Participants informed about development and implementation of its enhancement of the SBO System through several Administrative Bulletins, and no comments regarding the matters addressed in the Bulletins have been received.

The text and a summary of the proposed Rule changes will be distributed to all Participants shortly after the submission of this Form. The Corporation will notify the Securities and Exchange Commission upon receipt of any written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with resepct to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 52, will be available for inspection and copying in the Commission's Pubic Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MBS-88-19 and should be submitted by February 15, 1989.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1658 Filed 1-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26465; File No. SR-MSRB-88-5]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Arbitration and Arbitration Fees and Deposits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 23, 1988, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board is filing amendments to rule G-35 relating to arbitration and amendments to rule A-16 relating to arbitration fees and deposits (hereafter referred to as the "proposed rule change"). The Board requests that the Commission delay the effectiveness of Section 36 of rule G-35, relating to predispute arbitration agreements, for a period of three months following the date of Commission approval in order to allow dealers to revise their customer account agreements to include the required disclosures.

In general, the proposed rule change is intended to improve the efficiency of the arbitration process; to extend the benefits of simplified arbitration procedures to controversies not involving more than $10,000; to define public and industry arbitrators; to provide additional information concerning arbitrators' backgrounds to parties to arbitration proceedings; to codify the affirmative disclosure obligations of arbitrators; to improve pre-hearing discovery processes; to require that a verbatim record of

proceedings be kept; to provide for the publication of arbitration awards; and to require certain disclosures to be provided to customers regarding predispute arbitration agreements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) A Uniform Arbitration Code (the "Uniform Code") was developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of representatives of the Board, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established a uniform system of arbitration procedures throughout the securities industry. The proposed rule change is intended to conform the provisions of the Board's arbitration code, contained in rule G–35, and arbitration deposits and fees, contained in rule A–16, to recent amendments to the Uniform Code approved by SICA.

(i) Arbitrators

(A) *Definition of public and industry arbitrators.* Section 12(c) of the proposed rule change would prohibit persons currently employed in the securities industry, or employed during the last three years, from acting as public arbitrators. The proposed rule change would retain industry members retired for more than three years as public arbitrators, but the Board will grant a challenge for cause to any customer who is concerned about the possible bias of such arbitrators.

The proposed rule change would remove from the public arbitrator pool attorneys who spent more than 20 percent of their work effort within the previous two years as municipal securities underwriter's counsel or representing dealers in securities-related litigation or arbitration matters involving public customers. Securities lawyers, accountants and other professionals who devote "substantial" work effort (30% or more of work effort) to other municipal securities dealer activities will continue to act as public arbitrators; however, customers, will be granted a challenge for cause if they are concerned about any possible bias. The Board has included this in section 8(c) of the proposed rule change.

(B) *Notice of appointment of arbitrators.* Since January 1988, the Board has asked arbitrators to complete an Arbitrator Profile Form, which includes extensive employment history and much more background information than previously was obtained. The proposed rule change would state that this more complete information, as well as other information discussed in subsection (C) below, be provided to the parties within eight business days of the initial hearing. The proposed rule change to section 8(b) of the Code also would state that a party may make further inquiry of the Director of Arbitration concerning the background of any arbitrator.

(C) *Required disclosure by arbitrators.* Section 13 of the Code would incorporate the specific scope of disclosures that are provided in the *American Bar Association/American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes* into its disclosure requirements for arbitrators.

The proposed rule change also would state that arbitrators must make a reasonable effort to inform themselves of any of the enumerated interests or relationships and that the obligation to disclose such interests or relationships is a continuing duty throughout the arbitration process.

(D) *Disqualification or other disability of arbitrators.* Section 14 of the Code would state that, after commencement of the first hearing, but prior to rendering an award, if an arbitrator should become disqualified, refuse or be unable to discharge his duties, the remaining arbitrators either may request that another arbitrator be appointed or continue with the hearing and determination of the case. If a party objects to the remaining arbitrators continuing with the case, the Director of Arbitration would appoint a new arbitrator to the panel. The proposed rule change also would authorize the Director of Arbitration to appoint a new arbitrator if an arbitrator becomes disqualified after appointment but prior to the first hearing. This would codify the Board's current procedure.

Section 8(b) of the Arbitration Code allows parties to request a peremptory challenge within five business days after notification of the identities of the arbitrators. As discussed above, section 14 states that, if an arbitrator should become disqualified, refuse or be unable to discharge his duties, either before the initial hearing or at any time before the rendering of the award, a new arbitrator may be appointed. The proposed rule change would clarify that, if a replacement arbitrator is appointed less than five business days prior to the hearing date, the parties have only until the hearing date to consider whether they wish to exercise a peremptory challenge. While the five business day period would be shortened in certain cases, the proposed rule change should expedite the processing of claims when a vacancy occurs on the hearing panel and a replacement arbitrator is chosen by holding the case to its initial hearing date.

(ii) Discovery

(A) *Document production and information exchange.* The proposed rule change would add a new provision to the Code (Section 22) setting forth a procedure for document production and information exchange. The section would allow any party to serve a written request for information or documents upon another party 20 business days or more after service of the Statement of Claim by the Director of Arbitration or upon service of the Answer by the Director of Arbitration, whichever is earlier. The parties must serve the request on all parties and file it with the Director of Arbitration. If a party objects to all or part of a request for information or documents, it must make such objections, in writing, within 15 calendar days from the date of service. Any response to objections must be served on all parties and filed with the Director of Arbitration within 10 calendar days of receipt of the objection. If there are no objections, these requests must be satisfied within 30 calendar days from the date of service.

In addition, prehearing conferences may be held. Such conferences allow parties to meet prior to the hearing to discuss any matters which would expedite the arbitration proceeding, including the exchange of documents, identification of witnesses and briefing of contested issues. The proposed rule change would provide that, at the request of an arbitrator, or at the discretion of the Director of Arbitration, a prehearing conference would be scheduled. The conference may be held by telephone and would be presided over by a Board staff member. The staff person would seek to achieve agreement among the parties to any open discovery issue. Any issues raised at the prehearing conference that are not resolved may be referred by the Director of Arbitration to one of the arbitrators for decision.

With the agreement of a majority of the arbitration panel, the Director of Arbitration may appoint one member of

the panel to decide all unresolved information and document issues. The arbitrator would be authorized to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines on behalf of the panel and issue any other ruling that will expedite the arbitration process. These issues would be resolved without a hearing unless the arbitrator calls one. The arbitrator also may refer any issue to the full panel for a decision.

The proposed rule change also would require, at least 10 calendar days prior to the first scheduled hearing date, that all parties serve on each other copies of documents and the identities of witnesses they intend to present at the hearing as part of their direct testimony. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified.

(B) *Subpoenas and power to direct appearances.* The proposed rule change would amend section 23 of the Code regarding subpoenas and the power of arbitrators to direct the appearances of associated persons of dealers to require all parties to provide a copy of any subpoena issued to the other parties.

(iii) Record of Proceedings

Section 27 would require a verbatim record by stenographer or tape recording of all arbitration hearings to be made. If a party elects to have the record transcribed, the cost of such transcription would be borne by the party making the request unless the arbitrators direct otherwise. The arbitrators also may direct that the record be transcribed, with the cost borne by the Board.

(iv) Arbitration Awards

Section 31 of the Code states that awards shall be in writing and signed by a majority of the arbitrators. The proposed rule change would provide that an award must be prepared by the arbitrators and would contain (1) the names of the parties; (2) a summary of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded and a statement of any other issues resolved; and (3) the names of the arbitrators and the signatures of those arbitrators concurring in the award. The proposed rule change would state that summary information contained in the award shall be made publicly available in accordance with the policies of the Board.

Board arbitration awards would contain a characterization of the dispute involved as summarized by the arbitrators. The Board's publication policy, included in the Board's Arbitration Policies and Interpretations, provides for the public availability of the awards except for the names of parties who are public customers (unless the customer agrees to the disclosure of his identity) and the names of the arbitrators. If a party wishes to review prior awards rendered by the arbitrators assigned to the party's current case, such awards will be made available to that party.

(v) Disclosure Regarding Predispute Arbitration Agreements

In response to the Commission's concerns about predispute arbitration agreements as expressed in Chairman Ruder's July 8, 1988 letter to the Board, the proposed rule change would set forth requirements for using such agreements with customers. The proposed rule change would require the predispute arbitration clause to be highlighted and preceded by specific highlighted disclosure language which explains that arbitration is final and binding on the parties; that the parties are waiving their right to seek remedies in court; that discovery in arbitration is limited; that the award need not contain factual findings and legal reasoning; that appeals of awards are strictly limited; and that the arbitration panel will include a minority of persons who were or are affiliated with a dealer. The Board believes such disclosure clearly and concisely describes arbitration and its effect on customers who agree to arbitrate disputes.

In addition, the proposed rule change would require the agreement to include a statement immediately preceding the signature line that the agreement contains an arbitration clause. Also, it would require a dealer to give a copy of the arbitration agreement to the customer, who must acknowledge receipt on the agreement or on a separate document. The proposed rule change would apply only to new agreements signed by an existing or new customer of a dealer three months after the effective date of the proposed rule change.

(vi) Other Amendments to the Arbitration Code

(A) *Simplified arbitration for small claims.* The proposed rule change would raise the limit on the size of claims eligible for simplified arbitration procedures for public customers from $5,000 to $10,000. Under the simplified procedure, cases are decided by a single arbitrator, often without a hearing. The increase from $5,000 to $10,000 in section 34 of the Board's Code would increase the number of cases eligible for processing under this expedited provision and allow many more cases to be determined quickly, with fewer arbitrators. The proposed rule change also would be adopted for industry small claims under section 35.

(B) *Composition of arbitrator panels.* The proposed rule change also would revise section 12 which provides that customer claims exceeding $500,000 must be decided by a panel of five arbitrators, instead of the usual three. Five arbitrator panels cause inordinate administrative costs and delays the conclusion of these cases without providing substantial benefits. The proposed rule change would eliminate the five-member panel requirement and allow the Director of Arbitration to exercise discretion in appointing panels of either three or five arbitrators in all cases in which the claims exceed $10,000.

(C) *General denial by respondent.* Section 5(b)(2)(i) states that a respondent who pleads only a general denial as an answer may be barred, upon written objection by the adversary party to the Director of Arbitration before the hearing and in the discretion of the arbitrators, from presenting the facts or defenses not included in such party's answer at the hearing. The proposed rule change would delete the requirement that the objection must be made to the Director of Arbitration in writing prior to the hearing, leaving it up to the arbitrators to determine, upon objection by a party, whether any additional facts or defenses may be offered.

(D) *Administrator fee.* The proposed rule change also would revise rule A-16(4) which provides that a $25 administrative fee is retained in an arbitration case that is settled or withdrawn prior to the first hearing session. Such fees assist in defraying certain administrative costs associated with processing arbitration claims. Because of increasing costs of the Board's arbitration program, the proposed rule change would increase the fee retained to $50. The proposed rule change also would state that the fee does not apply to customer small claims so that the entire filing fee may be returned to these customers upon settlement of their disputes.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) and 15B(b)(2)(D) of the Securities Exchange Act of 1934. Section 15B(b)(2)(C) requires in pertinent part that the Board's rules be designed

> to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open

market in municipal securities, and, in general, to protect investors and the public interest * * *.

Section 15B(b)(2)(D) states that the Board shall, if it deems appropriate

provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will effect any burdens on competition in the municipal securities industry because the proposed rule change will be equally applicable to all participants in the industry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board did not solicit comments on the proposed rule change. One comment was received regarding the disclosure rule for predispute arbitration agreements. The Board revised its rule to address the commentator's concern. The proposed rule change was the subject of extensive discussions by SICA which approved the provisions as part of the Uniform Code.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

The proposed rule change represents significant modifications in the current rules for arbitration proceedings administered by the Board. On September 10, 1987, the Commission wrote to SICA, of which the Board is a member, in order to request that it consider a wide range of changes to its Uniform Code. Since that time, SICA has developed new rules to respond to many of the issues raised in the Commission's letter. The proposed rule change is intended, in large part, to conform the Board's arbitration rules to the new SICA rules. The Commission has asked the Board to make a number of, generally minor, amendments to the proposed rule change to more fully conform the Board's arbitration provisions to the SICA Uniform Code. The Commission understands that its recommendations will be considered at the Board's next regular meeting, and, if approved by the Board, that the proposed rule change will be amended accordingly.

The Commission encourages comment on any aspect of the proposed rule change. In addition, the Commission requests specific comment as follows.

The Board's proposed rule change differs in certain respects from the SICA Uniform Code. In particular, comment is sought on the Board's proposed public and industry arbitrator definitions as they would apply to attorneys and other professionals. The Uniform Code defines as an industry arbitrator an attorney, accountant or other professional who has devoted twenty percent or more of his or her professional work effort to securities industry clients within the last two years. Section 12(c) of the Board's proposed rule change would establish a narrower definition of the sort of professional representation that would disqualify a person from serving as a public arbitrator. Section 12(c) would remove from the public arbitrator pool only attorneys, and only those who have spent more than 20 percent of their work effort within the previous two years as municipal securities underwriter's counsel in securities-related litigation or arbitration matters involving public customers. On the other hand, the Board proposes, in section 8(c) of the proposed rule change, to give customers a challenge for cause to arbitrators who are securities lawyers, accountants and other professionals who devote 30 percent or more of their work effort to municipal securities activities [1] of securities industry clients. The Commission specifically seeks comment as to whether the proposed definitions of public and industry arbitrators, together with the right to challenge for cause, are adequate to assure the independence of public arbitrators from any perception of, or actual, influence from the securities industry. We also invite comment as to whether the appropriate balance has been struck by the Board between the need for impartial arbitrators and the need for industry expertise.

The Commission also seeks comment on the provisions of section 22 of the proposed rule change governing discovery. In particular, proposed section 22 does not explicitly provide for the taking of depositions. Rather, the section permits arbitrators to issue any ruling which will expedite the arbitration proceedings. The Commission understands this to include the ability to order depositions. Comment is specifically sought as to whether a party should be able to have the arbitrators order depositions in a particular case if he can demonstrate to them that a deposition is necessary to develop his case or that he cannot obtain equivalent information from documents alone.

Section 31 of the proposed rule change establishes standards for the content and public availability of arbitration awards. We invite comment as to whether these standards provide investors with sufficient ability to evaluate the arbitration system in general and the records of particular arbitrators.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 15, 1989.

For the commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1609 Filed 1-24-89; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission has asked the Board to amend Section 8(c) to delete the reference to representation involving specifically "municipal securities activities."

[Release No. 34-26469; File No. SR-NASD-88-55]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc, Relating to NASD Assessment on Members Conducting a Business in U.S. Government Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to section 1(b) of Schedule A to the Association's By-Laws imposes an assessment of .25% on the annual gross income from transactions in U.S. Government securities on NASD members whose books and records and financial operations regarding transactions in U.S. Government securities will be examined by the Association pursuant to the Government Securities Act of 1986.

II. Self-Regulatory Organization's Statement of the Purpose of, And Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendmet to Section 1(b) of Schedule A to the Association's By-Laws imposes an assessment of .25% on the annual gross income from transactions in U.S. Government securities on NASD members whose books and records and financial operations regarding transactions in U.S. Government securities will be examined by the Association pursuant to the Government Securities Act of 1986. Reflecting the expansion of the Association's regulatory responsibilities, the new assessment is designated to ensure that the Association's assessments on gross income are imposed fairly on all members and fairly reflect the costs of membership.

With the addition of section 15C to the Securities Exchange Act of 1934 ("Exchange Act") and the amendment of section 15A(f)(2), the NASD was assigned responsibility for examining the books and records and financial responsibility of NASD member firms with respect to their business in U.S. Government securities. This includes not only those firms newly required to become NASD members by section 15C of the Exchange Act, but all NASD members doing a business in U.S. Government securities (excluding only the approximately 175 NASD members that will be examined by another Self-Regulatory Organization). As a result, the NASD is currently responsible for examining the U.S. Government securities activities of 843 firms.

In enacting the Government Securities Act of 1986, Congress clearly stated that NASD surveillance of the books and records and financial responsibility of its members with respect to their transactions in U.S. Government securities is necessary to address "* * * specific weakness in the existing regulatory framework." Congress also specifically referenced "the recent failures of several government securities dealers." S. Rep. No. 426, 99th Cong., 2d Sess. 1 (1986). In response to this Congressional mandate, and based on its experience in this area to date, the NASD determined that it must employ all of the resources it utilizes in the regulation of the financial responsibility and recordkeeping of its membership generally. Manpower models, examination modules, and estimates of resource expenditure necessary to examine the U.S. Government securities activities of its member firms were developed accordingly. Cost elements included additional examining personnel, supporting personnel and facilities, and a pro rata allocation of general administrative costs, including, for example, training and legal support. On the basis of this analysis, an estimate of the minimum expenditure for the enterprise was developed and a rate calculated. It is estimated that, with the application of the annual assessment credit, the NASD will recover approximately $1.5 million of the $1.7 million it will expend in 1989. Like all NASD income assessments and the annual assessment credit, this rate will be reevaluated annually and, as experience is gained, it may be appropriate to alter the rate.

The proposed rule change is consistent with the provisions of section 15A(b)(5) of the Securities Exchange Act of 1934, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that this rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was filed initially on September 21, 1988, as part of SR-NASD-88-41, in conjunction with a number of fee changes. Comments were neither solicited nor received by the NASD. Comments objecting to the assessment were, however, received by the Commission from Shearson Lehman Government Securities, Inc. ("SLGIS"), Merrill Lynch Government Securities, Inc., Aubrey Lanston & Co., Inc., Discount Corporation of New York, and County NatWest Government Securities, Inc. These comments were forwarded to the NASD. In order to consider these comments, the NASD temporarily withdrew the government securities assessment. Thereafter, additional comments were received by the NASD from the Government Securities Brokers Association ("GSBA"), a trade association representing government securities interdealer brokers. Copies of these letters are attached. The rule change proposed herein is a re-filing of that part of the rule change initially proposed in SR-NASD-88-41 relating to the U.S. Government securities assessment.

All of the commentators asserted that the NASD's proposed assessment was too high and reflected the Association's lack of understanding of the peculiarities of the U.S. Government securities marketplace. SLGSI argues, for example, that an assessment in the amount of .25% on annual gross income derived from transactions in U.S. Government securities is excessive because members that conduct transactions in U.S. Government securities (i) do not require the same extent of regulation as is required for

transactions in other products, and (ii) do not utilize NASD services to the same extent as do other members. SLGSI characterizes its industry as one dominated by sophisticated institutions with ready access to all necessary information. At the same time, SLGSI suggests that "manipulative practives are virtually eliminated in a market whose enormous size precludes dominance by a single broker or dealer." Thus, SLGSI appears to be arguing that a lower (and presumably a less expensive) level of regulatory effort is required in the U.S. Government securities marketplace.

GSBA suggests that assessments on its members [1] should be lower than the assessment imposed on other government securities firms because its members "are exposed to and create fewer markets or customer risks, do not take positions, do not make markets, and transact business with only approximately sixty (60) accounts all of whom are NASD members." As further evidence that its members' assessment should be significantly lower, GSBA notes that the proposed assessment of its members (stated by GSBA to average $80,000 with the application of the 50% assessment credit) is significantly higher than the expense incurred by GSBA members for complete audits by their independent accountants.

Congress's mandate to the NASD, as expressed in the legislative history of the Government Securities Act and in the Exchange Act itself (at section 15A(f)(2)), is to provide regulation and surveillance of the books and records of its members engaged in the U.S. Government securities business.[2] Thus, as previously noted, the NASD will examine not only those firms newly required to become registered pursuant to section 15C of the Exchange Act, but all NASD members doing a business in U.S. Government securities (excluding only the approximately 175 NASD members that will be examined by another Self-Regulatory Organization). Thus, pursuant to the Government Securities Act, the NASD is required to assume the responsibility of examining the U.S. Government securities activities of a group that currently includes 843 firms.

It is true, as asserted by the commentators, that the U.S. Government securities market is primarily a wholesale market dominated by institutional investors. Nonetheless, the NASD, as noted above, is required by Congressional mandate to examine all of its members engaged in the government securities business, regardless of firm size or the particular nature of their business. If distinction should be made in the NASD's regulatory mandate among (i) those firms whose books and records with respect to their business in U.S. Government securities the NASD will examine (as urged by GSBA), or (ii) between those firms and the other over-the-counter members (as urged by all commentators), such distinctions should have been made by Congress when it adopted the Government Securities Act of 1986. Therefore, in accordance with its usual practice in establishing member fees and assessments, the NASD proposes to assess all NASD members doing a business in U.S. Government securities for the cost of regulating that activity without discriminating among these members.

It is this practice that the commentators object to fundamentally. Thus, for example, SLGSI argues that the assessment is excessive because institutional investors in U.S. Government securities would not utilize the arbitration services offered by the Association. The NASD Arbitration Department, however, is a necessary adjunct to the NASD's regulatory services and is intended as a service to all members and the investing public. The NASD is not simply an auditor or an arbitration forum seeking payment for services delivered incrementally. The NASD is a regulatory enterprise and has established the proposed assessment rate of a level sufficient to maintain that enterprise. As such, the cost of supporting that enterprise is properly allocated to all NASD members. The NASD should not be asked to develop assessments on an incremental cost basis for each member.

The commentators further assert that the NASD's proposed assessment is unfair because it is six times greater than the New York Stock Exchange's ("NYSE") assessment of .042% on FOCUS gross revenue. Unlike the NYSE, the NASD is registered as a "national securities association" under section 15A of the Exchange Act and is required to regulate the activities of all registered broker/dealers that deal with the public. Therefore, the NASD believes that its proposed assessment fee structure should not be compared to that of the NYSE, as the NASD's regulatory responsibilities and infrastructure are substantially different from that of the NYSE.

In further response to the commentators, the manpower analysis underlying the proposed assessment was reexamined. In particular, the NASD reexamined the amount of manpower required for a typical field examination, and concluded, based on its experience to date, that the analysis reflected a conservative assessment of the effort needed to carry out its regulatory responsibility with respect to the U.S. Government securities firms, including the six interdealer brokers represented by GSBA. Further, as noted above, NASD estimates that there will be a slight shortfall. NASD estimates that it will expend approximately $1.7 million in this effort during 1989, while, with the application of the annual assessment credit, it will recover approximately $1.5 million of that cost. Again, as previously noted, this fee, like all NASD fees and the annual assessment credit, will be evaluated annually and may be revised as experience is gained.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

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[1] NASD staff was advised by a representative of GSBA that there are a total of six Government securities interdealer brokers. The GSBA letter includes a comparison chart of NASD assessments on over-the-counter broker/dealers and on U.S. Government interdealer brokers. The NASD has discussed its objections to the premises underlying the comparison chart with a representative of GSBA.

[2] SLGSI in its letter states incorrectly that NASD would exempt NASD members that are registered pursuant to section 15B of the Exchange Act. The proposed rule change does not contain such an exemption, nor does any other part of Schedule A of the NASD By-Laws.

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: January 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1659 Filed 1–24–89; 8:45am]

BILLING CODE 8010–01–M

[Release No. 34–26463; File No. SR–NYSE–88–45]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Authorization of Fees for New Organization and Statutory Disqualification Applicants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1988, the New York Stock Exchange, Inc. (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing fees for processing member organization and option trading right holder applications and "statutory disqualification" applicants. Amendments to Rules 311 and 346 will authorize the new fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to amend Exchange rules to authorize fees for processing new member organization and option trading right holder applications and applicants subject to a "statutory disqualification" as defined in section 3(a)(39) of the Act. These fees are intended to offset, in part, the cost to the Exchange of processing the applications and will be effective upon Commission approval of the filing. The proposed fees for processing of new applications are as follows:

Clearing organizations	$20,000
Introducing organizations	7,500
Non-Public floor professionals	2,500
Option trading right holders	2,500

The fee would be payable upon submission of a new application and would not apply to successor organizations, *e.g.*, conversion of a partnership to a corporation, new organization resulting from a merger, or reorganization of an existing organization or an individual member incorporating. In cases where an applicant is classified in more than one of the above categories, the higher fee category will apply.

The Act prohibits a person subject to a statutory disqualification (*i.e.*, a suspension or bar by the Commission or another exchange or being convicted of certain criminal activities) from being associated with a broker/dealer unless specific application to the Commission for such association is made by the self-regulatory organization ("SRO") on behalf of the broker/dealer. Such application is made by the SRO after investigation of the facts surrounding the request.

When a member organization seeks approval to remain or become associated with a person subject to any statutory disqualification, the Exchange will impose a $1,000 fee for processing the request.

(b) Statutory basis for the proposed rule change is section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change and new fees will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 17, 1989.

[FR Doc. 89-1610 Filed 1-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26466; File No. SR-NYSE-88-26]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

On September 27, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] a proposed rule change to amend the Exchange's proxy rules for member organizations as set forth in NYSE Rule 450, "Restriction on Giving of Proxies."

The proposed rule change was noticed in Securities Exchange Act Release No. 26161, 53 FR 40150 (October 13, 1988). No comments were received on the proposed rule change.

The Exchange states that the purpose of the proposed rule change is to amend the Exchange's current proxy rules by allowing a member firm acting as investment manager of an ERISA Plan, under specified circumstances, to vote proxies in accordance with its ERISA Plan fiduciary responsibilities.

Currently, NYSE Rule 450, "Restrictions on Giving of Proxies," states that no member organization shall give a proxy to vote stock registered in its name, or in a nominee name, unless the member organization is the beneficial owner of such stock, except as permitted pursuant to NYSE Rule 452.[3] Under NYSE Rule 452, a member would be permitted to vote, at the direction of the beneficial owner, when the member organization is holding securities as executor or trustee with authority to a vote or when proxy material is sent to the beneficial owners of securities in the members' custody, the beneficial owners did not respond; and the proposal is inconsequential.

In an interpretive letter dated February 23, 1988, the Pension and Welfare Benefits Administration ("PWBA") of the Department of Labor ("Department") set forth its views regarding proxy voting by fiduciaries of employee retirement plans subject to the Employee Retirement Income Security Act of 1934 ("ERISA"). [4] In the interpretive letter, the Department stated that " . . . the fiduciary act of managing plan assets which are shares of corporate stock would include the voting of proxies appurtenant to those shares of stock." The Department stated its position that, with respect to the specific issues presented by the facts of the particular inquiry set forth in the request for interpretation (*i.e.*, a proposal to change the state of incorporation of a corporation in which a plan owned shares, and a proposal to rescind "poison pill" arrangements), the decision as to how proxies should be voted are fiduciary acts of plan asset management. The Department concludes that, to the extent that the plan permits a named fiduciary to appoint an investment manager to manage, acquire and dispose of plan assets, and the named fiduciary has not expressly reserved the voting rights to itself, there would be an ERISA violation if, during the duration of such delegation, any person other than the investment manager were to make the decision how to vote any proxy with respect to shares owned by the plan.[5]

In light of the Department's views with respect to proxy voting by plan investment managers, the Exchange believes that, should a member organization, designated as an investment manager to manage plan assets, follow the restrictions set forth in Exchange Rule 450 regarding the voting of proxies by member organizations, it may be in violation of its fiduciary responsibilities under Title I of ERISA. Accordingly, the Exchange proposes to amend Rule 450 in order to clarify the appropriate procedure to be followed by Exchange member firms where a conflict of duty could arise as a result of the Exchange's current rule. More specifically, the Exchange proposes to add a provision to Rule 450 which would state that "[n]otwithstanding the foregoing [the current provisions of Rule 450], any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities."

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder. More specifically, the Commission believes that the voting of proxies by a member organization in accordance with its ERISA Plan fiduciary responsibilities under the conditions specified in the proposal is consistent with the investor protection policies embodied in section 6(b)(5) of the Act. We note that in voting proxies as a plan fiduciary, an investment manager must consider those factors which would affect the value of the plan's investment and is prohibited from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives.[6] In addition, the Commission notes that the Exchange's proposal will clarify the Exchange's policies with respect to the voting of proxies by Exchange member firms where a conflict of duty otherwise could arise between the policies set forth in

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] Rule 13d-3 of the Act defines beneficial owner for purposes of the reporting requirements of sections 13 (d) and 13 (g) of the Act as either voting power (including the power to vote or to direct the voting of such security) and/or investment power (including the power to dispose, or to direct the disposition of such security). Section (d)(2) of Rule 13d-3, however, provides that "a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction."

[4] *See* Labor Department Letter on Proxy Voting By Plan Fiduciaries, dated Feb. 23, 1988, BNA Pension Reporter, Feb. 29, 1988, Vol. 15, PG. 391 ("Department Letter"). As noted in the Department's letter, PWBA is responsible for administration and enforcement of Title I of ERISA, which establishes standards governing the operation of employee benefit plans and includes fiduciary responsibility rules governing the conduct of plan officials and others who exercise discretionary authority or control with respect to the assets of the plan.

[5] Section 402(c)(3) of ERISA states that a plan may provide that a named fiduciary may appoint an investment manager or managers to manage plan assets. Section 403(a)(2) of ERISA provides that all assets of an employee benefit plan must be held in trust by one or more trustees, who must have exclusive authority and discretion to control the plan's assets unless the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3).

[6] *See* Department Letter, *supra* note 4, at 391, note 4, and accompanying text. The named fiduciary would be responsible for monitoring decisions made and actions taken by investment managers with regard to proxy voting.

the Exchange's rule and ERISA guidelines. Accordingly, the Commission notes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will " * * * foster cooperation and coordination with persons engaged in regulation * * * and facilitating transactions in securities."

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[8]

Dated: January 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1611 Filed 1-24-89 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26468; File No. SR-Phlx-88-45]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Dues and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), submitted a proposed rule change amending the Phlx's Schedule of Dues, Fees and Charges as follows.[1]

1. Increase options transaction charge respecting registered options traders and specialists in equity options, index options and foreign currency options from five cents to six cents, seven cents to eight cents and five cents to six cents respectively per contract as noted. Increase the options transaction charge for other than registered options traders and specialist in varying amounts.

2. Increase annual floor trading post rentals from one thousand dollars to one thousand two hundred fifty dollars annually per trading post.

3. Increase initiation fee and membership and participation transfer fees from one thousand and two hundred dollars respectively to one thousand five hundred and three hundred dollars respectively.

4. Initiate a new floor facility fee applicable to floor members and foreign currency options participants not renting floor trading posts at the rate of six hundred and twenty five dollars annually (i.e., fifty percent of floor trading post rental).

5. Initiate a new execution services and communication charge of one hundred dollars per month per receiver/output device for telephones and other communication equipment on the trading floors utilized for communication with other market centers for trade execution purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to amend the PHLX Schedule of Dues, Fees and Charges. The amended schedule increases the options transaction charge amongst registered traders and specialists for the first time since the PHLX began trading equity options in June 1975, index options in December 1983, and foreign currency options in December 1982 respectively. The increase in trading post rental is the first since the PHLX occupied its present facility in July 1981. The increase in initiation, membership and participation transfer fees is the first since October 1983. In each of these instances the increased fees are necessary to recover significantly increased costs attendant to providing existing members and participants with services necessary to the conduct of business on the Exchange.

The initiation of new charges respecting a floor facility fee and execution services/communication charges are being undertaken at this time in order to fairly allocate significantly increased costs attendant to providing existing members and participants with services necessary to the conduct of business on the floor of the Exchange.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested pesons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be

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[7] 15 U.S.C. 78s (b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1986).

[1] A copy of the schedule of fees is available from the Phlx or Commission.

available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NYSE-88-20 and should be submitted by February 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1612 Filed 1-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16759; File No. 811-3072]

Hartford Variable Annuity Life Insurance Co.; Application

January 18, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The Hartford Variable Annuity Life Insurance Company-Variable Account "A" ("Applicant" or "Variable Account "A"").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 2, 1988 and amended on August 23, 1988 and December 27, 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 February 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve 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 of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Hartford Life Insurance Companies, P.O. Box 2999, Hartford, Connecticut 06104-2999.

FOR FURTHER INFORMATION: Cindy J. Rose, Financial Analyst (202) 272-2058 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Office of Insurance Products and Legal Compliance).

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 Commerical copier (800) 231-3282 (in Maryland (301) 252-4300).

Applicant's Representation

1. Applicant, a unit investment trust, is a separate account which was established under the laws of the State of Connecticut. The application states that Applicant filed a Form N-8B-2 on July 10, 1980. Applicant states that a registration statement on Form S-6, filed on July 10, 1980, became effective on November 4, 1980.

2. On March 31, 1988, Variable Account "A", sponsored by Hartford Variable Annuity Life Insurance Company, transferred all its assets and liabilities to Separate Account Two, a unit investment trust sponsored by Hartford Life Insurance Company.

3. All decisions and actions taken to transfer the assets and liabilities of Variable Account "A" were ratified and approved on September 30, 1985, by the Board of Directors of the Hartford Variable Annunity Life Insurance Company.

4. The application states that the transfer was pursuant to an Order of Exemption under the Investment Company Act of 1940, File No. 812-6882 and a No-Action Letter, Ref. No. IP-1-88.

5. Hartford Life Insurance Company assumed all expenses relating to the transfer of Variable Account "A" to Separate Account Two, sponsored by Hartford Life Insurance Company.

6. Applicant has no other debts or liabilities outstanding and is not a party to any litigation or administrative proceeding.

7. Applicant has no securityholders and is not now engaged in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1655 Filed 1-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16758; File No. 811-3155]

Hartford Variable Annuity Life Insurance Co.; Application

January 18, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Hartford Variable Annuity Life Insurance Company—NQ Variable Account ("Applicant" or "NQ Variable Account").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 2, 1988 and amended on August 23, 1988 and December 27, 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 February 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve 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 of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Hartford Life Insurance Companies, P.O. Box 2999, Hartford, Connecticut 06104-2999.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272-2058 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Office of Insurance Products and Legal Compliance).

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 (303) 252-4300).

Applicant's Representations

1. Applicant, a unit investment trust, is a separate account which was established under the laws of the State of Connecticut. The application states that Applicant filed a Form N-8B-2 on March 30, 1981. Applicant states that a registration statement on Form S-6, filed on March 30, 1981, became effective on February 26, 1982.

2. On March 31, 1988, NQ Variable Account, sponsored by Hartford Variable Annuity Life Insurance Company, transferred all its assets and liabilities to Separate Account Two, a unit investment trust sponsored by Hartford Life Insurance Company.

3. All decisions and actions taken to transfer the assets and liabilities of QP Variable Account were ratified and approved on September 30, 1985 by the Board of Directors of the Hartford Variable Annuity Life Insurance Company.

4. The application states that the transfer was pursuant to an Order of Exemption under the Investment Company Act of 1940, File No. 812-6882 and a No-Action Letter Ref. No. IP-1-88.

5. Hartford Life Insurance Company assumed all expenses relating to the transfer of NQ Variable Account to Separate Account Two, sponsored by Hartford Company.

6. Applicant has no debts or other liabilities and is not a party to any litigation or administrative proceeding.

7. Applicant has no security holders and is not now engaged in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1656 Filed 1-24-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on January 18, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on January 18, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirements must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on January 18, 1989.

DOT No: 3168.

OMB No: New.

Administration: Urban Mass Transportation Administration (UMTA).

Title: Control of Drug Use in Mass Transportation Operations.

Need for Information: The information is necessary to properly monitor the effectiveness of the program and to ensure compliance with the rule.

Proposed Use of Information: The information will be used to build a data base to help determine continuing need for the rule.

Frequency: Semi-annual, annually, monthly.

Burden Estimate: 376,205.

Respondents: State or local Governments, businesses, or other for profit, non-profit institutions, and small businesses or organizations.

Form(s): None.

Average Burden Hours Per Respondent: 112.5.

DOT No: 3169.

OMB No: 2106-0009.

Administration: Office of the Secretary, Tariffs Division.

Title: Part 221—Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers.

Need for Information: Section 403, Federal Aviation Act of 1958, as amended, requires that all air carriers and foreign air carriers file with the DOT, and post for public inspection, tariffs containing fares, rates and charges which apply to international air transportation.

Proposed Use of Information: Tariffs filed are used by carriers, travel agents, DOT, other government agencies and general public to determine the fares, rates and charges for international air transportation.

Frequency: As necessary.

Burden Estimate: 2,229,373.

Respondents: Air carriers and/or their agents.

Form(s): N/A.

Average Burden Hours Per Respondent: 5 hours, 34 minutes.

DOT No: 3170.

OMB No: 2137-0039.

Administration: Research and Special Programs Administration.

Title: Hazardous Materials Incident Reports.

Need for Information: Hazardous Materials Incident Reports are used and needed for evaluation of the adequacy of the hazardous materials transportation standards as set forth in the regulations for their transportation.

Proposed Use of Information: The reports are used to evaluate the adequacy of existing regulations for the packaging, marking and labeling of hazardous materials; exemptions to the regulations; etc., so as to determine what changes, if any, are needed.

Frequency: On occasion of reportable incident.

Total Estimated Burden: 8,693 hours.

Respondents: Carriers of hazardous materials.

Form Number(s): Department of Transportation Hazardous Materials Incident Report (DOT F 5800.1).

Estimated Average Per Respondent: 1 hour.

DOT No: 3171.

OMB No: 2130-0526.

Administration: Federal Railroad Administration.

Title: Control of Alcohol and Drug Use in Railroad Operations.

Need for Information: To deter use of alcohol or drug involvement in railroad operations.

Proposed Use of Information: FRA and the railroad industry uses this information to determine the extent of

the alcohol and drug problems and to curtail the widespread use of alcohol and drugs.

Frequency: Recordkeeping, On Occasion, Monthly.

Burden Estimate: 139,570 Hours (1st Year), 112,186 Hours (Subsequent Years).

Respondents: 440 Railroads.

Form(s): FRA–F–6180.73 and FRA–F–6180.74.

Average Burden Hours Per Respondent: 11 Hours for reporting burden and 279 hours for recordkeeping burden.

DOT No: 3172.

OMB No: New.

Administration: Federal Aviation Administration.

Title: Security Programs for Foreign Air Carriers.

Need for Information: This amendment, which requires foreign air carriers to submit a written security program to the FAA for the Administrator's approval, will ensure that adequate security measures are being implemented by foreign air carriers that land or take off in the United States. The purpose of the amendment is to reduce fatalities and property damage attributable to acts of criminal violence and air piracy.

Proposed Use of Information: To ensure that adequate security measures are being implemented by foreign air carriers that land on take off in the United States.

Frequency: One time.

Burden Estimate: 17,760 hours.

Respondents: Foreign Air Carriers.

Form(s): None.

Average Burden Hours Per Respondent: 160 hours.

DOT No: 3173.

OMB No: 2130–0036.

Administration: Federal Aviation Administration.

Title: Notice of Landing Area Proposal.

Need for Information: FAR Part 157 requires that each person who intends to construct, activate a runway or taxiway, or change the status of an airport to public use, shall notify the Administrator. This action is necessary to help to ensure aviation safety through current and updated information.

Proposed Use of Information: The information will provide advice as to the effect the proposal will have on existing airports and on the safe and efficient use of airspace by aircraft. It will be used for aeronautical charting data and for a national airport system plan.

Frequency: As required.

Burden Estimate: 2250 hours annually.

Respondents: Anyone who intends to construct a runway, activate a runway or taxiway, or change the status of an airport.

Form(s): FAA Form 7480–1.

Average Burden Hours Per Respondent: It is estimated that it takes an average of 45 minutes to complete the form.

DOT No: 3174.

OMB No: 2125–0514.

Administration: Federal Highway Administration.

Title: Utility Accommodation Policies.

Need for Information: For FHWA to fulfill its statutory obligation regarding utility use of right-of-way on Federal-aid highway projects.

Proposed Use of Information: For FHWA to review and approve State highway agencies utility accommodation policies.

Frequency: After initial submission, submission on 3 to 5 year cycle as needed.

Burden Estimate: 2,800.

Respondents: State highway agencies.

Form(s): N/A.

Average Burden Hours Per Response: 280 hours per respondent.

DOT No: 3175.

OMB No: 2125–0531.

Administration: Federal Highway Administration.

Title: Alternate Procedures for Processing Utility or Railroad Adjustments.

Need for Information: For FHWA to meet its statutory obligations to process and approve State Highway agencies applications for alternate procedures for processing utility or railroad adjustments.

Proposed Use of Information: For FHWA to determine the State highway agencies policies and procedures for handling utility or railroad adjustments.

Frequency: On occasion

Burden Estimate: 80 hours

Respondents: State highway agencies

Form(s): N/A

Average Burden Hours Per Responses: 40 hours per respondent.

Issued in Washington, DC on January 18, 1989.

Robert J. Woods,

Director of Information Resource Management.

[FR Doc. 89–1642 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended

January 13, 1989.

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46056

Date Filed: January 9, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 6, 1989.

Description: Application of Pakistan International Airlines Corporation, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests an amendment to its foreign air carrier permit to add Madrid, Spain as an intermediate point of its current U.S.-Pakistan route.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–1560 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–62–M

[Order 89–1–26; Docket 45921]

Application of Trump Shuttle, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Trump Shuttle, Inc. fit and awarding it a certificate of public convenience and necessity to engage in domestic scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than February 2, 1989.

ADDRESSES: Objections and answers to objections should be filed in Docket 45921 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400

Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: January 18, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-1641 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-62-M

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operation costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 88-12-24 set the currently effective two-month SFFL applicable through January 31, 1989.

In establishing the SFFL for the two-month period beginning February 1, 1989, we have projected nonfuel costs based on the year ended September 30, 1988 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 89-1-28 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic—1.1736
Latin American—1.2346
Pacific—1.6510
Canada—1.2426

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation.

Dated: January 18, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-1640 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[AC No. 43.13-1A]

Proposed Revision of Advisory Circular (AC) 43.13-1A; Acceptable Methods, Techniques, and Practices, Aircraft Inspection and Repair

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: FAA is soliciting comments on the proposed revision to AC 43.13-1A.

SUMMARY: This notice announces a proposed revision to AC 43.13-1A widely used by the aviation community as guidelines and acceptable practices for aircraft inspection and repair. Comments are requested from the public regarding required revisions, changes, corrections, and inclusion of new or different information.

DATE: Comments must be received on or before April 28, 1989.

ADDRESSES: Mail or deliver comments and suggestions to: Federal Aviation Administration, Aviation Standards National Field Office, Engineering and Manufacturing Branch, Airman's Record Building, Room 203, Attention: AVN-110, P.O. Box 25082, 6500 S. MacArthur, Oklahoma City, Oklahoma 73125. Comments mailed or delivered must be identified with "AC 43.13-1A."

FOR FURTHER INFORMATION CONTACT: Mr. George Torres, AVN-110, at the above address, telephone: (405) 686-4374.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to make comments and/or recommendations as to changes and the kinds of information they would like to see incorporated in this revision. All communications received on or before the closing date for comments will be considered before revising the AC. Comments may be inspected at the above address, in Room 203, weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

Commentors wishing acknowledgement of receipt of their comments must submit, with their comments, a self-addressed stamped postcard bearing the statement: "AC 43.13-1A." The card will be dated and returned to the sender.

Types of comments solicited include:

1. Noted errors—typographical or data.
2. Suggested inclusion of new material.
3. Suggested additional chapters or addition of latest state-of-the-art technology.
4. Suggested clarification or rewrite of existing material.

Discussion of the Proposed Advisory Circular

Advisory Circular 43.13-1A contains acceptable methods, techniques, and practices for aircraft inspections and repairs used by the aviation industry in the absence of manufacturer's instructions. This AC, widely used by the general aviation industry, was last revised in 1972. In 1986, proposal was made to revise this document in two phases. Phase I, correction of errors and deletion of obsolete material was completed in 1988 and identified as Change 3. This AC, with Change 1, 2, and 3 incorporated, is now available from GPO under stock number 050-007-00806-3 at a price of $18. Phase II will be a completed revision of the present document. It will also incorporate information, but not be limited to, composites, lighter than air airships (hot air balloons), sailplanes/gliders, helicopters, avionics, and new technologies.

This AC was developed for, and is used extensively by the aviation community. Therefore, it has a significant influence on aviation safety.

To assure its contents are accurate and current, industry's input and expertise are needed.

Richard C. Hall,

Manager, Regulatory Support Division.

Issued in Oklahoma City, Oklahoma on December 16, 1988.

[FR Doc. 89-1603 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

Proposed Advisory Circular 21-PCMC; Production Certification Multinational/ Multicorporate Consortia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21-PCMC, Production Certification Multinational/ Multicorporate Consortia for review and comments. The proposed AC 21-PCMC provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) Part 21, Certification Procedures for Products and Parts.

DATE: Comments submitted must identify the proposed AC 21-PCMC file number P8-220-133, and be received by February 27, 1989.

ADDRESSES: Copies of the proposed AC 21-PCMC can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Diana Smith, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, Room 333, Aircraft Certification Service, Federal Aviation Administration, 800

Independence Avenue, SW., Washington, DC 20591 (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21–PCMC provides information and describes criteria to be emphasized in evaluating and approving the quality control system of a multinational or multicorporate consortium seeking a production certificate (PC).

Comments Invited

Interested persons are invited to comment on the proposed AC 21–PCMC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specific address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–PCMC may be examined, before and after the comment closing date, in Room 333, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on December 23, 1988.

Alphonse G. Santarelli,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 89–1604 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 4 (Rev. 19)]

Delegation of Authority; Regional Inspectors

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Regional Inspectors are delegated authority to issue a "John Doe" summons in which the proper name or names of the taxpayer is not identified because it is unknown or unidentifiable. The text of the delegation order appears below:

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: James Hardy, I:IS:OA, Room 6005, 1111 Constitution Avenue, NW., Washington, DC 20224; Telephone: (202) 566–3425, (not a toll-free telephone number).

Richard Byrd, Jr.,

Chief, Operations Analysis Branch.

Order No. 4 (Rev. 19)

Effective date: 1–26–89

Authority to Issue Summonses, to Administer Oaths and Certify, and to Perform Other Functions

1(a) The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602–1(b), 301.7603–1, 301.7604–1 and 301.7605–1(a) and the authorities contained in Section 7609 of the Internal Revenue Code of 1954 and vested in the Commissioner of Internal Revenue Service by Treasury Department Order No. 150–10 to issue summonses; to set the time and place for appearance; to serve summonses; to take testimony under oath of the person summoned; to receive and examine books, papers, records or other data produced in compliance with the summons; to enforce summonses; to apply for court orders approving the service of John Doe Summonses issued under Section 7609(f) of the Internal Revenue Code; to apply for court orders suspending the notice requirements in the case of summonses issued under Section 7609(g) of the Internal Revenue Code; and under Section 7609(i)(2) of the Internal Revenue Code; may, when requested, certify to third-party recordkeepers that no action to quash has been timely initiated or that the taxpayer has consented to the examination of the records summonsed, are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 1(b), 1(c), and 1(d) of this Order and subject to the limitations stated in paragraphs 1(b), 1(c), 1(d), 5, and 6 of this Order.

1(b) The authorities to issue summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order, are delegated to all District Directors and the following officers and employees, provided that the authority to issue a summons in which the proper name or names of the taxpayer or taxpayers is not identified because unknown or unidentifiable (hereinafter called a "John Doe" summons) may be exercised only by said officers and employees.

(1) Inspection: Director, Internal Security Division and Regional Inspectors.

(2) International: Deputy Assistant Commissioner and Directors, Offices of Compliance and Foreign Programs.

(3) District Criminal Investigation: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(4) District Collection Activity: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(5) District Examination: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(6) District Employee Plans and Exempt Organizations: Chief of Division.

1(c) The authorities to issue summonses except "John Doe" summonses, and to perform other functions related thereto specified in paragraph 1(a) of this Order, are delegated to the following officers and employees:

(1) Inspection: Assistant Regional Inspectors (Internal Security) and Chief, Investigations Branch.

(2) Assistant Commissioner (International): Criminal Investigation Special Agents; Collection Group Managers; and Examination Case Managers and Group Managers.

(3) District Criminal Investigation: Assistant Chief of Division; and Special Agents.

(4) District Collection Activity: Assistant Chief of Division; Group Managers.

(5) District Examination: Case Managers, Group Managers and, in streamlined districts Chiefs, Examination Section.

(6) District Employee Plans and Exempt Organizations: Group Managers.

1(d) The authority to issue summonses except "John Doe" summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order is delegated to the following officers and employees except that in the instance of a summons to a third party witness, the issuing officer's case manager, group manager, or any supervisory official above that level, has in advance personally authorized the issuance of the summons. Such authorization shall be manifested by the signature of the authorizing officer on the face of the original and all copies of the summons or by a statement on the face of the original and all copies of the summons, signed by the issuing officer, that he/she had prior authorization to issue said summons and stating the name and title of the authorizing official and the date of authorization.

(1) Assistant Commissioner (International): Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers; GS–9 and above.

(2) District Collection: Revenue Officers, GS–9 and above.

(3) District Examination: Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(4) District Employee Plans and Exempt Organizations: Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(e) Each of the officers and employees referred to in paragaphs 1(b), 1(c), and 1(d) of this Order may serve a summons whether it is issued by him/her or another official.

(f) Revenue Represenatives, GS–5 and above, aides of Revenue Officers, GS–5 and above, and Revenue Officers, who are assigned to the district Collection activity may serve any summons issued by the officers and employees referred to in paragraphs 1(b), 1(c) and 1(d) of this Order.

(g) Tax Fraud Investigative Aides, GS–5 and above, who are assigned to the district Criminal investigation activity may serve any summons issued by the officers and employees referred to in Paragraphs 1(b) and 1(c) of this Order.

2. Each of the officers and employees referred to in paragraphs 1(b), 1(c), and 1(d) of this Order authorized to issue summonses, is delegated the authority under 26 CFR 301. 7602–1(b) to designate any other officer or employee of the Internal Revenue Service referred to in paragraph 4(b) of this Order, as the individual before whom a person summoned pursuant to Section 7602 of the Internal Revenue Code shall appear. Any such other officer or employee of the Internal Revenue Service when so designated in a summons is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records or other data produced in compliance with the summons.

3. Internal Security Inspectors are delegated the authority under 26 CFR 301.7603–1 to serve summonses issued in accordance with this Order by any of the officers and employees of the Inspection Service referred to in paragraphs 1(b)(1) and 1(c)(1) of this Order even though Internal Security Inspectors do not have the authority to issue summonses.

4(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602–1(a), and 301.7605–1(a) to examine books, papers, records or other data, to take testimony under oath and to set the time and place of examination are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 4(b) and 4(c) of this Order and subject to the limitations stated in paragraphs 4(c) and 6 of this Order.

4(b) General Designations

(1) Inspection: Director, Internal Security Division; Director, Internal Audit Division; Regional Inspectors; Internal Auditors; Management Auditors; Internal Security Inspectors; Investigators (Internal Security); and Internal Security Assistants.

(2) District Criminal Investigation: Assistant Chief of Division; and Special Agents.

(3) International: Deputy Assistant Commissioner (International), Special Agents; Case Managers; Group Managers, Internal Revenue Agents; Estate Tax Attorneys; Estate Tax Law Clerks; Estate Tax Examiners; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers.

(4) District Collection Activity: Assistant Chiefs of Division; Revenue Representatives and Office Collection Representatives.

(5) District Examination: Internal Revenue Agents; Tax Auditors; Estate Tax Attorneys; Estate Tax Law Clerks; and Estate Tax Examiners.

(6) District Employee Plans and Exempt Organization: Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(7) Service Center: Revenue Agents; Tax Auditors; Tax Examiners in the correspondence examination function; and Special Agents.

4(c) District Directors, Service Center Directors, Regional Inspectors, and the Chief of Investigation Branch, Internal Security Division, may redelegate the authority under 4(a) of this Order to student trainees (Revenue Officer), student trainee (Accounting Student Trainee), Audit Accounting Aides, Tax Fraud Investigative Aides, aides or trainees (Internal Auditor) and student trainees (Internal Security Inspector), provided that each student trainee or aide shall exercise said authority only under the appropriate supervision of a Revenue Officer, Tax Auditor, Revenue Agent, Special Agent, Internal Auditor, or Internal Security Inspector, as applicable.

5. Under the authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7622–1, the officers and employees of the Internal Revenue Service referred to in paragraphs 1(b), 1(c), 1(d), and 4(b) and 4(c) of this Order are designated to administer oaths and affirmations and to certify to such papers as may be necessary under the internal revenue laws and regulations except that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive.

(a) Revenue Representatives and Office Collection Representatives referred to in paragraph 4(b)(4) of this Order are not designated to administer oaths or to perform the other functions mentioned in this paragraph, except that Revenue Representatives, GS–5 and above, are authorized to certify the method and manner of service, and the method and manner of giving notice, when performed the functions and duties contained in paragraph 1(f) of this order.

(b) Tax Fraud Investigative Aides, GS–5 and above, referred to in Paragraph 4(c) of this Order are not designated to administer oaths or to perform the other functions mentioned in this paragraph; except that the Tax Fraud Investigative Aides, GS–5 and above, are authorized to certify the method and manner of service, and the method and manner of giving notice, when performing the functions and duties contained in Paragraph 1(g) of this Order.

6. The authority delegated herein may not be redelegated except as provided in paragraph 4(c).

7. Delegation Order No. 4 (Rev. 18), effective October 31, 1987, is superseded.

Date: January 13, 1989.

Approved:

Michael J. Murphy,

Senior Deputy Commissioner.

[FR Doc. 89–1623 Filed 1–24–89; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 15
Wednesday, January 25, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

January 18, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409, 5 U.S.C. 552B:

TIME AND PLACE: 10:00 a.m., January 25, 1989.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Linwood A. Watson, Jr., Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda

890th Meeting—January 25, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 6456-008, Village of Green Island, New York
CAP-2.
Docket No. HB03-75-1-002, Alabama Power Company
CAP-3.
Project No. 10524-001, North Coast Development Company, Inc.
CAP-4.
Project No. 7395-004, W.M. Lewis & Associates
CAP-5.
Project No. 619-009, Pacific Gas & Electric Company
CAP-6.
Project No. 7267-005, Joseph M. Keating
CAP-7.
Project No. 2179-002, Merced Irrigation District
CAP-8.
Project No. 2144-007, City of Seattle, Washington
CAP-9.
Docket No. ER89-1-000, Wisconsin Power & Light Company
CAP-10.
Docket Nos. ER88-594-000, ER88-595-000 and ER88-596-000, Southern Company Services, Inc.
CAP-11.
Docket No. EF89-2061-000, United States Department of Energy—Bonneville Power Administration
Docket No. ER89-52-000, Southern California Edison Company
CAP-12.
Docket No. ER88-588-000, ER88-589-000, ER88-593-000, ER88-597-000 and ER88-598-000, American Electric Power Companies
CAP-13.
Docket No. EL83-24-006, Seminole Electric Cooperative, Inc.
Docket No. ER84-379-006, Florida Power and Light Company
CAP-14.
Docket No. ER88-433-000, Central Louisiana Electric Company
CAP-15.
Docket No. ER88-499-000, Kanawha Valley Power Company
CAP-16.
Docket No. ER88-505-000, Canal Electric Company
CAP-17.
Docket No. ER88-75-000, Northern States Power Company [Minnesota]
CAP-18.
Docket No. EL89-2-000, City of Piqua, Ohio v. Dayton Power and Light Company
CAP-19.
Docket No. EL89-3-000, South Carolina Public Service Authority, Central Electric Power Cooperative, Inc. and Mid-Carolina Electric Cooperative, Inc. v. South Carolina Electric & Gas Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM88-28-000, Revision of Filing Fees For Natural Gas Rate and Tariff Filings
CAM-2.
Docket Nos. RM88-14-002 and RM88-15-001, Interpretation of, and Regulations under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf
CAM-3.
Docket No. GP87-74-000, CNG Development Company
CAM-4.
Docket No. SA87-2-003, Pogo Producing Company
Docket No. SA87-3-003, Mobil Exploration and Producing North America, Inc. and Mobil Producing Texas & New Mexico Inc.
Docket No. SA87-6-003, Shell Offshore Inc. and Shell Oil Company
Docket No. SA87-16-003, Columbia Gas Development Corporation
Docket No. SA87-28-003, Samedan Oil Corporation
Docket No. SA87-30-003, Sun Exploration and Production Company
CAM-5.
Docket No. SA87-48-001, Pan Eastern Exploration Company
CAM-6.
Docket No. SA88-6-001, Crosstex Pipeline Partners, Ltd. d/b/a Crosstex Pipeline Company
CAM-7.
Docket No. SA87-39-001, The Louisiana Land and Exploration Company and LLOXY Holdings, Inc.
Docket No. SA87-40-001, Forest Oil Corporation
Docket No. SA87-47-001, FMP Operating Company
CAM-8.
Omitted
CAM-9.
Docket No. R87-20-000, Ted True, Inc. and Ted W. True

Consent Gas Agenda

CAG-1.
Docket No. RP88-227-005, Paiute Pipeline Company
CAG-2.
Docket No. RP89-29-000, Tennessee Gas Pipeline Company
CAG-3.
Docket No. RP89-48-000, Transwestern Pipeline Company
CAG-4.
Docket No. RP89-49-000, National Fuel Gas Supply Corporation
CAG-5.
Docket No. RP88-184-007, El Paso Natural Gas Company
CAG-6.
Docket No. RP88-88-94-014, Natural Gas Pipeline Company of America
CAG-7.
Docket No. RP88-187-012, Columbia Gas Transmission Corporation
CAG-8.
Docket No. RP89-47-000, Natural Gas Pipeline Company of America
CAG-9.
Docket No. TA89-1-18-000 and 001, Texas Gas Transmission Corporation
CAG-10.
Docket Nos. TA89-1-17-000 and 001, Texas Eastern Transmission Corporation
CAG-11.
Docket Nos. TQ89-1-23-000 and 001, Eastern Shore Natural Gas Company
CAG-12.
Docket No. TQ89-2-63-000, Carnegie Natural Gas Company
CAG-13.
Docket No. TQ89-2-22-000, CNG Transmission Corporation
CAG-14.
Docket No. TQ89-3-21-000, Columbia Gas Transmission Corporation
CAG-15.
Docket No. RP88-205-003, Alabama-Tennessee Natural Gas Company

CAG–16.
Docket Nos. RP85–122–015 and RP87–30–020, Colorado Interstate Gas Company
CAG–17.
Docket No. RP85–122–014, Colorado Interstate Gas Company
CAG–18.
Docket Nos. RP82–55–039 and RP87–7–045, Transcontinental Gas Pipe Line Corporation
CAG–19.
Docket No. RP88–217–008, CNG Transmission Corporation
CAG–20.
Docket No. RP85–206–042, Northern Natural Gas Company, Division of Enron Corp.
CAG–21.
Docket Nos. RP85–58–026 and TA85–1–33–015, El Paso Natural Gas Company
CAG–22.
Docket No. RP88–182–001, Gas Research Institute
CAG–23.
Docket No. RP89–14–002, Inter-City Minnesota Pipelines, Ltd., Inc.
CAG–24.
Docket No. RP87–15–026, Trunkline Gas Company
CAG–25.
Docket No. RP83–93–020, Trunkline Gas Company
CAG–26.
Docket No. RP88–239–006, Trunkline Gas Company
CAG–27.
Docket Nos. TQ89–1–55–002 and TQ88–1–55–002, Questar Pipeline Company
CAG–28.
Docket No. CP86–578–019, RP85–13–027, RP88–47–016, and TQ88–2–37–024, Northwest Pipeline Corporation
CAG–29.
Docket No. ST85–1397–002, Kansas Power and Light Company
CAG–30.
Docket Nos. RP89–09–001 and RP88–241–003, Panhandle Eastern Pipe Line Company
CAG–31.
Docket Nos. RP89–10–001 and RP88–240–003, Panhandle Eastern Pipe Line Company
CAG–32.
Docket No. RP88–88–003, Panhandle Eastern Pipe Line Company
CAG–33.
Omitted
CAG–34.
Docket No. RP88–207–007, Columbia Gas Transmission Corporation
CAG–35.
Omitted
CAG–36.
Omitted
CAG–37.
Docket No. RP88–106–002, Northern Natural Gas Company, Division of Enron Corp.
CAG–38.
Omitted
CAG–39.
Docket No. RP88–94–013, Natural Gas Pipeline Company of America
CAG–40.
Omitted
CAG–41.
Omitted
CAG–42.
Docket No. RP87–61–005, Eastern Shore Natural Gas Company
CAG–43.
Docket No. RP88–267–003, South Georgia Natural Gas Company
CAG–44.
Omitted
CAG–45.
Docket Nos. CP86–578–018 and RP85–13–024, Northwest Pipeline Corporation
CAG–46.
Docket Nos. TA83–1–37–006, TA83–2–37–003, TA84–1–37–004, TA84–2–37–010, TA85–1–37–004, TA85–2–37–022 and RP82–56–021, Northwest Pipeline Corporation
CAG–47.
Docket No. TQ89–1–29–001, Transcontinental Gas Pipe Line Corporation
CAG–48.
Docket Nos. RP88–93–003 and RP88–40–004, Questar Pipeline Company
CAG–49.
Docket No. RP86–32–014, Williams Natural Gas Company
CAG–50.
Docket No. RP80–97–058, Tennessee Gas Pipeline Company
CAG–51.
Docket No. RP88–259–003, Northern Natural Gas Company, Division of Enron Corp.
CAG–52.
Docket No. RP88–259–006, Northern Natural Gas Company, Division of Enron Corp.
CAG–53.
Docket No. RP88–211–004, CNG Transmission Corporation
CAG–54.
Docket No. RP82–114–013, Williams Natural Gas Company
CAG–55.
Docket No. RP88–81–009, Texas Eastern Transmission Corporation
CAG–56.
Docket No. RP88–115–006, Texas Gas Transmission Corporation
CAG–57.
Docket No. RP89–9–002, Panhandle Eastern Pipe Line Company
CAG–58.
Docket Nos. RP88–80–010 and RP88–251–004, Texas Eastern Transmission Corporation
CAG–59.
Docket No. RP89–11–002, Trunkline Gas Company
CAG–60.
Docket No. RP88–201–005, East Tennessee Natural Gas Company
CAG–61.
Omitted
CAG–62.
Omitted
CAG–63.
Docket Nos. RP83–58–000, RP86–63–000, RP86–114–000, RP87–17–000, RP88–96–000, RP88–210–000 and RP88–229–000, Southern Natural Gas Company
CAG–64.
Docket No. ST88–3758–000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–65.
Docket No. ST88–5599–000, Gulf South Pipeline Company
CAG–66.
Docket No. ST88–5804–000, Acacia Natural Gas Corporation
CAG–67.
Docket No. ST88–5632–000, Red River Pipeline Company
CAG–68.
Docket No. CP88–42–001, Kansas Power and Light Company v. Williams Natural Gas Company
Docket No. CP61–29–002, Williams Natural Gas Company
CAG–69.
Docket Nos. CP87–479–010 and CP87–480–007, Wyoming-California Pipeline Company
CAG–70.
Docket No. CP87–395–001, Consumers Power Company
CAG–71.
Docket No. CP87–506–001, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–72.
Docket No. CP81–225–006, Great Lakes Gas Transmission Company
CAG–73.
Docket No. CP88–696–001, Midwestern Gas Transmission Company
CAG–74.
Docket No. CP88–700–001, Windward Energy and Marketing Company and ARCO Oil and Gas Company
CAG–75.
Docket Nos. CP87–150–001 and CP87–197–001, United Gas Pipe Line Company
CAG–76.
Docket No. CP88–397–002, Great Lakes Gas Transmission Company
CAG–77.
Omitted
CAG–78.
Docket No. CP89–93–000, Williams Natural Gas Company
CAG–79.
Omitted
CAG–80.
Docket No. CP88–137–000, ANR Pipeline Company
CAG–81.
Docket No. CP60–79–004 and CP70–242–002, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–82.
Docket No. CP88–486–000, Cimarron Transmission Company
CAG–83.
Docket No. CP89–363–000, Falcon Seaboard Pipeline Company
CAG–84.
Docket No. CP89–267–000, Atlantic Richfield Company and Intalco Aluminum Corporation
CAG–85.
Docket Nos. RP89–13–001 and 003, Mississippi River Transmission Corporation
CAG–86.
Docket No. RP87–30–002, Colorado Interstate Gas Company

CAG–87.
Docket Nos. CP86–589–008, RP86–104–010 and RP87–30–017, Colorado Interstate Gas Company

I. Licensed Project Matters

P–1.
Retroactive Application of Order No. 464, Rule on Waiver of Certification Pursuant to the Clean Water Act. Reconsideration of retroactive application of Order No. 464, interpreting waiver provision of water quality certification requirements of Section 401(a)(1) of the Clean Water Act.

II. Electric Rate Matters

ER–1.
Reserved

Miscellaneous Agenda

M–1.
Docket No. FA85–63–002, Long Island Lighting Company. Concerning certain nuclear plant accounting issues.
M–2.
Reserved
M–3.
Reserved

I. Pipeline Rate Matters

RP–1.
Docket No. RP88–228–005, Tennessee Gas Pipeline Company. Concerning D–2 charges and D–2 nominations.
RP–2.
(A) Docket No. RP89–1–004, Northwest Pipeline Corporation. Concerning direct billing of PGA surcharge account balances.
RP–2.
(B) Docket No. TA89–1–6–000, Sea Robin Pipeline Company. Concerning waiver of the surcharge requirement and direct billing proposal.

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Reserved

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89–1683 Filed 1–23–89; 9:02 am]
BILLING CODE 6717–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 19, 1989.

TIME AND DATE: 10:00 a.m., Thursday, January 26, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Amber Coal Company, Docket No. KENT 88–136. (Issues include consideration of possible relief from a default order.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 89–1758 Filed 1–23–89; 2:58 pm]
BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 30, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed electronic payment processor pilot program within the Federal Reserve System.
2. Proposals regarding the Board's performance management program.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 23, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89–1734 Filed 1–23–89; 11:39 am]
BILLING CODE 6201–01–M

BOARD FOR INTERNATIONAL BROADCASTING

Certification of Closed Meeting

The Executive Director, in accordance with section 3(f)(1) of the Government in the Sunshine Act (5 U.S.C. 552b(f)(1) and the Board's rules issued under that Act (22 CFR Part 1302), hereby certifies that the Board meeting of February 6, 1989, at which will be discussed matters concerning the broad foreign policy objectives of the United States Government, may properly be closed to the public on the basis of the exemptions set forth in the Board's rules in 22 CFR 1302.4 (c) and (h).

Dated: January 12, 1989.

Mark G. Pomar,
Deputy Executive Director.

[FR Doc. 89–1752 Filed 1–23–89; 12:12 pm]
BILLING CODE 6155–01–M

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m. February 6, 1989.

PLACE: The Park Hyatt Hotel, 24th and M Streets NW., Washington, DC 20037.

STATUS: Closed, pursuant to 5 U.S.C. 552(b)(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Deputy Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue NW., Washington, DC 20036.

Mark G. Pomar,
Deputy Executive Director.

[FR Doc. 89–1753 Filed 1–23–89; 12:12 pm]
BILLING CODE 6155–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, February 8, 1989 at 3:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731–TA–426/428 (P) (Certain Telephone Systems and Subassemblies from Japan, Korea, and Taiwan)—briefing and vote.
6. Inv. No. 731–TA–234 (Final—Court Remand) (Carbon Steel Structural Shapes from Norway)—briefing and vote.
7. Inv. No. 731–TA–207 (Final—Court Remand) (Cellular Mobile Telephones and Subassemblies Thereof from Japan)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Kenneth R. Mason,
Secretary.

January 17, 1989.

[FR Doc. 89–1708 Filed 1–23–89; 10:45 am]
BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, February 15, 1989 at 12:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 701–TA–298 (P) (Fresh, Chilled, or Frozen Pork from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Kenneth R. Mason,

Secretary.

January 17, 1989.

[FR Doc. 89–1709 Filed 1–23–89; 8:45 am]

BILLING CODE 7020–02–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, February 1, 1989.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Trans-Colorado Airlines, Inc., Fairchild Metro III, SA227, AC, N68TC, Bayfield (Durango), Colorado, January 19, 1988.
2. Revision to Existing System of Board Review of Brief Reports of Highway Accidents.
3. Aircraft Accident/Incident Summary Report: TWA Flight 756, Boeing 767, Scott Air Force Base, Belleville, Illinois, August 22, 1987.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

January 19, 1989.

[FR Doc. 89–1735 Filed 1–23–89; 11:39 am]

BILLING CODE 7533–01–M

SECURITIES AND EXCHANGE COMMISSION

AGENCY MEETING

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 23, 1989.

A closed meeting will be held on Tuesday, January 24, 1989, at 10 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 24, 1989, at 10 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive action.
Formal orders of investigation.
Institution of administrative proceeding of an enforcement nature.
Order compelling testimony.

At times changes in Commission priorities require alterations in the scheduling of meeting times. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Jonathan G. Katz,

Secretary.

January 19, 1989.

[FR Doc. 89–1842 Filed 1–23–89; 4:01 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 15
Wednesday, January 25, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 320

[Docket No. 86-041P]

Processing Procedures and Cooking Instructions for Cooked, Uncured Meat Patties

Correction

In proposed rule document 88-29794 beginning on page 52179 in the issue of Tuesday, December 27, 1988, make the following corrections:

1. On page 52180, in the first column, in the 24th line, after "requirements", insert "for".

2. On page 52183, in the third column, in the last complete paragraph, in the last line, before "to" insert "within 1.5 hours and from 80°F".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-09-4214-11; GP9-066; OR-42315]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

Correction

In notice document 88-30162 beginning on page 70, in the issue of Tuesday, January 3, 1989, make the following corrections:

1. On page 71, in the first column, under "Sec. 11, that portion described as follows:" in the 6th line, "39°01'30"E.," should read "39°02'30"E.,"

2. On the same page and in the same column, also under "Sec. 11 ***," in the 12th line, "of the SW¼" should appear only once.

3. On the same page and in the same column, in the last paragraph, in the first line, "1980" should read "1989."

BILLING CODE 1505-01-D

federal register

Wednesday
January 25, 1989

Part II

Department of Energy

Economic Regulatory Administration

10 CFR Part 500 et al.
Powerplant and Industrial Fuel Use Act of 1978; Notice of Proposed Rulemaking

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 500, 501, 503, 504, 508 and 516

Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing to amend the regulations implementing the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act). The ERA proposes to: (1) Incorporate Congressional amendments to certain FUA sections into the regulations; (2) revise and update the fuel price and inflation indices used in the cost test calculations supporting exemptions based on a lack of alternate fuel at a cost which does not substantially exceed the cost of using imported petroleum; (3) clarify how to calculate the fuel price when a petitioner proposes to burn natural gas by permitting the petitioner to use the price of natural gas directly or, alternatively, to use the price of an equivalent Btu value of low sulfur, No. 6 residual fuel oil for the required price computation, and (4) revise and update the oil/gas savings estimates used in determining eligibility for an exemption based on cogeneration.

More specifically, the ERA proposes to incorporate amendments to the FUA as a result of Pub. L. 100–42 (May 27, 1987) which removed the applicability of the FUA to all but baseload electric powerplants. In addition, ERA proposes to update and revise the criteria and indices used in the cost test to more accurately reflect significantly changed circumstances in projected fuel use and fuel pricing patterns. This notice seeks comments on the proposed revisions.

DATES: Written comments from interested parties must be submitted on or before March 13, 1989.

ADDRESS: All comments should be addressed to Ellen Russell, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9624.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell (Office of Fuels Programs), Economic Regulatory Administration, Department of Energy, Room 3F–094, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9624.

Anthony J. Como (Office of Fuels Programs), Economic Regulatory Administration, Department of Energy, Room 3F–007, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5935.

Steven E. Ferguson (Office of General Counsel) Department of Energy, Room 6B–144, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6947.

SUPPLEMENTARY INFORMATION:

I. Background

On May 21, 1987, Pub. L. 100–42 (Powerplant and Industrial Fuel Use Act of 1978, Amendments) repealed certain sections of the Act and amended other sections. Repealed were section 202, New Major Fuel-Burning Installations; section 302, Existing Major Fuel-Burning Installations; section 401, Authority to Prohibit Use of Natural Gas in Certain Boilers Used for Space Heating; section 402, Prohibition on Use of Natural Gas for Decorative Outdoor Lighting; section 405, Authority to Restrict Increased Uses of Petroleum by Existing Powerplants; Title 5, System Compliance Options; and, section 801, Coal Reserves Disclosure. Section 201 was amended by prohibiting the construction or operation of new baseload electric powerplants without the capability to use coal or another alternate fuel as a primary energy source. In addition the Congress added a coal capability self-certification procedure for declaring new units to be alternate fuel capable.

The original statute was enacted following severe shortages of natural gas in the interstate market in the winter of 1976–1977. At the time, Congress sought to reduce oil imports, and to conserve natural gas and oil for uses other than electric utility generation or the commerical generation of steam. In order to achieve its purpose, FUA prohibited the use of oil and natural gas in new major fuel burning installations (MFBI) and powerplants unless ERA granted an exemption for such use.

(The most recent guidelines for filing exemption petitions are contained in the regulations issued November 30, 1981, (46 FR 59822, December 7, 1981). They define (1) MFBI, electric powerplant, cogeneration and other pertinent terms (Part 500); (2) describe the prohibitions applicable to new powerplants and MFBI's and set forth eligibility and evidentiary requirements for obtaining exemptions from such prohibitions (Part 501); (3) describe the cost calculation required for certain exemptions under FUA (Part 503, Subpart B); (4) prescribe rules relating to exemptions available (Part 504); and (5) provide administrative procedures for applying for exemptions (Part 501). Since the 1981 rulemaking, the administration of the Act has proceeded with a minimum number of amendments and adverse comments from industry.)

The purpose of this notice of proposed rulemaking is threefold. First, the major effect of the FUA amendment is that the Act no longer applies to industrial facilities or non-baseload electric powerplants. Therefore, the ERA is soliciting comments on proposed regulatory language which, when issued in a final document, will bring the regulations into conformity with the legislative changes imposed by Pub. L. 100–42. A method by which electric utilities can use the legislatively initiated alternate fuel capability self-certification provision for new baseload powerplants is also proposed.

Second, ERA seeks public comment on its proposed changes to calculations used for the cost test exemptions. Over the years of administering the provisions of the Act, the ERA has noted that the parameters and methodologies here proposed to be revised have become outdated due to the development of extensive oil/gas fuel switching capability, and by the growing comparability of the prices of low sulfur residual oil and natural gas when these fuels compete in the same market. ERA also proposes to reassess and revise the parameters and indices used in the fuel price computation methodology set forth in Appendix II.

Third, a state-by-state estimate of oil and gas savings which may be expected to be saved per kilowatt hour (kWh) of electricity displaced by cogenerated electricity is offered for comment.

Domestic energy markets have been fundamentally altered since the 1978

enactment of FUA. Phased decontrol of natural gas has resulted in a significant surplus of natural gas available to the interstate market. In addition, the use of natural gas in new electric powerplants can enable utilities to make cost-effective decisions on future capacity. It also provides potential new markets for domestic oil and gas producers.

The amended FUA offers added flexibility to utilities while preserving the "coal option" for new baseload electric powerplants. This is accomplished by repeal of the prohibition against the use of oil or gas contained in section 201 of the original statute, and substitution of a requirement that new baseload powerplants be capable of using coal or another alternate fuel as a primary energy source. Utilities which do not wish to construct "alternate fuel capable" units may still petition for exemptions, as provided by the 1978 Act.

During the past two years, the ERA has seen a very significant increase in the number of exemption petitions and certifications filed by owners/operators of gas-fired combine cycle units. These new high efficiency combined-cycle powerplants may be the technology of choice for future capacity additions. Such capacity can be added more rapidly and in smaller increments than direct coal-fired capacity, which results in significant savings to consumers during construction. Subsequently, if economic conditions warrant, a coal gasifier could be added to such plants, either on- or off-site, to produce clean synthetic coal gas that could be used in the combined-cycle powerplant.

Advances in gas combustion turbine technology have made it possible for powerplant owner/operators to install efficient gas turbines that could be altered at a later date if a decision were then made to add a gasifier to run the combustion turbine on clean, medium-Btu synthetic gas derived from coal. This type of combustion turbine is, for purpose of the amended Act, "alternate fuel capable"; that is, the turbine itself can be altered to a later date by installing different tubing, nozzles, ducts, vanes, etc., so that it is capable of handling the larger volumes of medium-Btu coal gas.

Changes in energy markets and the convergence of the per million Btu cost of low sulfur residual oil and natural gas have also caused the parameters and methodologies used in the FUA cost test regulations to become outdated and in need of change. These changes, particularly as they pertain to the fuel price computation set forth in Appendix II to Part 504 and referenced in § 503.6, stimulated the ERA's effort to reexamine the methodology of this computation. Further, the National Coal Association (NCA) specifically requested ERA commence a rulemaking to revise the indices contained in Appendix II. The NCA asserts that the indices used in the fuel price computation required for exemption purposes are outdated and inaccurate, and that reliance on them would neither appropriately reflect present fuel price patterns nor provide a suitable basis for reasonable fuel price projections. In addition, ERA has found that currently available data indicate that a substantially close pricing relationship has developed between imported petroleum and natural gas in the competitive industrial markets. Such a relationship did not exist when the initial criteria for the fuel price computation were adopted. This parity of pricing has persuaded ERA to consider simplifying the cost exemption requirements by permitting cost comparisons to be made between coal and the actual fuel(s) a petitioner proposes to use, and to reassess and revise the parameters and indices used in the fuel price computation methodology set forth in Appendix II.

II. Proposals

Major substantive changes to the regulations are described below.

A. General

1. Industrial Facilities

Throughout these regulations, the ERA proposes to remove all reference to new or existing major fuel burning installations, installations, MFBI, process life, and refinery operations.

2. Powerplants

ERA proposes to remove all reference to intermediate load and peakload powerplants. However, it should be noted that the 1987 FUA amendments did not affect the status of cogenerating "industrial" facilities which qualify as powerplants under the Act. If more than half of the electricity generated by such a facility is sold, it qualifies as a powerplant, and is subject to the prohibitions contained in the Act.

B. Definitions (Part 500)

1. Capability to Use Alternate Fuel

An important element of the recent FUA amendments was the redefining of a unit's coal or alternate fuel capability. Under the current rules a new facility is coal or alternate fuel capable if it has the ability to physically sustain combustion of an alternate fuel, and, if adequate space exists for appropriate pollution control or fuel handling equipment for the use of the alternate fuel. In addition, the alternate fuel must be available to the operator when the facility becomes operational.

The definition proposed herein is taken from the FUA amendment. A powerplant is now to be considered alternate fuel capable if it has the inherent design characteristics to permit the *addition of equipment* (including pollution devices) to render the unit coal or alternate fuel capable, *and* if it is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

This "coal capability" is not to be interpreted to mean that the unit is capable of using coal or another alternate fuel on its initial day of operation.

Example: A natural gas fired combined-cycle cogeneration facility would be considered "coal capable" if the unit were physically, structurally, and technically capable of being modified at a future date to burn an alternate fuel, such as gasified coal.

2. Various definitions are deleted or changed to conform with the provisions of the FUA amendments. In most cases, this involves changes or deletions associated with industrial facilities, and intermediate load and peakload powerplants.

C. Administrative Procedures and Sanctions (Part 501)

Part 501 has been simplified and, where appropriate, certain sections of the current rules have been consolidated or combined to eliminate provisions or requirements which are repetitious or which experience has shown to be unnecessary.

1. General Provisions (Subpart A)

In § 501.6, ERA proposes to remove the requirement that orders, notices, or other documents be served by certified mail.

For exemption requests, the ERA proposes to retain its requirement that an original and fourteen (14) copies of the request be filed. However, ERA will require only an original and three (3) copies of certification requests.

The ERA is proposing to remove the procedures for determining the commercial unmarketability of fuels. This language related mainly to industrial facilities no longer subject to FUA. Since FUA's 1978 enactment, no electric powerplant has submitted a request that the fuel consumed by the powerplant be determined to be commercially unmarketable and therefore an "alternate fuel".

ERA has proposed to add a subparagraph (b) to § 501.9 (Effective date of orders or rules) taken from the amended Act which requires that, for purposes of section 201 of the Act, no order issued by ERA will take effect until all approvals required by State regulatory authorities relating to the construction of such facilities have been obtained.

The addresses for the filing of documents and the location of the public reading room for reviewing or copying documents have been updated.

2. Exemptions and Certifications (Subpart F)

The FUA amendments provide for a certification procedure to meet the alternate fuel capability requirement of the new section 201(a). Section 501.61 of these proposed rules implements that provision by requiring that the following information be submitted in addition to the alternate fuel certification signed by a duly authorized representative of the company: (1) A description of the planned facility including the size of the proposed unit(s) and process used (combined-cycle, simple-cycle, etc.), (2) the owner/operator of the facility, and (3) the facility's location. For cogeneration facilities filing self-certifications, the document is to include the name of the utility that will be purchasing the generated electricity.

D. Cogeneration Oil/Gas Savings (Part 503)

The ERA is proposing to replace a table of estimated regional oil and gas savings attributable to electricity backed off the grid by cogeneration with a comparable table by state. When the regional table was created in 1980 it contained data forecasts for 1988. The proposed table contains current, not projected, data.

E. Cost Calculation and Fuel Price Computations (Appendix II to Part 504)

Under FUA, a facility shall be granted an exemption to use oil or natural gas on the basis of cost when coal or another alternate fuel will not be available at a cost which "based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum * * *" (FUA, sections 211(a), 212(a), 311(a), 312(a), providing cost-based exemptions, and section 103(a)(20), defining "cost").

With respect to the fuel cost components of the cost calculations, the current regulations provide the equations and future fuel price indices for computing the price of delivered fuels over the lifetime of a facility. When an applicant proposes to use natural gas, the regulations require that the fuel cost computation for the proposed fuel must employ the cost of an equivalent energy use of No. 6 residual fuel oil. However, since adoption of the cost calculation regulations, domestic energy prices in general ceased rising and then declined under the impact of declining world petroleum prices, increasing supplies, steady efficiency improvements in energy use, and deregulation of natural gas prices. As a result, earlier projections of future coal and oil prices used for cost comparisons in applications for exemptions are outdated and need revision.

The ERA believes that market forces also have essentially eradicated the earlier price gap that represented the undervaluation of natural gas relative to petroleum when natural gas prices were constrained by binding price ceilings at the wellhead. Therefore, ERA now proposes that the price of the primary fuel to be used in the new facility, either natural gas or petroleum, be used directly in the fuel cost computations.

1. Cost Calculation for Petitions Proposing the Use of Natural Gas

The current requirement is that, for purposes of the cost calculation, natural gas be priced at the Btu equivalent price of No. 6 residual fuel oil. This was adopted originally to avoid biasing the cost comparison between gas and coal by employing an arbitrarily low natural gas price when binding wellhead price ceilings held natural gas prices below the energy-equivalent price of imported petroleum. The ERA now believes that market and regulatory changes have essentially eliminated the former disparity between the prices of oil and natural gas.

The Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 717b) decontrolled high cost gas and allowed gradually rising prices for gas developed from "new" sources. Under the NGPA provisions, on January 1, 1985, wellhead price controls were removed from approximately half of all natural gas supplies. Even before partial decontrol, natural gas price increases had dampened, and some decline had begun under the combined pressure of weakening world oil prices, and the increase in domestic competition between oil and natural gas, and among gas suppliers. Under continuous pressure of market forces, natural gas prices continued falling after partial decontrol. The earlier undervaluation of natural gas relative to imported petroleum prices, attributable to wellhead ceiling prices, has vanished. In recent years the price of natural gas at the wellhead has actually declined in response to the decline in the prices of crude oil and its products with which natural gas competes.

Evidence of the changes in oil prices relative to gas prices is clear. The average landed cost of crude oil imports (in current dollars) declined from $36.52 per barrel in 1981 to $13.07 per barrel in October of 1986. The average wellhead price of natural gas, after rising steadily for more than 10 years, peaked at $2.70 per Mcf in June 1984, and fell to $1.54 per Mcf in September of 1986, while the average price delivered to steam-electric utility plants fell from $3.86 per Mcf in July 1984, to $2.12 per Mcf in September 1986. In 1980 and 1981, the delivered price of residual fuel oil to steam-electric utility plants was almost twice that of natural gas on an equivalent energy basis, but in October 1986, the gap had disappeared, with the delivered price of natural gas actually greater by $0.054 per MMBtu.

There is now demonstrated competition between natural gas and residual fuel oil in which many facilities with dual capability switch back and forth between the two fuels based on very small changes in their relative prices. The capability for substitution between the fuels both in the short- and long-run will prevent unconstrained swings in the price of one fuel relative to the other.

The ERA now believes that for electric utility and industrial users, the price of natural gas is no longer artificially too low to permit valid comparisons under FUA and, therefore, the real price of No. 6 residual fuel oil is no longer a necessary surrogate in the fuel price computation for an exemption to use natural gas. Accordingly, the ERA now proposes that a petitioner requesting an exemption to use natural gas should use the price of the fuel that will actually be used rather than price an equivalent energy value of No. 6 residual fuel oil.

As an alternative to this proposal, ERA will consider and requests comments on retaining the current regulations for an exemption requesting permission to use natural gas, although in view of the evidence concerning the radical changes in the domestic energy market the ERA believes this to be an inferior course of action.

2. Fuel Price and Inflation Indices

Under the current regulations, Appendix II—Fuel Price Computations provides the equations and parameters needed to compute the price of delivered fuels and inflation indices used in

computing the cost of using an alternate fuel in Parts 503 and 504. Two options are now provided for accounting for the impact of fuel price escalation: Option 1 (paragraph (b)) allows use of the price and inflation indices contained in Tables II–1 and II–2 of Appendix II of the regulations; Option 2 (paragraph (c)) employs an annuity premium added to the price of oil to account for projected escalation in oil prices as compared to changes over time in alternate fuel prices. The ERA proposes the following changes to Option 1, and also proposes to eliminate Option 2.

Proposed Option 1: Appendix II of the regulations (paragraph (a)) indicates that, from time to time, the ERA will change the parameters specified in paragraphs (b)(4) and (c)(4) and in Tables II–1 and II–2. Having noted the substantial changes in energy markets and the economy, the ERA proposes to update the fuel price and inflation indices in these tables. For this purpose, the ERA evaluated the projections made by several forecasters and concluded that the DOE's Energy Information Administration (EIA) base case, or mid-range, forecast is the best practicable estimate.

As this forecast is published annually in the EIA's *Annual Energy Outlook* (AEO), the ERA proposes that the fuel price and inflation indices be updated yearly with the publication of the AEO. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

Forecasts published by the EIA typically extend for approximately 15 years. Therefore, the ERA also is soliciting comments on a proposal to freeze the fuel and inflation indices at the level reached in the final year of the projection and extend them at that level throughout the remaining useful life of the proposed unit. As the ERA is proposing that the petitioner be allowed to compare the cost of coal with the cost of the fuel(s) planned to be used in the unit, the AEO price projections (per million Btu) for distillate oil, low sulfur residual oil, natural gas and steam coal are the relevant fuels to be used in calculating the indices.

The ERA is further proposing that petitioners planning to use more than one fuel in a powerplant compute a weighted average fuel cost for each fuel proposed to be used throughout the life of the unit(s) as described below.

The following is an example of the proposed changes to Option 1:

The equation to use in calculating the annual price index for each fuel (distillate oil, residual oil, natural gas, and steam coal) is:

$$\text{EQ II–1} \qquad PX_i = \frac{P_i}{P_o}$$

where:

PX_i = The fuel price index for each fuel in, year i.
P_i = Price of fuel in year i.
P_o = Price of fuel in base year.

The fuel prices P_i and P_o used in equation EQ II–1 are to be taken from the current *Annual Energy Outlook.*

The equation to use in calculating annual inflation indices is:

$$\text{EQ II–2} \qquad IX_i = \frac{GX_i}{GX_o}$$

where:

IX_i = The inflation index for year i.
GX_i = The NIPA GNP price deflator for year i.
GX_o = The NIPA GNP price deflator for the base year.

When computing annual inflation indices, the petitioner is to use the Base Case National Macroeconomic Indicators (NIPA GNP Price Deflator) contained in the EIA's current AEO. If necessary, the petitioner must rebase the projection to the same year used for the fuel price projections. For example, the 1986 AEO projects the price deflator in 1982 dollars; this must be rebased to the year in which the petition is filed. The methodology used to rebase the inflation indices must follow standard statistical procedures and must be fully documented within the petition. This index will remain frozen at the last year of the AEO's projection for the remainder of the unit's useful life.

Using the equations II–1 and II–2 with the 1986 EIS fuel price projections and NIPA GNP price deflators, the following sample fuel price and inflation indices were computed:

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
1986	1.000	1.000	1.000	1.000	1.000
1989	1.129	1.078	1.040	1.025	1.110
1993	1.458	1.429	1.411	1.087	1.341
1996	1.820	1.816	1.881	1.143	1.587
2000	2.160	2.155	2.257	1.168	1.960
2010	2.160	2.155	2.257	1.168	1.960

When planning to use two or more fuel in the proposed unit(s), the petitioner must use EQ II–3 (found in the regulatory text at the end of this notice) to compute the annual fuel price to each fuel to be burned. The petitioner must also estimate the proportion of each fuel to be burned over the useful life of the unit(s). With these proportions and the annual fuel price for each fuel to be used, the petitioner must compute a weighted average fuel price for each year of the unit(s) operation. The methodology used to calculate the weighted average fuel price must follow standard statistical procedures and be fully documented within the petition.

Proposed Option 2: Since publication of the current regulations (December 7, 1981), the ERA has received petitions for exemptions based on cost for 69 units. An examination of these petitions reveals that none employed the Option 2 fuel price computation provided by paragraph (c).

The ERA believes that since Option 2 has not been used by petitioners and since it is proposing to make Option 1 more reflective of changing energy markets, Option 2 is no longer necessary and should be eliminated. The ERA also is soliciting comments on this proposal.

III. Procedural Matters

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the proposed rulemaking to the Office of Fuels Programs, Docket No. ERA R–88–1, Economic Regulatory Administration, Department of Energy, Room 3H–070, 1000 Independence Avenue, SW., Washington, DC 20585. Comments may also be hand-delivered between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Comments should be identified on the outside of the envelope and the face of the documents submitted to DOE with the designation "Amendments to FUA Regulations". Fifteen copies should be submitted.

B. Section 102 of the National Environmental Policy Act (NEPA)

The environmental impact of the Fuel Use Act was addressed in the programmatic Environmental Impact Statement (DOE/EIS–00381) published in April 1979. The existing regulations were published on December 7, 1981 (46 FR 59872), after it was determined that those final regulations did not constitute a major federal action significantly affecting the human environment.

The proposed changes to the FUA regulations bring the language of the regulations into line with the amended FUA regarding the fuel price and inflation indices used in the cost

calculations for an exemption, and change the fuel pricing formula when it is proposed to burn natural gas in a powerplant. Since this NOPR addresses the applicability of the FUA to all but baseload powerplants and updates certain computational parameters and pricing fomulae, already evaluated in the programmatic EIS, the environmental impact of the proposed amendments falls within the scope of the previous EIS and its implementing rules. Thus, these amendments do not constitute a major federal action significantly affecting the human environment and neither an environmental assessment nor a supplemental to the existing EIS is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 (September 19, 1980)) requires the DOE to describe the economic impact that a proposed rule would have on small entities or to certify that the rule would not have a significant economic impact on a substantial number of small entities.

Since the proposed rules reflect a reduction in the universe affected by the FUA and only change certain parameters already defined in the existing regulations, the DOE has determined that this proposed rule will not negatively impact firms that are "small entities" within the meaning of the Regulatory Flexibility Act. Accordingly, the DOE certifies that this proposed rule is not likely to have a significant impact on a substantial number of small entities within the meaning of that Act.

D. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires an agency to prepare a regulatory impact analysis for any proposed major rule. At the time the existing regulations were published, the Office of Management and Budget waived the requirements of sections 3, 4, and 7 of Executive Order 12291 as they pertain to those regulations. Since this proposed rule reduces the universe affected by FUA and would change only a small portion of the existing regulations, no regulatory impact analysis has been prepared.

Pursuant to section 3(c)(3) of Executive Order 12291, this proposed rulemaking was submitted to the Office of Management and Budget for review at least 10 days prior to publication in the Federal Register.

E. Paperwork Reduction Act of 1980

The information collection requirements contained in 10 CFR Parts 500, 501, 503, and 504 of the existing regulations have received Office of Management and Budget (OMB) approval under control number 1903–0075. The information collection requirements contained in 10 CFR Parts 503 and 504 of the proposed regulations will be sent to the OMB for review under the provisions of the Paperwork Reduction Act of 1980, as amended (Pub. L. 96–511). As required, specific information regarding the collection requirements is provided below. This request, known as "A Revision to the Regulations Implementing the Powerplant and Industrial Fuel Use Act of 1978," proposes to: (1) Incorporate Congressional amendments to certain FUA sections into the regulations; (2) revise and update the fuel price and inflation indices used in the cost test calculations supporting exemptions based on the lack of alternate fuel at a cost which does not substantially exceed the cost of using imported petroleum; and (3) clarify how to calculate the fuel price when a petitioner proposes to burn natural gas by permitting the petitioner to use the price of natural gas directly or, alternatively, to use the price of an equivalent Btu value of low sulfur, No. 6, residual fuel oil for the required price computation. These changes are necessary to assure that data submitted under FUA rules are presented in a more useful format. Owners or operators of baseload powerplants must submit the information required in this regulation in order to obtain an exemption from the FUA. The total annual burden estimate on respondents for the information collection requirement of this proposed rule is 20 hours.

List of Subjects in 10 CFR Parts 501, 502, 503, and 504

Business and industry, Electric power plants, Energy conservation, Natural gas, Petroleum, Reporting and recordkeeping requirements.

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on January 17, 1989.

Chandler L. Van Orman,

Administrator, Economic Regulatory Administration.

For reasons set out in the preamble, Parts 500, 501, 503, 504, 508, and 516 of Chapter II, Title 10 of the Code of Federal Regulations are proposed to be amended as follows.

PART 500—DEFINITIONS

1. The authority citation for Part 500 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 *et seq.*); E.O. 1209, 42 FR 46267, September 15, 1977.

§ 500.2 [Amended]

2. By revising the definitions of "action" in § 500.2 to read as follows:

* * * * *

"Action" means a prohibition by rule or order, in accordance with sections 301 (b) and (c) of FUA; any order granting or denying an exemption in accordance with sections 211, 212, 311, and 312 of FUA; a modification or rescission of any such order, or rule; an interpretation; a notice of violation; a remedial order; and interpretive ruling; or a rulemaking undertaken by DOE.

* * * * *

3. By revising the definition of "Capability to use alternate fuel" in § 500.2 to read as follows:

* * * * *

"Capability to use alternate fuel," for the purposes of Title II prohibitions relating to construction of new powerplants, means the powerplant to be constructed:

(1) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

* * * * *

4. By adding the definition of "Certification" in § 500.2 to read as follows:

* * * * *

"Certification" means that document, signed by an official of the company, notorized, and submitted to DOE, which declares that a new powerplant will have the "capability to use alternate fuel" (as defined herein).

* * * * *

5. By revising the definition of "cogeneration facility" in § 500.2 to read as follows:

* * * * *

"Cogeneration facility" means an electric powerplant that produces:

(1) Electric power; and

(2) Any other form of useful energy (such as steam, gas or heat) that is, or will be used, for industrial, commercial, or space heating purposes. In addition, for purposes of this definition, electricity generated by the cogeneration facility must constitute more than five (5) percent and less than ninety (90) percent of the useful energy output of the facility.

Note.—Any cogeneration facility selling or exchanging less than fifty percent (50%) of the facility's generated electricity is considered an industrial cogenerator and is exempt from the fuel use prohibitions of FUA.

* * * * *

6. By revising the definition of "combined cycle unit" in § 500.2 to read as follows:

* * * * *

"Combined cycle unit" means an electric power generating unit that consists of a combination of one or more combustion turbine units and one or more steam turbine units with a substantial portion of the required energy input of the steam turbine unit(s) provided by the exhaust gas from the combustion turbine unit(s). Substantial amounts of supplemental firing for a steam turbine or waste heat boiler to improve thermal efficiency will not affect a unit's classification as a combined cycle unit.

* * * * *

7. By revising the definition of "Costs" in § 500.2 to read as follows:

* * * * *

"Cost" means total costs, both operating and capital, incurred over the estimated remaining useful life of an electric powerplant, discounted to the present, pursuant to rules established in Parts 503 and 504 of these regulations.

* * * * *

8. By revising the definition of "Design capability" in § 500.2 to read as follows:

* * * * *

"Design capability" defined in section 103(a)(7) of FUA, shall be determined as follows:

(1) *Boiler and associated generator turbines.* The design fuel heat input rate of a steam-electric generating unit (Btu/hr) shall be the product of the generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall boiler-turbine-generator unit design efficiency (decimal); or if the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilovolt-amperes nameplate rating, and the power factor nameplate rating; and 3412 (Btu/kWh), divided by the boiler turbine-generator unit's design efficiency (decimal). (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(2) *Combustion turbine and associated generator.* The design fuel heat input rate of a combustion turbine (Btu/hr) shall be the product of its nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the combustion turbine-generator unit's design efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) at the unit's elevation. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(3) *Combined cycle unit.* The design fuel heat input rat of a combined cycle unit (Btu/hr) shall be the summation of the product of its generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall combustion turbine-generator unit's efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) and at the unit's evaluation, plus the product of the maximum fuel heat input to any supplemental heat recovery steam generator/boiler in gallons or pounds per hour and the fuel's heat content. If the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilowatt-amperes nameplate rating and power factor nameplate rating must be substituted for kilowatts. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

* * * * *

9. By removing the definitions of "Existing major fuel burning installation", "Installation", "Major fuel burning installation", "New major fuel burning installation", and "MFBI" from § 500.2.

10. By removing the definition of "Intermediate load powerplant" and "Peakload powerplant" from § 500.2.

11. By revising the definition of "Nonboiler" in § 500.2 to read as follows:

* * * * *

"Nonboiler" means any powerplant which is not a boiler and consists of either a combustion turbine unit or combined cycle unit.

* * * * *

12. By revising the definition of "Primary energy source" in § 500.2 to read as follows:

* * * * *

"Primary energy source" means the fuel or fuels used by any existing or new electric powerplant except:

(1) Minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses. ERA has determined that, unless need for a greater amount is demonstrated, twenty-five (25) percent of the total annual Btu heat input of a unit shall be automatically excluded under this paragraph.

(2) Minimum amounts of fuel required to alleviate or prevent:

(i) Unanticipated equipment outages as defined in § 501.191 of these regulations; and

(ii) Emergencies directly affecting the public health, safety, or welfare that would result from electric power outages as defined in § 501.191 of these regulations.

Note.—(1) Any fuel excluded under the provisions of paragraph (1) of this definition is in addition to any fuel authorized to be used in any order granting a fuel mixtures exemption under Parts 503 and 504 of these rules. The exclusion of fuel under paragraph (1), together with the authority for such additive treatment, shall apply to any jurisdictional facility, regardless of whether or not it had received an order granting an exemption as of the date these rules are promulgated.

(2) If an auxiliary unit to an electric powerplant consumes fuel only for the auxiliary functions of unit ignition, startup, testing, flame stabilization, and other control uses, its use of minimum amounts of natural gas or petroleum is not prohibited by FUA. The measurement of such minimum amounts of fuel is discussed in *Associated Electric Cooperative*, et al., Interpretation 1980–42 (45 FR 82572, Dec. 15, 1980).

* * * * *

13. By revising the definition of "Prohibition Order" in § 500.2 to read as follows:

* * * * *

"Prohibition order" means:

(1) An order issued pursuant to section 301(b) of the Act that prohibits a powerplant from burning natural gas or petroleum as its primary energy source; or

(2) An order issued pursuant to section 301(c) of the Act that prohibits excessive use of natural gas or petroleum in mixtures burned by a powerplant as its primary energy source.

* * * * *

14. By revising the definition of "Rated capacity" in § 500.2 to read as follows:

* * * * *

"Rated capacity" for the purpose of determining reduction in the rated capacity of an existing powerplant, means design capacity, or, at the election of the facility owner or operator, the actual maximum sustained energy output per unit of time that could be produced, measured in power output, expressed in kilowatts, per unit of time.

* * * * *

15. By revising the definition of "Reconstruction" in § 500.2 to read as follows:

* * * * *

"Reconstruction" means the following:

(1) Except as provided in paragraph (2) of this definition, reconstruction shall be found to have taken place whenever the capital expenditures for refurbishment or modification of an electric powerplant on a cumulative basis for the current calendar year and preceding calendar year, are equal to or greater than fifty (50) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels.

(2) Notwithstanding paragraph (1) of this definition, reconstruction shall not be found to have taken place whenever:

(i) The capital expenditures for refurbishment or modification of an electric powerplant, on a cumulative basis for the current calendar year and preceding calendar year, are not greater than eighty (80) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces:

(ii) The unit being refurbished or modified was destroyed, in whole or substantial part, in a plant accident and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces; or

(iii) Refurbishment or modification of the unit is undertaken primarily for the purpose of increasing fuel burning efficiency of the unit, and will not result in:

(A) Increased remaining useful plant life, or

(B) Increased total annual fuel consumption.

* * * * *

16. By removing the definition of "Refinery operation" from § 500.2.

17. By revising the definition of "Site limitation" in § 500.2 to read as follows:

* * * * *

"Site limitation" means a specific physical limitation associated with a particular site that relates to the use of an alternate fuel as a primary energy source for the powerplant such as:

(1) Inaccessibility to alternate fuels;

(2) Lack of transportation facilities for alternate fuels;

(3) Lack of adequate land for facilities for the handling, use and storage of alternate fuels;

(4) Lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of land for pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(5) Lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

* * * * *

Part 501 is proposed to be amended as follows:

PART 501—[AMENDED]

1. The authority citation for Part 501 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

§ 501.2 [Amended]

2. By removing the reference "and MFBI's" in § 501.2(a).

3. By revising § 501.6 to read as follows:

§ 501.6 Service.

(a) DOE will serve all orders, notices interpretations or other documents that it is required to serve, personally or by mail, unless otherwise provided in these regulations.

(b) DOE will consider service upon a petitioner's duly authorized representative to be service upon the petitioner.

(c) Service by mail is effective upon mailing.

4. By removing § 501.7(a)(12).

5. By redesignating § 501.7(a)(13) as § 501.7(a)(12).

6. By revising § 501.7(b) as follows:

§ 501.7 [Amended]

* * * * *

(b) *Number of documents to be filed.* (1) A petitioner must file an executed original and fourteen (14) copies of all exemption requests submitted to ERA. For certification requests, an original and three (3) copies shall be submitted.

(2) Where the petitioner requests confidential treatment of some or all of the information submitted, an original and eleven (11) copies of the confidential document and three (3) copies of the document with confidential material deleted must be filed.

7. By revising § 501.9 as follows:

§ 501.9 Effective date of orders or rules.

(a) When ERA issues a rule or order imposing a prohibition or granting an exemption (or permit) under FUA, the rule or order will be effective sixty (60) days after publication in the **Federal Register**, unless it is stayed, modified, suspended or rescinded.

(b) If the appropriate State regulatory authority has not approved a powerplant for which a petition or certification has been filed, such exemption, to the extent it applies to the prohibition under section 201 of FUA shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

8. By revising § 501.10 to read as follows:

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this part and any other provisions or parts of this chapter, except for general procedures which are unique to Part 515 of this chapter, the provisions of this part will control with respect to procedure.

9. By revising § 501.11 to read as follows:

§ 501.11 Address for filing documents.

Send all petitions and written communications to the following address: Economic Regulatory Administration, Office of Fuels Programs, Coal and Electricity Division, Mail Code RG–22, 1000 Independence Avenue, SW., Washington, DC 20585.

10. By revising § 501.12 to read as follows:

§ 501.12 Public files.

DOE will make available at the Freedom of Information reading room, Room 1E190, 1000 Independence Avenue, SW., Washington, DC for public inspection and copying any information required by statute and any information that ERA determines should be made available to the public.

11. By revising § 501.14 to read as follows:

§ 501.14 Notice to Environmental Protection Agency.

A copy of any proposed rule or order that imposes a prohibition, order that imposes a prohibition, or a petition for an exemption or permit, shall be transmitted for comments, if any, to the Admininstrator and the appropriate Regional Administrator of the

Environmental Protection Agency (EPA). The Administrator of EPA shall be given the same opportunity to comment and question as is given other interested persons.

12. By revising § 501.31(a) to read as follows:

§ 501.13 Written comments.

(a) *New facilities.* Except as may be provided elsewhere in this regulations, ERA shall provide a period of at least forty-five (45) days, commencing with publication of the Notice of Acceptance of Petition, or in the case of certification exemptions, Notice of Acceptance and availability of Certification, in the **Federal Register** in accordance with § 501.63(a), for submission of written comments concerning a petition for an exemption. Written comments shall be made in accordance with § 501.7.

* * * * *

13. By revising § 501.33(a) to read as follows:

§ 501.33 Request for a public hearing.

(a) *New facilities.* In the case of a petition for an exemption under Title II of FUA, any interested person may submit a written request that ERA convene a public hearing in accordance with section 701 of FUA no later than forty-five (45) days after publication of either the Notice of Acceptance of a petition, or in the case of a certification exemption, the publication of the Notice of Acceptance of Certification. This time period may be extended at the discretion of ERA.

* * * * *

14. By revising § 501.35(b) to read as follows:

§ 501.35 Public file.

* * * * *

(b) *Availability.* The public file shall be available for inspection at Room 1E190, 1000 Independence Avenue, SW., Washington, DC. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

15. By revising § 501.51 (a), (b)(2) and (3), (d)(2)(ii), and (3) to read as follows:

§ 501.51 Prohibitions by order—existing major fuel-burning installations and electing powerplants.

(a) ERA may prohibit by order the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an electing powerplant, if:

(1) That facility has not been identified as a member of a category subject to a final rule at the time of the issuance of such order; and

(2) The requirements of § 504.6 have been met.

(b) * * *

(2) Pursuant to section 701 of FUA, prior to the issuance of a final order to an electing powerplant, ERA shall publish a proposed order in the **Federal Register** together with a statement of the reasons for the order. In the case of a proposed order that would prohibit the use of petroleum or natural gas as a primary energy source, the finding required by former section 301(b)(1) of the Act shall be published with such proposed order.

(3) ERA shall provide a period for the submission of written comments of at least three months after the date of the proposed order. During this period, the recipient of the proposed order and any other interested person must submit any evidence that they have determined at that time to support their respective positions as to each of the findings that ERA is required to make under former section 301(b) of the Act. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows publication of the Tentative Staff Analysis or prior to the close of the record of any public hearing, whichever occurs later. A request by the proposed order recipient for an extension of the three-month period may be granted at ERA's discretion.

* * * * * * *

(d) * * *

(2) * * *

(ii) Sufficient information for ERA to make the findings required by former section 301(b) of FUA.

(3) If ERA determines to accept the request, ERA shall publish a proposed order in the **Federal Register** together with a statement of the reasons for the order.

§ 501.56 [Removed and reserved]

16. By removing and reserving § 501.56.

17. The heading for Subpart F is revised to read as follows:

Subpart F—Exemptions and Certifications

18. By revising § 501.60(a)(1), (2), and (3) to read as follows:

§ 501.60 Purpose and scope.

(a)(1) If the owner or operator plans to construct a new baseload powerplant and the unit will not be in compliance with the prohibition contained in section 201(a) of FUA, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) Self-certification alternative. If the owner or operator plans to construct a new baseload powerplant and the unit will be in compliance with the prohibitions contained in section 301(a) of FUA, this subpart establishes the procedures for the filing of a self-certification under section 201(d) of FUA.

(3) If the petitioner owns, operates or controls a new powerplant, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under sections 211 or 311 of FUA.

* * * * *

19. By adding a new § 501.61 to read as follows:

§ 501.61 Certification contents.

(a) A self-certification filed under section 201(d) of FUA should include the following information:

(1) Owner name and address.

(2) Operators name and address.

(3) Plant location and address.

(4) Plant configuration (combined cycle, simple cycle, topping cycle, etc.)

(5) Design capacity in megawatts (MW).

(6) Name of utility purchasing electricity from the proposed facility and percent of total output to be sold.

(7) Date unit is expected to be placed in service.

(8) Certification by an officer of the company or his designated representative certifying that the proposed facility:

(i) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(ii) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

(b) A self-certification filed pursuant to § 501.61(a) shall be effective to establish compliance with the requirement of section 201(a) of FUA as of the date filed.

(c) ERA will publish a notice in the **Federal Register** within fifteen days reciting that the certification has been filed.

(d) ERA will notify the owner or operator within 60 days if supporting documentation is needed to verify the certification.

20. By revising § 501.63(a)(2) to read as follows:

§ 501.63 Notice of the commencement of an administrative proceeding on an exemption petition.

(a) * * *

(2) ERA will notify the appropriate State agency having apparent primary authority to permit or regulate the construction or operation of a powerplant that an exemption proceeding has commenced and will consult with this agency to the maximum extent practicable. Copies of all accepted petitions also will be forwarded to ERA, as provided in § 501.14(a).

* * * * *

21. By revising § 501.65 to read as follows:

§ 501.65 Publication of notice of availability of draft EIS.

A Notice of Availability of any draft EIS will be published in the **Federal Register** and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

22. By revising § 501.68(d) to read as follows:

§ 501.68 Decision and order.

* * * * *

(d) ERA may design any terms and conditions included in any temporary exemption issued or extended under section 211 of FUA, to ensure, among other things, that upon expiration of the exemption the persons and powerplant covered by the exemption will comply with the applicable prohibitions under FUA. For purposes of the provision, the subsequent grant of a permanent exemption to the subject unit shall be deemed compliance with applicable prohibitions.

23. By revising § 501.103(c) to read as follows:

§ 501.103 ERA decision.

* * * * *

(c) ERA will serve the rule or order granting or denying the request for modification or rescission upon the requester, or, if the action was initiated by ERA, upon the owner or operator of the affected powerplant. ERA will publish a notice of the issuance of a rule or order modifying or rescinding a rule or order in the **Federal Register**.

24. By revising § 501.190 to read as follows:

§ 501.190 Purpose and scope.

(a) If a person operates a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, § 501.191 of this subpart establishes procedures to be followed for the use of minimum amounts of natural gas or petroleum under FUA section 103(a)(15)(B) in order to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public health, safety, or welfare that would result from electric power outages.

(b) *Explanatory note:* If a person operates a rental boiler as a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, he may be able to use the provisions of this subpart for the emergency use of natural gas or petroleum.

25. By revising § 501.191(a) to read as follows:

§ 501.191 Use of natural gas or petroleum for certain unanticipated equipment outages and emergencies defined in section 103(a)(15)(B) of the act.

(a) In the event of the occurrence or imminent occurrence of an emergency, or of the occurrence or imminent occurrence of an unanticipated equipment outage in the unit, an owner or operator of a powerplant is automatically permitted to use the minimum amounts of natural gas or petroleum in the unit or in a substitute unit to prevent or alleviate the outage or to prevent or alleviate the emergency if he complies with procedures contained in paragraph (b) of this section.

* * * * *

§ 501.192 [Removed and Reserved]

26. By removing and reserving § 501.192.

Part 503 is proposed to be amended as follows:

PART 503—NEW FACILITIES

1. The authority citation for Part 503 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 *et seq.*); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By revising the heading of Subpart A to read as follows:

SUBPART A—GENERAL PROHIBITION

3. By revising § 503.1 to read as follows:

§ 503.1 Purpose and scope.

This subpart sets forth the statutory prohibition imposed by the Act upon new powerplants. The prohibition in the subpart applies to all new baseload electric powerplants unless an exemption has been granted by ERA under Subparts C and D of this part. Any person who owns, controls, rents, leases or operates a new powerplant which is subject to the prohibition may be subject to sanctions provided by the Act or these regulations.

4. By revising § 503.2 to read as follows:

§ 503.2 Prohibition.

Section 201 of the Act prohibits, unless an exemption has been granted under Subpart C or D of this part, any new electric powerplant from being constructed or operated as a baseload powerplant without the capability to use coal or another alternate fuel as a primary energy source.

§ 503.3 [Removed and Reserved]

5. By removing and reserving § 503.3.

6. By removing the footnotes and revising the definition for "IX_i" in § 503.6(b)(4) and by revising (d)(4) to read as follows:

§ 503.6 Cost calculations for new powerplants and installations.

* * * * *

(b) * * *

(4) * * *

IX_i = Inflation index value for year i (see Appendix II to Part 504 for method of computation).

* * * * *

(d) * * *

(4) The discount rate (k) for analyses is 2.9% or that which is computed as specified in Appendix I. The method of computing the inflation index (IX) is shown in Appendix II to Part 504. ERA will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

7. By revising § 503.8(a) to read as follows:

§ 503.8 No alternate power supply—general requirement for certain exemptions for new powerplants.

(a) *Application.* To qualify for an exemption except in the case of an exemption for cogeneration units, section 213(c) of the Act requires a demonstration that despite reasonable good faith efforts, there is no alternative supply of electric power available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service. If a petitioner in unable to demonstrate that there is no alternate supply during the

first year of operation, ERA will conclude that the absence of the proposed powerplant will not impair short-term reliability of service, and as a result will not grant the exemption. Such action would not impair long-term reliability of service, since a petition may be submitted for a powerplant that would begin operation in a subsequent year.

* * * * *

8. By revising § 503.9(a) to read as follows:

§ 503.9 Use of mixtures-general requirement for certain permanent exemptions.

(a) *Criteria.* To qualify for a permanent exemption, except in the case of an exemption for fuel mixtures, section 213(a)(1) of the Act requires a demonstration that the use of a mixture of natural gas and petroleum and an alternate fuel for which an exemption under 10 CFR 503.38 (Fuel mixtures) would be available, would not be economically or technically feasible.

* * * * *

9. By revising § 503.10(a) to read as follows:

§ 503.10 Use of fluidized bed combustion not feasible-general requirement for permanent exemptions.

(a) *ERA finding.* Except in the case of an exemption for fuel mixtures, ERA may deny permanent exemptions authorized under section 212 of the Act if ERA finds on a site-specific or generic basis that use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

* * * * *

10. By revising § 503.11(a) to read as follows:

§ 503.11 Alternative sites—general requirement for permanent exemptions for new powerplants.

(a) *Criteria.* To qualify for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, or inadequate capital, section 212(a) of the Act requires a demonstration that one of these exemptions would be available to any reasonable alternative site for the facility.

* * * * *

11. By revising § 503.13(a) introductory text, (a)(1), and (b) to read as follows:

§ 503.13 Environmental impact analysis.

* * * * *

(a) All petitions for permanent exemptions must contain the following information:

(1) A description of the facility, including site location, and surroundings, alternative site(s), the facility's current proposed operations, its fuel capability and its pollution abatement systems and equipment (including those systems and equipment necessary for all fuel scenarios considered);

* * * * *

(b) For exemptions for cogeneration, the information enumerated below is to be submitted in lieu of the information required by paragraph (a) of this section. However, submission of the following information merely establishes a rebuttable presumption that the grant or denial of the exemption would have no significant environmental impact. ERA may, in individual cases, during the course of the administrative proceeding, determine that additional environmental information is required. In such cases, the petitioner will be required to submit the information described in paragraph (a) of this section.

* * * * *

12. By revising § 503.14 to read as follows:

§ 503.14 Fuels search.

Prior to submitting a petition for a permanent exemption for lack of alternate fuel supply, site limitations, inadequate capital, or state or local requirements, a petitioner must perform a fuels search by examining the use of conventional solid coal as a primary energy source at the site under consideration, and at reasonable alternative sites. Where a petitioner believes that its use of such coal would be infeasible, however, and where ERA and the petitioner can reach accord, it may evaluate use of a different alternate fuel in lieu of solid coal. A petitioner of these exemptions must demonstrate for any fuel examined that he would qualify for an exemption.

13. By revising § 503.20(b) to read as follows:

§ 503.20 Purpose and scope.

* * * * *

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

* * * * *

14. By revising § 503.21(a)(4) to read as follows:

§ 503.21 Lack of alternate fuel supply.

* * * * *

(a) * * *

(4) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

§ 503.21 [Amended]

15. By removing § 503.21(c) and by redesignating § 503.21(d) as § 503.21(c).

16. By revising § 503.22(a)(3) to read as follows:

§ 503.22 Site limitation.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

17. By revising § 503.23 (b)(8) and (d)(1)(ii) to read as follows:

§ 503.23 Inability to comply with applicable environmental requirements.

* * * * *

(b) * * *

(8) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

(d) * * *

(1) * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

18. By revising § 503.24(a)(3) to read as follows:

§ 503.24 Future use of synthetic fuels.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

19. By revising § 503.25(a)(3) to read as follows:

§ 503.25 Public interest.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

20. By revising § 503.31(a) (3) and (5) to read as follows:

§ 503.31 Lack of alternate fuel supply for the first 10 years of useful life.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations;

* * * * *

(5) Alternate sites are not available, as required under § 503.11 of these regulations.

* * * * *

21. By revising § 503.32(a) (3) and (5) to read as follows:

§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

§ 503.32 [Amended]

22. By removing § 503.32(c).

23. By revising § 503.33(a) (2) and (4) to read as follows:

§ 503.33 Site limitations.

(a) * * *

(2) No alternate power supply exists, as required under § 503.8 of these regulations;

* * * * *

(4) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

24. By revising § 503.34(a)(2), (c) (8) and (10), and (d)(1) (ii) and (iii) to read as follows:

§ 503.34 Inability to comply with applicable environmental requirements.

(a) * * *

(2) Reasonable alternative sites, which would permit the use of alternate fuels in compliance with applicable Federal or state environmental requirements, are not available.

* * * * *

(c) * * *

(8) No alternate power supply exists as required under § 503.8 of these regulations;

* * * * *

(10) Alternative sites are not available, as required under § 503.11 of these regulations;

* * * * *

(d) * * *

(1) * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations;

(iii) Alternative sites are not available, as required under § 503.11 of these regulations; and

* * * * *

25. By revising § 503.35(a)(2) introductory text, (3), and (5) to read as follows:

§ 503.35 [Amended]

(a) * * *

(2) The additional capital cannot be raised:

* * * * *

(3) No alternative power supply exists, as required under § 503.8 of these regulations;

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

26. By revising § 503.36(a) (4) through (6) and by adding (7) as follows:

§ 503.36 State or local requirements.

(a) * * *

(4) The petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital at the site of the proposed powerplant or at any reasonable alternative site for the alternate fuel(s) considered;

(5) At the proposed site and every reasonable alternative site where the petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital, the petitioner nevertheless would be barred at each such proposed or alternate site from burning an alternate fuel by reason of a State or local requirement;

(6) No alternate power supply exists, as required under § 503.8 of these regulations; and

(7) Use of mixtures is not feasible, as required under § 503.9 of these regulations.

* * * * *

27. By revising § 503.37 to read as follows:

§ 503.37 Cogeneration.

TABLE.—STATE ESTIMATES OF OIL/GAS SAVINGS ATTRIBUTABLE TO ELECTRICITY BACKED OFF THE GRID BY COGENERATION

State name	Oil/gas savings, Btu/kWh
Alabama	800
Arizona	1,000
Arkansas	7,000
California	7,000
Colorado	1,000
Connecticut	7,200
Delaware	4,700
Wash. D.C.	4,700
Florida	8,000
Georgia	800
Idaho	1,000
Illinois	800
Indiana	100
Iowa	800
Kansas	7,000
Kentucky	100
Louisiana	7,000
Maine	7,200
Maryland	4,700
Massachusetts	7,200
Michigan	800
Minnesota	800
Mississippi	800
Missouri	7,000
Montana	1,000
Nebraska	800
Nevada	7,000
New Hampshire	7,200
New Jersey	4,700
New Mexico	7,000
New York	4,700
North Carolina	800
North Dakota	800
Ohio	100
Oklahoma	7,000
Oregon	7,000
Pennsylvania	4,700
Rhode Island	7,200
South Carolina	800
South Dakota	800
Tennessee	800
Texas	9,000
Utah	1,000
Vermont	7,200
Virginia	800
Washington	7,000
West Virginia	100
Wisconsin	800
Wyoming	1,000

Data are based upon current utility capacity and oil/gas statistics supplied by DOE's Energy Information Administration.

Example: The proposed cogeneration project is located in Mississippi, and would displace one million kilowatt hours (kWh) from the grid each year. To determine oil/gas savings associated with electricity backed off the grid:

1. Locate Mississippi on the above table. The oil/gas savings for Mississippi, according to the table are 800 Btu/kWh.

2. The annual oil/gas savings attributable to electricity backed off the grid by your cogenerator is: 1,000,000 kWh × 800 Btu/kWh = 800,000,000 Btu.

28. By revising § 503.38(a)(3) to read as follows:

§ 503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

§ 503.38 [Amended]

29. By removing §§ 503.38 (b) and (d), and redesignating §§ 503.38 (c) and (e) as §§ 503.38 (b) and (c), respectively.

§ 503.39 [Removed and Reserved]

30. By removing and reserving § 503.39.

§ 503.40 [Removed and Reserved]

31. By removing and reserving § 503.40.

§ 503.41 [Removed and Reserved]

32. By removing and reserving § 503.41.

§ 503.42 [Removed and Reserved]

33. By removing and reserving § 503.42.

§ 503.43 [Removed and Reserved]

34. By removing and reserving § 503.43.

Part 504 is proposed to be amended as follows:

PART 504—EXISTING POWERPLANTS

1. The authority citation for Part 504 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

§ 504.1 [Removed and Reserved]

2. By removing and reserving § 504.1.

3. Appendix II to Part 504 is revised to read as follows:

Appendix II to Part 504—Fuel Price Computation

(a) *Introduction.* This appendix provides the equations and parameters needed to specify the price of delivered fuels used in computing the cost of using an imported petroleum (approximated by pricing distillate oil, low sulfur residual oil, or natural gas) and the cost of using an alternate fuel (coal) in Parts 503 and 504 of these regulations. The delivered price of the fuel to be used to calculate delivered fuel expenses must reflect (1) the price of each fuel at the time of the petition; (2) the effects of future real price increases for each fuel; and (3) a substantially exceeds premium. The delivered price of an alternate fuel used to calculate delivered fuel expenses must reflect the petitioner's delivered price of the alternate fuel and the effects of real increases in the price of that alternate fuel. Paragraphs (b), (c), (d) and (e) below provide the procedure to: (1) Account for projected real increases in fuel prices; (2) calculate the inflation index; (3) account for projected real increases in fuel prices when planning to burn more than one fuel; and (4) account for projected real increases in the price of the alternate fuel. Table II-1 of this appendix (See paragraph (b)) contains example fuel price and inflation indices based on the latest data appearing in the Energy Information Administration's (EIA) *Annual Energy Outlook* (AEO).

The fuel price and inflation indices will change yearly with the publication of the *AEO.* Revisions shall become effective after final publication. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

(b) *Computation of Fuel Price and Inflation Indices.* (1) the Petitioner is responsible for computing the annual fuel price and inflation indices by using Equation II-1 and Equation II-2, respectively.

EQ II-1 is:

$$PX_i = \frac{P_i}{P_o}$$

where:

PX_i = The fuel price index for each fuel in year i.
P_i = Price of fuel in year i.
P_o = Price of fuel in base year.

EQ II-2 is:

$$IX_i = \frac{GX_i}{GX_o}$$

where:

IX_i = The inflation index in year i.
GX_i = The NIPA GNP price deflator for year i.
GX_o = The NIPA GNP price deflator for the base year.

(2) The parameters to be used in EQ II-1 are the Base Case fuel price projections found in EIA's current *AEO.*

(3) When computing annual inflation indices, the petitioner is to use the Base Case National Macroeconomic Indicators (NIPA GNP Price Deflator) contained in EIA's current *AEO.* If necessary, the petitioner must rebase the projection to the same year used for the fuel price projections. For example, in 1986 *AEO* projects the price deflator in 1982 dollars; this must be rebased to the year in which the petition is filed. The methodology used to rebase the inflation indices must follow standard statistical procedures and must be fully documented within the petition. This index will remain frozen at the last year of the *AEO*'s projection for the remainder of the unit'(s) useful life.

(4) Table II-1 is provided as an example of the application of equations II-1 and II-2. This table contains annual fuel indices for distillate oil, low sulfur residual oil, natural gas, and coal. It also contains annual inflation indices. These values were computed from information contained in Table A3 and Table A11 of EIA's *Annual Energy Outlook, 1986.*

TABLE II-1.—PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
1986	1.000	1.000	1.000	1.000	1.000
1987	1.056	1.024	1.071	1.012	1.030
1988	1.093	1.024	0.984	1.019	1.069
1989	1.129	1.078	1.040	1.025	1.110
1990	1.180	1.135	1.087	1.037	1.157
1991	1.230	1.176	1.130	1.050	1.210
1992	1.326	1.286	1.277	1.068	1.272
1993	1.458	1.429	1.411	1.087	1.341
1994	1.604	1.584	1.581	1.112	1.417
1995	1.725	1.710	1.751	1.130	1.500
1996	1.820	1.816	1.881	1.143	1.587
1997	1.811	1.898	1.996	1.155	1.678
1998	1.986	1.951	2.067	1.161	1.771
1999	2.076	2.069	2.162	1.168	1.864
2000	2.160	2.155	2.257	1.168	1.960
2001	2.160	2.155	2.257	1.168	1.960
2002	2.160	2.155	2.257	1.168	1.960
2003	2.160	2.155	2.257	1.168	1.960
2004	2.160	2.155	2.257	1.168	1.960
2005	2.160	2.155	2.257	1.168	1.960
2006	2.160	2.155	2.257	1.168	1.960
2007	2.160	2.155	2.257	1.168	1.960
2008	2.160	2.155	2.257	1.168	1.960

TABLE II-1.—PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS—Continued

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
2009	2.160	2.155	2.257	1.168	1.960
2010	2.160	2.155	2.257	1.168	1.960

(c) Fuel Price Computation—Single Fuel. (1) The delivered price of the proposed fuel to be burned (FPB_i) must reflect the real escalation rate of the proposed fuel, a substantially exceeds premium, and must be computed with Equation II-3.

EQ II-3 is:

$$FPB_i = MPB\ [PX_i] + PREM$$

where:

FPB_i = Price of the proposed fuel (distillate oil, low sulfur residual oil, or natural gas) in year i.

MPB = The current delivered market price of the proposed fuel.

PX_i = The fuel price index value in year i, computed with Equation II-1.

PREM = A substantially exceeds premium of $1.00 per barrel of oil equivalent ($1.00 per 6.27 MMBTU) added to the price of the fuel to be burned.

(d) *Fuel Price Computation—More Than One Fuel.* When planning to use more than one fuel in the proposed unit(s), the petitioner must use Equation II-1 and Equation II-3 to calculate the annual fuel price of each fuel to be used. The petitioner then must estimate the proportion of each fuel to be burned annually over the useful life of the unit(s). With these proportions and the respective annual fuel prices for each fuel, the petitioner must compute an annual weighted average fuel price. The methodology used to calculate the weighted average fuel price must follow standard statistical procedures and be fully documented within the petition.

(e) *Fuel Price Computation—Alternate Fuel.* The delivered price of alternate fuel (PFA_i) must reflect the real escalation rate of alternate fuel and must be computed with Equation II-4.

ES II-4 is:

$$PFA_i = APF \times APX_i$$

where:

PFA_i = The price of the alternate fuel in year i.

APF = The current market price of the alternate fuel (f.o.b. the facility).

APX_i = The alternate fuel price index value for year i, computed with Equation II-1.

PART 508—[REMOVED]

For the reasons set out in the preamble, Part 508 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be removed as set forth above.

PART 516—PROHIBITIONS ON SALE AND DIRECT INDUSTRIAL USE OF NATURAL GAS FOR OUTDOOR LIGHTING

For the reasons set out in the preamble, Part 516 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be removed as set forth above.

[FR Doc. 89-902 Filed 1-24-89; 8:45 am]

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Federal Register

Wednesday
January 25, 1989

Part III

Department of Health and Human Services

Agency For Toxic Substances and Disease Registry

Health Effects of Medical Waste; Request for Comments and Information

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Request for Comments and Information on the Health Effects of Medical Waste

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for comments and information.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR) is interested in obtaining existing and available information and research findings related to the potential public health effects of medical waste for a report on the health effects of medical waste.

DATE: Comments concerning this notice must be submitted by May 1, 1989.

ADDRESS: Comments or information concerning this announcement, or inquiries about the study, should be submitted to: Dr. Maureen Y. Lichtveld, Chairperson, Medical Waste Group, Office of the Associate Administrator, Agency for Toxic Substances and Disease Registry, Chamblee, F-38, 1600 Clifton Road NE., Atlanta, Georgia 30333, Telephone: (404) 488-4204 or FTS 236-4204.

SUPPLEMENTARY INFORMATION: This study is mandated by section 11009 of the Medical Waste Tracking Act of 1988 (Pub. L. 100-582), which amended the Solid Waste Disposal Act. The Medical Waste Tracking Act states:

Health Impacts Report

Within 24 months after the enactment of this section, the Administrator of the Agency for Toxic Substances and Disease Registry shall prepare for Congress a report on the health effects of medical waste, including each of the following:

(1) A description of the potential for infection or injury from the segregation, handling, storage, treatment, or disposal of medical wastes.

(2) An estimate of the number of people injured or infected annually by sharps and the nature and seriousness of those injuries or infections.

(3) An estimate of the number of people infected annually by other means related to waste segregation, handling, storage, treatment, or disposal, and the nature and seriousness of those infections.

(4) For diseases possibly spread by medical waste, including Acquired Immune Deficiency Syndrome and hepatitis B, an estimate of what percentage of the total number of cases nationally may be traceable to medical wastes.

Medical waste is defined by the Medical Waste Tracking Act as any solid waste (solid, liquid, or gasses phase) which is generated in diagnosis, treatment, or in the production or testing of biologicals. Medical waste does not include any hazardous or household waste listed under the Resource Conservation and Recovery Act (RCRA), and implementing regulations.

ATSDR is soliciting any existing and available relevant information for the preparation of the report on the health effects of medical waste. Specifically, the Agency is requesting any information on the potential for infection or injury from medical waste of health care providers, janitorial workers, refuse workers, sanitation workers, morticians, waste site clean-up (remedial) workers, emergency response personnel (fire and police), and the general public. Sources of generation of medical waste of interest to ATSDR include hospitals, clinics, HMOs, physicians' offices, dentists' offices, medical laboratories, veterinary offices and clinics, biomedical research (academy and industrial) and manufacturing facilities, funeral homes, in-home medical care (e.g. insulin users) and other facilities relevant to the definition of medical waste. In addition to the sources of generation of medical waste, ATSDR solicits relevant information related to the transportation, storage, disposal (incineration, autoclaving, disinfection, landfilling, radiation, and sanitary sewer, etc.), and release to the environment of medical waste. Where available, the information should describe the total study population, rate of injury or infection, how the injury or infection was determined, and how the information was collected. Additionally, the Agency is soliciting any information concerning the number of people injured or infected by sharps annually and the nature and seriousness of those injuries or infections.

Dated: January 18, 1989.

James O. Mason,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89-1565 Filed 1-24-89; 8:45 am]

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federal register

Wednesday
January 25, 1989

Part IV

Environmental Protection Agency

Preliminary Determination To Cancel Registrations of Carbofuran Products; Availability of Technical Support Document and Draft Notice of Intent To Cancel

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/48A; FRL-3509-3]

Preliminary Determination To Cancel Registrations of Carbofuran Products, Availability of Technical Support Document and Draft Notice of Intent To Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary determination.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing granular carbofuran and sets forth the Agency's assessment of the risks and benefits associated with the pesticidal uses of granular carbofuran. This Notice announces the Agency's preliminary determination to cancel all registrations of granular carbofuran. In addition, this Notice announces the availability of the Carbofuran Special Review Technical Support Document and the Draft Notice of Intent to Cancel. The Technical Support Document and accompanying scientific reviews constitute the technical documents in support of the action.

DATE: Written comments must be received on or before March 27, 1989.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/48A" by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. The carbofuran public docket, which contains all non-CBI written comments and the correspondence index, will be available for public inspection and copying in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7400).

Copies of the Carbofuran Technical Support Document and draft Notice of Intent to Cancel are available from the contact person at the address given above.

SUPPLEMENTARY INFORMATION: This Notice is organized into six units. Unit I is the Introduction and provides background information related to carbofuran and the initiation of the Special Review of all granular products. The availability of the Technical Support Document and the draft Notice of Intent to cancel are also discussed. Unit II provides discussion of the legal background. Unit III summarizes the avian risk assessment, the benefits assessment, and the risk/benefit analysis. Information related to the hazard to humans from all formulations of carbofuran and its alternatives is also provided. Procedures related to the referral to the U.S. Department of Agriculture and the Scientific Advisory Panel are discussed in Unit IV. This Notice concludes with Units V and VI summarizing the opportunity for public comment and the availability of the public docket, respectively.

I. Introduction

Carbofuran is the common name for 2,3-dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate. FMC Corporation is the major producer and holds 11 registrations. FMC formulates carbofuran as a 2, 3, 5, 10, and 15 percent active ingredient (ai) granular product. These products include Furadan® 2G, 3G, 5G, 10G, and 15G. FMC also markets a 4 pound ai per gallon flowable formulation, a 75 percent wettable powder; and 75, 85, and 90 percent ai formulation intermediates. At present, the technical formulation is not federally registered. All granular carbofuran products marketed in the United States have been classified for restricted use based on the risk to avian species.

On September 30, 1985, EPA issued a Notice which initiated the Special Review of all granular products containing carbofuran, and which detailed the bases for the Agency's decision. (This document is also referred to as Position Document 1 or PD 1, 50 FR 41938). EPA determined that granular carbofuran products met or exceeded the risk criterion existing at that time for acute avian toxicity described in 40 CFR 162.11(a) (3)(i)(B)(2). This criterion provided that a Special Review shall be conducted if a pesticide "occurs as a residue immediately following application in or on the feed of an avian species, representative of the species likely to be exposed to such feed in amounts equivalent to the average daily intake of such representative species, at levels equal to or greater than the subacute dietary LC_{50} measured in avian test animals as specified in the Registration Guidelines."

The EPA also determined that granular carbofuran met or exceeded the risk criterion existing at that time for population effects described in 40 CFR 162.11(a)(3)(ii)(C). This criterion provided that a Special Review shall be conducted if the use of a pesticide "can reasonably be anticipated to result in significant local, regional, or national population reductions in nontarget organisms, or fatality to members of endangered species."

At that time, the Agency had proposed new criteria for initiating a Special Review on a specific pesticide, which would consider a pesticide for Special Review when its use results in "residues of the pesticide product or its ingredients, impurities, metabolites, or other degradation products in the environment of nontarget organisms at levels which equal or exceed concentrations acutely or chronically toxic to such organisms * * *." Available laboratory and field data indicated that granular formulations of carbofuran met or exceeded this proposed criterion. This risk criterion is now in effect and supersedes the old risk criteria. In either case the Agency determined that carbofuran met or exceeded the Special Review criteria, and the Agency would have initiated a Special Review regardless of which criterion was in effect.

Based on information received in public comments and on additional analyses performed since the Special Review process began, EPA has made a preliminary determination to propose cancellation of registrations of granular products containing carbofuran. EPA's position and a summary of the rationale underlying that position are set forth in this Notice. The basis for EPA's action is explained more fully in the Carbofuran Special Review Technical Support Document. Copies of the Technical Support Document are available upon

request from the contact person listed at the beginning of this Notice. The Technical Support Document also contains references, background information, and other information pertinent to the registration of pesticide products containing granular carbofuran.

In addition, copies of a draft Notice of Intent to Cancel granular carbofuran products are also available from the contact person listed above. Preparation of the draft Notice of Intent to Cancel is required by 40 CFR 154.31(b)(1). This draft Notice is being forwarded to the Scientific Advisory Panel (SAP) and the Secretary of Agriculture to permit their review of the Agency's action. The draft Notice of Intent to Cancel, along with the Carbofuran Technical Support Document and other notices and analyses prepared pursuant to 40 CFR 154.31, will be sent to all registrants and applicants for registration of pesticide products containing granular carbofuran. The draft Notice of Intent to Cancel is not now legally effective but is intended only to provide a basis for comment by the SAP, U.S. Department of Agriculture, registrants, and the public. The draft Notice indicates that registrants or distributors will not be allowed to sell and distribute existing stocks of cancelled products. Also, EPA will not allow the use of such existing stocks. The draft Notice also discusses requesting a cancellation or denial hearing after issuance of a final notice of intent to cancel. Comments on the draft Notice of Intent to Cancel, this Notice, and the Technical Support document must be filed within 60 days of the issuance of this Notice.

II. Legal Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 *et seq.*). Before a product can be registered unconditionally it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel this registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rubuttable Presumption Against Registration (RPAR), is a mechanism by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. The Special Review process is currently governed by 40 CFR Part 154.

Through the Special Review process the Agency: (1) Announces and describes the Agency's risk concerns regarding pesticidal use based on certain risk criteria; (2) establishes a public docket; (3) proposes a regulatory decision; (4) solicits comments from the public on the proposed decision and issues concerning the Special Review; (5) responds to significant comments from the Secretary of Agriculture and the SAP; and (6) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Issuance of this Notice means that the Agency has assessed the potential adverse effects and benefits associated with the use of pesticide products containing granular carbofuran and that the Agency has preliminarily determined that, unless the terms and conditions of registration are modified as proposed in this Notice, the risks from granular carbofuran outweigh the benefits of its continued use.

C. Other Statutes

In considering this action under FIFRA, EPA is mindful of other statues intended to protect birds. The Migratory Bird Treaty Act (MBTA) prohibits the taking, except by permit, of individual migratory birds (16 U.S.C. 703). Regulations promulgated pursuant to the MBTA list the migratory birds which are protected by the Act (50 CFR 10.13). The MBTA prohibits unpermitted taking "by any means or in any manner" of the protected bird species. Case law holds that even unintentional kills of birds by pesticide poisoning is prohibited by the MBTA. More than 20 species of birds protected by the MBTA. More than 20 species of birds protected by the MBTA have been reported killed by carbofuran. Indeed, in one incident, a carbofuran manufacturer was convicted of violating the MBTA for causing the deaths of a number of birds exposed to a wastewater pond containing carbofuran.

A similar provision in the Bald and Golden Eagle Protection Act (BGEPA) prohibits takings of bald and golden eagles (16 U.S.C. 668). The Endangered Species Act (ESA) prohibits takings of species designated by the Department of Interior as endangered or threatened (16 U.S.C. 1538(c)). A number of bald eagle kills due to carbofuran have been reported and the Fish and Wildlife Service has determined that the continued survival of several endangered species is threatened by carbofuran use (see Unit II of this document). Taken together, the provisions of these three statutes prohibiting unpermitted bird kills underline society's concern with needless destruction of wildlife and provide additional support for EPA's proposed action on carbofuran.

III. Summary of Risk and Benefit Determinations and Proposed Regulatory Actions

A. Risk Concerns

To evaluate the hazard to birds from grandular carbofuran in this Technical Support Document, the Agency evaluated the risk to birds based on (1) laboratory data on acute avian toxicity; (2) exposure; (3) estimated risk; (4) field studies; (5) bird kill incidents; (6) population effects; and (7) toxicity and risks of the alternatives.

Based on laboratory data, the Agency concluded that carbofuran is acutely toxic to birds, and that a single granule may kill a small bird. Based on an analysis of whether birds would be present when carbofuran is applied, the Agency determined that birds, including endangered species, are expected to be present at the time of application. Field and agricultural engineering studies confirm that at-planting application of granular pesticides, including carbofuran, results in granules exposed on the soil surface. Dietary exposure occurs from direct ingestion of granules and contaminated soil invertebrates such as earthworms. Predatory birds may be secondarily exposed to carbofuran by feeding on contaminated vertebrates such as small birds. Residues in wildlife confirm that both direct and secondary poisonings from carbofuran have occurred.

The Agency has described avian risk from granular carbofuran by comparing avian acute toxicity data (number of granules equal to an LD_{50} dose) to exposure (number of granules exposed per unit area). This ratio indicates that all registered uses of granular carbofuran pose a high risk to birds for acute toxicity. Field studies confirm the Agency's conclusion that bird mortality is expected when the expected amount

of carbofuran granules are available for avian consumption.

The Agency assessed 6 field studies conducted at 11 locations that investigated the loss of birds from label-directed, soil-incorporated uses of 10G and 15G applied as band and in-furrow applications and 10G using specialized equipment. Commonly practiced techniques for soil incorporation of granules were used. Application of 1 and 4 lb ai/A resulted in approximately the same level of avian mortality. Both direct and secondary poisoning occurred. The Agency concluded that bird mortality following the label-directed use of granular carbofuran may be a frequent and regular occurrence. Furthermore, the magnitude of the acute mortalities could be more heavily influenced by the numbers of birds entering treated fields, than by the extent of incorporation of granules or application rate.

Bird kill incidents from direct carbofuran poisoning have occurred in several crops in various areas of the country and Canada. The types of birds varied and included both migratory and nonmigratory birds. Bird mortality was frequently associated with at-planting application, but has occurred with other uses at other times of the year. Direct poisoning of birds has caused over 40 separate, reported bird kill incidents involving one to over 2,000 birds. More than half of these reported incidents are associated with carbofuran's use on rice.

Secondary poisoning incidents have also occurred and involved bald eagles, red-tailed hawks, red-shouldered hawks, northern harriers (marsh hawks), and other birds of prey. Such species are attracted to dead and dying smaller birds and small mammals affected by granular carbofuran.

Birds of prey species commonly produce only a few young per year and are slow to reach sexual maturity. Thus, the death of each individual of these species can have important consequences for a population. A computer model of a small breeding population of bald eagles that had experienced several mortalities due to granular carbofuran was used to illustrate this point. If the rate of carbofuran-related mortality observed in this population remains constant, the model predicted that the small breeding population will remain static over a 10-year span, even under ideal breeding conditions. At secondary mortality rates slightly higher than those observed in this population, the model predicted that the breeding numbers could decrease over the short span of the model.

The Agency believes that direct and secondary bird kill incidents that have been reported underestimate the number of incidents actually taking place because of the problems associated with the reporting of bird kills and with carcass removal by predators.

Populations of declining or endangered species may be present in areas where carbofuran is applied. The Agency cited documented population declines of the red-shouldered hawk, loggerhead shrike, field sparrow, Henslow's sparrows, and others. Statistically significant declines have been measured for several species.

While the Agency does not consider granular carbofuran to be the sole causative factor in the decline of the bird species discussed, carbofuran is one of the most highly toxic pesticides to which these birds are exposed. Given its widespread use in agriculture, carbofuran is likely to be responsible for bird deaths in these species. The Agency concluded that granular carbofuran can, therefore, be an important additive factor in the declines.

The Division of Endangered Species and Habitat Conservation (DESHC) of the Fish and Wildlife Service indicated in the Biological Opinion dated July 2, 1987, for carbofuran, that the Aplomado falcon, Attwater's greater prairie-chicken, and Aleutian Canada goose were the bird species jeopardized by the use of carbofuran. To avoid jeopardy to these species, DESHC indicated that the use of carbofuran should be eliminated in certain areas. The use of carbofuran in certain areas is already prohibited to protect the Attwater's greater prairie-chicken, Aleutian Canada goose, and Kern primrose sphinx moth. DESHC also indicated that the bald eagle, whooping crane, and Mississippi sandhill crane may be adversely affected. DESHC recommended prohibiting the use of carbofuran in certain areas.

The Agency compared the risks of granular carbofuran to representative avian species to the risks posed by its alternatives. Since the greatest risk of granular pesticides to avian wildlife may result from direct exposure, especially ingestion, the Agency compared the acute toxicity (in terms of the number of granules equivalent to an LD_{50} dose) to estimates of exposure (in terms of the number of granules exposed and available to birds per unit area) for carbofuran and its alternatives. This comparison is expressed as the number of LD_{50}s/square foot of treated ground. Based on this analysis it appears that carbofuran generally poses a greater risk to birds than the alternatives.

B. Additional Considerations

The Agency evaluated information concerning the hazard to humans from carbofuran and its major alternatives. Based on the available data, carbofuran does not appear to pose a chronic human health hazard because it has not shown positive oncogenic, teratogenic, or reproductive effects. Existing data indicate no adverse chronic health effects associated with the alternatives although the data bases are incomplete for many effects so definitive conclusions cannot be drawn. The Agency has required additional studies to complete the data bases. Based on data on acute health effects, the acute oral hazard of carbofuran is the same order of magnitude as fonophos, phorate, and terbufos, but is less than aldicarb, and greater than the other alternatives examined.

The Agency also evaluated the potential for ground water contamination from carbofuran. The environmental fate data indicate that carbofuran is highly mobile and has a potential to leach. Simulation modeling with the Pesticide Root Zone Model support this hypothesis. The environmental fate data indicate that under low pH and low temperature, residues of carbofuran could persist after leaching into the ground water. Since these conditions are not widespread in the United States, most leaching of carbofuran will probably not result in significant concentrations at the wellhead. Ground water conditions of low pH and low temperature generally exist in the Northeast, where monitoring data indicate that New York, Massachusetts, and Maryland show the highest and most frequently found residues in ground water. The highest level found was 71 parts per billion and was found in a well near corn and potato fields in Maryland. Other studies suggest that carbofuran may also be found in surface waters that may be used for drinking water. The Agency will require registrants to amend their labels' current ground water advisory statement in an effort to further reduce the potential of ground water contamination for carbofuran use.

C. Determination of Benefits

The Agency's benefit analysis examined in depth the following use sites: field corn, sorghum, soybeans, rice, peanuts, tobacco, cotton, cranberries, pineseed orchards, and sunflowers. The Agency reviewed the pests associated with these crops, methods of application, agricultural practices, and chemical and

nonchemical alternatives. In the Technical Support Document, the Agency also sought to identify newly emerging integrated pest management (IPM) strategies that may have an impact on the future benefit of carbofuran use. While the potential impacts of these strategies on the quantitative benefits estimates were not calculated, EPA notes that they do present potential alternative agricultural practices.

Approximately 7 to 10 million pounds of active ingredient (lb ai) of all carbofuran formulations are used on a variety of agricultural crops and forestry sites per year, with approximately 6 to 9 million lb ai of the annual usage accounted for by the granular formulations. About 68 percent of all carbofuran use is on corn, 14 percent on sorghum, 5 percent on soybeans, 2 percent on rice, 5 percent on peanuts, and 2 percent on tobacco. Also, less than 1 percent is used on each of the following sites: cotton, cranberries, sunflowers, and pineseed orchards. These uses encompass over 95 percent of the granular carbofuran usage and about 85 percent of all carbofuran formulation usage.

If carbofuran is not available for treatment of the 10 sites, the Agency estimated and annual grower impact that ranged from approximately $22.8 to $33.0 million. The largest economic impact from cancellation of granular carbofuran would be for rice since no registered alternatives are available for control of the rice water weevil. The Agency estimates that the grower impact would be $12.2 million annually; a $6.1 million decrease in Federal deficiency payments to rice growers would indicate a net loss to society of $6.1 million.

Corn is the major use site for carbofuran, and cost-effective, efficacious alternatives are available. No changes in costs of production, yields, or revenues would be expected. The corn insecticide market is highly competitive, and viable alternatives with similar pesticide performance would be available at comparable cost per acre.

The carbofuran market for field corn has been declining since 1978. Current usage is approximately one-third the level it was in 1978. Carbofuran has lost its market share primarily to terbufos and chlorpyrifos. By 1986, the market share held by carbofuran dropped to less than 15 percent. In terms of acre treatments, it ranked fourth out of the five major corn insecticides. The reasons for the decline are not clear, but could include loss of effectiveness, spectrum of control, and others.

Carbofuran is applied to an estimated 185 acres of nonflooded cranberries in Washington and Oregon to control the black vine weevil larval stage. Because of the soil or the terrain of the fields, these cranberry acres are not diked for flooding. Flooding can be a cultural method for controlling the weevil. Carbofuran is the only insecticide registered for control of the larval stage while acephate is registered for the control of the adult stage of this pest. The impact on cranberries, excluding acephate, is expected to occur over a 7-year period due to the perennial nature of the crop. Overall impacts could be approximately $7 million to $7.7 million over the 7 years or $1.0 to $1.1 million annually.

For the U.S. sorghum industry, cancellation would generally not have an adverse effect on the overall sorghum industry (at most $0.4 to $0.9 million annually) or on consumers. In years of high chinch bug infestations, which occur every 5 to 10 years, annual localized income reductions could range from $7.4 to $9.3 million in eastern Kansas if aldicarb is used as an at-planting alternative. However, this estimate of impact does not consider the foliar treatments that would be available for use when infestations actually occur. Foliar treatments may not always provide adequate control because of problems with treatment timing, limited availability of scouts, and chinch bug reinfestations.

For the remaining crops, the Agency does not anticipate major impacts. The overall economic impact from cancellation is not expected to result in significant changes in either production costs or outputs.

The Agency also evaluated aspects of carbofuran use that are not easily quantifiable. For example, only one carbamate (trimethacarb) would be available for corn growers who rotate organophosphate and carbamate insecticides to delay development of resistance in soil pests. The Agency recognizes that some cross-resistance with organophosphates could occur because both affect acetylcholinesterase. Also, carbofuran has residual and systematic properties and a broad spectrum of control. It should be noted that repeated use of carbofuran may lead to an apparent increase in soil microbial populations that are capable of reducing its effectiveness.

D. Risk/Benefit Analysis

There are three basic options for regulating the uses of carbofuran:

Option 1—Continuation of registration without changes,

Option 2—Continuation of registrations with modifications to the terms and conditions of registration, and

Option 3—Cancellation of registration.

Adoption of Option 1 would be appropriate only when the Agency has concluded that the level of risk is acceptable compared to the benefits of use and that further risk reduction measures are not necessary to assure that the use of the pesticide meets the statutory standard for continued registration. Adoption of Option 3 would be appropriate when the Agency has concluded that the risks from a use outweigh the benefits of that use and that the risks cannot be mitigated to an acceptable level when compared to the benefits by any measures short of cancellation.

Option 2 is appropriate when the risks of a pesticide's use can be reduced to a level where the benefits of use outweigh the risks. This risk reduction is accomplished by modifying the terms and conditions of the pesticide's registration. EPA has considered various modifications for regulating the uses of carbofuran; these modifications are evaluated fully in the Technical Support Document and are summarized here.

1. *Adding label precautionary statements.* The Agency considered requiring additional precautionary labeling regarding the hazard to birds from the use of carbofuran. However, the additional labeling would not significantly mitigate the hazard to birds. Carbofuran is already a restricted use pesticide on the basis of the avian hazard and limited in use only to certified applicators or persons under their direct supervision. Extensive environmental hazard warning statements already appear on the label and, despite such label statements, bird kill incidents still have occurred.

2. *Limiting application to certain months.* The Agency considered limiting carbofuran application to certain months because most of the bird kill incidents occurred during the major use season from April to June. Eliminating the use of carbofuran during any particular season of the year would eliminate the bird kills in direct proportion to use. Carbofuran must be applied during a certain season to be effective, and eliminating its use at that time of year would essentially result in cancellation.

3. *Limiting application to certain geographic areas.* Because most of the bird kill incidents involved waterfowl, the Agency considered limiting carbofuran application to areas outside

those that constitute the major waterfowl migration flyways. By not allowing carbofuran application in those areas, the risk to these migrating waterfowl and birds within the flyway could be reduced. However, eliminating the use of carbofuran in the flyways would also affect a large portion of the usage of carbofuran. In addition, exact boundaries of these flyways cannot be readily defined.

4. *FMC Corporation's risk reduction program.* FMC Corporation, the major registrant of carbofuran, proposed a risk reduction program that included several measures to reduce the avian hazard. The major points of FMC Corporation's program are as follows:

a. *Reduce percent ai.* Voluntarily remove carbofuran 15G from the market, but retain the Federal registration. Carbofuran 10G would remain as the formulation with the highest percent ai until FMC has demonstrated that the avian hazard from 15G is at an acceptable level.

b. *Reduce application rate in corn.* Reduce maximum application rate for corn from 4 to 1 lb ai/A based on a 40-inch row space.

c. *Substitute "T" band for band applications.* "T" band is an application method combining band and in-furrow application. When using in-furrow application, granules are dropped into the furrow and covered with soil. When using band application, granules are applied as a 7-inch band on the soil surface and are then incorporated into the soil. "T" band application is a modified form of band application, which may leave as little as a 4-inch band, depending on the application equipment.

d. *Conduct research.* Begin studies to determine if changes such as modifying the release rate or size, shape, and color of granule could further reduce risk.

e. *Aid equipment research.* Aid research on new farm equipment which would result in greater incorporation of granules and subsidize growers for the purchase of new equipment if it is developed.

f. *Implement educational program.* Implement an educational program to educate growers on the proper use of carbofuran to reduce avian hazard.

g. *Provide funding for endangered species.* Provide $1,500,000 over the next 5 years for endangered species relocation and/or to purchase or preserve critical habitat.

5. *Agency's analysis of FMC's program.* The Agency evaluated each point of FMC's program, as discussed below.

a. *Reduce the percent ai.* Such a reduction would temporarily eliminate the hazard from 15G. However, the documented hazard from 10G would still remain. Also, application of 10G results in approximately 50 percent more granules than from 15G. A single granule of 10G can be lethal to small birds.

b. *Reduce application rate in corn.* Assuming the typical 35-inch row space, rate reduction from 4 to 1 lb ai/A would result in a maximum of 72 percent fewer granules applied. Although this would reduce the number of granules applied, field studies indicate that application of 1 lb ai/A would still pose a high risk to birds.

c. *Substitute "T" band application.* Based on studies with band and in-furrow application, estimates indicate that a 4-inch "T" band would result in 43 percent fewer granules remaining unincorporated than would occur with a 7-inch band application.

While "T" banding may reduce the number of granules exposed on the soil surface, it would not be expected to result in a proportional reduction in avian mortalities. Birds were killed in field studies using band application at 4 and 1 lb ai/A and in-furrow application at 1 lb ai/A. Because "T" band application would be expected to result in a number of granules exposed on the soil surface between the numbers resulting from in-furrow application at 1 lb ai/A and at 4 lb ai/A, "T" banding is expected to result in mortalities within the range of mortalities observed in these field studies.

d. *Conduct research and aid in research.* Research regarding reformulation of granular carbofuran products and developing new farm equipment has the potential to result in a formulation less attractive to birds and may result in fewer unincorporated granules. However, the Agency does not know if risk reduction would occur, and if so, to what extent.

e. *Implement educational program.* Educating users in the proper application of carbofuran would result in greater assurance of compliance with risk reduction measures and would probably help to ensure that carbofuran is applied properly. However, field studies and bird kill incident data indicate that proper application of carbofuran results in birds being killed.

f. *Provide endangered species funding and relocation.* In limited situations such as with dicofol, the OES has accepted funding and relocation as a way to offset the impact to endangered species.

However, the Aplomado Falcon has already been relocated from Mexico into Texas as an attempt to reintroduce it into its historic range, which happens to be an area of carbofuran use.

6. *The Agency's risk reduction program and analysis.* The Agency explored whether a modified risk reduction program developed by FMC Corporation would result in sufficient risk reduction. The major points analyzed by the Agency are as follows:

a. *Cancellation of 15G.* As opposed to temporarily removing 15G from the market, 15G would be cancelled. 10G would remain as the formulation with the highest percent ai.

b. *Reduce application rate in all crops.* In addition to requiring FMC's rate reduction for corn, rate reduction would be required on other crops as well.

c. *Requiring in-furrow application only.* In-furrow application would remain as the only registered application method for carbofuran.

As discussed under FMC's program, eliminating 15G would remove the hazard from 15G. The 10G formulation would be applied using in-furrow application, which results in the greatest degree of soil incorporation of all the carbofuran application methods.

However, the documented hazard from 10G would remain. Although fewer granules would be applied by using the 10G formulation in combination with rate reduction and in-furrow application, field studies indicate that rate reduction to 1 lb ai/A and in-furrow application may well result in mortality levels comparable to those resulting from banded application at higher rates. Also, a 1 lb ai/A limit for other crops may not be efficacious.

7. *Comparison of the two programs.* The two risk reduction programs were initially compared by calculating exposure reduction in terms of the number of granules remaining unincorporated on the surface of the soil and, therefore, available to birds.

The number of granules of 10G and 15G that are available to birds on the soil surface from carbofuran application are conservatively estimated as follows:

Current application	Estimated number of granules available to birds per acre
10G, 4 lb ai/A, 7-inch band	2,648,000
10G, 4 lb ai/A, 7-inch band	1,768,000

If either risk reduction program were implemented, the number of granules available on the surface of the soil would decrease. Table 1 compares estimates of the number of granules that would be readily available to birds on the surface of treated fields:

TABLE 1.—ESTIMATES OF THE NUMBER OF GRANULES AVAILABLE TO BIRDS

Proposed use program	Number of granules per acre	Change from current use pattern
FMC Program:		
15G—Voluntary suspension		
10G, 4 lb ai/A, 7-inch band	2,648,000	+880,000
10G, 1 lb ai/A, 7-inch band	662,000	−1,106,000
10G, 1 lb ai/A, 4-inch band	337,000	−1,431,000
EPA Program:		
15G—Suspension/ cancellation		
10G, 4 lb ai/A, 7-inch band	2,648,000	+880,000
10G, 1 lb ai/A, 7-inch band	662,000	−1,106,000
10G, 1 lb ai/A, in-furrow	95,000	−1,673,000

These estimates indicate that the number of exposed granules would be reduced. However, these estimates do not consider the number of granules available below the surface. Birds may consume below-surface granules while foraging for seeds, grit, or invertebrates. This is one reason why reducing the number of exposed granules would not be expected to result in a proportional reduction in avian risk.

The available field data do not indicate that the reduction in potential bird poisonings is proportional to the reduction of the number of granules. Although the field studies were performed at different application rates with different application methods, sites, and locales, avian mortality for direct carbofuran poisoning occurred in all studies and up to 60 days after application. Secondary poisoning occurred as well. The data indicate that the number of ganules remaining would still result in approximately the same level of avian mortality as occurs following current application methods. As discussed earlier, one granule of either 10G or 15G is sufficient to kill a small bird. Therefore, risk reduction in the probability of birds consuming a single granule is necessary for substantial risk reduction to occur.

Field data are available for the following combinations of formulation and application methods:

Formulation	Application
10G and 15G	7-inch band at 4 and 1 lb ai/A.
10G and 15G	In-furrow at 1 lb ai/A.
10G	Specialized equipment at 25 lb ai/A.

These data are plotted in the following Figure 1:

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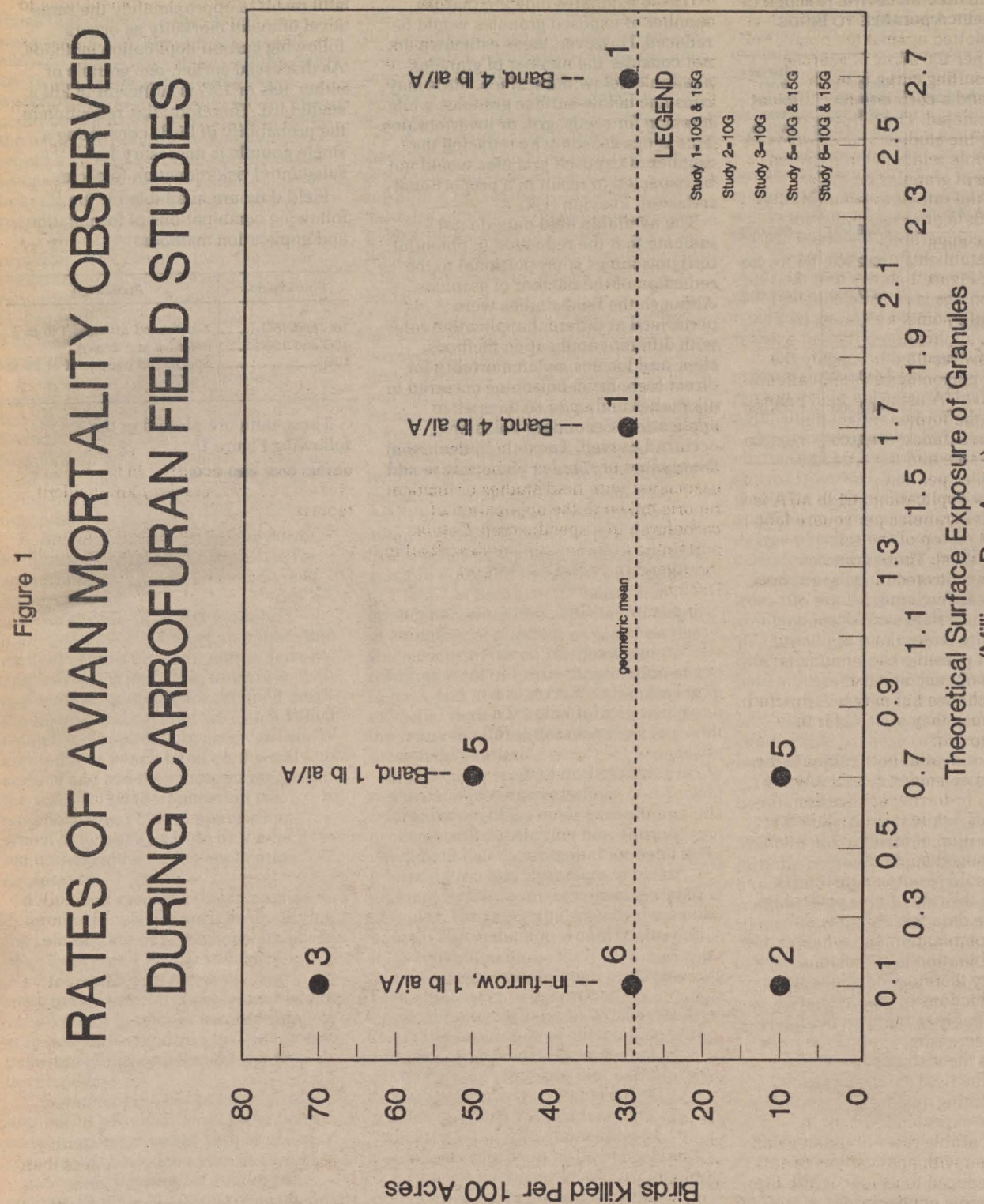
Figure 1

RATES OF AVIAN MORTALITY OBSERVED DURING CARBOFURAN FIELD STUDIES



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These estimated number of granules remaining unincorporated on the surface of fields is plotted against the number of birds killed per 100 acres of searched area. The resulting curve is not a regression, and a correlation coefficient was not calculated. The purpose of representing the studies in this way is to show a possible relationship between the exposure of granules on the soil surface and the rate of avian mortality. Since these data are essentially not statistically comparable, they may not be used to establish a quantifiable relationship. Figure 1 shows that the rate of bird poisonings is roughly constant within the data points available. In other words, application of 10G at 1 lb ai/A in-furrow resulted in roughly the same rate of poisonings as application of 10G at 4 lb ai/A using a 7-inch band, even though the former application resulted in an estimated 100,000 granules per acre and the latter 2.6 million granules per acre.

If in-furrow application at 1 lb ai/A is used, very few granules per square foot could remain on top of the soil (excluding spilles). These granules would be concentrated in the seed rows. However, these few granules are of concern because field studies showed avian mortality under these application conditions. A possible explanation is that birds do not encounter these granules by chance but may be attracted to them because they are similar in appearance to grit.

Data are not available to estimate the potential bird poisoning rate below the 10G 1 lb ai/A in-furrow application scenario. Thus, while it is possible that some combination of lower application rates and changed application techniques could result in substantial reductions in the rate of bird poisonings, EPA lacks the data to determine an acceptable combination and whether or not that combination is efficacious.

The Agency therefore concluded that while net reductions in the number of granules available to birds would likely result from decreasing application rates and changing the methods of application, the field studies indicate that the remaining number of granules would still be expected to result in roughly comparable rates of direct avian mortality, even with applications of 10G carbofuran reduced to as low as 1 lb ai/A using in-furrow application.

E. Risk/Benefit Analysis of Regulatory Options

The Agency has concluded that if the registrations of carbofuran products were continued without restriction (Option 1), the risks to birds resulting from carbofuran application would exceed the benefits associated with carbofuran use.

The Agency has evaluated amending the terms and conditions of registration (Option 2) by modifying labeling to include additional precautionary language, limiting application to certain geographic areas or certain months of the year, or by imposing risk reduction measures through various risk reduction programs. The Agency has determined that none of these measures would adequately reduce the risk to birds to bring the risks and benefits of carbofuran use into balance.

As a result the Agency considered cancellation (Option 3), which would eliminate the hazard to birds from carbofuran exposure from these sites. To evaluate cancellation, an in-depth risk/benefit analysis on 10 sites of application was conducted.

The following crop-by-crop discussion notes whether there have been bird kills associated with field studies or incident reports linked to the application of carbofuran in a specific crop. Details pertaining to these kills are described in the Agency's Technical Support Document.

Exposure is often comparable among sites, and bird kills associated with one site strongly suggests that kills also will be associated with sites having similar exposure. When EPA lacks documentation of kills for a given site, this does not necessarily reflect a true absence of kills associated with the use of carbofuran at that site. Rather, the lack of systemic observations for that site and the lack of an effective system for reporting and verifying bird kills associated with pesticide use.

1. *Corn.* Species diversity and population levels are high in corn fields and may include endangered species such as the Aleutian Canada goose and Mississippi sandhill crane and other species such as waterfowl, marsh and shorebirds, upland game birds, and passerines. Researchers have documented birds using corn fields throughout the crop cycle for a range of activities, including feeding, resting, nesting, and brood-rearing. Since carbofuran may be applied both at-planting or postemergence, any of these activities may occur at the time of application.

Birds will mainly be exposed to carbofuran granules on the soil surface. Agricultural engineering and field studies confirm that application of granular pesticides, including carbofuran, applied at-planting results in granules exposed on the soil surface. This is of concern because data from acute toxicity testing indicate that one granule can provide a sufficient dose to kill some small birds.

The Agency estimated the number of LD_{50}s/sq ft for songbirds, upland gamebirds, and waterfowl based on current product label information, which resulted in a minimum of 6 and a maximum of 2211 LD_{50}s/sq ft. These estimates suggest that the use of granular carbofuran in corn poses a potential risk to birds. Field studies indicate that avian mortality occurred at estimated risk levels as low as 6 LD_{50}s/sq ft.

In addition to the bird mortality documented in the field studies, mortality has also been documented as reported bird kill incidents. Direct poisoning has resulted in killing waterfowl, songbirds, and other species from carbofuran application in several states. Secondary mortality to birds of prey such as hawks, bald eagles, and others has also occurred in the field studies and as secondary kill incident reports.

Because of its widespread use on corn, the Agency is concerned about the potential impact on populations of declining birds, which may be exposed by either direct or secondary poisoning. Population declines of the red-shouldered hawk, loggerhead shrike, and other birds of prey and small birds such as the field sparrow have been documented.

While the Agency does not consider granular carbofuran to be the sole causative factor in the decline of the bird species discussed, carbofuran is one of the most highly toxic pesticides to which these birds are exposed. Given its widespread use in corn, carbofuran is likely to be responsible for bird deaths in these species. The Agency concluded that granular carbofuran can, therefore, be an important additive factor in the decline of these birds.

Carbofuran is applied as a preventive treatment when seeds are planted to 4.5 to 5.5 million acres of corn or 5 to 7 percent of the U.S. corn crop per year. Carbofuran is used primarily to control the corn rootworm and corn borer complexes. Usage has been declining and is approximately one-third of the 1978 level. By 1986, the market share held by carbofuran dropped to less than 15 percent, where in terms of acre treatments, carbofuran ranked fourth out of the five major corn insecticides. These insecticides are terbufos, chlorpyrifos, fonofos, carbofuran, and phorate.

The Agency evaluated data that indicated that several efficacious alternatives such as terbufos and chlorpyrifos are available and are of

comparable cost. Alternatives are available both for use at-planting, the most common method of application, and later in the season when pest problems actually occur. No difference in yield was demonstrated between carbofuran and its alternatives, and the economic impact of cancellation is negligible. Also, field data support the conclusion that carbofuran appears to pose a greater avian hazard than the alternatives.

Carbofuran has a broad spectrum of control and residual systemic properties, which makes it attractive to certain growers. Carbofuran is one of only two carbamate pesticides available for rotation between organophosphates and carbamates in corn to delay resistance in soil pests. The Agency recognizes that some cross-resistance with organophosphates could occur because both affect acetylcholinesterase. It should be noted that repeated use of carbofuran may lead to an apparent increase in soil microbial populations capable of reducing its effectiveness.

Because less hazardous, efficacious alternatives of comparable cost are available, the Agency concluded that the risk to birds outweighs the minor benefits and proposes cancelling carbofuran use on corn.

2. *Sorghum.* Birds such as marsh and shorebirds, game birds, songbirds, and waterfowl are expected to be in sorghum fields at the time of carbofuran application. Endangered species that may be exposed include, the Attwater's greater prairie-chicken, Aplomado falcon, and the whooping crane. In one case, whooping cranes had to be driven away from a sorghum field treated with granular carbofuran.

The Agency estimated the number of LD_{50}s/sq ft for songbirds, upland game birds, and waterfowl. The estimated values ranged from 5 to 1033.

Bird kills are likely to occur in sorghum as sorghum fields at planting time are similar to corn fields at planting time.

Carbofuran is applied to approximately 640,000 to 2.04 million acres of sorghum or 4 to 12 percent of the acres planted. It is primarily applied at-planting to control later infestations of chinch bug and greenbug.

For greenbug control, pesticides may be applied at-planting as a preventive treatment or later in the season if problems with greenbugs arise. Several alternatives are available, but terbufos is most likely to be used. In terms of product performance, terbufos appears to be equally effective.

Most years with normal pest infestations are not expected to have an adverse impact on growers. During years of high chinch bug infestations every 5 to 10 years, both localized cost increases and yield losses would be incurred with the use of aldicarb as an at-planting treatment. However, foliar treatments are available.

Sorghum has received considerable IPM attention. Due to the relatively low return on sorghum, a number of pest management and cultivation practices have already been incorporated into sorghum culture to reduce the need for pesticide application. None of these practices will completely replace the use of insecticides on sorghum, but they will help reduce the number of applications and the amount of insecticides used.

The Agency concluded that the risk to birds outweighs the minor benefits and therefore proposes to cancel the use of carbofuran on sorghum.

3. *Soybeans.* Birds that are expected to be present at application include waterfowl, marsh and shore birds, game species, and songbirds. Endangered species expected to be present at application include the bald eagle, whooping crane, and Mississippi crane.

The range of estimated LD_{50}s/sq ft for songbirds, upland gamebirds, and waterfowl are 6 to 2104, which are values that suggest that carbofuran poses a potential risk to birds.

The use pattern and thus the risk is similar to corn. A bird kill incident associated with corn and soybean fields was reported and involved 25 waterfowl, bluejays, grackles, and killdeer.

Carbofuran is applied to approximately 210,000 to 280,000 acres of soybeans or less than 1 percent of the U.S. soybean crop. It is used mainly to control the Mexican bean beetle. In the majority of the soybean-producing states, the Mexican bean beetle is not a major pest and is only of major concern in some of the southeastern states. Because carbofuran is applied at-planting, it is uncertain whether enough carbofuran will be present in the plant to control an infestation at pod set and fill, the critical stages of Mexican bean beetle infestation. Thus, consultants and extension entomologists in the majority of the soybean-producing states recommend the use of foliar sprays later in the season to control the Mexican bean beetle. The use of resistant varieties of soybeans, early planting, and crop rotation are also recommended.

Alternatives are available at-planting and as foliar sprays later in the season. Efficacy data indicate that viable alternatives, including disulfoton and terbufos, are available and are not expected to have adverse impacts on production costs. Overall, aggregate impacts are expected to be minor, amounting to less than 1 percent of the U.S. farm value of soybeans.

The Agency proposes to cancel the use on soybeans because the hazard to birds outweighs the minor benefits.

4. *Rice.* Rice fields offer attractive habitat to many types of birds, including migratory waterfowl. Diverse water species are expected to be present when carbofuran is applied, and hawk species are known to search rice fields for prey.

EPA estimated the number of LD_{50}s/sq ft for songbirds, upland gamebirds, and waterfowl. These values range from 13 to 261 and suggest that carbofuran poses a potential risk to representative bird groups.

The 20 reported bird kill incidents which have occurred on rice corroborate the assertion that the use of carbofuran on rice poses a high risk to birds. These 20 incidents are over half of all reported bird kill incidents associated with carbofuran. These incidents include direct and secondary waterfowl kill incidents. The numbers of killed birds range from 1 to 150. A field study was conducted in rice, but a quantitative analysis could not be conducted due to lack of important information on the extent of the treatments and the performance of carcass searches.

Carbofuran is applied to approximately 319,000 acres in Arkansas, California, Louisiana, Mississippi, Texas, and Missouri, or about 10 percent of the U.S. rice acreage, to control the rice water weevil.

Carbofuran is the only pesticide registered to control the rice water weevil, a major pest of rice in all growing regions, and treatment varies among California and southern rice-growing states. All control recommendations are based on annual population monitoring.

Since no alternative chemical controls are available, pest control costs would decrease by approximately $8.50 per acre or about 4 percent of the total variable operating costs in the Delta and 3 percent in California from cancellation of this use. Considering the savings from not applying carbofuran or any other pesticide, as well as the value of a 7 percent yield loss, the annual net revenue loss is approximately $12.2 million or 10 percent of the net farm income of the impacted acres. Some marginal rice growers who normally rely on carbofuran may be forced out of business.

Government payments under the current U.S. Department of Agriculture farm program would decrease by $6.1 million because of lower production. Subtracting the reduced government

payments ($6.1 million) from the rice industry impact ($12.2 million) results in an estimate of the net loss to society of $6.1 million.

The Agency is unaware of any measures which would reduce the hazard from carbofuran use on this site. Because of risks, as exemplified by the number of reported bird kill incidents in rice, the risks outweigh the benefits on this site. As a result, the Agency proposes to cancel this use.

However, EPA recognizes that there are no chemical alternatives currently registered for use to control the rice water weevil and only limited information pertaining to the availability and efficacy of non-chemical alternatives. Thus the substantial risks associated with carbofuran's use must be weighed against the substantial benefits. Because the Agency is concerned about the lack of chemical alternatives for control of the rice water weevil, as well as the risks associated with carbofuran's use, the Agency requests comments on the following issues:

(1) The extent of usage of carbofuran to control the rice water weevil;

(2) The economic impacts that would result from cancellation of carbofuran's use on rice;

(3) The potential for other pesticides being registered to control the rice water weevil, particularly efficacy testing of such pesticides;

(4) The potential for non-chemical control methods, including draining of fields and biological control organisms, to control the rice water weevil (particularly efficacy testing of such methods); and,

(5) The availability of bird kill information on rice fields outside of California, and any information which would assist the Agency in interpreting the apparently extensive bird kills particular to that state.

5. *Peanuts.* An endangered species, the Attwater's greater prairie chicken, along with upland game and songbird species are expected to be present at application. Field studies were not available, and no bird kill incidents were reported. The estimated LD_{50}s/sqs ft for songbirds, upland gamebirds, and waterfowl ranged from 3 to 2632.

Approximately 136,500 acres of peanuts or 9 percent of the total crop are treated with carbofuran to control insects and nematodes. Efficacious alternatives are available for both uses. The generally higher rate of application for nematode control leads to higher treatment costs, particularly if aldicarb or fenamiphos are used. The overall annual change in insect and nematode control costs if carbofuran were not available would not exceed $4.0 million. The total variable costs of peanut production would increase 4 to 6 percent for alternative insecticides and 7 to 11 percent for alternative nematicides.

Based on estimated risks and the minor benefits, the Agency concluded that the risk outweighs the benefits and proposes to cancel the use of carbofuran on peanuts.

6. *Tobacco.* Numerous species of birds may be present when carbofuran is applied to tobacco fields. Tobacco fields tend to be small, thereby providing a high ratio of "edge" habitat to field area. Edge habitat would tend to have high levels of bird activity, including nesting, rearing, and foraging.

Extremely high values of LD_{50}s/sq ft have been estimated for songbirds, upland gamebirds, and waterfowl. The range is from 114 to 3159 which represents the highest range of values calculated for all 10 crop sites, with the exception of pineseed orchards.

Use of all carbofuran formulations has been declining in recent years in tobacco. Approximately 20,000 to 40,000 acres are treated each year, or 3 to 6 percent of the crop. A review of efficacy data indicate that effective alternatives are available, including ethoprop and fensulfothion, and yields of those acres normally treated would not be significantly reduced. The flowable carbofuran formulation is the preferred alternative. This formulation may also pose a hazard to birds, but at this time field study data are not available to evaluate the hazard. These data are being required through the reregistration process.

A change from granular to flowable carbofuran would increase per acre costs by approximately $11 to $20 per acre, which is less than 1 percent of annual variable production costs. A total annual production cost impact ranging from $220,000 to $800,000 is estimated for the current granular carbofuran user. Less than a 1 percent variable production cost increase for 3 to 6 percent of the U.S. tobacco crop may result, but should not affect tobacco prices. Output effects are not expected at the commodity or retail level.

Because of the minor benefits, the Agency concluded that the hazard to birds outweighs the benefits of use and proposes cancellation of granular carbofuran on tobacco.

7. *Cotton.* Cotton represents less than 1 percent of both the granular and total carbofuran usage. Approximately 30,000 acres are treated (primarily in Texas). Marshbirds and songbirds along with the endangered species, the Mississippi sandhill crane and the Aplomado falcon, may be exposed when carbofuran is applied. The estimated LD_{50}s/sq ft for the three representative bird groups range from 6 to 527. This range suggests that carbofuran's application to cotton sites poses a potential risk to avian species.

Carbofuran is used in cotton for preventive control of thrips. However, this use is controversial because some research indicates that this pest causes damage that reduces yield, while other research indicates that it does not.

Both at-planting and foliar treatments are available. Cancellation would result in aggregate farm level impacts totaling $120,000, at most. Adverse economic impacts are not expected to occur for either the cotton industry or other interrelated sectors of the economy.

The Agency concluded that the risk outweighs the minor benefits and proposes to cancel the use on this site.

8. *Cranberries.* Birds are expected to be present at the time that carbofuran is applied to cranberries. Carbofuran poses a very high risk to songbirds, upland gamebirds, and waterfowl as suggested by the Agency's estimated numbers of LD_{50}s/sq ft for this site. The estimated values range from 89 to 1052.

Cranberries represent less than 1 percent of both the granular and total carbofuran usage. Approximately 400 lb ai are applied to 185 acres of nonflooded cranberries in Washington and Oregon. While only carbofuran is registered for use on non-flooded cranberries to control the larval stage of the black vine weevil, acephate is an efficacious insecticide for the control of the adult stage of this pest. Major annual impacts without considering acephate's use are estimated to be $1.0 to $1.1 million ($7.0 to $7.7 million over 7 years).

The Agency has determined that the risks outweigh the benefits, and therefore proposes to cancel this use.

9. *Pineseed orchards.* A variety of birds including predator species are expected to be present at the time of application. Although no bird kill incidents were reported, a field study evaluated the effectiveness of specialized application equipment. The Agency concluded that the equipment did result in a high degree of incorporation, but birds mortalities still occurred ranging from 0.4 to 1.4 birds per acre.

The LD_{50}s/sq ft analysis for pineseed orchards resulted in the highest values of all of the crops analyzed. The minimum and maximum LD_{50}s/sq ft ranged from 438 to 10,002 for the three representative bird groups.

Pineseed orchards also represent less than 1 percent of both granular and total carbofuran usage. Only 5 percent or less

of the 10,000 acres of mature seed producing pine orchards are treated with 1,500 to 7,500 lb ai. Use on young seed orchards is more important (20 to 50 percent of the acres), although usage is still estimated to be less than 100 lb ai. Aggregate annual economic impacts would be no higher than $11,000, which represents a 2 to 3 percent increase in production costs.

Because of the minor benefits associated with carbofuran's use on this site, the Agency proposes cancellation.

10. *Sunflowers.* Many types of birds, including waterfowl, game birds, songbirds, and other species are expected to be present when carbofuran is applied to this site. These birds are expected to frequent sunflower fields and border areas for feeding, nesting, cover, brood-rearing, and bedding. Neither field studies nor bird kill incidents were available.

The LD_{50}s/sq ft analysis indicated a minimum of 6 and a maximum of 1368 for the three representative bird groups.

All of these are high enough to suggest potential risk to each bird group. Because of the similarity of this site to the other sites, such as corn, the risk is expected to be similar.

Sunflowers account for less than 1 percent of both granular and total carbofuran usage. From 1 to 5 percent or 18,400 to 105,900 U.S. acres are treated with 18,400 to 121,100 lb ai annually. Over the last few years, more cost-effective rescue treatments are replacing the use of at-planning insecticides such as granular carbofuran. No adverse impacts are expected for either sunflower producers or consumers.

Because of the minor benefits, the Agency concluded that high risks, especially as compared to the alternatives, outweigh the benefits of use and proposes cancellation.

11. *Other sites.* Carbofuran is also registered for use on sites that were not examined with the same degree of intensity. The risk from usé on these sites is anticipated to be similar to the risks from use on corn.

Regarding benefits, a review of the potential alternatives for these sites indicated that registered alternatives are not available for the following:

Site	Pest
Section 3 registrations:	
Banana	Weevils.
Sugarcane stubble	Wireworms (FL only).
24(c) registrations:	
Sugarcane	Sugarcane beetle.
Sugarcane stubble	White grubs (TX).
	Sugarcane beetle (MS).
Sweet corn	Corn stalk weevil (FL).
Alfalfa	Pillbug (IL).
White pine	White pine cone beetle (OH).

The Agency did not receive comments during the PD 1 comment period regarding the benefits of use on these sites. Thus, the Agency assumes the benefits are negligible, although no alternatives are registered, and proposes cancellation.

A review of the potential alternatives of the other crops indicated that alternatives that may be used either at-planting or as foliar treatments are available. Thus, the Agency has determined that the hazard outweighs the minor benefits and proposes cancellation of these remaining minor uses of carbofuran.

F. Conclusions

The Agency proposes to cancel the registrations of all granular products containing the active ingredient carbofuran. The Agency has evaluated several risk reduction measures and has concluded that the avian hazard of granular carbofuran outweighs the benefits of continued use. The Agency recognizes that while the substantial risks outweigh the substantial benefits associated with the use of carbofuran on rice, additional information pertaining to carbofuran's risks and benefits and on this site would be desireable. Additionally, the Agency requests the submission of any efficacy data on carbofuran and its alternatives.

G. Proposed Regulatory Actions

The Agency proposes to cancel all granular products containing carbofuran that are registered for all crops.

IV. Procedural Matters

As required by FIFRA sections 6(b) and 25(d), and 40 CFR 154.31(b), EPA has transmitted copies of a draft Notice of Intent to Cancel based on this Notice, together with the support documents, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. EPA will publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination.

V. Public Comment Opportunity

The Agency is providing a 60-day period for the public to comment on this Notice and on the Carbofuran Special Review Document. Comments must be submitted by March 27, 1989. All comments and information should be submitted in triplicate to the address given in this Notice under **ADDRESS.** The comments and information should bear the identifying notation OPP–30000/48A. All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

VI. Public Docket

The Agency has established a public docket (OPP–30000/48A) for the Carbofuran Special Review. This public docket will include (1) this Notice; (2) any other notices pertinent to the Carbofuran Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice, and any other documents regarding carbofuran submitted at any time during the Special Review process by any person outside the government; (4) a transcript of all public meetings held by the Agency for the purpose of gathering information on carbofuran; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government; and (6) a current index of materials in the public docket.

Dated: January 5, 1989.

John A. Moore,

Acting Deputy Administrator.

[FR Doc. 89–1584 Filed 1–24–89; 8:45 am]

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Part V

Department of Labor

Employment and Training Administration

Apprenticeship 2000, Focus Paper on Support Activities and Linkages; Notice and Request for Comments

DEPARTMENT OF LABOR

Employment and Training Administration

Apprenticeship 2000, Focus Paper on Support Activities and Linkages

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor's Employment and Training Administration has completed the first stage of its review of apprenticeship. This included a public discussion of five broad issues surrounding expansion of the apprenticeship concept of training. This is the second focus paper, designed to examine specific issues and options in more detail. The first focus paper, published in the **Federal Register** of October 14, 1988, announced a series of three focus papers. This paper combines the second and third papers. It examines ways to overcome barriers to expansion of apprenticeship through appropriate support activities and better program linkages. The term "expansion" means expansion of the apprenticeship concept of training. It encompasses expansion outside the current occupational boundaries, as well as improvement to, and potential expansion of, the traditional apprenticeship program.

DATE: Public comment is sought on the effectiveness of the methods suggested for overcoming barriers to expansion, including the feasibility and appropriateness of the support activities and linkage options described in this focus paper. Public comment is also welcome on alternative methods for overcoming barriers to expansion. Comments must be received by February 24, 1989.

ADDRESS: Comments shall be mailed to James D. Van Erden, Director, Bureau of Apprenticeship and Training, Room N–4649, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Director, Bureau of Apprenticeship and Training, Office of Job Training Programs, Employment and Training Administration, Telephone (202) 535–0540 (this is not a toll-free number).

Signed at Washington, DC, this 19th day of January, 1989.

Roberts T. Jones,

Assistant Secretary of Labor for Employment and Training.

Apprenticeship 2000—Focus Paper on Support Activities and Linkages

Background

Publication of an issue paper exploring expansion of the apprenticeship concept (52 FR 45904, December 2, 1987) launched the Apprenticeship 2000 review. The purpose of the review is to determine the role of the apprenticeship system in meeting America's future needs for a skilled work force. A short-term research effort to support the review was announced in the **Federal Register** on June 3, 1988 (53 FR 20386).

The public response to the issue paper has been analyzed, and the results were published in the **Federal Register** on September 2, 1988 (53 FR 34250). The analysis of the public response found overwhelming support for the apprenticeship concept as a method of training skilled workers. There was also significant consensus that apprenticeship should be expanded, but within certain limits and without sacrificing quality. The first focus paper presented alternative models for apprenticeship and examined measures for defining quality in apprenticeship programs (53 FR 40326, October 14, 1988).

For discussion, this second focus paper assumes that some significant level of expansion of the apprenticeship model will occur, and asks how to accomplish such expansion. The details of the program structure needed to support expansion will be developed following analysis of public comments and research results. However, such further efforts will conform to several basic principles. These include: equal access for employers and equal opportunity for all workers; employer-based training; portability of worker credentials; formal recognition of identifiable skill competencies; and maximum flexibility, within a structured base, to adapt training to work place needs.

Expansion includes two parts: Strengthening the traditional apprenticeship program, without changing its basic character; and establishing a separate program, based on the most effective and successful characteristics of apprenticeship, but modified to fit the changing economic environment. Public comment is sought on the appropriate support and linkage activities necessary for an effective expansion of apprenticeship to occur. Comment is also sought on how these activities should be organized and carried out.

Framework for Expansion

1. Current Apprenticeship Programs

There is strong support for the current apprenticeship programs which produce well-rounded, multi-skilled journey workers primarily in the construction and manufacturing industries. The private sector financing structure and the delivery system for these traditional programs have worked well over the years, with government and education providing appropriate support activities. These programs should be preserved, but strengthened, where needed, to keep pace with technological changes and to be responsive to workers' needs for upgrade training and retraining. They should also expand because of the continuing need for skilled, versatile workers in traditional apprenticeable occupations.

The first focus paper presented alternatives for improving and expanding traditional apprenticeship programs. The alternatives included: A career ladder approach to journey level completion, worker certification, periodic assessments, and institution of a formal appeals process. This focus paper does not reach conclusions on these issues. It does, however, assume that the traditional apprenticeship program will be expanded within some limits. It also assumes that some changes to existing regulations will be made to improve the current system. Such changes will be consistent with the basis principles for expansion, and will assure a minimum standard of quality in training.

2. Structured Work-Place Training

The first focus paper presented the concept of a separate program based on the successful characteristics of the traditional apprenticeship program. No single proposal for such a program is proposed here. Therefore, this paper does not address details of any potential separate training program. However, a separate training program, based on the elements and concepts of apprenticeship, is being explored. To advance the discussion, commentators should assume that a separate program will be developed, in line with the basic principles mentioned above.

A structured work-place training program, based on the successful elements of apprenticeship, is one possible option for programs which might better suit employers' needs for specialized skills outside of the construction industry, or for skills that can be mastered in periods different

from traditional programs. A work-place training program could also be responsive to workers' needs for flexibility and portability in training and retraining, and could encourage career ladder alternatives. It might also include some of the features of traditional apprenticeship programs, such as structured on-the-job training with related instruction; and industry-based, voluntary approach to training; registration of programs; and recognition of results. Some of the features might be different from the current apprenticeship system. These differences might include a separate program structure and separate terminology, career ladder or modular approaches to training (for example, recognized results less than journey level, or building skill competencies over time), and certification of skill competencies.

Need for Apprenticeship Models

Employers of all types and sizes will need employees with stronger basic skills as well as better skills required by new technologies. Yet private sector investment in training has been insufficient. The most common form of employee training is informal. Much less frequent is a more structured method of training. Only about 10 percent of employees receive any formal training from their employers.[1] In addition, small employers, who will need to train employees most, are the least able to make such a training investment.

Recent research at the University of Pittsburgh on how learning skills are acquired found that programs that are successful in teaching thinking and learning skills share many of the elements of apprenticeship. Like apprenticeship, the programs which were studied "encourage student observation and commentary * * * allow skill to build up bit by bit, yet permit participation even for the relatively unskilled, often as a result of the social sharing of tasks (and) are organized around particular bodies of knowledge and interpretation * * * rather than general abilities." [2]

Apprenticeship has added benefits. For the employer, apprentices are productive wage-earners while they are learning. In addition, the classroom instructor, the on-the-job mentor, and the employer all can review and contribute to an apprentice's progress in training. For the employee, apprenticeship offers the opportunity to earn wages while learning a skill.

A strength of apprenticeship in this country has always been that it is a voluntary program developed, supported, and carried out by industry, with minimal government regulation. Apprenticeship works because, in the industries in which it operates, employers, unions and employees are convinced that apprenticeship is in their self-interest.

Barriers

Despite employers' needs for skilled workers and the advantages of structured training, the number of employers who register apprenticeship programs has been relatively small. Therefore, there are assumed to be barriers to employers' use of apprenticeship to meet their needs. Some of these barriers are not specific to apprenticeship, but apply to overall employer investment in traiining. Among the barriers to investment in training, and in apprenticeship, are:

- Cost—Training can be expensive. This is particularly true for small employers training relatively few employees. Apprenticeship programs can involve start-up costs, time spent instructing by on-the-job trainers, deferred productivity, and costs related to classroom instruction.
- Perception of union control—The perception in the general employer community is that apprenticeship is a training program for the construction and manufacturing industries, used only for the organized trades. In fact, apprenticeship can be used for many occupations in a wide range of industries. The majority of approved programs are now in the non-union sector.
- Fear of "pirating"—Many say that the cost of apprenticeship might not be considered prohibitive if there were some assurance that apprentices—in the later stages of their training, when they are more productive—and completers were not hired by firms that do not invest in training.
- Lack of support structure—Many current apprenticeship program sponsors are individual employers not covered by collective bargaining agreements. Many sponsors of traditional programs, however, are covered by such agreements. The latter have a structure to support the development and implementation of apprenticeship programs designed to meet established standards. These Joint Apprenticeship and Training Committees (JATCs) operate apprenticeship trust funds, which share the costs of administration of apprenticeship programs by all participating employers. The absence of a support structure may inhibit significant expansion among new employers or employers not subject to a collective bargaining agreement. This may be particularly true for small employers who will experience most of the job growth and will do most of the training.
- Government involvement—Many employers, even entire industries, will not participate in a program that has any degree of government involvement. Apprenticeship is a cooperative national training system in which business, labor, education, and federal and state governments all have a role a play. The aversion to government programs may be at work with some employers, even though apprenticeship is a program in which the role of government is relatively non-intrusive.

Overcoming Barriers

There are many options for overcoming possible barriers and increasing an employer's motivation to sponsor an apprenticeship program. Some of these activities are ongoing in the apprenticeship system, and might be adapted to any expansion of apprenticeship. Others represent activities that would be new to the apprenticeship system. The categories presented below are: (1) Support activities, (2) linkages, and (3) appropriate roles for the federal and state governments.

1. Support Activities

Apprenticeship support activities, performed by the Bureau of Apprenticeship and Training (BAT) and the State Apprenticeship Councils (SACs), include: Promotion, technical assistance, registration and certification, and various oversight activities. This paper seeks comments on which of these activities would be critical to improvement and/or expansion of apprenticeship, what the objectives of the activities should be, and how they should be accomplished. Commentators may also wish to include suggestions for additional activities.

- *Promotion.* The promotion of apprenticeship programs has traditionally been a function of the BAT. Promotion is also a function of the state apprenticeship agencies, recognized by the Secretary of Labor for federal purposes. Promotion encourages enlisting new program sponsors and greater participation by existing sponsors. Promotional efforts at the national, state and local levels have

[1] American Society for Training & Development, The Learning Enterprise, Draft, September 1988.

[2] Resnick, Lauren B., Educational Researcher, December 1987

included direct personal contacts, written materials, and to a lesser extent, radio and television public service announcements.

Except for the military and certain public sector jobs, success in marketing apprenticeship outside the traditional building and manufacturing trades has been limited. In recent years, federal promotional efforts have also been limited. How important will promotion be in efforts to broaden apprenticeship effectively in both the traditional areas and in new occupations and industries?

• *Technical assistance.* BAT and state staff provide technical assistance to potential and existing program sponsors. Staff assist sponsors in developing the structured on-the-job training component, securing appropriate related theoretical instruction, developing affirmative action plans, and in various aspects of ongoing programs. The availability and expertise of staff, especially outside the traditional skilled trade areas, however, varies from one location to another.

The availability and quality of technical assistance may be a significant support function needed for expansion. What should be the objectives of technical assistance in an expansion effort, and whose responsibility is it? Should efforts be directed to specific sponsors, or should there be a more systematic national effort to develop and make accessible curricula for a wide range of occupations? Are there other agencies or organizations which might also provide technical assistance?

• *Registration/Certification/Accreditation.* In support of apprenticeship programs, the BAT and the SACs register both new programs and new apprentices. Program sponsors in BAT states, and in some SAC states, receive a registration certificate which certifies that the program meets standards for registration. The apprentice, upon completion, receives a certificate of completion from the BAT, or the SAC or, in some states, both. Thus, in effect, there is no single, complete, national registration/certification system for apprenticeship programs.

This system of registration and certification does not ensure portability of skill recognition because a worker's certificate from one state may not be accepted in another state. Furthermore, the certificate only attests to completion and does not serve to inform employers of the specific competencies achieved. To promote the principle of portability, should current procedures be changed to provide universal recognition for program sponsors and for individual training results? If so, how should this be accomplished? Commentators should also consider whether a national system of registration/certification is needed. If the answer is yes, should portions of the process be delegated? If so, which entities should be involved, and, under what circumstances?

• *Special recognition.* Now the major—some say only—benefits for an employer of registering an apprenticeship program are the lowered wage rates permitted under Davis-Bacon, and the ability to require related training "off the clock," without compensation. Are there ways of increasing the recognition value of both registration approval and certification of completion that would provide enough additional incentive for employers to develop and register apprenticeship programs? For example, national awards for excellence in apprenticeship could focus attention on its contributions to national productivity and generate industry pride in training accomplishments. Or, are there means of helping industries to use their apprenticeship programs as a "selling" technique, such as auto dealers displaying their mechanics' training certificates in service departments?

• *Delivery system.* Apprenticeship is an industry-based training program. Private employers, either on their own initiative or through a collective bargaining agreement, sponsor apprenticeship programs. (Local, state and federal governments, including the military, also operate registered apprenticeship programs.) As mentioned above, the lack of a support structure or delivery system may be a barrier to expansion of apprenticeship. Under the JATC model, employers who lack the resources to train on their own can jointly sponsor an apprenticeship program. Furthermore, employee interests are represented in decision-making about the operation of the apprenticeship program. Is providing assistance in forming delivery systems crucial to expansion of apprenticeship and broader work-place training programs? Should efforts be made to duplicate the JATC model? If so, who should provide this assistance: government, education, associations, others? Finally, if such help is provided, should it be focused on emerging occupations and industries, on small employers, or on all potential programs, including those in the traditional apprenticeship trades?

• *Provide loans to apprenticeship or work-place training sponsors.* Employers or associations could receive loans to pay for the initial costs of developing and implementing apprenticeship programs. The amount of such loans could be based on some combination of number of apprentices, skill level of the occupation, and length of training.

• *Subsidize the costs of related instruction.* Providing classroom training related to the skills being learned on the job is essential to the success of apprenticeship and is a requirement for registration. Related instruction is sometimes paid for solely by the state, or in conjunction with federal vocational education funds. However, who provides related instruction and who pays for it varies from state to state. Some states have their own methods of providing funds for related instruction. California, for example, through the "Montoya Law," provides monies to apprenticeship program sponsors through the education system, for related and supplemental instruction.

• *Help lower the costs of doing business.* Among the possibilities for using apprenticeship to lower business costs is in the area of lower insurance rates. Apprenticeship includes safety training and strict rules of supervision while learning. It is logical to believe, and there is some evidence to suggest, that apprentices and journey workers trained through apprenticeship have a lower accident rate on the job. If this is shown to be true in specific industries, then the insurance industry might lower specific rates (e.g., workers' compensation) based on apprenticeship safety training.

• *Contract preference.* At times, in specific circumstances, preference in the award of federal or state contracts has been given to firms that exhibit certain characteristics or undertake certain activities. Preference on certain contracts could be reserved for firms that hire apprentices or structured work-place trainees in certain occupations.

2. Linkages

Apprenticeship programs over the years have developed linkages with other programs, particularly with the education system, and also with parts of the employment and training system. Although there are many creative apprenticeship linkages with a variety of organizations, these linkages have not been universally adopted.

Employers receive no direct federal funds for sponsorship of apprenticeship programs. However, many federal, state, and local funds are spent on education, employment and training, and related programs. These resources can be used to lower the costs of training for apprenticeship program sponsors. Operating in this way, linkages can be

significant incentives for program sponsors.

Apprenticeship linkages are conceivable with a great number and variety of organizations at state and local levels. The kinds of linkages that can develop and flourish will depend on the purpose, perspective and leadership of existing organizations. Barriers to successful coordination can be formidable, but the potential benefits may make the effort required to establish linkages extremely worthwhile. Linkage activities should increase the ability of apprenticeship programs both to produce skilled workers and to serve populations that are different from the current apprenticeship populations.

The specific objectives of apprenticeship linkage activities include the following:

- To provide for coordinated employment and training and education programs that produce the maximum value for the dollars invested;
- To increase the likelihood that women, minorities, immigrants and youth will be able to enter and succeed in apprenticeship;
- To raise the visibility and awareness of apprenticeship; and
- To improve the quality of apprenticeship through such methods as:
  - Better related instruction; and
  - Valid competency tests.

Commentators are asked to consider what kinds of linkages with the following organizations or programs will help meet these objectives. Commentators are specifically asked to suggest additional organizations which might be the focus of linkage efforts for a specific purpose, and how such linkages might best be established.

- *Education.* Linkages with education are among the most frequent kind of links for apprenticeship programs because of the requirement for related instruction. However, the details of how a related instruction program is developed and conducted vary considerably from state to state and among apprenticeship sponsors. Among the other links that could strengthen the apprenticeship program and which are operated, to varying degrees, are: School to apprenticeship programs; development of curricula and instructional materials; instructor training; associate degree programs, which combine apprenticeship training and college study; membership in sponsoring organizations to represent workers, if no union active in apprenticeship; and linkages with assessment and evaluation services.
- *Job Training Partnership Act (JTPA).* The prevalence of higher-paying skilled occupations in the apprenticeship system makes it an attractive link for programs like JTPA which are evaluated, in part, by participants' outcomes after completion. Pre-apprenticeship programs operated by JTPA sponsors are a fairly common method of providing the economically disadvantaged the necessary support and background to gain access to apprenticeship. Other kinds of links with JTPA could include using the Private Industry Councils to increase the visibility of apprenticeship in the employer community, and conducting upgrade training or retraining.
- *Job Corps.* Many Job Corps Centers already have strong linkages to apprenticeship through their pre-apprenticeship programs, largely in the building trades. Can these successful models be duplicated for other occupations?
- *Federal-State Employment Service system (ES).* The State Employment Service is used most frequently today by apprenticeship sponsors for testing and selection. In the past, ES has operated apprenticeship information centers, and some states have recently reinstituted this activity. The first focus paper presented for comment the idea that occupational performance tests could be used before completion of apprenticeship. At the national level, the United States Employment Service's (USES's) expertise in testing could make it a valuable partner for apprenticeship. Under federal BAT guidance, and with industry direction and involvement, USES might develop or adapt such performance tests or design others to assess and document the performance of apprentices. Another option might be to use USES to develop methods of assessing applicants' experience so they can begin their apprenticeship above the entry level.
- *Economic development organizations.* In recent years there has been a growing awareness among public and private economic development practitioners of the importance of the human capital factor in private investment decisions. Most states now include, at least in a general way, employment and training in their economic development plans for strengthening the business climate and creating jobs for their residents. However, most state coordination strategies in this area are still evolving. Because registered apprenticeship programs are evidence of a commitment to developing and maintaining a skilled work force, they can be a particularly attractive development tool. Links with economic development organizations, such as chambers of commerce, and state and local government economic development agencies, might include: Aggressive marketing of apprenticeship as evidence of a skilled work force in the state; and promoting apprenticeship in the small business community, while helping to tailor programs to their needs.

3. Federal/State Roles

Administration of the national apprenticeship system is a mix of solely federal, joint federal-state, and mostly state administration. In 23 states, the BAT directly administers apprenticeship. In the 27 states where direct administration of apprenticeship is delegated to a state agency, the role of the BAT varies widely, from only minimal involvement in some state activities to a substantial role in others.

While this diversity provides options and flexibility to the states, it also results in differences and inconsistencies in program registration and certification procedures among states. Thus, the current administrative structure needs review to examine options needed to support an expanded and improved national apprenticeship system. Some of the issues raised are long-standing. Recommendations for resolution of these issues could appropriately be made regardless of any expansion efforts. Following are some areas where change to the current federal/state relationship and roles might be considered.

- *Minimum state level.* Current federal regulations do not prescribe any minimum level of state activity required for recognition. In at least several states, the SAC serves essentially as a registration agency, with BAT staff performing all the administrative functions. Some maintain that this adds a cumbersome layer of bureaucracy with no real benefit to the program sponsors or the apprentices. Accordingly, should there be minimum requirements for the level of effort as a condition for recognition? If so, what criteria should be used in establishing the minimum state level of effort?
- *Participation by all states.* Several respondents to the broad issue on government role suggested establishing a federal-state apprenticeship system modeled after the federal-state unemployment insurance (UI) system. In the UI system, state agencies receive federal administrative grants and employers receive tax credits against their federal unemployment tax if the state enacts an unemployment insurance law that conforms with federal requirements. For employers to receive tax credits, the state law must meet requirements of the Federal

Unemployment Tax Act. Receipt of administrative grants is conditioned on requirements in Title III of the Social Security Act. Although state participation in the UI system is theoretically voluntary, the financial inducements are such that all states participate in the system.

A similar arrangement or variations of such an arrangement are conceivable for the apprenticeship system. Of course, any alternative could change the present federal-state structure by adding more or less federal oversight. On the other hand, it would promote establishment of a national federal-state apprenticeship system unlike the hybrid structure that now exists. Is a federal-state apprenticeship system modeled after the UI system, or some other model, a desirable goal? If so, what should be the minimum federal requirements for state participation?

- *Consistency among states.* The focus papers have examined issues about quality, accreditation and portability of apprenticeship. Does there need to be more uniformity among the states in apprenticeship program operations? Or, does the unique economic environment of each state argue for diversity? If uniformity is important, is it more important in some areas than others: for example, in apprenticeable occupations, program standards, program registration and approval procedures, curriculum, or some other area?
- *Procedural safeguards.* Current federal regulations do not provide for potential program sponsors to be advised of the reasons for denial of program registration. There are no appeal rights for potential program sponsors in BAT states and in many SAC states. The right to appeal an adverse finding is basic to most government programs. Should it be included in apprenticeship programs? If so, what are the appropriate levels for appeal?
- *Oversight.* The BAT conducts annual compliance reviews of SAC operatons for consistency with federal regulations. The Secretary of Labor may derecognize a SAC which fails to comply with federal regulations, after opportunity for corrective action. In fact, no SAC has ever been involuntarily derecognized. In large part, this is because this sanction is viewed as too extreme, considering the voluntary nature of state participation. Is derecognition too strong a tool for fostering compliance? If faced with this action, would a SAC choose to go out of business for "federal purposes" rather than comply with federal regulations? How might this impact the national apprenticeship system?

While derecognition would always be an option available to the Secretary, there may be interim actions to ensure SACs comply with federal rules. One suggested alternative is a periodic recertification of SACs. Another is to establish procedures for routine review and approval of state law and regulatory changes related to the delegation of federal functions. Are these viable options and/or are there others?

- *Other.* Suggestions have been made that additional efforts are needed to clarify respective responsibilities in states where apprenticeship is jointly administered by the BAT and the SAC. However, in 25 of the 27 SAC states, responsibilities are established in written agreements. However, many of these may be little more than a paper exercise. What more should be done to clarify the federal/state roles? Are there additional steps that might provide more structure to existing processes?

Summary of Public Comments Requested

ETA is presenting for comment many specific questions and issues related to various ways of overcoming any barriers to expansion of the apprenticeship concept of training. The general categories include: I. Support Activities, II. Linkages, and III. Federal/State Roles. Many commentators will not want to address all the issues and questions presented, and ETA welcomes responses to selected questions. For ease in responding, a summary of the questions is provided below. Commentators are requested to follow the order presented and key their responses to the numbers listed below.

Issue I—Support Activities

A. Public comment is sought on the mix of activities listed below that will best support expansion of apprenticeship. Should the mix be different for expansion of the traditional program than for expansion under a structured work-place training program?

- Promotion
- Technical assistance
- Registration/certification/accreditation
- Special recognition
- Delivery system
- Loans
- Help subsidize related instruction
- Lower costs of doing business
- Contract preference

B. Are there other support activities that would be effective in overcoming barriers to expansion?

C. Who should undertake the various activities necessary for expansion? BAT? States? Education? Business? How should these activities be implemented?

Issue II—Linkages

A. Public comment is sought on the degree to which strengthened or additional linkages are needed to improve or expand apprenticeship programs and on how such linkages should be undertaken.

B. What other organizations will be most important to improvement and expansion of apprenticeship? What should be the nature of the apprenticeship system's relationship with them?

System III—Federal/State Roles

A. *Minimum state level.* Should there be minimum requirements for the level of state effort as a condition of recognition by the Secretary?

B. *Participation by all states.* Is a federal/state apprenticeship system in which all states participate a desirable goal? If so, how can this goal be accomplished and what should be the minimum requirements for state participation?

C. *Consistency among states.* Is uniformity among states important? If so, in what areas is uniformity most important—apprenticeable occupations, program standards, program registration and approval procedures, curriculum, other?

D. *Procedural Safeguards.* Should there be minimum requirements for notification and rights to appeal adverse decisions on program registration?

E. *Oversight.* How can BAT best foster compliance of the SACs with federal regulations? What other options to derecognition are viable for compliance purposes, i.e., periodic recertification, regular review of law and regulatory changes?

F. *Other.* What more should be done to clarify the federal-state roles?

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Federal Register

Wednesday
January 25, 1989

Part VI

Office of Personnel Management

5 CFR Part 300

Employment (General); Government Use of Private Sector Temporaries; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

Employment (General);

Government Use of Private Sector Temporaries

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule establishing criteria and conditions under which agencies may consider using temporary help service firms for meeting short term temporary work needs. We are issuing the rule to respond to agencies' requests for flexibility to provide public services and to maintain productivity. The effect of this rule will be to give agencies an optional, additional tool for meeting short term needs which has long been available to other public and private organizations.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, (202) 653–9407.

SUPPLEMENTARY INFORMATION: On October 17, 1988, OPM published (at 53 FR 40546) proposed regulations which would permit agencies to use temporary help services in certain situations. The policy is intended to benefit the public, agencies, and employees: services to the public will be maintained, managers can keep up timely operations, and employees may more readily get time off for dependent care, family emergencies, extended recovery, or other important personal situations. In preparing the final regulations, we considered carefully the more than 50 responses received during the comment period. While we have maintained the basic approach of the proposal, we have made many changes in response to the concerns of agencies, Federal employee organizations, temporary help firms, and other organizations and individuals.

We appreciate the concerns raised by Federal employee unions and by some other commenters regarding such matters as the employer-employee relationship, supervision, costs, and OMB Circular A–76 requirements. We want to address those matters in detail first and will cover other comments in the section analysis. Some responses asked about operational and advisory matters which would not be included in a rule. In accordance with regular OPM practice, we will address those matters through the Federal Personnel Manual System.

I. Introduction

What these regulations would permit is simply this—the occasional use of a private sector temporary for a few days or weeks when an employee needs to be absent or an agency is faced with an immediate, critical need which cannot be met readily through temporary appointment procedures. A temporary help service firm specializes in having personnel on tap to step into a job quickly.

The use of outside help is a long-standing practice in every other type of organization in the United States: private companies; city, county, and State governments; and even Federal agencies which are independent of the general personnel system, such as the Federal Reserve System and the Tennessee Valley Authority. The Government of Canada has administratively authorized use since 1980.

In all of those organizations, the situation is the same. The outside temporaries are legally the employees of a temporary help firm, which exercises overall control of their activities from hiring through termination. The client contracts with the firm for services, gives the temporaries assigned a brief orientation and work tasks, and reviews the work product. There is no employer-employee relationship created with the client.

These regulations simply transfer this idea to the Federal sector. They will make outside temporaries available to Federal agencies, at their option, but in a more restricted and controlled way than other organizations use them.

In our capacity as the Federal agency authorized by statute to administer, execute, and enforce the laws governing the civil service under 5 U.S.C. 1103(a)(5), we believe such use is proper. There is no statutory prohibition. The guidance and opinions of the past (best known as the Pellerzi-Mondello opinions after the two General Counsels of the former Civil Service Commission who prepared them), which placed the use of temporary help services under the general ban against contracting for personal services, must give way to a new interpretation based on court decisions, the statutory definition of a Federal supervisor, evolving experience, and the now-established role which temporary help services perform. This rule reflects that new interpretation and it amends the Pellerzi-Mondello opinions with respect to the use of temporary help service firms.

Clearly, the policy is not meant to solve permanent recruitment needs, pay problems, or other unrelated matters, as some commenters believed. We believe the policy should be viewed in terms of the immediate, short-term needs it seeks to address, and, where the policy is used, we believe it will provide an opportunity for agencies and employees to judge how the use of these services function in practice.

We will keep the policy under review and are prepared to make changes where need is indicated. We plan to make a full review of the policy in 2 to 3 years, and will evaluate it for further continuation.

II. Origins

For a number of years, we have received many individual suggestions from Federal agencies and from private firms that the Government should be able to use the same services that are available to private sector organizations.

In 1986, the President issued Executive Order 12552, which requires agencies to improve the quality, timeliness, and efficiency of public services. We established the Personnel Directors Productivity Task Force at that time to identify impediments to modern personnel management in Federal agencies. For a wide variety of reasons, including major changes in the national work force, employers are facing increasingly difficult staffing challenges. These are described in the recently completed "Civil Service 2000" study, which provides a projection of future labor market conditions and agency needs through the end of this century. While some items in the report require further discussion, it is clear we must begin to address those challenges now.

The specific impetus for developing the new temporary help policy came from the Task Force's recommendations. We believe we have taken a reasonable and prudent approach to the recommendations, an approach which seeks to recognize the needs of agencies and employees. It should be noted that use of temporary help services is entirely optional with each agency, is a supplement to an agency's own personnel and resources, and is permitted only in narrowly defined circumstances. Because the policy is optional and because use is restricted to situations which are difficult to forecast—for example, individual employee needs for dependent care, family emergencies, or extended recovery—we have not projected any numerical estimates of the extent to

which agencies may elect to use these services.

The thrust of the proposal is to clarify previous legal or policy concerns so that Federal agencies may use, in a proper manner, services long available to other employers. The Federal Government will be the last significant employer to begin using those services.

III. The Employer-Employee Relationship

A permanent civil service is a vital component of all modern governments. The Federal civil service performs a wide variety of essential activities for our Nation. In the Federal Government, a comprehensive system of legal obligations, rights, restraints, and benefits encompasses and uniquely characterizes Federal employees. This system is necessary to assure the direct control of the basic machinery of the Government and to protect the integrity of the civil service.

When the work of an agency is performed by a contractor rather than by Federal employees, the general guidance is that the agency must avoid creating an employer-employee relationship with the contractor's employees because those employees were not hired under the system of civil service laws. This means an agency may not recruit, test, select, reward, reassign, grant leave to, discipline, or separate, a temporary help service contractor's employees. The contractor must perform these actions because the contractor is the employer. (This does not preclude a temporary help service employee from applying for and being hired by a Federal agency for civil service employment.)

We have reviewed the legal and policy restraints, resulting from the civil service employment laws, on the ability of agencies to contract for temporary help services. Under OPM's previous guidance, such contracts have not been allowed because they were understood to create an employer-employee relationship without observing the legal requirements for civil service employment.

While the definition of what constitutes civil service employment is in statute (5 U.S.C. 2105), the former Civil Service Commission interpreted that definition in 1967 and 1968 in its Federal Personnel Manual Letters 300–8 and 300–12 (the Pellerzi-Mondello opinions) to agencies. That guidance has been applied in Comptroller General rulings, in court decisions, and in the Federal Acquisition Regulation.

The statutory tests in 5 U.S.C. 2105 for identifying a Federal employee are whether the individual worker is performing an authorized Federal function, is supervised by a Federal official or employee, *and* is appointed formally to the civil service by an authorized Federal official or employee.

While outside temporaries would be doing Federal work, they would neither be supervised (they would receive technical instructions) nor appointed by Federal officials or employees, within the meaning of section 2105:

1. Absence of Supervision

A. Universal Practice

For all other employers, public and private, use of outside temporaries does not present a question that the temporaries might be the employees of the client. The role of the temporary help service firm is well established and clear cut, and the temporaries are legally its employees.

Typically, for example, a client will give rough drafts to, and review the typed products of, a typist from a temporary help firm. Yet this type of relationship has never been judged sufficient evidence of supervision to make the client the employer of the temporary. Supervision is a broad activity consisting of many significant authorities and responsibilities toward employees, including performance appraisal and accountability—it is far more than one individual's assigning work to another.

B. Statutory Definition

While 5 U.S.C. 2105 does not define supervision, in 1978 the Civil Service Reform Act added a definition of a Federal supervisor at 5 U.S.C. 7103(a)(10). It reads, in pertinent part,

> (10) supervisor means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment * * *

The statute clearly states the broad scope and full range of activities which typifies a supervisor's relations with, and control over, employees. A Federal agency would not perform these supervisory activities with respect to outside temporaries; the temporary help firm would.

2. Absence of Appointment

Recent case law interpreting 5 U.S.C. 2105 makes clear that Federal employment cannot exist in the absence of a formal appointment. An appointment is a conscious, deliberate act by an agency to initiate an employer-employee relationship. Further, a contract issued by a contracting or procurement authority is not an appointment made by an official with authority to appoint as the law requires.

Section 2105 expressly goes beyond the common law employer-employee relationship and requires more than just the supervisory relationship. All three criteria of that law must be satisfied in order for an individual to be a Federal employee within the meaning of the statute. See *Costner* v. *United States*, 665 F. 2d 1016, 1021 (Ct. Cl. 1981); also, *United States* v. *Testan*, 424 U.S. 392 (1976); *Lodge 1858, American Federation of Government Employees* v. *Administrator, National Aeronautics and Space Administration*, 580 F. 2d 496 (DC Cir. 1978), *cert. denied*, 439 U.S. 927 (1978); *Baker* v. *United States*, 614 F. 2d 263 (Ct. Cl. 1980); *National Treasury Employees Union* v. *Reagan*, 663 F. 2d 239 (DC Cir. 1981); *Horner* v. *Acosta*, 803 F. 2d 687 (U.S.C.A. Fed. Cir. 1986); and *Watts* v. *OPM*, 814 F. 2d 1576 (U.S.C.A. Fed. Cir. 1987).

To quote just two of those cases, the court in *Costner* significantly noted,

> an abundance of Federal function and supervision will not make up for lack of an appointment.

In *Horner*, the court fully examined the appointment question and said,

> It is well established that an appointment is necessary for a person to hold a Government position and be entitled to its benefits.

IV. Responses to Other Frequent Comments

A. Oversight

Agency expenditures will be subject to the full range of internal controls and oversight, inspector general reviews, and audits which apply to every service contract. An agency contracting officer is responsible for seeing to the proper performance of the contract. Each agency is responsible for using these services to advance the work of the agency and for weighing program needs against costs. Agency adherence to our regulations is subject to review under our regular compliance and evaluation activities.

B. The Federal Procurement System

Several comments suggested adding security, suitability, liability, and other requirements which already are provided for in the comprehensive Federal procurement system. Agency use of these services will be a procurement rather than a personnel

management matter and as such is subject to all of the contracting laws, the Federal Acquisition Regulation, and the policies of the Office of Federal Procurement Policy and the General Services Administration which apply to every other purchase of goods or services from the private sector.

Under those legal and policy requirements, the Federal procurement system provides for fair and open competition among interested firms and for selecting the firm whose services will provide the greatest value to the Government at the lowest total cost. The procurement system also requires special consideration for small or disadvantaged businesses, for women-owned businesses, for handicapped activities, and for affirmative action by Federal contractors to employ disabled and Vietnam era veterans.

C. Costs

Concern was expressed over costs, especially the salaries which firms would pay to the outside temporaries. We have explored the cost of using these services and there are many factors to consider:

—The fees an agency will pay are determined by the contracting process which favors the lowest bidder who can do the job best.

—Under Federal procurement regulations, an agency contracting officer must certify that the price is fair and reasonsble.

—The large number of firms makes for a very competitive situation for the buyer.

—Fees vary by company, locality, and occupation.

—Temporary help firms bill clients only for services actually used. Clients do not pay for holidays, vacations, sick leave, or other absences of the firm's employees. From those fees, the firm pays: The salaries and benefits of its employees; the costs of recruiting, testing, hiring, and training as well as maintaining a ready referral pool for instant placement; overhead; and profit.

—The salaries temporary help firms pay are summarized by locality and occupation in a Department of Labor news report dated May 24, 1988, and a more comprehensive industry wage survey, Bulletin No. 2313, dated September 1988. Interested parties may wish to consult those publications.

Like any other private activity, temporary help firms have the right to set the pay of their employees. Agencies will need to be sensitive to Federal employee concerns in a situation where the total compensation a firm would pay to its employees would exceed that of Federal employees for comparable work under similar conditions.

D. Cost Effectiveness

It should be noted that, in every instance, each agency will be responsible for deciding whether temporary help services are worth the cost. Our policy simply will make using such services a possibility for agencies to consider—a use which is limited to certain defined situations and to very short periods spelled out in regulations.

In high-cost localities, agencies may well conclude that temporary help fees are not affordable in all but the most crucial situations. The need to meet a statutory deadline, to respond to a court order, to provide timely services to veterans, to dispense benefits to the elderly, and to assist farmers and small businesses, are representative of the daily tasks agencies must be prepared to perform through their resources. Before using outside temporaries, each agency must weigh each individual situation and consider the relative costs of alternatives, the importance of the work to be done, the need to maintain basic Government operations, the rights of the public, and the personal needs of its employees.

E. OMB Circular A–76 and Contracting Requirements

Since OMB is responsible for Circular A–76, we obtained its advice to respond to the following comments:

1. *Comment:* The authority delegated by this regulation must still comply with the requirements of OMB Circular A–76. Before contracting out for temporary employees, agencies must conduct the cost analyses required for an A–76 study. Decisions to fill position vacancies through a temporary help firm cannot be made on an ad hoc basis, especially where the potential exists for the agency to incur increased costs.

Response: Circular A–76 cost analysis requirements do not apply to the use of temporary employees under the conditions set by this regulation. A–76 requires cost comparisons of Government operated commercial activities with 10 or more full-time equivalent employees. Because this regulation only allows the use of outside temporaries when an agency cannot locate Federal employees in a timely manner to do the work, there is no competition between agencies and private firms for the work and no basis to make a cost comparison.

2. *Comment:* The proposal is contrary to the concept of career appointments which is inherent in the Federal system.

Response: To preserve the career appointment process, § 300.503(c) has been amended to specifically prohibit use of temporaries where career appointment should be made.

3. *Comment:* Federal personnel principles in essence permit agencies to contract out specific types of work when certain criteria are met, such as those contained in Circular A–76. OPM's regulation is in conflict with these principles in that it allows agencies to contract out positions, as distinguished from specific types of work.

Response: Circular A–76 sets the basic policy for executive agencies to determine whether commercial activities should be performed by Federal employees or by private contractors. There is no conflict between Circular A–76 and Federal personnel policies and, in these circumstances, there is no special bar to contracting out the work an individual performs as distinct from contracting out an entire function. The contracting procedure agencies would follow does not turn work or positions over to a contractor. Instead, a contractor is obligated to provide brief fill in or back up services, only at such times as an agency may request. In each instance, an agency must first determine that no employees or qualified candidates are immediately available. Agencies should use Federal employees to the maximum extent possible. The contracting procedure referred to is found in Subpart 16.5 of the Federal Acquisition Regulation and is used regularly by agencies to address possible future needs for goods and services which cannot be predicted.

4. *Comment:* The advisability of using contract temporaries is questionable, since pay disparities between workers doing the same work, side-by-side, will increase the already serious morale problems of the current Federal work force.

Response: The outside temporaries will accomplish work that cannot be accomplished by the existing Federal staff; therefore, their use should not harm morale. Without them, the work would not be done in a timely manner and would remain for Federal workers to do at some future time. Also, outside temporaries do not have the benefits that come with full-time Federal employment. For further information on this point, please refer to the earlier discussion in the supplementary information on costs and cost effectiveness.

5. *Comment:* OPM should limit the use of outside temporaries to certain situations and duties, i.e., typing and filing. Such workers should be prohibited from dealing with the public

and working in areas where security clearances are necessary, and the firms should be limited to payments that do not exceed step 5 of the grade of the worker whose duties are being performed by the outside temporary.

Response: It is not necessary to restrict outside temporaries to particular positions. Federal managers may use outside temporaries for a variety of tasks only when work cannot be accomplished with Federal employees. To be sure, there are many Federal work assignments which could not be filled by outside temporaries. It would be unreasonable to expect outside temporaries to step into most middle and upper level jobs and have them hit the ground running. There is no need, however, to ban unlikely use and, at the same time, second-guess agencies on individual situations where outside temporaries would be feasible.

An agency must specify in the contract the capabilities and, if any, the security clearance requirements of the workers the firm is required to provide. If an individual does not meet the performance requirements the agency has specified, the firm will assign a qualified replacement.

Concerning the suggested limit on pay levels, please see the earlier discussion of costs and cost effectiveness.

V. Section Analysis

Here is a summary of the key changes we have made in the final regulation. Since the changes are based on the comments, we generally will not describe each individual comment.

A. Regulatory Agenda and Regulatory Flexibility Act

We did not list development of the regulation in the last agenda because at the time of our agenda submission, we had no decided on a regulatory approach. We have substantially expanded our statement in the regulation concerning the application of the Regulatory Flexibility Act.

B. Authority Citation

We added 5 U.S.C. 1103(a)(5) to indicate that we are acting in our capacity as the agency responsible for the administration, execution, and enforcement of the civil service laws.

C. Section 300.501

We clarified the definitions of temporary help service firms and private sector temporaries and added definitions for parental and family responsibilities (in place of maternity leave), Federal supervisor, critical need, and local commuting area. We did not add individual consultant-type services to the temporary help service firm definition because, among other reasons, those services may be acquired under the procurement laws or under 5 U.S.C. 3109.

D. Section 300.502

The reference to the Senior Executive Service (SES) in our proposed regulations was meant simply to identify those agencies within the scope of our regulations and not to suggest it would be appropriate to use temporary help services to perform SES work. Therefore, for clarity, we have excluded SES positions from coverage. We also have added an exclusion against using outside temporaries for managerial and supervisory work in the competitive service, since, like the SES, such work would entail control over Federal employees and programs. Lastly, the proposal included agencies with excepted Schedule A, B, and C positions. We are eliminating Schedule C because it would not be appropriate to use outside temporaries because of the confidential relationship required for those positions.

E. Section 300.503

We have dropped the concept of specific permitted use situations in the proposal for agency relocations, phase downs, and shortage category recruitment needs. Those situations implied, rather than required, some sort of special need and raised unrelated issues. Rather than listing the situations where use is permitted, we have taken instead a generic approach. We have added a more focused agency critical needs situation which parallels the empolyee needs situation. Thus, we have neither endorsed nor excluded particular situations, but have defined the kind of situation in which use may be appropriate. Both situations, taken together, will present occasions for temporary help usage as an alternative to short term temporary appointment and provide a rational place for those services within the overall Federal resources management picture.

We have dropped the open-ended special circumstances category from the employee needs situation, added a restriction on use when civil service recruitment for permanent employment should be conducted, and, at the recommendation of a veterans' organization, added references to veterans' preference, disabled veterans, and FPM chapter 316 temporary appointment requirements.

The proposal received overwhelming support from Federal agencies, although they favored expanded usage such as lengthening the 45 workday limit and suing outside temporaries for vacations. Since this is a new situation for most agencies, we have decided not to expand the usage and to proceed with a limited approach until more experience has been gained.

F. Section 300.504

We have made the following changes: (1) Stressed that outside temporaries shall not be considered or treated as Federal employees and shall not be regarded as performing a personal service; (2) changed the area for applying the 45 workday limit on an outside temporary from nationwide to the local commuting area; (3) added authority for an agency to grant a one-time, 20 workday extension to let the same outside temporary continue, in maternity situations only; (4) added an overall 120 day cap on any one situation and provided authority for OPM to permit appropriate extensions; (5) and, added instructions that Federal agencies, just like every other organization using temporary help services, are expected to give orientation, assign tasks, and review work products.

G. Section 300.505

Reminds agencies that a variety of other means may be available for meeting short-term needs.

H. Section 300.506

Reminds agencies of procurement requirements. There is no requirement for imposing civil service qualification standards (such as those in Civil Service Handbook X-118) for Federal empolyment, on private sector employees. We have noted that agencies must specify the obligations a contractor is required to meet including the types and levels of skills to be provided.

I. Section 300.507

Alerts agencies that basic records will need to be kept.

Each agency will be responsible for deciding whether to use temporary help firms and for using them as they would any other management alternative to advance the work of the agency. As in other management actions, an agency should weigh program needs against relative costs. Each agency will be responsible for observing the conditions and criteria of these regulations.

E.O. 12291, Federal Regulation

After a careful review of the proposed rulemaking, including the analysis set forth below for purposes of the Regulatory Flexibility Act, OPM has determined that this is not a major rule

for the purposes of section 1(b) of E.O. 12991, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. OPM is not regualting, establishing criteria for participation of, or imposing requirments including record keeping or reporting on, small or other entities. OPM is regulating the conduct of Federal agencies to avoid the development of an employer-employee relationship should they elect to use outside temporary help.

2. The requirements an entity will have to observe will come about through an agency-initiated contracting process under the already-established, statutory Federal procurement system which applies to all contractors providing goods and services to the Government. The only entities affected would be those who seek and win a contract. Those entities may be viewed as receiving a beneficial economic impact, but we have no way of forecasting how many firms will compete or which ones will win contracts.

3. Our regulations do not require agencies to use private temporary help firms. Use is entirely optional with each agency.

4. Our regulations will provide an additional tool for agencies to consider using in very limited circumstances—emergency and critical needs situations, which by their nature are unpredictable. OPM has no basis for predicting when an agency will elect to use this alternative in light of the many other variables and alternatives which may or may not be present in any particular situation.

List of Subjects in 5 CFR Part 300

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is issuing final rules to amend 5 CFR Part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Part 300 is revised to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 3324.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

2. Subpart E is added to read as follows:

Subpart E—Use of Private Sector Temporaries

Sec.

Subpart E—Use of Private Sector Temporaries

§ 300.501 Definitions.

For purposes of this subpart:

(a) A "temporary help service firm" is a private sector entity which quickly provides other organizations with specific services performed by its pool and employees, possessing the appropriate work skills, for brief or intermittent periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to a client. The firm, not the client organization, recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. Among other employer obligations, the firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and workers' compensation, and shall provide required liability insurance and bonding.

(b) "Private sector temporaries" or "outside temporaries" are those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to various client organizations who have contracted for the temporary use of their skills when required.

(c) "Parental and family responsibilities" are defined in chapter 630 of the Federal Personnel Manual and include situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

(d) A "Federal supervisor" of Federal employees is defined in 5 U.S.C. 7103(a)(10) as

> an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment * * *

(e) A "critical need" is a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, Executive order, court order, regulation, or formal directive from the head of an agency or subordinate official authorized to take final action on behalf of the agency head. A recurring, cyclical peak workload, by itself, is not a critical need.

(f) A "local commuting area" is defined in Part 351 of this chapter.

§ 300.502 Coverage.

These regulations apply to the competitive service and to Schedules A and B in the excepted service. These regulations shall not be used:

(a) For the Senior Executive Service, or

(b) For the work of managerial or supervisory positions.

§ 300.503 Conditions for using private sector temporaries.

An agency may enter into a contract or other procurement arrangement with a temporary help service firm for the brief or intermittent use of the skills of private sector temporaries, when required, and may call for those services, subject to these conditions:

(a) One of the following short-term situations exists—

(1) An employee is absent for a temporary period because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances which are not shown to be compelling in the judgment of the agency, or

(2) An agency must carry out work for a temporary period which cannot be delayed in the judgment of the agency because of a critical need.

(b) The need cannot be met with current employees or through the direct appointment of temporary employees within the time available by the date, and for the duration of time, help is needed. At minimum, this should include

an agency determination that there are no qualified candidates on the applicant supply file and on the reemployment priority list (both of which must provide preference for veterans), and no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required, and that employees cannot be reassigned or detailed without causing undue delay in their regular work. In instances where a need is foreseeable, as when approval of employee absence is requested well in advance, an agency may have sufficient time to follow the temporary appointment recruiting requirements, including veterans' preference in chapter 316 of the Federal Personnel Manual to determine whether qualified candidates are available by the date needed and for the length of service required.

(c) These services shall not be used:

(1) In lieu of the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service, or

(2) To displace a Federal employee.

§ 300.504 Prohibition on employer-employee relationship

No employer-employee relationship is created by an agency's use of private sector temporaries under these regulations. Services furnished by temporary help firms shall be performed by their employees who shall not be considered or treated as Federal employees for any purpose, shall not be regarded as performing a personal service, and shall not be eligible for civil service employee benefits, including retirement. Further, to avoid creating any appearance of such a relationship, agencies shall observe the following requirements:

(a) No one employee of a temporary help firm may work at an agency within its local commuting area for more than 45 work-days in a 6-month period. For departments, the 45 day limit applies to the bureau, service, or other major organizational element at the headquarters level of the department. Provided a situation in § 300.503(a) of this subpart continues to exist, an agency may secure a different individual from the firm or, provided it can show that termination would cause significant delay, an agency may request OPM to authorize the extension of the same individual for a specified period. An agency may authorize the extension of the same individual for one period not exceeding 20 workdays when needed for maternity absence.

(b) An agency's use of private sector temporaries shall not exceed an overall duration of 120 calendar days in any one individual situation under § 300.503(a) of this subpart. OPM may extend that time limit, for a period not to exceed 120 calendar days, in the interest of good administration in circumstances it determines to be appropriate.

(c) Individual employees of a temporary help firm providing temporary service to a Federal agency may be eligible for competitive civil service employment only if appropriate civil service hiring procedures are applied to them.

(d) Agencies shall train their employees in appropriate procedures for interaction with private sector temporaries to assure that the supervisory responsibilities identified in paragraph (a) of § 300.501 of this subpart are carried out by the temporary help service firm. At the same time, agencies must give technical, task-related instructions to private sector temporaries including orientation, assignment of tasks, and review of work products, in order that the temporaries may properly perform their services under the contract.

§ 300.505 Relationship of civil service procedures.

Agencies continue to have full authority to decide to meet their temporary needs by a number of means including appointing individuals as civil service employees, details, redistribution of work, overtime, in-house pools, and the on-call authority.

§ 300.506 Requirements of procurement.

(a) Agencies must follow the Federal procurement laws and the Federal Acquisition Regulation, as applicable, in procuring services from the private sector.

(b) Agencies should make full use of the provisions of the Federal procurement system to make clear that the firm is the legally responsible employer and to specify the obligations the firm will have to meet to provide effective performance including such matters as the types and levels of skills to be provided, deadlines for providing service, liability insurance, and, when necessary, security requirements. The Federal procurement system also requires contractors to comply with affirmative action requirements to employ and advance in employment qualified disabled and Vietnam era veterans as provided in 41 CFR Part 60–250, and with public policy programs including equal employment opportunity, handicapped employment, and small businesses.

§ 300.507 Documentation.

Agencies are required to maintain basic records to establish that use of temporary help services is consistent with these regulations. Specific instructions will be provided through the Federal Personnel Manual System.

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