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Federal Register

Friday
October 11, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

Selected Subjects

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

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: November 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call JoAnn Harte, Workshop Coordinator, 202-523-5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Presidential Documents

Title 3—

The President

Memorandum of September 19, 1985

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Foreign Assistance and Related Programs Appropriations Act, 1985, as amended by Public Law 99–88 of August 15, 1985, and section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered that the functions vested in the President by the paragraph entitled "Population, Development Assistance" of the Foreign Assistance and Related Programs Appropriations Act, 1985, as amended by the paragraph of the same title in Title I, Chapter V, of Public Law 99–88, are hereby delegated to the Secretary of State, with full authority to redelegate this function in the event the Secretary concludes in his discretion that such a redelegation is necessary or desirable to the effective execution of his responsibilities.

You are authorized and directed to publish this memorandum in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, September 19, 1985.

[FR Doc. 85-24408
Filed 10-9-85; 2:01 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5380 of October 9, 1985

Fire Prevention Week, 1985

By the President of the United States of America

A Proclamation

Fire controlled is one of man's greatest friends; unchecked, it is our deadly enemy. Each year, millions of fires kill thousands of Americans and destroy billions of dollars of property.

Carelessness and apathy are fire's greatest allies. But an informed public aware of fire hazards and ways to prevent and combat fire can bring the problem under control.

Thanks to the efforts in both the public and private sectors, our annual fire loss has been declining in recent years. But we must not become complacent. We must build on the progress that has been made.

I urge every American to join the fight against fire. During Fire Prevention Week, communities should begin initiatives for fire prevention and control that can be implemented throughout the year. I encourage all citizens to join in local efforts to marshal the forces of the entire community—local government, the fire service, business leaders, civic organizations, and service groups—to redouble their efforts to prevent and control fire and minimize its toll of life and property.

One place we can all start is with this year's Fire Prevention Week theme, "Fire Drills Save Lives." Everyone should plan ahead noting the most convenient fire exits. Families should install and maintain smoke detectors in their homes to provide early warning of fire. Your local firefighters can provide you with more detailed recommendations and will be happy to do so. And let us not forget to thank them for the great job they do to protect us, our homes, our businesses, and our belongings. Daily they risk their lives to protect our communities. It is most fitting that the culmination of National Fire Prevention Week will be the observance of the National Fallen Firefighter Memorial Service in Emmitsburg, Maryland. The observance will honor the scores of brave firefighters who last year gave their lives in service to others.

We also must recognize and commend the efforts of all organizations concerned with fire prevention and control, and in particular the National Fire Protection Association, the International Association of Firefighters, the International Association of Fire Chiefs, the National Volunteer Fire Council, the International Society of Fire Service Instructors, the Fire Marshals Association of North America, and all the members of the Joint Council of National Fire Service Organizations.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 6, 1985, as Fire Prevention Week, and I call upon the people of the United States to plan and actively participate in fire prevention activities during this week and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-24594
Filed 10-10-85; 10:29 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5381 of October 9, 1985

National School Lunch Week, 1985

By the President of the United States of America

A Proclamation

Since 1946, the National School Lunch Program has made it possible for our Nation's children to enjoy nutritious, well-balanced, low-cost lunches. Now in its 39th year, the National School Lunch Program stands as an outstanding example of a successful partnership between Federal and State governments and local communities to make food and technical assistance available in an effort to provide a more nutritious diet for students.

The youth of our Nation are our greatest resource, and the school lunch program demonstrates our commitment to the promotion of their health and well-being. Under its auspices, over 23 million lunches are served daily in nearly 90,000 schools throughout the country. The success of this effort is largely due to resourceful and creative food service managers and staff, working in cooperation with government personnel, parents, teachers, and members of civic groups.

By joint resolution approved October 9, 1962, the Congress has designated the week beginning on the second Sunday of October in each year as "National School Lunch Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 13, 1985, as National School Lunch Week, and I call upon all Americans to give special and deserved recognition to those people at the State and local level who, through their dedicated and innovative efforts, have contributed so much to the success of the school lunch program.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-24595
Filed 10-10-85; 10:31 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5382 of October 9, 1985

White Cane Safety Day, 1985

By the President of the United States of America

A Proclamation

Americans admire courage and respect independence. Every day some of our neighbors renew our appreciation of these qualities. They are the Americans who set forth about their daily business bearing the white cane.

The white cane is the badge of courage carried by those blind and visually impaired citizens who believe freedom and independence are meant for all Americans. The white cane tells the world that its bearer expects not pity but fairness and consideration—on the street, on the job, and everywhere Americans' paths cross.

In recognition of the significance of the white cane, the Congress, by joint resolution approved October 6, 1964, has authorized the President to designate October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 15, 1985, as White Cane Safety Day. I urge all Americans to salute the courage of those who carry the white cane and consider how each of us, in our work and in our daily rounds, can show our respect for these proud and able Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-24396
Filed 10-10-85; 10:32 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12536 of October 9, 1985

Board of the Foreign Service

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 153 of Public Law 99-93, it is hereby ordered that Section 9(e) of Executive Order No. 12293, as amended, relating to the appointment of the Chairman of the Board of the Foreign Service, is revoked, and that Section 9(f) of that Order is redesignated as Section 9(e).

Ronald Reagan

THE WHITE HOUSE,
October 9, 1985.

[FR Doc. 85-24597
Filed 10-10-85; 10:34 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

Spearmint Oil Produced in the Far West; Suspension of Prescribed Date for Producers to Apply for Additional Allotment Bases and Minor Administrative Rule Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends § 985.53(d)(2) of the marketing order for far west spearmint oil and makes minor changes in the administrative rules and regulations. These provisions currently require producers to file applications for additional allotment base on or before December 1 of the year prior to the marketing year when the allotment base will be used. The Spearmint Oil Administrative Committee has found that many producers' normal cultural practices, such as fall planting, warrant issuing such additional allotment bases earlier than December 1. Therefore, this action enables the Committee to issue additional allotment bases prior to December 1 and avoids the possibility of producers filing for additional allotment base up to December 1 but after issuance has already occurred. The Committee works with the Department in administering the marketing order.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone (202) 447-5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee is planning to issue additional allotment bases for the 1986-87 marketing year in early October 1985 and this change should be effective before additional allotment bases are issued. This is necessary to be equitable to those producers who plan to plant spearmint roots in the fall of 1985, and to avoid any problems that could arise if producers apply for additional allotment bases after the issuance has been completed. No useful purpose would be served by delaying the effective date of this action.

This action suspends § 985.53(d)(2) of Marketing Order No. 985 (7 CFR Part 985) regulating the handling of spearmint oil produced in the Far West. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The suspension is issued pursuant to section 608c(16) of the act and § 985.72 of the order because this provision does not effectuate the declared policy of the act. Section 985.53(d)(2) requires new and existing producers desiring additional allotment base to file applications with the Spearmint Oil Administrative Committee on or before December 1 of the marketing year preceding the year for which the base could be used. Also, included in this action are changes in § 985.153 of Subpart—Administrative Rules and Regulations (7 CFR Part 985.104-985.156). Section 985.153 is effective pursuant to § 985.53 of the order and contains procedures used in determining the distribution of additional allotment bases. The changes are necessary to reflect the suspension of § 985.53(d)(2) and to remove obsolete provisions in that section.

Notice of this action was published in the **Federal Register** on August 22, 1985 (50 FR 33973). Interested persons were invited to submit written comments by September 13, 1985. No comments were received.

As provided in the order, since the 1982-83 marketing year, the Committee has been making additional allotment bases available to new and existing growers in an amount not to exceed one percent of the total of all allotment bases for each class of oil (Class 1—Scotch Spearmint Oil; Class 3—Native Spearmint Oil). Fifty percent must be made available to new growers and the remaining 50 percent must be made available to existing growers.

In most areas spearmint roots are normally planted in early spring. However, in other areas, the crop performs better if planted in the fall. Both fall and spring planted crops are harvested the following summer. In recognition of the fact that some growers plant spearmint roots in the fall of each year, and to give other growers enough time to make planting decisions, the Committee, since 1982, has been accepting applications and issuing additional allotment bases as early as September.

Pursuant to § 985.53(d)(2), the Committee may issue additional allotment bases before December 1. However, because the amount of allotment base available for distribution is limited by the order, the Committee would be required to repeat the additional allotment base distribution procedures. This would result in wasted time and expense and more importantly it could be inequitable to those producers who planted spearmint roots based on the earlier issuance because they would not be assured of receiving additional base when the procedures were repeated.

The suspension of § 985.53(d)(2) will allow the Committee to continue to complete the application and allotment issuance process in September or October without the administrative problems that could accompany that action because of the existing December 1 application deadline.

Several changes are necessary in § 985.153 in recognition of the suspension of § 985.53(d)(2), and several provisions in § 985.153 are now obsolete. Consistent with § 985.53(d)(2), § 985.153(b) now requires that requests for additional allotment base be made to the Committee by December 1 prior to the marketing year for which such base will be made available. Because

§ 985.53(d)(2) is being suspended, December 1 is removed from paragraph (b) and the phrase "by a date specified by the Committee" inserted in its place. This change recognizes current industry practices and gives the Committee more flexibility to handle changes which may occur in the future. Paragraph (b) also includes an obsolete proviso dealing with 1982–83 marketing year additional allotment base applications, and that proviso is removed.

In addition, § 985.153(c)(2)(i) includes provisions for bringing the allotment bases of existing producers which were less than economic enterprises when the order was established in 1980 up to economic levels during the 1982–83, 1983–84, and 1984–85 marketing years. These provisions are now obsolete and are deleted.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Committee, and other information, it is determined that (1) cultural practices, especially the fall planting of spearmint roots, in the spearmint oil industry make it necessary to issue additional allotment bases earlier than December 1 in order to be equitable to all spearmint producers, and (2) under the conditions currently existing in the spearmint oil industry, the December 1 deadline specified in § 985.53(d)(2) does not now tend to effectuate the declared policy of the act and is hereby suspended.

List of Subjects in 7 CFR Part 985

Marketing agreements and orders, Spearmint oil.

PART 985—[AMENDED]

1. The authority citation for 7 CFR Part 985 continues to read as follows:

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

2. Section 985.53(d)(2) of Part 985 is suspended.

3. Section 985.153 of Subpart—Administrative Rules and Regulations (7 CFR Part 985.104–985.156) is amended by revising paragraph (b), removing paragraph (c)(2)(i), and redesignating paragraph (c)(2)(ii) as paragraph (c)(2) to read as follows:

§ 985.153 Issuance of additional allotment base to new and existing producers.

* * * * *

(b) *Requests.* Any new or existing producer desiring additional allotment base for any class of oil made available by the Committee pursuant to § 985.53(d)(1) shall request such base by a date specified by the Committee prior to the marketing year for which such base will be made available.

(c) * * *

(2) *Existing producers.* Each existing producer of a class of spearmint oil who requests additional allotment base and has the ability to produce additional quantities of that class spearmint oil shall be eligible to receive a share of the additional allotment base for that class of oil. Additional allotment base to be issued by the Committee for a class of oil shall be distributed equally among the eligible producers for that class. The Committee shall immediately notify each producer who is to receive additional allotment base by issuing that producer an allotment base in the appropriate amount.

* * * * *

Dated: October 8, 1985.

Raymond D. Lett,

Assistant Secretary Marketing & Inspection Services.

[FR Doc. 85–24388 Filed 10–10–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 341

Certificates of Citizenship

Correction

In FR Doc. 85–23279 beginning on page 39649 in the issue of Monday, September 30, 1985, make the following corrections:

1. On page 39649, third column, in amendatory instruction 2, "341." should read "341.5".

2. On page 39649, third column, in § 341.5, seventh line, "includig" should read "including".

3. On page 39650, first column, in § 341.7, seventh line, "or" should read "of".

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 7

Coordination and Information Exchange Meetings Between the NRC Staff and Organizations Involved in the Study of the Nuclear Power Industry; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This statement presents the policy of the Nuclear Regulatory Commission (NRC) with respect to the exchange of technical information between the NRC staff and organizations which are studying various aspects of the safety of nuclear power plants. The NRC finds the information provided by such groups to be useful as supplemental to the studies and information which it generates or receives from other sources in fulfillment of its responsibilities to ensure the health and safety of the public. This Policy Statement provides guidance to the Commission staff when it meets with such groups. Nothing in this Policy Statement shall limit the authority of the NRC to conduct or commission studies or to constitute advisory committees, when appropriate. This Policy Statement does not require the NRC to meet with any group with which it does not wish to meet. No new rights or privileges are bestowed upon any group by virtue of this Policy Statement.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Theresa W. Hajost, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (202) 634–1493.

SUPPLEMENTARY INFORMATION:

Policy Statement

To assist in meeting the NRC's statutory and regulatory objectives relating to the safety of nuclear power plants, the staff of the Commission may periodically participate in coordination and information exchange meetings with personnel of organizations generally involved in the study of the nuclear power industry, such as Critical Mass Energy Project (CMEP), Edison Electric Institution (EEI), Government Accountability Project (GAP), the Institute of Nuclear Power Operations (INPO), Nuclear Utility Management and Human Resources Committee (NUMARC), and Union of Concerned Scientists (UCS). The NRC finds the information obtained from such organizations to be potentially useful as a supplement to the studies and information which it generates or receives from other sources in fulfillment of its regulatory responsibilities. The purpose of this Policy Statement is to clarify the purposes and scope of such meetings and provide guidance to the participants in the conduct of these meetings.

Coordination meetings involving staff of the NRC and personnel from organizations who are involved in the

study of the nuclear power industry are only for the purposes of the exchange of information and data generally relating to the safety of nuclear power plants. These meetings are generally intended to provide an opportunity for the NRC to obtain technical information and data about the operations of nuclear power plants and current information about specific organizations' activities, plans, and projects relating to nuclear plant safety. Meetings also may provide an opportunity for NRC staff to comment upon the activities, projects, and plans of nuclear power industry organizations, and to keep these organizations apprised of the NRC's activities, plans, and projects relating to nuclear power plant safety.[1] Coordination meetings may also involve written or oral status reports on joint projects or activities involving the NRC and organizations involved in the study of the nuclear power industry.

However, such coordination meetings held with organizations involved in the study of the nuclear power industry are not for the purpose of obtaining the organizations' advice or recommendations on regulatory issues or policies within the scope of the NRC's responsibilities, and such advice or recommendations are outside the scope of these meetings.

Dated at Washington, DC this 8th day of October 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-24426 Filed 10-10-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-24-AD; Amdt. 39-5152]

Airworthiness Directives; Government Aircraft Factories Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Government Aircraft Factories (GAF) Models N22B and N24A airplanes which requires replacement of certain vertical fin attachment fittings and fin/horizontal stabilizer attachment fittings. The AD is needed because certain empennage attachment fittings are undergoing fatigue failure which could result in loss of the airplane. Accomplishment of the actions required by this AD will preclude this occurrence.

EFFECTIVE DATE: November 14, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: GAF Service Bulletin (S/B) NMD-53-5, dated October 19, 1984 and S/B NMD-55-21, dated October 19, 1984, applicable to this AD may be obtained from Government Aircraft Factories, 226 Lorimer Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207; Telephone 03-647-3111; Telex 30252; Cable BEAUFAIR. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Domich, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; Telephone (213) 297-1143.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD applicable to Government Aircraft Factories (GAF) Models N22B and N24A airplanes requiring installations of certain improved vertical fin attachment fittings and fin/horizontal stabilizer attachment fittings was published in the **Federal Register** on June 28, 1985 (50 FR 26787). The proposal resulted from an AD (AD/GAF-N22/50) received from the Australian Department of Aviation stating that certain attachment fittings on the GAF Model N22B and N24A airplanes are reaching their fatigue life limits. These fittings which are the attachment fittings of the upper fin rear spar and the fin/horizontal stabilizer attachment fittings, are essential for retaining the vertical fin and horizontal stabilizer in position on the fuselage. This fatigue condition reaches criticality at approximately 3000 hours time-in-service. Failure could result in the loss of the vertical fin and/or horizontal stabilizer with resulting loss of the aircraft. Therefore, GAF issued S/B NMD-53-5 and NMB-55-21, both dated October 19, 1984, which entail replacement of certain attachment fittings with sturdier ones. Compliance with the provisions of S/B's NMD-53-5 and NMD-55-21 must be recorded in aircraft logbooks as Mod N600A or N600B, as applicable, and N602. The Australian Department of Aviation, who has the responsibility and authority to maintain the continuing airworthiness of these airplanes in Australia has classified these service bulletins and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Australian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the Australian Department of Aviation combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of S/Bs NMD-53-5 and NMD-55-21 and the mandatory classification of these service bulletins by the Australian Department of Aviation. Based on the foregoing, the FAA found that the conditions addressed by S/Bs NMB-53-5 and NMD-55-21 are unsafe and may exist on other products of this type design certificated for operation in the United States. Consequently, an AD was proposed applicable to all GAF Models N22B and N24A airplanes, which would require installation of improved attachment fittings in accordance with GAF S/B's NMD-53-5 and NMD-55-21, prior to exceeding 3000 hours total aircraft time-in-service for those airplanes having less than 2700 hours time-in-service and within 300 hours time-in-service after the effective date of this AD for those airplanes having 2700 hours or greater time-in-service.

Interested persons have been afforded the opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly the proposal is adopted without change.

There are approximately 22 United States registered airplanes affected by the AD. The cost of complying with the AD is estimated to be $800 per airplane. The kits are free from the manufacturer. The total cost to the private sector is estimated to be $17,600. Few, if any small entities own the affected airplanes. The cost of compliance is so miminal that it would not impose a significant economic burden on any such owner. Therefore, I certify that this action: (1) Is not a "major rule" under

[1] General information about the NRC's activities, plans, and projects is generally available to the public through attendance at public meetings of the Commission or the Advisory Committee on Reactor Safeguards or through various NRC publications in its Public Document Room.

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 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 identified under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, 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:

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

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

2. By adding the following new AD:

Government Aircraft Factories (GAF): Applies to Models N22B and N24A (all serial numbers) airplanes certificated in all categories, unless GAF Service Bulletin (S/B) NMD-53-5, dated October 19, 1984 (Mods N600A or N600B) and S/B NMD-55-21 (Mod N602) dated October 19, 1984, have been incorporated.

Compliance: Required as indicated, unless already accomplished.

To prevent structural failure of the vertical fin and/or the horizontal stabilizer in flight, prior to accumulating 3,000 hours time-in-service for aircraft having less than 2,700 hours time-in-service on the effective date of this AD, and within the next 300 hours time-in-service for aircraft having 2,700 or more hours time-in-service on the effective date of this AD, accomplish the following:

(a) Replace the attachment fittings of the upper fin rear spar and the fin/horizontal stabilizer in accordance with Paragraph 2, "Accomplishment Instructions" of Government Aircraft Factories (GAF) Service Bulletins NMD-53-5 and NMD-55-21, both dated October 19, 1984.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Western Aircraft Certification Office, ANM-170W, Northwest Mountain Region, FAA, Post Office Box 92007, Worldway Postal Center, Los Angeles California 9009-2007.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Government Aircraft Factories, 226 Lormier Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207 or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 14, 1985.

Issued in Kansas City, Missouri, on September 30, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-24373 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-CE-23-AD; Amdt. 39-5151]

Airworthiness Directive; Government Aircraft Factories Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Government Aircraft Factories Models N22B and N24A airplanes which requires removal of material from the interior trim panel of the emergency exit door to provide sufficient clearance for the opening of the emergency door. The AD is needed because possible interference between the emergency exit door and the fuselage trim panel could result in restricting exit from the airplane. Accomplishment of actions required by the AD will prevent this restriction.

EFFECTIVE DATE: November 14, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: GAF Alert Service Bulletin (AS/B) ANMD-52-6, dated August 8, 1984, applicable to this AD may be obtained from Government Aircraft Factories, 226 Lormier Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207; Telephone 03-647-3111; Telex 30252; Cable BEAUFAIR.

A copy of this information is also contained in the Rules Docket, FAA, Central Region, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Domich, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, telephone (213) 297-1143.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD applicable to Government Aircraft Factories (GAF) Models N22B and N24A airplanes requiring modification of the airplane emergency exit door interior trim panel was published in the Federal Register on June 28, 1985 (50 FR 26786). The proposal resulted from an AD (AD/GAF-N22/49) received from the Australian Department of Aviation applicable to GAF Models N22B and N24A airplanes stating that excessive force may be required to push the emergency door clear of the airplane. The manufacturer investigated and found that the interior trim on the emergency exit could interfere with release of the emergency exit door, which is a window in the fuselage. Removal of material from the lower edge of the trim panel provides clearance and proper operation of the emergency door. As a result, GAF issued AS/B ANMD-52-6 dated August 8, 1984, which gives instructions for trimming the excess material and relieves interference between the emergency exit door and the fuselage. Compliance with the provision of AS/B ANMD-52-6 are recorded in aircraft logbooks as Mod N627. The Australian Department of Aviation, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Australia, has classified this alert service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Australian regulations, this action has the same effect as an AD on airplanes certified for operation in the United States.

The FAA relies upon the certification of the Australian Department of Aviation combined with the FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of AS/B ANMD-52-6 and the mandatory classification of this service bulletin by the Australian Department of Aviation. Based on the foregoing, the FAA found that the condition addressed by AS/B ANMD-52-6 is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, an AD was proposed applicable to GAF Models N22B and N24A airplanes which would require inspection and trimming of material, if necessary, in accordance with GAF AS/B ANMD-52-6 to allow

the emergency exit door to clear the airplane fuselage.

Interested persons have been afforded the opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

There are approximately 22 United States registered airplanes affected by the AD. The cost of complying with this AD is estimated to be $40 per airplane. The cost to the private sector is estimated to be $880. Few, if any, small entities own the affected airplanes. The cost of compliance is so miminal that it would not impose a significant economic burden on any such owner. Therefore, I certify that this action: (1) Is not major under provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the 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 identified under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new AD:

Government Aircraft Factories (GAF): Applies to Models N22B and N24A airplanes, (all Serial Numbers) certificated in any category, unless, GAF Service Bulletin (AS/B) ANMD–52–6 dated August 8, 1984 (Mod N627) has been incorporated.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless already accomplished. To prevent restriction of the emergency exit opening, accomplish the following:

(a) Modify the airplane emergency exist door interior trim panel in accordance with Paragraph 2. "Accomplishment Instructions" of GAF Alter Service Bulletin AS/B ANMD–52–6 dated August 8, 1984.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Western Aircraft Certification Office, ANM–170W, Northwest Mountain Region, FAA, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Government Aircraft Factories, 226 Lormier Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207, or FAA, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 14, 1985.

Issued in Kansas City, Missouri, on September 30, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85–24374 Filed 10–10–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 83–AEA–1]

Alteration of Transition Area, Chambersburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the transition area at Chambersburg, PA. A new VOR/DOME–B instrument approach procedure has been developed to the Chambersburg Municipal Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

EFFECTIVE DATE: 0901 G.m.t., December 19, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA–530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917–1228.

SUPPLEMENTARY INFORMATION:

History

On April 25, 1983, The FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Chambersburg, PA, to provide controlled airspace from 700 feet above the surface for IFR arrival/departure aircraft at Chambersburg Municipal Airport (48 FR 17602). A new VOR/DME–B approach procedure has been developed to the Chambersburg Municipal Airport. Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations, alters the Chambersburg, PA transition area. A new VOR/DME–B approach procedure has been developed to the Chambersburg Municipal Airport. This action provides protected airspace for aircraft arriving/departing under instrument flight rules. The FAA has determined that this amendment 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 areas.

The Proposed Amendment

PART 71—[AMENDED]

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

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.

2. Section 71.181 is amended as follows:

Chambersburg, PA [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Chambersburg Municipal Airport, Chambersburg, PA (lat. 39°58'23"N., long. 77°38'37"W.), and within an 8-mile radius of the center of the airport, extending clockwise

from a 039° bearing from the airport to a 061° bearing from the airport; and within a 15-mile radius of the center of the airport, extending clockwise from a 061° bearing from the airport to a 135° bearing from the airport; and within a 8-mile radius of the center of the airport, extending clockwise from a 135° bearing from the airport to a 174° bearing from the airport; and within a 7-mile radius of the center of the airport, extending clockwise from a 174° bearing from the airport to a 241° bearing from the airport; and within 4-miles each side of the St. Thomas VORTAC 080° radial, extending from the VORTAC to 29 miles east of the VORTAC; excluding that portion with the Hagerstown, MD transition area.

Issued in Jamaica, New York on Sepember 13, 1985.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 85-24370 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AEA-3]

Alteration of the Pittsburgh Allegheny County Airport, PA Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The nature of this action is to alter the existing Pittsburgh Allegheny County Airport, PA Control Zone. The NDB approach to Runway 10 at Allegheny County, PA Airport was canceled on August 2, 1982. The Control Zone at the Allegheny County Airport has an extension to the west to encompass a portion of this NDB approach. This extension is no longer necessary.

EFFECTIVE DATE: 0901 G.m.t., December 18, 1985. Comments must be received on or before November 14, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Joseph Kelley, Acting Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Docket 85-AEA-3, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION: On February 22, 1984, the Federal Aviation Administration circularized a notice of Non-Rulemaking procedure to decommission the Cecil (CCZ) NDB, serving Runway 10 at Allegheny County, PA. At that time, no objections were interposed; the Federal Aviation Administration recommended decommissioning subsequent with the relocation of the Transcribed Weather Broadcast (TWEB) outlet to the McKeesport, PA, NDB.

Request for Comments on the Rule

Although this action is in the form of a final rule, which alters the existing Pittsburgh Alleghney County Airport, PA Control Zone and thus was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the Federal Aviation Administration (FAA) will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. 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, stampted postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AEA-3." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

The Rule

The purpose of this amendment to 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the existing Pittsburgh Allegheny County Airport, PA Control Zone.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 3, 1984. Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to alter the existing Pittsburgh Allegheny County Airport, PA Control Zone. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the next charting date.

The FAA has determined that this amendment 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

Control zones, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

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:

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.

2. Section 71.171 is amended as follows:

Pittsburgh Allegheny County Airport, PA. [Amended]

By removing the words "and within 3.5 miles each side of the 257° bearing from the Cecil RBN extending from the 5-mile radius zone to 8.5 miles west of the RBN."

Issued in Jamaica, New York, on September 13, 1985.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 85-24372 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AEA-8]

Designation of Transition Area, Blairstown, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a transition area at Blairstown, NJ. A new VOR Runway 25 instrument approach procedure has been developed to the Blairstown, NJ, Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

EFFECTIVE DATE: 0901 G.m.t., December 19, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On May 25, 1984, The FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Blairstown, NJ to provide controlled airspace from 700 feet above the surface for IFR arrival/departure aircraft at Blairstown Airport (49 FR 22100). A new VOR Runway approach procedure has been developed to the Blairstown Airport. Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a new transition area at Blairstown, NJ. A new VOR Runway 25 approach procedure has been developed to the Blairstown Airport. This action provides protected airspace for aircraft arriving/departing under instrument flight rules.

The FAA has determined that this amendment 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 areas.

The Proposed Amendment

PART 71—[AMENDED]

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

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.

2. Section 71.181 is amended as follows:

Blairstown, NJ [NEW]

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Blairstown, NJ, Airport (lat. 40°58'17" N., long. 74°59'53" W.), excluding that airspace which overlies existing transition area airspace.

Issued in Jamaica, New York, on September 13, 1985.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 85-24367 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 3

Adjudicative Proceedings; Practice and Procedure Rules

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission has revised section 3.21 of its Rules of Practice and Procedure, governing adjudicative procedures. The changes are intended to expedite proceedings under Part 3 of the Rules.

EFFECTIVE DATE: Revised § 3.21 applies to adjudicative proceedings that are initiated by complaints issued by the Commission on or after November 12, 1985. Former § 3.21 applies to adjudicative proceedings that are initiated by complaints issued by the Commission before November 12, 1985.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Attorney, Office of the General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580 (Telephone: (202) 523-3865).

SUPPLEMENTARY INFORMATION: On August 2, 1985, at 50 FR 31385, the Commission published for comment proposed amendments to Rules 3.1 and 3.21 of its Rules of Practice and Procedure. Comments were received from the Commission's Administrative Law Judges ("ALJ's"), from the law firm of Sullivan & Cromwell and from James T. Halverson, Chairman of the Section of Antitrust Law of the American Bar Association, on behalf of himself and five other present and past officials of the section.[1]

The proposed change to Rule 3.1 was to replace the requirement that parties shall "make every effort . . . to avoid delay" with language mandating counsel to "complete each stage of the proceedings without delay" and directing the ALJ to require counsel to do so. The ALJ's opposed this change as unnecessary. Also, Mr. Halverson argued that it was unnecessary if it were intended to impose no greater obligation on counsel than the current rule, and that it could lead to unwarranted sanctions under Proposed Rule 3.21(i) if it were meant to impose greater substantive obligations. We have decided not to amend this rule.

The Commission is, however, amending Rule 3.21. The amended rule contains several new provisions governing prehearing case management and establishes a deadline that will require the evidentiary hearing to begin within six months of the entry of the initial prehearing order. The latter

[1] The other officials on whose behalf Mr. Halverson commented are Richard A. Whiting, Immediate Past Chairman of the Section; James. F. Rill, Finance Officer; Irving Scher, Section Delegate to the House of Delegates; Caswell O. Hobbs, III, National Institutes Chairman; and Michael L. Denger, Vice-Chairman. The comments were filed for these individuals "in their capacity as frequent practitioners before the Commission and not for the American Bar Association nor its Section of Antitrust Law."

requirement will apply except where the complexity of the case or circumstances beyond the control of the parties require modification. The purpose of these changes is to reduce delay in adjudicative proceedings, to emphasize the role of the ALJ in managing and controlling the progress of litigation, and to encourage counsel to prepare for trial expeditiously.

As we observed in proposing the amendments, Administrative Law Judges already have broad powers to manage cases. Discovery in Part 3 matters, for example, can only proceed if authorized by the ALJ. See Rule 3.31(b)(1). A more structured prehearing procedure, however, should further expedite litigation of administrative complaints.

Recent amendments to the Federal Rules of Civil Procedure emphasize the importance of effective case management. In 1983, for example, Rule 16 of the Federal Rules was amended to require that judges or magistrates consult with the parties and enter a scheduling order in all civil cases, except categories of cases specifically exempted by local rules. See Fed. R. Civ. P. 16(b). According to the advisory committee's notes, this change, and other changes to Rule 16, were intended to "[make] scheduling and case management an express goal of pre-trial procedure." Even before Rule 16 was amended, moreover, many courts had adopted local rules requiring pretrial case management. *See* Peckham, "The Federal Judge as Case Manager: The New Role in Guiding a Case from Filing to Disposition," 69 *Calif. L. Rev.* 770 (1981).

A. The Six-month Provision

The rule requires that the scheduling order establish a trial date. Unless the complexity of the cases or circumstances beyond the control of the parties necessitate more time, the date must be within six months after the order is entered. Once established, moreover, the date can only be modified for good cause.[3]

The agency's ALJ's strongly supported this proposal. Mr. Halverson, however, vigorously opposed the requirement, and Sullivan & Cromwell commented that the ALJ should be required to set some trial date but that the six-month standard should be omitted.

[3] The proposed rule also said that dates set by the scheduling order could be modified "to prevent manifest injustice." The prevention of manifest injustice, however, is necessarily "good cause" for modification. The phrase is therefore superfluous and is not included in the rule.

Mr. Halverson opposed the six-month requirement as unnecessary because the Commission can already act with the expedition needed to protect the public interest; he noted, for example, that Rule 3.42(c) grants the ALJ "all powers necessary" to avoid delay. Mr. Halverson also commented that a six-month requirement is unfair because complaint counsel often will have had extensive pre-complaint investigation, while respondent cannot be expected to begin preparation until a complaint is issued. Furthermore, he noted that Commission cases may raise complex legal and factual issues, may require extensive third-party discovery or time-consuming survey research, or may require the location and preparation of experts and other witnesses. For these reasons, Mr. Halverson concluded, many cases cannot be brought to trial within six months.

Mr. Halverson is of course correct in observing that existing Commission rules require expedition in Part 3 matters. These other rules, however, address the issue of expedition in general terms. The changes to Rule 3.21 establish specific procedures to implement the goal and are therefore meaningful supplements to the existing rules.

The setting of a trial date, moreover, is one significant action that will promote the goal of expedition. As Mr. Halverson notes, the date will have to be set on the basis of incomplete information, and the complexity of a case may not become apparent until after the order is issued. However, the judgment that the ALJ must make in setting a trial date is little different than the judgment that a judge or magistrate must make under Rule 16 of the Federal Rules of Civil Procedure. Under Fed. R. Civ. P. 16(b), the judge or magistrate must in most cases issue a order, within 120 days after the filing of a complaint, that limits the time to complete discovery. Like the Federal Rules, moreover, Commission Rule 3.21 addresses situations in which the date proves unrealistic by providing that it can be changed for good cause.

We have also concluded that the six-month standard included in the rule should not prove unfair to respondents. The critical issue is whether the rule allows respondents adequate time to prepare their defense. The proposed rule generally allows eight or more months after the complaint to prepare a case, including a period of more than two months that may precede the scheduling conference. Past experience demonstrates that this is adequate time to prepare many cases. *See, e.g., George's Radio and Television Co., Inc.*, 94 FTC 1135, 1139 (1979) (less than 7 months between complaint and trial); *E.I. DuPont de Nemours & Co.*, 96 FTC 653, 655–56 (1980) (less than 8 months); *Litton Industries, Inc.*, 97 FTC 1, 10 (1981) (less than 8 months); *Cliffdale Associates, Inc.* 103 FTC 110, 125 (1983) (less than 7 months).

In the past, most Commission cases have not been brought to trial this rapidly. It is intended, as a result of these changes, that all cases that can be brought to trial within this schedule will be prepared at this pace. In any event, as noted above, the trial date can be set for more than six months after the scheduling order if the complexity of the case or circumstances beyond the control of the parties so requires. In addition, as further noted above, a previously-established trial date can be modified when, for good cause, trial preparation takes longer than anticipated. These provisions adequately protect parties who cannot realistically prepare for trial within six months.

We have concluded, finally, that a rule establishing a six-month deadline is preferable to a rule that simpy directs the Administrative Law Judge to set some trial date. The comment filed by Sullivan & Cromwell argues that a six-month standard with an exception for special circumstances will create incentives for a party to seek an extended trial date. These incentives, however, will exist as long as the ALJ is required to set any trial date in the order. The remedy for this problem is not to eliminate the six-month standard, as Sullivan & Cromwell concludes, but to rely on the judge to weigh the arguments that are made and to set a later trial date only when the arguments are persuasive. Sullivan & Cromwell also comments that substantial litigation will result because unrealistic trial dates will generate motions to modify the scheduling order. When a six-month trial date is not realistic, however, the judge can set a later date at the outset.

B. Section-by-Section Analysis of Rule 3.21

1. *Rule 3.21(a)—Nonbinding statements*—Rule 3.21(a), which incorporates language from the published rule and from existing Rule 3.21(b), requires that counsel sequentially exchange nonbinding statements of claims and defenses before the scheduling conference.

The proposed rule contained more extensive requirements mandating that counsel meet and exchange witness lists and documents. Mr. Halverson,

however, opposed the entire provision as premature and impracticable. The ALJ's did not object to the provision, but commented that the exchange of documents and witness lists was premature and would accomplish little and that the other requirements in the proposed section were unnecessary because the judges typically impose them at the first prehearing conference.

These comments raise substantial questions about the proposed section and we therefore adopt only the requirement that the parties exchange nonbinding statements that set forth the theories of the case and the defense, the issues to be tried, and what they intend their evidence to show. These statements will focus pre-trial preparation and will assist the ALJ in preparing a scheduling order. The exchange of statements at this point, moreover, is not premature. Respondents' counsel as well as complaint counsel have typically participated in the pre-complaint investigation and pre-complaint negotiations. Counsel should therefore be in a position to define, on a preliminary, nonbinding basis, the theories of their case or defense. Furthermore, we have modified the proposed rule to require that statements be exchanged sequentially. Respondents will therefore benefit from receiving complaint counsel's statement before they must prepare their own.

Because the nonbinding statements may be used as continuing guideposts throughout the proceeding, the rule provides that they may be modified at the close of discovery or at such other times as the Administrative Law Judge may direct.

2. *Rule 3.21(b)—Scheduling conference*—Rule 3.21 requires that a scheduling conference be held in every case.[3] The rule sets forth matters that must be considered at the conference, listing a few examples: the parties' factual and legal theories, potential stipulations of law, fact, or admissibility of evidence, a schedule of proceedings and possible limitations on discovery. Additional matters are encompassed within an open-ended directive that the parties be prepared to address "other possible agreements or steps that may aid in the orderly and expeditious disposition of a proceeding."

Under the rule, the scheduling conference must be held no later than ten days after the last nonbinding statement is filed. We have not included a deadline that is geared to the filing of the complaint, although the proposed rule would have required that the meeting be no later than sixty days after the complaint was filed. The prehearing process will be most productive if counsel first exchange the statements required by Rule 3.21(a) and, under the sixty-day requirement, this might not be possible.[4]

3. *Rule 3.21(c)—Prehearing scheduling order*—Rule 3.21(c) requires that a scheduling order be issued not later than fourteen days after the scheduling conference. For the reasons discussed previously, the scheduling order must include a trial date and, unless the complexity of the case or circumstances beyond the control of the parties require a later date, this trial date must be within six months after the entry of the scheduling order. The scheduling order may be modified only for good cause.[5]

4. *Rule 3.21(d)—Additional prehearing conferences and orders*—Rule 3.21(d) provides that the ALJ may hold additional prehearing conferences and issue additional prehearing orders.

5. *Rule 3.21(e)—Public access and reporting*—The rule retains this provision, which allows the ALJ to determine if hearings should be open to the public and if they should be stenographically recorded.

6. *Provisions of the proposed rule that are not adopted*—Several provisions of the proposed rule have not been adopted. First, Proposed Rule 3.21(e) would have required that a final prehearing conference be held not less than 21 days before the evidentiary hearings, and Proposed Rule 3.21(f) would have required that the ALJ subsequently enter a final prehearing order incorporating a target date for the completion of evidentiary hearings. The ALJ's, however, commented that a final conference may not be needed in many cases, either because necessary issues had been resolved previously or because they could be handled expeditiously by letter or conference call. They also opposed the requirement that a target date be set for the completion of evidentiary hearings. The ALJ's comments raise serious doubt about the need for a final prehearing conference and order in every case. Moreover, the Administrative Law Judge assigned to a case will be in constant contact with the parties once the hearings begin, and unnecessary delay should therefore be less of a problem during the evidentiary hearings than during the prehearing phase of the proceeding. Therefore, we have decided not to require a final prehearing conference and order in every case.

We have also deleted Section 3.21(g) of the proposed rule, which provided that prehearing conferences may be held for the purpose of accepting returns on *subpoenas duces tecum*. This provision is superfluous, because Rule 3.34(b) provides that the ALJ may require that a subpoena return be made at a prehearing conference.

Finally, we have deleted § 3.21(i) of the Proposed Rule, which would have authorized the ALJ to impose sanctions. When a party fails to comply with a subpoena or a discovery order, Rule 3.38(b) already authorizes the ALJ to impose any of five specific sanctions or to take any other action as is just. Rule 3.42(d), moreover, authorizes the suspension of an attorney from a proceeding for "dilatory" or "obstructionist" tactics. An additional provision for sanctions therefore seems unnecessary.

List of Subjects in 16 CFR Part 3

Administrative practice and procedures, Claims, Equal access to justice.

For these reasons, Part 3, of Chapter I of Title 16, Code of Federal Regulations, is amended as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. The authority for 16 CFR Part 3 continues to read as follows:

Authority: 15 U.S.C. 46(g).

2. Section 3.21 is revised to read as follows:

§ 3.21 Prehearing Procedures

(a) *Nonbinding statements.* Not later than ten days after the answer is filed by the last answering respondent, complaint counsel shall file a nonbinding statement setting forth in

[3] The proposed rule had referred to this as an "initial prehearing conference." We have changed the title because the ALJ may call earlier prehearing conferences, pursuant to Rule 3.21(d), prior to the "scheduling conference."

[4] Statements might not be filed within sixty days, for example, if a motion for a more definite statement is filed under Rule 3.11(c), or if an extension of time to file an answer is granted under Rule 4.3(b).

[5] No special provision is made for the timing of motions to modify the scheduling order; like other motions, they may be filed at any time consistent with the scheduling order and under Rule 3.22(b) answers may be filed within ten days after the motions are served. It is unnecessary to complicate the rules by providing, as the proposed rule would have done, special deadlines for certain motions to modify the scheduling order.

detail the theory of the case, the issues to be tried, and what complaint counsel expect their evidence to prove. Not later than ten days after complaint counsel's statement is served, each respondent shall file a nonbinding statement setting forth in detail the respondent's theory of the defense, the issues to be tried, and what the respondent expects its evidence to prove. Such statements may be modified upon completion of discovery or at such other times as the Administrative Law Judge may direct.

(b) *Scheduling conference.* Not later than ten days after all respondents have filed the nonbinding statement required by paragraph (a) of this section, the Administrative Law Judge shall hold a scheduling conference. At the scheduling conference, counsel for the parties shall be prepared to address their factual and legal theories, potential stipulations of law, fact, or admissibility of evidence, a schedule of proceedings, possible limitations on discovery, and other possible agreements or steps that may aid in the orderly and expeditious disposition of the proceeding.

(c) *Prehearing scheduling order.* Not later than fourteen days after the scheduling conference, the Administrative Law Judge shall enter an order that sets forth the results of the conference and establishes a schedule of proceedings, including a plan of discovery and dates for the submission and hearing of motions. The schedule shall provide for the commencement of the evidentiary hearings within six months after entry of the order, unless the Administrative Law Judge determines that a later date is necessary because of the complexity of the case or circumstances beyond the conrol of the parties. The Administrative Law Judge may modify this order for good casue shown.

(d) *Additional prehearing conferences and orders.* The Administrative Law Judge may hold additional prehearing conferences or enter additional orders for the purpose of aiding in the orderly and expeditious disposition of a proceeding.

(e) *Public access and reporting.* Prehearing conferences shall be public unless the Administrative Law Judge determines in his or her discretion that the conference (or any part thereof) shall be closed to the public. The Administrative Law Judge shall have discretion to determine whether a prehearing conference shall be stenographically reported.

By direction of the Commission, dated October 3, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85-24358 Filed 10-10-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 85-164]

Customs Regulations Amendment Relating to a Change in the Customs Service Field Organization—Hidalgo and Progreso, TX—Correction

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 85-23005 published as T.D. 85-164 in the **Federal Register** on September 26, 1985 (50 FR 38978), § 101.3(b), Customs Regulations (19 CFR 101.3(b)), was amended to change the Customs field organization by extending and redefining the geographical limits of the ports of entry of Hidalgo and Progreso, Texas. The change will enable importers, now operating produce sheds outside the port limits, to apply for a special permit for the immediate delivery for the transportation of fresh fruits and vegetables arriving from Mexico for human consumption.

§ 101.3 [Corrected]

On page 38978, in the third column, last paragraph, last line, the new port limits for Hidalgo included the following territory, ". . . west on FM-1925 to FM-881 . . ." It has been brought to Customs attention that the correct boundary should be ". . . west on FM-1925 to FM-681 . . ." Accordingly, the new port limits of Hidalgo are revised to reflect this change.

EFFECTIVE DATE: October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-8157).

Dated: October 4, 1985.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 85-23743 Filed 10-10-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 540, and 546

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor of several new animal drug applications (NADA's) from the U.S. Animal Health Division of E.R. Squibb & Sons, Inc., to Solvay Veterinary, Inc.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Solvay Veterinary, Inc., P.O. Box 7348, Princeton, NJ 08540, has informed FDA that it has acquired the U.S. animal health business of E.R. Squibb & Sons, Inc., including certain NADA's. E.R. Squibb & Sons, Inc., has confirmed the change. The NADA's affected are:

Product	NADA
1. Boviclox (benzathine cloxacillin)	55-068
2. Crysticillin Injectable (procaine penicillin G)	65-174
3. Dirocide Syrup (diethylcarbamazine)	46-147, 131-808
4. Dirocide Tablets (diethylcarbamazine)	93-512
5. Distrycillin Injectable (procaine penicillin G plus dihydrostreptomycin)	65-089
6. Esb³ Powder & Solution (sodium sulfachloropyrazine monohydrate)	31-553
7. Equipoise (boldenone undecylenate)	34-705
8. Myco-20 (nystatin)	11-398, 12-680
9. Panolog Cream (nystatin-neomycin sulfate-thiostrepton-triamcinolone acetonide)	96-676
10. Panolog Ointment (nystatin-neomycin sulfate-thiostrepton-triamcinolone acetonide)	12-258
11. Potassium penicillin G U.S.P.	55-060
12. Princillin Bolus (ampicillin trihydrate)	55-056
13. Princillin Capsule (ampicillin trihydrate)	55-036
14. Princillin Injection (ampicillin trihydrate)	
Calves	55-064
Swine	55-071
Dogs	55-066
15. Princillin for Oral Suspension (ampicillin trihydrate)	55-061
16. Princillin Powder (ampicillin trihydrate)	55-050
17. Procaine penicillin G in oil	65-130
18. Procaine penicillin for animal feed 50 percent	46-666
19. ReCovr Injectable (tripelennamine hydrochloride)	6-417
20. Rheaform Bolus (iodochlorhydroxyquin)	31-448
21. Tetracycline capsules	65-064
22. Vetalog Cream (triamcinolone acetonide)	46-146
23. Vetalog Injection (triamcinolone acetonide)	12-198
24. Vetalog Powder (triamcinolone acetonide)	99-388
25. Vetalog Tablet (triamcinolone acetonide)	13-624
26. Vetame Tablets & Injection (trifluopromazine hydrochloride)	11-462
27. Vetisulid Bolus (sulfachlorpyridazine)	33-127
28. Vetisulid Injectable (sulfachlorpyridazine)	33-318
29. Vetisulid Powder (sulfachlorpyridazine)	33-373

Product	NADA
30. Vetisulid Oral Suspension (sulfachlorpyridazine)	40-181
31. Vetisulid Tablets (sulfachlorpyridazine)	33-319
32. Follutein (chorionic gonadotropin)	6-103
33. Gastrografin (diatrizoate meglumine and diatrizoate sodium)	91-327
34. Ophthaine (proparicaine hydrochloride)	9-035
35. Renografin-76 (diatrizoate meglumine and diatrizoate sodium)	91-192
36. Renovist (diatrizoate meglumine and diatrizoate sodium)	91-240

This change of sponsor does not involve any changes in current manufacturing facilities, equipment, procedures, or production personnel. FDA is amending the regulations providing for use of the drugs to reflect the change of sponsor.

FDA is also amending 21 CFR 510.600 to add Solvay Veterinary, Inc., to the list of sponsors of approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs, oral.

21 CFR Part 522

Animal drugs, injectable.

21 CFR Part 524

Animal drugs, topical

21 CFR Part 540

Animal drugs, penicillin.

21 CFR Part 546

Animal drugs, tetracycline.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts, 510, 520, 522, 524, 540, and 546 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended by adding a new sponsor alphabetically in paragraph (c)(1) and numerically in paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Solvay Veterinary, Inc., P.O. Box 7348, Princeton, NJ 08540	053501
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
053501	Solvay Veterinary, Inc., P.O. Box 7348, Princeton, NJ 08540.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.563 [Amended]

4. Section 520.563 *Diatrizoate meglumine and diatrizoate sodium oral solution* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 520.622a [Amended]

5. Section 520.622a *Diethylcarbamazine citrate tablets* is amended in paragraph (a)(2) by removing "000003" and inserting in its place "053501".

§ 520.622b [Amended]

6. Section 520.622b *Diethylcarbamazine citrate syrup* is amended in paragraph (a)(2) by revising "000003" and 021188" to read "021188 and 053501".

§ 520.1158 [Amended]

7. Section 520.1158 *Iodochlorhydroxyquin boluses* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 520.2184 [Amended]

8. Section 520.2184 *Sodium sulfachloropyrazine monohydrate* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 520.2200a [Amended]

9. Section 520.2200a *Sulfachlorpyridazine bolus* is amended in paragraph (c) by removing "000003" and inserting in its place "053501".

§ 520.2200b [Amended]

10. Section 520.2200b *Sulfachlorpyridazine medicated milk and drinking water* is amended in paragraph (c) by removing "000003" and inserting in its place "053501".

§ 520.2200c [Amended]

11. Section 520.2200c *Sulfachlorpyridazine tablets* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 520.2481 [Amended]

12. Section 520.2481 *Triamcinolone acetonide tablets* is amended in paragraph (c) by removing "000003" and inserting in its place "053501".

§ 520.2482 [Amended]

13. Section 520.2482 *Triamcinolone acetonide oral powder* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 520.2582 [Amended]

14. Section 520.2582 *Triflupromazine hydrochloride tablets* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

15. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)), 21 CFR 5.10 and 5.83.

§ 522.204 [Amended]

16. Section 522.204 *Boldenone undecylenate injection* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 522.563 [Amended]

17. Section 522.563 *Diatrizoate meglumine and distrizoate sodium injection* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 522.1081 [Amended]

18. Section 522.1081 *Chorionic gonadotropin for injection; chorionic genadotropin suspension* is amended in paragraph (a)(2)(i) by revising "000003" and 000381" to read "000381 and 053501".

§ 522.2200 [Amended]

19. Section 522.2200 *Sulfachlorpyridazine* is amended in paragraph (c) by removing "000003" and inserting in its place "053501".

§ 522.2483 [Amended]

20. Section 522.2483 *Sterile triamcinolone acetonide suspension* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 522.2582 [Amended]

21. Section 522.2582 *Triflupromazine hydrochloride injection* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

22. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1600a [Amended]

23. Section 524.1600a *Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 524.1600b [Amended]

24. Section 524.1600b *Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ophthalmic ointment* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 524.1982 [Amended]

25. Section 524.1982 *Proparacaine hydrochloride ophthalmic solution* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

§ 524.2481 [Amended]

26. Section 524.2481 *Triamcinolone acetonide cream* is amended in paragraph (b) by removing "000003" and inserting in its place "053501".

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

27. The authority citation for 21 CFR Part 540 continues to read as follows:

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

§ 540.107b [Amended]

28. Section 540.107b *Ampicillin trihydrate capsules* is amended in paragraph (c)(2) by removing "000003" and inserting in its place "053501".

§ 540.107c [Amended]

29. Section 540.107c *Ampicillin trihydrate for oral suspension* is amended in paragraph (c)(2) by removing "000003" and inserting in its place "053501".

§ 540.107d [Amended]

30. Section 540.107d *Ampicillin trihydrate soluble powder* is amended in paragraph (c)(2) by removing "000003" and inserting in its place "053501".

§ 540.107e [Amended]

31. Section 540.107e *Ampicillin trihydrate boluses* is amended in paragraph (c)(4)(i) by removing "000003" and inserting in its place "053501".

§ 540.181b [Amended]

32. Section 540.181b *Potassium penicillin G in drinking water* is amended in paragraph (c)(2) by removing "000003" and inserting in its place "053501".

§ 540.207a [Amended]

33. Section 540.207a *Sterile ampicillin trihydrate suspension* is amended in paragraph (c)(1)(i) by removing "000003" and inserting in its place "053501".

§ 540.274b [Amended]

34. Section 540.274b *Procaine penicillin G aqueous suspension* is amended in paragraph (c)(2)(ii) by removing "000003" and inserting in its place "053501".

§ 540.274c [Amended]

35. Section 540.274c *Procaine penicillin G in oil* is amended in paragraph (c)(2) by removing "000003" and inserting in its place "053501".

§ 540.814a [Amended]

36. Section 540.814a *Sterile benzathine cloxacillin for intramammary infusion* is amended in paragraph (c)(1)(ii) by removing "000003" and inserting in its place "053501".

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

37. The authority citation for 21 CFR Part 546 continues to read as follows:

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

§ 546.180a [Amended]

38. Section 546.180a *Tetracycline hydrochloride capsules* is amended in paragraph (c)(5)(i)(c) by revising "000003, 000009, and 000693" to read "000009, 000693, and 053501".

Dated: October 4, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

FR Doc. 85-24362 Filed 10-10-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[T.D. 8057]

26 CFR Part 48

Excise Tax Treatment of Sales of Retreaded Tires

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the definition of manufacture of a new tire. Under the existing regulations, one retreading process, bead-to-bead retreading, constitutes manufacture of a new tire for purposes of the excise tax imposed on tire manufacturers by section 4071 of the Code, while retreading of tires by another process, shoulder-to-shoulder retreading, does not constitute manufacture of a new tire. Under the regulations as hereby amended, neither bead-to-bead nor shoulder-to-shoulder retreading constitutes manufacture of a new tire.

DATE: The regulations are effective for tires sold on or after January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Neal E. Sheldon of the Interpretative Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:I) 202–566–3226, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1984, the **Federal Register** (49 FR 4790) published proposed amendments to the Excise Tax Regulations (26 CFR Part 48) under section 4071 of the Internal Revenue Code of 1954. The amendments were proposed to change the definition of manufacture of a new tire by excluding from such definition retreading of a tire by the bead-to-bead process. One comment was received with respect to the proposed amendment, and no public hearing was requested or held. After consideration of this comment, the proposed amendments are adopted by this Treasury decision without change.

This Treasury decision is issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a

Regulatory Impact Analysis is therefore not required. Although a notice of proposed rulemaking which solicited public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirement of 5 U.S.C. 533 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations was Jane E. Wilson of the Interpretative Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

Adoption of amendments to the regulations.

Accordingly, 26 CFR Part 48 is amended as follows:

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

Authority: 26 U.S.C. 7805.

Par. 2. Section 48.4071–1(d) is revised to read as set forth below:

§ 48.4071–1 Imposition and rates of tax.

* * * * *

(d) *Recapped or retreaded tires.* The recapping or retreading of a tire, whether from shoulder-to-shoulder or bead-to-bead, does not constitute manufacture of a taxable tire. The tax on tires imposed by section 4071 does not apply to the sale of a recapped or retreaded tire, except that a used tire or tire carcass not previously sold in the United States that is recapped or retreaded from shoulder-to-shoulder or bead-to-bead in a foreign country and imported into the United States is subject to the tax imposed by section 4071 when such tire is sold or used by the importer. This paragraph (d) is effective for recapped and retreaded tires sold on or after January 1, 1984.

* * * * *

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Approved: September 24, 1985.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–24444 Filed 10–10–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Ethylene Oxide; Labeling Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This document amends OSHA's final ethylene oxide (EtO) standard (29 CFR 1910.1047) to provide an exception (new paragraph (i)(1)(iii)) from the labeling requirements of paragraph (j)(i)(ii) of that section, for EtO containers which have been labeled pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This amendment is believed to be necessary to avoid legal and substantive conflict with FIFRA and regulations issued pursuant to FIFRA by the Environmental Protection Agency (EPA). In addition, this notice amends paragraph (i)(1)(i)(A) by modifying the signal word of OSHA's EtO label from "Caution" to "Danger" to conform both to that required for EtO signs by paragraph (j)(1)(i) of the OSHA standard and with the signal word on the FIFRA label, and by revising the hazard language on the label.

DATES: New paragraphs (j)(1)(iii) and (m)(3) are effective October 11, 1985.

Revised paragraph (j)(1)(i)(A) is effective January 9, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

1. Events Leading to this Action

OSHA promulgated a revised standard for EtO on June 22, 1984 (49 FR 25796). One provision of that standard requires employers to "ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level" (29 CFR 1910.1047(j)(1)(ii)). The label to be affixed is required to include the word "Caution." OSHA's proposed rule for EtO (48 FR 17248) has also provided for a similar container labeling requirement but included the following exemption as proposed paragraph (k)(2)(iii):

> The labeling requirements under this section do not apply where EtO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when it is labeled pursuant to that Act and regulations issued under that Act by the Environmental Protection Agency;

The rationale for this exemption was described in the proposed rule as follows:

> A number of EtO products which are utilized as sterilants are registered by the EPA as pesticides, in accordance with FIFRA. EPA must establish terms and conditions for the registration of such products sufficient to ensure that use of the products "will not generally cause unreasonable adverse effects on the environment." These terms and conditions may include restrictions and limitations on use which all users are obligated by law to comply with. For these reasons OSHA is proposing that the labeling requirements under this paragraph not apply to any EtO product registered as a pesticide, as such term is defined under FIFRA, for which labeling is required by EPA under FIFRA and regulations issued pursuant thereto. OSHA feels that this provision is appropriate to mitigate any dual regulatory requirements pesticide registrants may face with regard to container labeling. It is OSHA's understanding, however, that EPA is presently developing EtO labeling requirements that will provide health warnings similar to those on the OSHA label (e.g., cancer and reproductive hazard). 48 FR at 17306.

The final labeling rule adopted by OSHA for EtO did not include the proposed exemption because the Agency "determined that the label required by the final EtO standard does not conflict with EPA labels under FIFRA." (49 FR at 25790). EPA, however, subsequently informed OSHA that the content of OSHA's label for EtO is inconsistent with the label which EPA requires under FIFRA and the regulations issued under FIFRA. It is EPA's view, based upon that Agency's analysis of FIFRA and EPA regulations, that OSHA labeling requirements would impose conflicting statutory and regulatory obligations on employers who also are subject to labeling requirements under FIFRA. The nature of the conflict was set forth concisely in an October 19, 1984 letter from Stephen Schatzow, Director of EPA's Office of Pesticide Programs, to Gary Strobel, Director of OSHA's Regulatory Review Committee (Ex. 195, OSHA Docket No. H–200) as follows:

[T]he OSHA final standard requires that further labeling be added to registered pesticide products containing EtO which currently bear labeling approved by EPA under FIFRA. Such a requirement poses both legal and substantive concerns.

To the extent that § 1910.1047(j)(1)(ii) contemplates that the employer will be responsible for affixing additional labeling not included in the approved FIFRA labeling to individual pesticide containers, EPA believes that this provision is inconsistent with an existing statutory provision. Section 12(a)(2)(A) of FIFRA, 7 U.S.C. 136j(a)(2)(A), states, "It shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act." We believe that any employer or other user who affixes additional labeling to the container of a registered pesticide product would be violating this provision. While EPA could as a matter of prosecutorial discretion decline to apply this provision to user labeling when it is required by other Federal agencies, it is our view that permitting any alteration or amendment by a user of approved labeling for a registered pesticide product could have pernicious consequences. Label language is the principal mechanism by which EPA requires users of pesticide products to conform to the terms and conditions of registration.

In addition to this basic legal problem, EPA has additional substantive concern about the specific label language which the OSHA EtO standard requires. Section 1910.1047(j)(1)(ii) requires that precautionary labeling for each affected product must, among other things, include the word "CAUTION". EPA regulations, 40 CFR § 162.10(h), establish specific requirements concerning the warnings and precautionary statements which must appear on pesticide labeling. A particular "human hazard signal word" is assigned to each pesticide depending on how it is classified with respect to toxicity. Ethylene oxide products fall within Toxicity Category I, the most stringent category, and must therefore state on the front panel of the label the signal word "Danger". In contrast, the signal word "Caution" is utilized for products which fall within Toxicity Categories III and IV. In our experience, the human hazard signal word is one of the elements of the label with which applicators and users are most familiar. Because the human hazard signal word describes the intrinsic toxicity of a pesticide and thereby gives general guidance concerning the measure of care required in handling and using that pesticide, it is critical to avoid using signal words in a confusing manner. Indeed, 40 CFR § 162.10(h)(1)(i)(E) expressly states that, "In no case shall more than one human hazard signal word appear on the front panel of a label."

For the reasons stated above, I hope OSHA will consider amending its final standard for EtO to include the exception to label requirements for registered pesticide products which was previously included in its proposed standard.

OSHA believed that there was merit in EPA's concern that both legal and substantive conflict exist under OSHA's present labeling requirement. The Agency felt that it was necessary and appropriate to amend the final EtO labeling provision to include the exception for EtO products which are subject to labeling under FIFRA, as originally proposed. The amendment would prevent a statutory and regulatory conflict between OSHA's EtO standard and EPA's labeling requirement under FIFRA, and would relieve employers of the burden of complying with such conflicting requirements. This action was proposed in a **Federal Register** notice published on April 1, 1985 (50 FR 12882), and public comment was invited on the appropriateness of the amendment.

II. Summary of Public Comment

OSHA received eight comments in response to the April 1, 1985 FR Notice. Those in opposition to adoption of this amendment, Public Citizen (Ex. 200–2) and NIOSH (Ex. 200–7), expressed concern that employee protection would be diminished by this action. They argued that EPA's current EtO warning label under FIFRA is not as effective as OSHA's because it does not require inclusion of a specific health hazard statement that EtO present a "Cancer and Reproductive Hazard", as does OSHA's label. In addition, Public Citizen stated that they do not agree with EPA's interpretation that there is a legal conflict between OSHA and FIFRA. Public Citizen argued that the FIFRA provision that states that "It shall be unlawful to detach, alter, deface, or destroy, in whole or in part, any labeling required under the [FIFRA] Act", does not expressly prohibit the affixing of supplementary information, such as the warning statement required by the OSHA label (Ex. 200–2).

Proponents of adoption of the proposed amendment agreed with EPA and OSHA that this action is necessary to avoid legal and substantive conflict with EtO regulations issued under FIFRA (Exs. 200–1, 200–2, 200–3, 200–4, 200–5, 200–6). The Association of Ethylene Oxide Users pointed out that without this amendment ". . . any employer who changed any lable registered with EPA in an attempt to comply with OSHA's labeling requirement would be in violation of FIFRA. In other words, compliance with OSHA's requirements could force employers to violate federal law "(Ex. 200–5). The State of Washington, Department of Labor and Industries, stated that "we agree that the labeling requirement of the Ethylene Oxide (EtO) standard should not apply to EtO where it is used as a pesticide and is labeled pursuant to . . . FIFRA . . ." (Ex. 200–6). 3M Company agreed that that there was ". . . inconsistency between the OSHA and EPA regulations with regard to labeling requirements for ethylene oxide . . ." and that they ". . . go on record as supporting the proposed labeling change . . ." (Ex. 200–4). Linde Division of Union Carbide (Linde) also commented . . . that EPA should have responsibility for the labeling requirements for pesticide ethylene oxide . . ." (Ex. 200–1).

In addressing the inconsistency in the OSHA label signal word (CAUTION) and the EPA signal word (Danger), Linde recommended the following:

We believe that the precautionary warnings and the signal word on labels should be the same for both industrial ethylene oxide and pesticide ethylene oxide. In fact, the sign warnings under paragraph (j)(1)(iii) should be the same as the label warnings under paragraph (j)(1)(ii). For example, paragraph (j)(1)(i) states: "Danger, Ethylene Oxide, Cancer Hazard and Reproductive Hazard" (plus the "authorized personnel" statement) on the sign. However, paragraph (j)(1)(ii) states: "Caution, contains Ethylene Oxide, Cancer and Reproductive Hazards." If this latter label statement is retained in Part 1910.1047, the OSHA label for industrial ethylene oxide will read differently than the EPA label for pesticide ethylene oxide. Users of ethylene oxide will be confronted with two different signal words depending upon whether the ethylene oxide is used for industrial purposes or pesticide purposes. Packagers of ethylene oxide will need to have two different labels for the same product, depending upon its use for industrial applications or pesticide applications.

Linde also agreed that, based upon paragraph (j)(1)(i) and Appendix B6 of ANSI standard Z129.1–1982, the signal word for signs and for labels should be "Danger" for ethylene oxide and its mixtures. They contended, however, that the statement of hazard on OSHA labels should read "Cancer Hazard and Reproductive Hazard" instead of "Cancer and Reproductive Hazard", similar to the signs, because these are separate and distinct hazards. (Ex. 200–1)

NIOSH concurred with EPA's view that the hazard signal word for EtO should be "Danger" instead of "Caution", based on the hazard criteria established for substances, such as EtO, that are assigned by EPA to Toxicity Category I (Ex. 200–7).

III. OSHA's Conclusions

After review of the positions and arguments set forth by EPA and public comments, OSHA has determined that amendment of the ETO labeling requirement is necessary and appropriate to avoid legal and

substantive conflict with FIFRA and regulations issued under FIFRA by EPA. OSHA agrees with EPA that this conflict is a ". . . basic legal problem" (Ex. 195) that centers on the question as to whether it is a violation of FIFRA if employees or other users affix additional labeling (OSHA's label) to the container of a registered pesticide product. EPA and other commentors point to section 12(a)(2)(A) of FIFRA, 7 U.S.C. 136(a)(2)(A), which states that "It shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act." EPA stated that ". . . any employer . . . who affixes additional labeling [to the EPA label] would be violating this provision." (Ex. 195). OSHA agrees with EPA and with the Association of Ethylene Oxide Users argument that ". . . any employer who changed any label registered with EPA in an attempt to comply with OSHA's labeling requirement would be in violation of FIFRA" (Ex. 200–5). There were no substantive legal discussions provided to the record to refute EPA's interpretation that including an OSHA label on the same container required to carry an EPA label is a violation of FIFRA. Thus, OSHA believes that amending the EtO labeling requirement, as proposed, is appropriate.

As noted earlier, Public Citizen and NIOSH contend that the OSHA label for EtO is more effective than that currently prescribed for pesticides by EPA. OSHA acknowledges that the OSHA label is more detailed as to its discussion of the hazards of EtO exposure. However, under the preemption provision of the OSH Act (section 4(b)(1)) 29 U.S.C. 653(b)(1)), the important consideration is simply whether the working conditions in question have been regulated by another Federal agency having statutory authority over those conditions. The comparative efficacy of the OSHA label as compared to the EPA label is not appropriate for consideration in the preemption calculus. In this case, the EPA labeling requirements under FIFRA are clearly an exercise of statutory authority over working conditions, and would therefore preempt the OSHA label for those conditions.

OSHA also defers to EPA's interpretation of its own statute, FIFRA, as to the legal effect of adding OSHA's supplemental labeling information to the FIFRA label. Since the additional information on the OSHA label would be an alteration of the approved FIFRA label, section 12(a)(2)(A) of FIFRA would not allow the supplemental OSHA information to be added to the product's approved labeling under FIFRA.

In addition to the legal arguments on the preemption issue, OSHA is convinced that there is a compelling policy argument for recognition of the FIFRA label by OSHA. Prudent regulatory policy dictates that duplicative and conflicting regulation by agencies with overlapping statutory mandates be avoided wherever possible. In the context of EtO regulation, the labeling requirements imposed by EPA under FIFRA are not bound by the limitations of employer-employee relationships, but extend to *any* misuse or mislabeling by *any* EtO applicator. Thus, the provisions of EPA's EtO label, together with the sanctions imposed for violation of the label extend to all pesticide uses of EtO and go far beyond workplace exposures. OSHA believes that the potential for conflict between the OSHA label and the FIFRA label, and the resulting confusion for the regulated parties as to which requirements are applicable, can be avoided through OSHA acceptance of the FIFRA label for products already required to be labeled under FIFRA. This will make it unnecessary for manufacturers and formulators of EtO pesticides to place different safety and health labels on their products depending on where and by whom they are to be used.

Employers who use EtO as a pesticide will not need to be concerned about conflicting EPA and OSHA labeling requirements and the risk of complying with one statute at the expense of possibly violating the other.

OSHA also believes that allowing the FIFRA label in lieu of the label specified in § 1910.1047(j)(1)(ii) will not result in a significant reduction in the protection provided by the EtO standard. All other provisions of the standard continue to apply, including the sign posting requirements of paragraph (j)(1)(i), the requirements for material safety data sheets (j)(2), and the information and training provisions (i)–(j)(3). These requirements and either the OSHA or FIFRA label will continue to assure that employees who are potentially exposed to EtO in the workplace are informed about the hazards of EtO exposure and the steps necessary to provide protection from those hazards.

In addition, OSHA has determined that the signal word "Caution" on OSHA's EtO label should be changed to "Danger" to be consistent with both its own EtO signs and with EPA's signal word on EtO pesticide labeling. OSHA agrees with Linde (Ex. 200–1) that if the signal words are not identical, there is potential for confusion among users of ethylene oxide. It does not make sense for the signal word on industrial EtO to read "Caution", while that for pesticide EtO reads "Danger", when the same health hazards are involved with exposure to either product. In addition, as noted by EPA (Ex. 195) and NIOSH (Ex. 200–7), EtO is a substance in EPA Toxicity Category I, and thus is more appropriately labeled "Danger".

Therefore, in addition to adoption of the amendment to the EtO labeling requirement as proposed, OSHA amends its label legend to conform to both the OSHA sign requirement and the FIFRA label by deleting the signal word "Caution" from the existing requirements and adding in its place the signal word "Danger". To further conform to EtO's sign legend that states that EtO presents a "Cancer Hazard and Reproductive Hazard", as suggested by Union Carbide, OSHA is administratively changing the label legend that reads "Cancer and Reproductive Hazard" to read as does the sign legend.

IV. Summary of Regulatory Impact

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Occupational Safety and Health Administration to consider the impact of the final rule on small entities.

The Secretary has determined that this is not a "major" action as defined by section 1(b) of Executive Order 12291. The Secretary also certifies that this action will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Effective Dates

New paragraph (j)(1)(iii), which allows FIFRA labeling in lieu of the OSHA label for EtO pesticides, prevents a statutory and regulatory conflict between OSHA's EtO standard and EPA's labeling requirement under FIFRA, and relieves employers of the burden of complying with such conflicting requirements. For this reason, pursuant to 5 U.S.C. 553(d)(1), this amendment is made effective immediately upon publication.

Revised paragraph (i)(1)(i)(A) changes the signal word and hazard language on OSHA labels for EtO. In order to allow employers sufficient time to make the

necessary label changes, OSHA is making this amendment effective January 9, 1986. Between October 11, 1985 and January 9, 1986, either the current or revised labeling will be acceptable.

Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

Pursuant to sections 4(b)(1), 6(b) and 8 of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), and 5 U.S.C. 553, 29 CFR 1910.1047 is amended as set forth below.

List of Subjects in 29 CFR Part 1910

Ethylene oxide, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, D.C., this 1st day of October 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is therefore amended as follows:

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

Authority: Secs. 4, 6 and 8 of the Occupational Safety and Health Act of 1970. (29 U.S.C. 653, 655, 657); 5 U.S.C. 553; Secretary of Labor's Order 9–83 (48 FR 35736); 29 CFR Part 1911.

2. By revising paragraph (j)(1)(i)(A) of § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(j) * * *

(1) * * *

(i) * * *

(A) Danger
Contains Ethylene Oxide
Cancer Hazard and Reproductive Hazard; and

* * * * *

3. By adding a new paragraph (j)(1)(iii) to § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(j) * * *

(1) * * *

(iii) The labeling requirements under this section do not apply where EtO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when it is labeled pursuant to that Act and regulations issued under that Act by the Environmental Protection Agency.

* * * * *

4. By adding a new paragraph (m)(3) to § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(m) *Dates.*

* * * * *

(3) Labeling. (i) Paragraph (j)(1)(i)(A) of this section as amended is effective January 9, 1986.

(ii) Paragraph (j)(1)(iii) of this is effective October 11, 1985.

* * * * *

[FR Doc. 85–23844 Filed 10–10–85; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 51

[CGD 81–104]

Discharge Review Board (DRB) Regulations

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is revising the regulations governing the establishment and operation of the Coast Guard Discharge Review Board. The existing regulations in Part 51 of Title 33 Code of Federal Regulations (CFR) were promulgated in 1947 and provided for a Board for Review of Discharges and Dismissals. Since that time, Congress enacted Pub. L. 85–857, (10 U.S.C. 1553) which provided a new statutory basis for discharge review boards. These regulations will update the existing regulations and establish the Coast Guard Discharge Review Board to more accurately reflect current law and policy.

EFFECTIVE DATE: November 12, 1985.

FOR FURTHER INFORMATION CONTACT: LT Dave Shippert, Office of Chief Counsel, Room 3314, Coast Guard Headquarters, Washington, D.C. 20593, (202) 426–1534.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM) concerning these regulations was published on January 29, 1985 (50 FR 3922). The public comment period closed on March 15, 1985. No comments were received and these regulations are identical in substance to those proposed in the NPRM. Minor editorial changes were made to § 51.3 to clarify that applications must be received by the DRB within 15 years of the date of discharge as provided in § 51.9(b).

Discussion

The Secretary of Transportation is responsible for the establishment of the Coast Guard Discharge Review Board (DRB) to review the administrative discharge of any former member. (10 U.S.C. 1553). These regulations supplant the existing regulations in Part 51 of Title 33, Code of Federal Regulations (CFR) which had operated in conjunction with Department of Defense DRB Regulations. The result of this revision is to completely sever the Coast Guard DRB from the Department of Defense regulations to emphasize its operation under the Secretary of Transportation.

These regulations are also promulgated in consideration of laws and regulations governing the Veterans Administration. Since October 8, 1977, actions by DRBs cannot remove any of a number of statutory bars to eligibility for benefits administered by the VA. (38 U.S.C. 3103(a)). However, DRB actions upgrading discharges to "honorable" or "general under honorable conditions" may otherwise give rise to eligibility that did not previously exist (38 CFR 3.12(a)(g)). This revision of the Coast Guard's DRB regulations is consistent with law and regulations governing eligibility for veterans' benefits.

Section-By-Section Analysis

Section 51.1 Basis and Purpose. This part provides an overview and description of the Coast Guard DRB.

Section 51.2 Authority. This section states the statutory authority for the establishment of the Coast Guard DRB and outlines the authority of the Secretary and the delegations to the Commandant of the Coast Guard.

Section 51.3 Applicability and Scope. This section provides that any former member, administratively discharged from the Coast Guard, may initiate DRB review of the discharge. In accordance with the Military Justice Act of 1983, discharges resulting from the sentence of a court-martial cannot be reviewed by the DRB except for purposes of clemency. (Pub. L. 98–209, 97 Stat. 1407, 10 U.S.C. 1553(a)). A former member may apply to the DRB for clemency only after exhausting all appellate remedies.

Section 51.4 Definitions. This section defines the operative terms within the proposed rule to provide a clear

meaning of the various components of the discharge review process.

Section 51.5 Discharge Review Objectives. This section outlines the basis for effecting a change in an applicant's discharge.

Section 51.6 Propriety Standard of Review. This section defines the standard of propriety as applied by the DRB.

Section 51.7 Equity Standard of Review. This section defines the standard of equity as applied by the DRB.

Section 51.8 Relevant Considerations. This section provides a list of factors normally considered by the DRB in determining the propriety and equity of an applicant's discharge.

Section 51.9 Discharge Review Procedures. This section gives a step-by-step procedural guideline for the discharge review process.

Section 51.10 Decisions. This section requires written findings and conclusions to be issued by a majority of the DRB.

Section 51.11 Records. This section requires that a record of each DRB proceeding be completed and preserved; and made available to the public through the Armed Forces Reading Room.

Economic Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary. The Coast Guard receives approximately eighty (80) applications for discharge review each year. Although an applicant may spend considerable time and effort, and incur attorney fees in presenting his or her application to the DRB, these regulations require only a written application on a two page form (application for Review of Discharge or Separation from the Armed Forces of the United States—DD Form 293). The costs of preparing the application that are a result of these requirements are so minimal that they cannot be quantified to any extent practicable. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. In addition, this rule falls under the section 3518(c)(1)(b) exception to the Paperwork Reduction Act of 1980. (92 Stat. 2824; 44 U S.C. 3501 et. seq.)

Drafting Information

This document was drafted by LT Dave SHIPPERT, Project Attorney, Office of the Chief Counsel.

List of Subjects in 33 CFR Part 51

Discharge Review Board (DRB) regulations, Administrative practice and procedure, Military personnel.

Regulations

In consideration of the foregoing, Part 51 of Title 33, Code of Federal Regulations, is amended by revising the entire part to read as follows:

PART 51—COAST GUARD DISCHARGE REVIEW BOARD

Sec.

Authority: 10 U.S.C. 1553.

§ 51.1 Basis and purpose.

This part establishes the procedures for review of administrative discharges from the Coast Guard by a Discharge Review Board (DRB) or by the Secretary of the Department, and for the compilation of the record of the DRB determination, made available for public inspection, copying and distribution through the Armed Forces Discharge Review/Correction Board Reading Room.

§ 51.2 Authority.

(a) The Secretry of Transportation has the authority to establish a Discharge Review Board (DRB) to review the discharge of a former member of the United States Coast Guard under the provisions of 10 U.S.C. 1553. This part prescribes the establishment and outlines the procedures of the Coast Guard Discharge Review Board. The Secretary retains the authority to review and take final action on the DRB's findings in the following cases:

(1) Those cases in which a minority of the board requests that their written opinion be forwarded to the Secretary for consideration;

(2) Those cases selected by the Commandant to inform the Secretary of aspects of the board's functions which may be of interest to the Secretary;

(3) Any case in which the Secretary demonstrates an interest;

(4) Any case which the President of the board believes is of significant interest to the Secretary.

(b) The Commandant of the Coast Guard is delegated the authority to:

(1) Appoint members to serve on the Discharge Review Board;

(2) Appoint alternates to serve on the DRB in the event that a regularly appointed member is unavailable;

(3) Designate a member as the President of the DRB; and

(4) Review and take final action on all DRB decisions which are not reviewed by the Secretary

§ 51.3 Applicability and scope.

The provisions of this part apply to the United States Coast Guard including reserve-components and all former members who have been discharged within 15 years of the date upon which application for review is received by the DRB. A former member may apply to the DRB for a change in the character of, and/or the reason for, the discharge. The Coast Guard DRB review is generally applicable only to administrative discharges, however, the DRB may review the discharge of a former member by sentence of a court-martial for the purpose of clemency. A petition for clemency will not be considered by the DRB unless the applicant has exhausted all appellate remedies. Upon a petition for clemency, the DRB shall consider only the equity of the discharge awarded.

§ 51.4 Definitions.

(a) *Applicant.* A former member of the Coast Guard who has been discharged from the service but excluding those discharged by sentence of a court-martial, except as provided in § 51.3. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member.

(b) *Counsel.* An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. It includes, but is not limited to: A lawyer who is a member of the bar of a federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a state agency concerned with veterans affairs; or a representative from private organizations or local government agencies.

(c) *Discharge.* Any formal separation of a member from the Coast Guard which is not termed "honorable",

including dismissals and "dropping from the rolls". This term also includes the assignment of a separation program designator, separation authority, the stated reason for the discharge, and the characterization of service.

(d) *Discharge Review.* The process by which the reason for separation, the procedures followed in accomplishing separation, and the characterization of service are evaluated. This includes determinations made under the provisions of 38 U.S.C. 3103(e)(2).

(e) *Discharge Review Board.* A board consisting of five members of the U.S. Coast Guard, appointed by the Commandant of the Coast Guard and vested with the authority to review the discharge of a former member. The board is empowered to change a discharge or issue a new discharge to reflect its findings, subject to review by the Commandant or the Secretary.

(f) *Hearing.* A proceeding which, upon request of the applicant, is utilized in the discharge review process enabling the applicant and/or the applicant's representative to appear before the DRB and present evidence.

(g) *President.* An officer of the United States Coast Guard appointed by the Commandant as President to preside over the DRB. The President will convene the board and may also serve as a member. If the President does not serve as a member of the DRB, the President shall designate a presiding officer for the board to serve as President.

§ 51.5 Objective of review.

The objective of the discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes if necessary. The DRB will utilize its discretion to reach a fair and just resolution of the applicant's claim. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established which require automatic change, or denial of change, in a discharge.

§ 51.6 Propriety standard of review.

A discharge is deemed to be proper except that:

(a) A discharge may be improper if an error of fact, law, procedure, or discretion was associated with the discharge at the time of issuance which prejudiced the rights of the applicant.

(b) A discharge may be improper if there has been a change in policy by the Coast Guard made expressly retroactive to the type of discharge under consideration.

§ 51.7 Equity standard of review.

(a) A discharge is presumed to be equitable and will not be changed under this section unless the applicant submits evidence sufficient to establish, to the satisfaction of the DRB that:

(1) The policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of that type, provided that current policies or procedures represent a substantial enhancement of the rights afforded a party in such proceedings, and there is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration; or

(2) At the time of issuance, the discharge was inconsistent with standards of discipline in the Coast Guard; or

(3) The applicant's military record and other evidence presented to the DRB, viewed in conjunction with the factors listed in § 51.8 and the regulations under which the applicant was discharged, do not fairly justify the type of discharge received.

(b) If the applicant was discharged with a characterized discharge before June 15, 1983, a change from the characterized discharge to an uncharacterized discharge will not be considered under the provisions of (a)(1) of this section unless specifically requested by the applicant. A determination that a discharge is inequitable according to the provisions of (a)(2) or (a)(3) of this section shall entitle the applicant to a discharge of a type to which the applicant was entitled at the time the original discharge was issued.

§ 51.8 Relevant considerations.

In determining the equity and propriety of a former member's discharge, the DRB shall consider all relevant evidence presented by the applicant. The DRB review will include, but is not limited to, consideration of the following factors:

(a) The quality of the applicant's service. In determining the quality of the applicant's service, the DRB may consider the applicant's dates and periods of service; rate or rank achieved; marks and evaluations received; awards, decorations and letters of commendation; acts of merit; combat service and wounds received; promotions and demotions; prior military service and type of discharge; records of unauthorized absence; records of non-judicial punishment; convictions by court-martial; records of conviction by civil authorities while a member of the Coast Guard; and any other relevant information respecting the applicant which is brought to the board's attention.

(b) The applicant's capability to serve. In determining the applicant's capability to serve, the DRB considers such factors as the applicant's age and education; qualification for reenlistment; capability to adjust to military service; and family or personal problems.

(c) Any evidence of arbitrary, capricious or discriminatory actions by individuals in authority over the applicant.

(d) Any other information respecting the applicant considered by the DRB to be relevant and material to the review of the applicant's discharge.

§ 51.9 Discharge review procedures.

(a) *Preliminary.* Prior to a review, applicants or their representatives may obtain copies of military records by submitting a Standard Form 180, Request Pertaining to Military Records, to the National Personnel Records Center (NPRC), 9799 Page Boulevard, St. Louis, MO. 72132. The request to the NPRC should be submitted prior to submitting the application for review, so that relevant information from the record can be included with the application.

(b) *Initiation of Review.* Review may be initiated by an applicant or by the DRB. The applicant may apply for DRB review of discharge by submitting DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, along with any other statements, affidavits or documentation desired by the applicant. The application must be received by the DRB within fifteen (15) years of the date of the discharge. The application form can be obtained, along with explanatory matter, from Commandant, (G–PE/44) U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593, any regional VA office, or by writing to the Armed Forces Review/Correction Board Reading Room, Pentagon Concourse, Washington, DC 20310.

(c) *Notice.* (1) The DRB will provide notification advising the former member of—

(i) Receipt of the applicant's request;

(ii) The right to appear before the board in person or by counsel; and

(iii) The date of review.

If the former member is deceased, written notice of DRB review will be sent to the surviving spouse, next of kin or legal representative of the former member. If the review is initiated by the

DRB, notification will be sent to the last known address of the former member.

(2) Prior to the initiation of the decision process, the DRB will notify the former member of the date by which requests to examine the documents to be considered by the board must be received. This notice will also state the date by which a request for a hearing must be made and the deadline for filing responses to the board.

(3) An applicant who requests a hearing will be notified of the time and place of the hearing. All expenses incurred by the applicant in DRB proceedings and hearings are the sole responsibility of the applicant and are not obligations of the U.S. Coast Guard or the Department of Transportation. If the applicant fails to appear, except as provided in § 51.9(f), the DRB will review the discharge and reach a decision based upon the evidence of record.

(d) *Withdrawal of Application.* An applicant may withdraw an application without prejudice at any time before the scheduled review. An application which is withdrawn will not stay the running of the 15 year statutory limitation imposed on the authority of the DRB to review the discharge.

(e) The DRB will consider the records and other data submitted by the applicant. The DRB may consider other probative evidence provided that all materials relied on by the DRB, except classified documents, are made available to the applicant and applicant's representative prior to the hearing date (or review date if no hearing is requested). The DRB shall not consider a classified document in the review of a discharge unless a summary of, or extract from, the document (deleting all reference to sources of information and other matters, the disclosure of which would, in the opinion of the classifying authority, be detrimental to the security interests of the United States) is made available to the applicant.

(f) *Postponement of Review or Hearing.* At any time before the date of scheduled review or hearing, an applicant may be granted a continuance, provided the applicant or the applicant's counsel makes a written request for additional time to the DRB which shows good cause to justify the postponement.

(g) *Hearing Procedures.* The following procedures apply to DRB hearings:

(1) DRB hearings are not public. Presence at hearings is limited to persons authorized by the Commandant or expressly requested by the applicant, subject to reasonable limitations based upon available space.

(2) The Federal Rules of Evidence are not applicable to DRB proceedings. The presiding officer rules on matters of procedure and ensures that reasonable bounds of relevancy and materiality are adhered to in the taking of evidence.

(3) An applicant is permitted to make a sworn or unsworn statement. Witness testimony will only be taken under oath or affirmation. An applicant or witness who makes a statement may be questioned by the DRB.

(4) An applicant may make oral or written argument personally or through his or her representative.

(h) *Reconsideration.* The decision of the DRB may not be reconsidered unless—

(1) The only previous consideration of the case was on the motion of the DRB;

(2) Changes in discharge policy occur; or

(3) New, substantial, relevant evidence, not available to the applicant at the time of the original review, is submitted to the DRB.

§ 51.10 Decisions.

(a) The DRB will make written findings and conclusions with respect to all disputed facts and issues. The decision of the DRB is governed by the vote of a majority of the board.

(b) A decision document is prepared for each review conducted by the DRB. This document contains—

(1) The date, character of, and reason for the discharge including the specific authority under which the discharge was issued;

(2) The specific change(s) requested by the applicant;

(3) A list of the issues raised by the applicant;

(4) The circumstances and character of the applicant's service, as extracted from the service record, health record and other evidence presented to the DRB;

(5) References to documentary evidence, testimony or other material relied on by the DRB in support of its decision;

(6) A statement of the DRB's findings with respect to each issue raised by the applicant;

(7) A summary of the rationale and a statement of the DRB's conclusions as to whether any change, correction or modification should be made in the type or character of the discharge or the reason and authority for the discharge; and

(8) A statement of the particular changes, correction, or modification made by the DRB.

§ 51.11 Records.

(a) The record of the discharge review will include—

(1) The application for review;

(2) A summarized record of the testimony and a summary of evidence considered by the DRB other than information contained in the service records;

(3) Briefs or written arguments submitted by or on behalf of the applicant;

(4) The decision of the DRB;

(5) Advisory opinions relief upon for the final action; and

(6) The final action on the DRB decision by the Commandant or Secretary.

(b) The record of the discharge review is incorporated into the service record of the applicant.

(c) A copy of the decision of the DRB and the final action thereon is made available for public inspection and copying promptly after a notice of the final decision is sent to the applicant. However, to the extent required for the protection of privacy rights, identifying details of the applicant and other persons are deleted from the public record.

(1) DRB documents made available for public inspection and copying are located in the Armed Forces Discharge Review/Correction Board Reading Room. The documents are indexed so as to enable the public to determine why relief was granted or denied. The index includes the case number, the date, character of, reason for, and authority for the discharge and is maintained at Coast Guard Headquarters and the Armed Forces Reading Room. The Armed Forces Discharge Review/Correction Board Reading Room publishes indexes quarterly for all boards.

(2) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) should be addressed to: Armed Forces Discharge Review/Correction Board Reading Room, The Pentagon Concourse, Washington, DC 20310.

Issued in Washington, DC on October 4, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85-24289 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest Timber; Downpayment and Bid Monitoring

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements those provisions of the Federal Timber Contract Payment Modification Act requiring: (1) Purchasers to make a cash downpayment for the sale of National Forest timber and (2) the Secretary of Agriculture to monitor bidding patterns on timber sale contracts and to take action to discourage speculative bidding. This rule requires a midpoint payment on sales with contract periods exceeding 1 year. A proposed rule implementing periodic payments in timber sale contracts, as required by the Act, will be published in the near future.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Questions about this final rule may be addressed to: David M. Spores, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 447–4051.

SUPPLEMENTARY INFORMATION:

Background

Section 2(d) of the Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat. 2213; 16 U.S.C. 618) requires that "[e]ffective January 1, 1985, in any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash downpayment at the time the contract is executed and periodic payments to be made over the remaining period of the contract." (16 U.S.C. 618(d)).

Section 2(c) requires the Secretary of Agriculture to "monitor bidding patterns on timber sale contracts and take action to discourage bidding at such a rate as would indicate that the bidder, if awarded the contract, would be unable to perform the obligations as required, or that the bid is otherwise for the purpose of speculation." (16 U.S.C. 618(c)).

Current Forest Service policy requires a downpayment equivalent to 10 percent of the bid value of advertised sales. On scaled sales, once 25 percent of the bid value is cut and scaled, a purchaser may apply the downpayment toward payments due for timber being cut and removed under the contract. On tree measurement sales, the downpayment may be used to initiate cutting, but the purchaser must deposit an equivalent amount after cutting begins until 25 percent of the advertised volume is shown on the timber sale statement of account to have been cut, removed, and paid for.

Sales with longer than 3 years between bid date and termination date currently require a midpoint payment equal to 25 percent of the contract value, including required deposits, or 50 percent of the amout of bid premium, whichever is greater. This is the only periodic payment currently required. Sales of less than 3 years do not now require a midpoint payment. All Forest Service timber sale contracts require that before timber is cut purchasers make payments, or provide payment guarantees, to cover the value of the estimated volume of timber to be cut.

The Forest Service timber sale contract establishes purchaser credits as the method for purchasers to recover costs incurred in constructing roads specified by the contract. The contract also provides that effective purchaser credit shall be considered equivalent to cash for advance deposits under the contract. In 1975, Congress further authorized the transfer of unused effective purchaser credit from one timber sale to another timber sale held by the same purchaser on the same national forest (16 U.S.C. 535). The legislative intent was to permit unused credit earned from road construction to be applied toward charges for timber on another sale on the same Forest. Currently, effective purchaser credit earned on the same national forest may be used for required downpayments for timber sales and for midpoint payments.

The Forest Service currently monitors bidding patterns that indicate competitive and noncompetitive bid situations. Reports are generated through a central computer system and sent to the Regional Foresters. These reports show bid patterns by individual Forests. On April 15, 1982, the Forest Service implemented revised National Forest timber sales procedures (47 FR 16178–16182). The purpose of the new procedures was to encourage a regular flow of products manufactured from National Forest timber, to encourage purchasers to harvest timber early in the National Forest timber contract period, and to help ensure financial responsibility of bidders.

Analysis of Public Comment

The Department of Agriculture published a proposed rule to implement a new cash downpayment and periodic payment requirement in the Federal Register on January 17, 1985, at 50 FR 2591. Public comment was requested by February 19, 1985.

The Forest Service received comments on the proposed rule from 102 individuals and entities. Comments were received from timber sale purchasers (72%), trade associations (12%), private citizens (8%), and Forest Service employees (8%). About half of the respondents were from the Northwest.

General Comments

About one-third of the responses opposed the proposed changes in both the down payment and periodic payment. These reviewers felt that the current requirements already met the intent of the new law. Another third felt that more time was needed to study and evaluate the changes and the impact of the current 10 percent downpayment and midterm payment. About 30 percent of the responses supported the proposal with some changes.

Comments by Section of the Proposed Rule

1. *Downpayment.*

a. The proposed rule would have changed the timing of the downpayment from 30 days after notification of the high bidder to the time when the contract is executed and returned by the purchaser. Several reviewers expressed concern about possible confusion on when the downpayment would be due. The time allowed the purchaser to execute and return a timber sale contract is normally 30 days following award date, unless a purchaser is granted additional time to secure a performance bond. For sales where a purchaser elects the Forest Service to build the specified roads, the final award date may be delayed 120 days or more. Some felt that this will encourage small business purchasers to elect to have the Forest Service build the timber sale roads and, thus, provide an unwarranted advantage over other purchasers who would have to pay the downpayment within 30 days. One suggestion was to require the downpayment within 45 days of the notification of apparent high bid where the purchaser opts to have the Forest Service build the road. The Act states, however, that the "Secretary of Agriculture shall require a cash downpayment at the time the contract is executed." Therefore, the final rule retains the requirement that the purchaser make the downpayment at the time the contract is executed. As noted, this is generally within 30 days of notification of the acceptable high bid.

b. Under the proposed rule, the downpayment could not be applied toward payment for timber or toward the midpoint payment until 25 percent of the advertised volume had been scaled in log-scale sales or shown as cut, removed, and paid for on the timber sale statement of account on tree measurement sales. Some respondents want the downpayment applied when timber removal starts, rather than after 25 percent removal. However, if the downpayment were available to cover stumpage payments when cutting begins, the purpose for the downpayment is defeated, since the transaction would then be a pay-as-you-cut proposition. Several reviewers asked for equity in the timing of release between scaled and tree-measured sales. In our view, the timing of the release of the downpayment is equitable under the proposed systems; therefore, this provision is not changed in the final rule.

c. Under the proposed rule, the amount of the downpayment would increase as the bid value increases. When the average bid premium (the amount a purchaser bids in excess of the advertised value) exceeds 50 percent of the advertised bid value and $25 per thousand board feet (or equivalent), the downpayment would increase from the current requirement of 10 percent of the total bid value to 15 percent. If the average bid premium exceeds 100 percent of the advertised bid value and $50 per thousand board feet (or equivalent), the downpayment would increase to 20 percent of the total bid value. Many reviewers stated that the current requirement of 10 percent downpayment, in conjunction with shorter contract periods and periodic payment requirements, was adequate to provide incentives for early operation of timber sales and a deterrent for bidding sales with the intent of holding the timber for extended periods of time, anticipating market price increases.

Many respondents also felt that the proposed downpayment requirement will cause cash flow problems, will result in lower bid prices and revenue loss to the public and should not be applied to all Regions of the country. Many felt that bidders on deficit sales will bid up the price to eliminate ineffective purchaser road credits, and that this bid premium should not be penalized with a higher downpayment requirement. A few felt that bid premiums may not be solely speculation and should not be penalized. A few reviewers recommended higher percentages for the downpayments, while many felt that other parts of the country should not be penalized for West Coast problems.

Suggestions received from reviewers included applying average advertised values to species bid; making allowance for tranferring effective purchaser credit to deficit sales for downpayments; requiring a 1 percent increase in downpayment for every 5 percent increase in bid; and requiring a downpayment based on 10 percent of appraised value and 30 percent of bid premiums. Some felt that the rule, as proposed, would encourage bid increases to the threshold of the next highest percentage category, thus encouraging large bid premiums.

The downpayment provision has been revised to address these concerns. The final rule includes the following major provisions:

(1) The current requirement of a downpayment equal to 10 percent of the total bid value will be retained.

(2) On Forests where bid ratios have exceeded 1.6 and $25 per thousand board feet (or equivalent) on a significant number of timber sales, as determined by the Regional Forester, the downpayment will be equal to 10 percent of the advertised value, plus 20 percent of the bid premium.

(3) Only the portion of the bid premium above the amount of the ineffective purchaser credit will be used for determining bid ratios and bid premiums for determining the downpayment requirement.

2. *Midpoint Payments.*

Current Forest Service policy requires a midpoint payment on sales of more than 3 years duration between bid date and termination date. Purchasers must have paid an amount equal to 25 percent of the contract value, including required deposits, or 50 percent of the amount of the bid premium, whichever is greater, by the end of the normal operating season that follows the midpoint of the timber sale contract. The midpoint of the timber sale contract is determined on the basis of the timber sale contract period remaining after the specified road completion date. All timber sale contracts require payments or payment guarantees in advance of cutting timber.

In consideration of comments received, the Forest Service will retain the existing requirement for midpoint payments, but the Agency will extend this requirement to all timber sale contracts of one year or more duration between bid date and termination date. Sales of less than a year's duration are generally paid for when issued or have sufficient payments by midpoint. Monitoring these sales for midpoint payments would not be cost-effective.

The midpoint payment was originally implemented to deter speculative bidding and is expanded to implement section 2(c) of the Act until periodic payments under section 2(d) become effective. There are many issues related to annual payments that should be considered before implementing periodic payments. The Forest Service will review the use of annual periodic payments, along with a method of pooling these payments for two or more timber sales a purchaser may hold, and a provision for market related contract term adjustments. A proposed rule covering these items will be published in the Federal Register for public review and comment.

3. *Monitoring to Determine Speculative Bidding.*

The Chief of the Forest Service will require Regional Foresters to monitor bidding patterns on timber sale contracts to determine if speculative bidding is occurring or if the bidding is at such rates that purchasers would be unable to perform their obligations under the contract. The Regional Foresters will report their recommendations to the Chief if any changes are needed in the timber sale procedures to discourage speculative bidding. This provision is necessary to fully comply with section 2(c) of the Act, requiring the Secretary of Agriculture to monitor bidding patterns on timber sales.

4. *Other Comments on Speculative Bidding.*

There were several comments about implementing bidder responsibility requirements to discourage speculative bidding. One person suggested that 50 percent of the offered timber sales be sold only to those companies which can process within their own facilities 50 percent of the advertised volume within the contract period.

Some respondents felt that the proposed changes will fail to curtail speculative bidding but will accelerate harvesting and maximize cash flow to the Treasury. Suggestions from reviewers included allowing purchasers to use Treasury Bills to guarantee payment; increasing deposits if prompt harvest does not occur; extending time to complete purchaser credit roads; and applying the downpayment and periodic payment changes to resales of defaulted sales.

Bidders responsibility and other suggestions will be considered further in development of additional rules. The Forest Service will continue to offer resales with conditions and requirements as close to the original offering as possible to help mitigate

damages and to facilitate the determination of the actual damages from the default.

Regulatory Impact

The Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this regulation is not a major rule. It implements those requirements of the Federal Timber Contract Payment Modification Act requiring the Secretary of Agriculture to provide for downpayments for Forest Service timber sale contracts, to monitor timber sale bidding patterns, and to take action to discourage speculative bidding.

This rule exclusive of the statutory requirements, will not have an annual effect on the economy of $100 million or more and will not result in a major increase in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have significant adverse effect on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The final rule should strengthen the United States forest products industry by deterring speculation and, thereby, should help preserve the structure of industry and the employment generated by it.

There are no alternatives to the issuance of some form of regulation since this is required by the Federal Timber Contract Payment Modification Act.

Small Entity Impact

After analysis of the alternatives, the Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this rule will not have a significant economic impact on a substantial number of small entities. The requirement for a minimum downpayment of 10 percent of the bid value follows current Forest Service policy (48 FR 48661), and satisfies section 2(d) of the Federal Timber Contract Payment Modification Act. The provisions for a larger downpayment will affect only those sales where past bidding has resulted in a significant increase over advertised rates on the National Forests. The mid-point payment will not affect those small entities who harvest their national forest sales in a timely manner.

Other Impacts

Based on environmental analysis, this final rule, individually or cumulatively, will not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. Futhermore, this rule will not result in additional procedures or paperwork not already required by law.

List of Subjects in 36 CFR Part 223

Exports, Forests and forest products, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

For the reasons set forth above, Part 223 of Chapter II of Title 36 of the Code of Federal Regulations is amended as follows:

PART 223—[AMENDED]

1. Revise the authority for Part 223 to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, unless otherwise noted.

2. Add new §§ 223.49, 223.50 and 223.51 before the centerheading "appraisal and pricing" to read as follows:

§ 223.49 Downpayment.

(a) The terms listed in this paragraph have the following meaning:

(1) *Total bid value* is the sum of the products obtained by multiplying the rate the purchaser bid for each species by the estimated volume for that species.

(2) *Bid ratio* is the result of dividing the total bid value, minus the amount of the ineffective purchaser credit, by the total advertised value of the sale. *Average bid ratio* is the weighted average of the bid ratios of timber sales on a National Forest.

(3) *Ineffective purchaser credit* is that portion of the credit earned pursuant to a specific Forest Service timber sale contract for construction of specified roads, or as otherwise provided in such contract, that exceeds the current contract value, minus base rate value as defined in that contract.

(4) *Bid premium* is the amount a purchaser bids in excess of the advertised value.

(b) Timber sale contracts shall include provisions that require purchasers to make a downpayment in cash or by application of earned effective purchaser credit at the time a timber sale contract is executed.

(c) The minimum downpayment shall be the equivalent of 10 percent of the total bid value of each sale, except in those areas where the Chief of the Forest Service determines that it is necessary to increase the amount of the downpayment in order to deter speculation.

(1) For sales on National Forests where the average bid ratio has exceeded 1.6 in the previous fiscal year or where the bid ratio on a significant number of timber sales exceeds a 1.6 ratio and the average bid premium on those sales is at least $25 per thousand board feet or equivalent, the amount of the downpayment will be equal to 10 percent of the advertised value, plus 20 percent of the total bid premium, unless increased by the Chief of the Forest Service where the Chief determines it is necessary to deter speculation. In calculating bid ratios and bid premiums for the downpayment requirement the Forest Service will not use the portion of the bid premium that offsets ineffective purchaser credit.

(2) To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustments.

(d) A purchaser cannot apply the amount deposited as a downpayment to cover other payments due on that sale until 25 percent of the advertised timber volume has been scaled and paid for on scaled sales, or until 25 percent of the advertised timber volume is shown on the timber sale statement of account to have been cut, removed, and paid for on tree measurement sales.

§ 223.50 Midpoint payment.

(a) Timber sale contracts shall include provisions requiring a midpoint payment for all timber sales with 1 year or more between the bid date and termination date. Midpoints shall be determined on the basis of the timber sale contract period remaining after the specified road completion date.

(b) The amount of payments or deposits at the midpoint of the contract term must equal at least 25 percent of the total contract value, including required deposits, at bid date, or 50 percent of the amount of the bid premium, whichever is greater.

§ 223.51 Bid monitoring.

Each Regional Forester shall monitor bidding patterns on timber sales to determine if speculative bidding is occurring or if Purchasers are bidding in such a way that they would be unable to perform their obligations under the timber sale contract. A Regional Forester shall propose to the Chief changes in servicewide timber sale procedures, as they appear necessary, to discourage speculative bidding.

Dated: September 18, 1985.

Peter C. Myers,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 85-24389 Filed 10-10-85; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC-007, -011; A-4-FRL-2910-3]

Approval and Promulgation of Implementation Plans; North Carolina; Miscellaneous Regulatory Changes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today, EPA is approving a number of minor regulation changes which North Carolina submitted as State Implementation Plan (SIP) revisions on January 24, 1983, and April 17, 1984. The effect of these changes is to clarify and update the regulations.

EFFECTIVE DATE: This action is effective November 12, 1985.

ADDRESSES: Copies of the materials submitted by North Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20005

Division of Environmental Management, North Carolina Department of Natural Resources & Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

FOR FURTHER INFORMATION CONTACT: Janet Hayward of EPA Region IV's Air Management Branch, at the above address and telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: Following notice and public hearing in conformity with Federal requirements, the North Carolina Environmental Management Commission has adopted numerous changes in the State's air pollution control regulations. These have been submitted to EPA for approval as SIP revisions.

Submittal of January 24, 1983

EPA proposed action on North Carolina's January 24, 1983, submittal in the December 21, 1983, issue of the **Federal Register** (48 FR 56412). In that notice, EPA proposed to approve revisions in the following regulations: 15 NCAC 2D.0501, 2D.0503, 2D.0504, 2D.0505, 2D.0518, 2D.0530, 2D.0531, 2D.0532, 2D.0606, 2D.0902, 2H.0603, and 2D.0536. EPA is now taking final action on all of these regulation changes, with the exception of 2D.0505 (Control of Particulates from Incinerators), 2D.0518 (Miscellaneous Volatile Organic Compound Emissions), and 2D.0536 (Particulate Emissions from Electric Utility Boilers). Significant comments were received on these three rules and the issues will be addressed in a separate notice. No comments were received on the rule changes being approved today.

The revisions are now described in the order that the affected rules appear in the North Carolina Administrative Code.

15 NCAC 2D.0501, Compliance with Emission Control Standards. Language added to paragraph (g), The Bubble Concept, allows the State to relax requirements for bubbles to the extent allowed by EPA's policy statement of April 7, 1982 (47 FR 15076). EPA notes that any change in SIP requirements resulting from an emission trade must be approved by EPA except for changes under the generic rule for volatile organic compounds previously approved for North Carolina.

15 NCAC 2D.0503, Control of Particulates from Fuel Burning Sources. Language is added to clarify the treatment of residential and institutional facilities where fuel is burned for comfort heat and combustion units are dispersed among several buildings. It is also made clear that waste by-products burned as fuel are subject to this regulation; if burned as refuse, particulate emissions are limited by regulation NCAC 15 2D.0505 dealing with refuse burning equipment.

15 NCAC 2D.0503, Control of Particulates from Fuel Burning Sources, and *15 NCAC 2D.0504, Particulates from Wood Burning Indirect Heat Exchangers.* Both these regulations are amended to clarify the determination of allowable particulate emissions when a new boiler is added to the plant site. Total heat input from all units at the site will be used to determine the allowable emissions from the new unit, but the allowable for the existing units will remain the same. Also, language is added to clarify the determination of allowable emissions for boilers which burn both wood and fossil fuels. It should be noted that the control requirements of these regulations would be superseded by applicable new source performance standards or new source review requirements.

15 NCAC 2D.0530, Prevention of Significant Deterioration. The short-term nitrogen dioxide significance level in paragraph (k) is removed. This makes the regulation consistent with Federal requirements.

15 NCAC 2D.0531, Sources in Nonattainment Areas, and *15 NCAC 2D.0532, Sources Contributing to an Ambient Violation.* The applicability date in these regulations is changed to take into account the change in the attainment status designation of the Spruce Pine area.

15 NCAC 2D.0606, [Monitoring and Reporting Required of] Other Coal or Residual Oil Burners. North Carolina requires certain sources with capacity factors of over 30% to monitor sulfur dioxide emissions. Under this revision, the basis for determining if monitoring is required is no longer the capacity factor reported to the Federal Power Commission (FPC) in 1974, but the average of the capacity factors reported to the FPC in the three most recent calendar years.

15 NCAC 2D.0902, Applicability. The State's RACT regulations for VOC are amended by making methyl chloroform and methylene chloride exempt compounds throughout. They were previously exempt only for the regulations based on EPA's second set of Control Techniques Guidelines.

15 NCAC 2H.0603, Applications. Paragraph (h) of this permit regulation, allowing certain exemptions from the requirements of the RACT regulations for VOC without public hearing, is repealed since it does not accord with EPA policy on the enforceability of state permits. In EPA's view, such permits must be handled as SIP revisions to be federally enforceable. It was noted in the final rule published on July 26, 1982 (47 FR 32118), that the State was planning to repeal ¶ (h) to make the regulation consistent with EPA policy.

Submittal of April 17, 1984

On October 17, 1984, (49 FR 40607) EPA proposed to approve all the revisions submitted on April 17, 1984, except the revision in the malfunction regulation (15 NCAC 2D.0535: Malfunction, Startup and Shutdown). The latter regulation was discussed in another notice, published on August 28, 1985, at 50 FR 34864. The revision to 2H.0603 will also be addressed in a separate notice as the changes are tied

to the State's stack height provisions. For a detailed description of the other regulation changes, the reader may consult the proposal notice. Most of the changes are intended to clarify and update the regulations, and do not involve changes in emission limitations. The regulations revised by this submittal are now listed:

15 NCAC 2D.0101, Definitions and References
15 NCAC 2D.0102, Phrase (Repealed)
15 NCAC 2D.0103, Copies of Referenced Federal Regulations
15 NCAC 2D.0201, Classification of Air Pollution Sources
15 NCAC 2D.0202, Registration of Air Pollution Sources
15 NCAC 2D.0302, Episode Criteria
15 NCAC 2D.0303, Emission Reduction Plans
15 NCAC 2D.0304, Preplanned Abatement Program
15 NCAC 2D.0305, Emission Reduction Plan—Alert Level
15 NCAC 2D.0306, Emission Reduction Plan—Warning Level
15 NCAC 2D.0307, Emission Reduction Plan—Emergency Level
15 NCAC 2D.0401, Purpose
15 NCAC 2D.0402, Sulfur Oxides
15 NCAC 2D.0403, Suspended Particulates
15 NCAC 2D.0404, Carbon Monoxide
15 NCAC 2D.0405, Ozone
15 NCAC 2D.0406, Hydrocarbons (Repealed)
15 NCAC 2D.0407, Nitrogen Dioxide
15 NCAC 2D.0408, Lead
15 NCAC 2D.0501, Compliance With Emission Control Standards
15 NCAC 2D.0524, New Source Performance Standards
15 NCAC 2D.0601, Purpose and Scope
15 NCAC 2D.0602, Definitions
15 NCAC 2D.0603, Sources Covered by National Standards (Repealed)
15 NCAC 2D.0604, Sources Covered by Implementation Plan Requirements
15 NCAC 2D.0605, Wood and Wood-Fossil Fuel Combination Units
15 NCAC 2D.0606, Other Coal or Residual Oil Burners
15 NCAC 2D.0607, Exceptions to Monitoring and Reporting Requirements
15 NCAC 2D.0608, Program Schedule
15 NCAC 2D.0610, Delegation
15 NCAC 2D.0801, Purpose and Scope (Complex Sources)
15 NCAC 2D.0802, Permits
15 NCAC 2D.0803, Highway Projects
15 NCAC 2D.0804, Airport Facilities
15 NCAC 2H.0601, Purpose and Scope (Air Quality Permits)
15 NCAC 2H.0602, Definitions
15 NCAC 2H.0604, Final Action on Permit Applications
15 NCAC 2H.0605, Issuance, Revocation, and Enforcement of Permits
15 NCAC 2H.0606, Delegation of Authority
15 NCAC 2H.0607, Copies of Referenced Documents

Final Action

EPA approves all the changes in the North Carolina air pollution control regulations identified above.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Reporting and recordkeeping requirements, Incorporation by reference.

Note.—Incorporation by reference of the North Carolina State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 3, 1985.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40; 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

Subpart II—North Carolina

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1770 is amended by adding paragraphs (c)(38) and (c)(39) as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(38) Revisions to the North Carolina Administrative Code were submitted to EPA on January 24, 1983.

(i) *Incorporation by reference.* (A) Letter of January 24, 1983 from the North Carolina Department of Natural Resources and Community Development, and the following North Carolina Administrative Code Regulations which were adopted by the Environmental Management Commission on December 9, 1982:

15 NCAC 2D.0501, Compliance With Emission Control Standards
15 NCAC 2D.0503, Control of Particulates from Fuel Burning Sources
15 NCAC 2D.0504, Particulates from Wood Burning Indirect Heat Exchangers
15 NCAC 2D.0530, Prevention of Significant Deterioration
15 NCAC 2D.0531, Sources in Nonattainment Areas
15 NCAC 2D.0532, Sources Contributing to an Ambient Violation
15 NCAC 2D.0606, Other Coal or Residual Oil Burners
15 NCAC 2D.0902, Applicability (Volatile Organic Compounds)
15 NCAC 2H.0603, Applications (Air Quality Permits)

(39) Revisions to the North Carolina Administrative Code were submitted to EPA on April 17, 1984.

(i) *Incorporation by reference.* (A) Letter of April 17, 1984 from the North Carolina Department of Natural Resources and Community Development, and the following North Carolina Administrative Code Regulations which were adopted by the Environmental Management Commission on April 12, 1984:

15 NCAC 2D.0101, Definitions and References
15 NCAC 2D.0103, Copies of Referenced Federal Regulations
15 NCAC 2D.0201, Classification of Air Pollution Sources
15 NCAC 2D.0202, Registration of Air Pollution Sources
15 NCAC 2D.0302, Episode Criteria
15 NCAC 2D.0303, Emission Reduction Plans
15 NCAC 2D.0304, Preplanned Abatement Program
15 NCAC 2D.0305, Emission Reduction Plan—Alert Level
15 NCAC 2D.0306, Emission Reduction Plan—Warning Level
15 NCAC 2D.0307, Emission Reduction Plan—Emergency Level
15 NCAC 2D.0401, Purpose (Ambient Air Quality Standards)
15 NCAC 2D.0402, Sulfur Oxides
15 NCAC 2D.0403, Suspended Particulates
15 NCAC 2D.0404, Carbon Monoxide
15 NCAC 2D.0405, Ozone
15 NCAC 2D.0407, Nitrogen Dioxide
15 NCAC 2D.0408, Lead
15 NCAC 2D.0501, Compliance With Emission Control Standards
15 NCAC 2D.0524, New Source Performance Standards
15 NCAC 2D.0601, Purpose and Scope (Monitoring, Reporting)
15 NCAC 2D.0602, Definitions
15 NCAC 2D.0604, Sources Covered by Implementation Plan Requirements
15 NCAC 2D.0605, Wood and Wood—Fossil Fuel Combination Units
15 NCAC 2D.0606, Other Coal or Residual Oil Burners
15 NCAC 2D.0607, Exceptions to Monitoring and Reporting Requirements
15 NCAC 2D.0608, Program Schedule
15 NCAC 2D.0610, Delegation
15 NCAC 2D.0801, Purpose and Scope (Complex Sources)
15 NCAC 2D.0802, Permits
15 NCAC 2D.0803, Highway Projects
15 NCAC 2D.0804, Airport Facilities
15 NCAC 2H.0601, Purpose and Scope (Air Quality Permits)
15 NCAC 2H.0602, Definitions
15 NCAC 2H.0604, Final Action on Permit Applications
15 NCAC 2H.0605, Issuance, Revocation and Enforcement of Permits
15 NCAC 2H.0606, Delegation of Authority
15 NCAC 2H.0607, Copies of Referenced Documents

(ii) *Additional Material.* (A) The following regulations were repealed by the Environmental Management Commission on April 12, 1984:

15 NCAC 2D.0102, Phrases
15 NCAC 2D.0406, Hydrocarbons
15 NCAC 2D.0903, Sources Covered by National Standards

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-235-F]

Medicare Program; Limitation on Payment for Services Furnished to Employed Aged and Aged Spouses of Employed Individuals

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

ACTION: Final rule.

SUMMARY: These regulations amend and respond to comments on the final Medicare rules published on April 13, 1983 which set forth policies and procedures under which Medicare is secondary payer for health care items and services furnished to employed individuals age 65 through 69 and their spouses age 65 through 69, who are covered under employer group health plans of employers which employ 20 or more employees. The April 1983 regulations implemented section 116(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248).

These regulations also have been changed to include provisions of the Deficit Reduction Act of 1984 (Pub. L. 98-369), enacted July 18, 1984, which modified application of these rules to employees' spouses age 65 through 69 and changed the age limit for individuals subject to the secondary payer provisions to the month before the month the individual attains age 70. Previously the age limit was the month in which the individual attained age 70.

EFFECTIVE DATE: November 12, 1985. See Section IV of this preamble, for information regarding the provisions of the Deficit Reduction Act of 1984.

FOR FURTHER INFORMATION CONTACT: Herbert Pollock, (301) 594-4978.

SUPPLEMENTARY INFORMATION:

I. Background

A. Tax Equity and Fiscal Responsibility Act of 1982

On April 13, 1983, we published in the Federal Register a final rule with comment period (48 FR 15902) to implement section 116(b) of Pub. L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1932 (TEFRA). Section 116(b) added section 1862(b)(3) to the Social Security Act (the Act) which makes Medicare benefits secondary to benefits payable under employer group health plans for employees age 65 through 69 and their spouses age 65 through 69.

Section 1862(b)(3) applies only if the individual is entitled to Part A of Medicare. Section 1862(b)(3) does not apply to individuals who are only entitled to Part B or who are entitled to Medicare (or who would be entitled upon filing an application) on the basis of end-stage renal disease (ESRD).

Under this section all Medicare payments to or on behalf of employees age 65 through 69 and their spouses age 65 through 69 must either be secondary benefits or payments conditioned on reimbursement to the appropriate trust fund (the Hospital Insurance Trust Fund or the Supplementary Medical Insurance Trust Fund) when notice or other information is received that payment for the service can be made under an employer group health plan. We have authority to waive recovery of an individual claim if we determine that the probability of recovery or the amount involved does not warrant pursuit of the claim.

The April 1983 final rule which implemented the provisions of the TEFRA specified that effective with items and services furnished on or after January 1, 1983:

- Medicare benefits are secondary to benefits payable by employer group health plans for services to employed beneficiaries age 65 through 69 and their spouses age 65 through 69.
- Medicare is secondary even though the employer plan states that its benefits are secondary to Medicare's.
- Medicare may make secondary payments to supplement the primary benefits paid by the employer plan if the plan pays only a portion of the charge for the services.
- Medicare may pay primary benefits for Medicare covered services that are not covered by the employer plan.
- Medicare will pay primary benefits if an individual is not covered under an employer group health plan for any reason.
- If Medicare pays secondary benefits, the beneficiary will be charged with utilization of Part A benefits only to the extent that Medicare paid for services.
- Expenses which would serve to meet the beneficiary's Part A or Part B deductible, if Medicare were the primary payer, will be credited to the deductible even if they are reimbursed by the employer plan.
- A provider may not charge the beneficiary for services paid or reimbursed by Medicare, if the provider or facility has been paid by an employer plan an amount which equals or exceeds the Medicare deductible and coinsurance amounts.
- Medicare will make conditional payments where an employer plan has denied benefits in whole or in part for any reason, and consider recoupment action either directly from the other insurer, or the employer or from the beneficiary.

B. Deficit Reduction Act of 1984

Sections 2301(a) and 2354(b)(31) of Pub. L. 98-369, the Deficit Reduction Act of 1984, enacted by July 18, 1984, modified section 1862(b)(3) of the Act to make several changes to the Medicare secondary payer provision. Effective January 1, 1985, the scope of the provision was expanded to apply to spouses aged 65 through 69 of employees of any age through age 69 (section 2301(a)). For prior months, the provision applies to spouses only if both the employee and spouse are aged 65 through 69. Effective July 18, 1984, the upper age limit of individuals subject to the provisions of section 1862(b)(3) changes to the month before the month in which the individual attains age 70 (section 2354(b)(31). Previously, the age limit was the month of attainment of age 70.

Section 2301(b) of the Deficit Reduction Act of 1984 also amended section 4(g)(1) of the Age Discrimination in Employment Act of 1967 (ADEA) to provide that spouses aged 65 through 69 be provided the same health insurance coverage offered to employees' spouses that are under age 65. The Equal Employment Opportunity Commission (EEOC) is revising its regulations (see 48 FR 26434) to incorporate these changes.

II. Summary and Discussion of Public Comments

We have worked with the Equal Employment Opportunity Commission (EEOC) is developing the Medicare regulations. The EEOC, in turn has worked with us in developing regulations to implement the ADEA changes. Section 116(a) of TEFRA amended section 4 of the ADEA, to

require employers of 20 or more employees to offer those employees age 65 through 69 the same group health plan coverage and under the same conditions it is offered to employees under age 65. The EEOC published interim regulations on June 7, 1983 (48 FR 26434) which implemented the amendment to the ADEA. The relationship of certain provisions in these regulations to the ADEA regulations is discussed in relevant contexts in this preamble.

We received 44 letters in response to the final rule with comment. The comments were from State agencies, insurance companies, agencies on aging, law firms, provider organizations, providers, group health plans, universities and several employers. A summary of specific comments received and our responses follow:

1. General

Comment: There were two comments that raised objections to our issuing a final regulation on the grounds that—

- We failed to follow the Administrative Procedure Act (APA) which requires a "good cause" exception justification for waiving the notice, comment and 30-day prospective effective date requirements.
- We highlighted in the preamble three areas in which the law is ambiguous, apparently contradicting one of our reasons for publishing the regulations in final form, i.e. that the law's detail and precision allowed minimal discretion.

Response: As stated in the preamble to the rule published on April 13, 1983, the purpose of the legislation giving rise to this rule is to reduce Medicare expenditures, beginning January 1, 1983, by making Medicare benefits secondary to benefits payable under an employer group health plan for services furnished to employed individuals and their spouses age 65 through 69. Under the APA, notice and comment may be waived for good cause when the Secretary finds that following these procedures would be impracticable, unnecessary or contrary to the public interest. The relevant legislative provisions are so detailed and precise that publication of a Notice of Proposed Rule Making with a comment period, followed by an analysis of comments, would have been contrary to the public interest within the meaning of the APA. Following these procedures would have resulted in unnecessary and uncontemplated expenditures from the Medicare trust funds. In addition, we believe that the three issues discussed in the preamble when the regulations were published on April 13, 1983, were relatively minor, given the impact of the entire provision. Since these issues called for discretion, we provided commenters an opportunity to express their views and are making revisions based on the comments. A 30-day effective date would be contrary to the statute which specifies that the provision is effective January 1, 1983.

Comment: Fourteen commenters objected to applying the regulations retroactively to January 1, 1983. They argued that a retroactive effective date would be unfair to employers who had not funded primary coverage for their employees by the time the regulations were issued, would render existing insurance contracts null and void, may conflict with the EEOC regulations, and would cause administrative problems for employees and insurers.

Response: Section 116(c) of TEFRA states that section 116(b) (which enacted the amendment to the Medicare law) "shall *apply with respect to items and services furnished on or after* January 1, 1983" (emphasis supplied). Since this effective date is a statutory requirement, we have no discretion to modify it. The changes in employer plan coverage mandated by TEFRA were binding on parties to insurance contracts in existence at the time this law took effect. These changes were prospective, not retroactive. The law was enacted on September 3, 1982. Its effectuation was not conditioned on publication of regulations.

We recognize that the effective date of section 116(a) of TEFRA which amended the ADEA is also January 1, 1983, and the EEOC, which administers that provision, has issued regulations which permit implementation by September 5, 1983. The ADEA amendment requires that employers "must provide that any employee age 65 through 69 shall be entitled to coverage" of health benefits under the same conditions as younger employees. Section 116(c) of TEFRA states that section 116(a) *"shall become effective* on January 1, 1983" (emphasis supplied), but the changes in coverage need not actually be in place on that date.

Section 116(b) of TEFRA specifically addresses the question of which coverage is primary where services are covered by both Medicare and an employer group health plan. That provision governs in determining the date on which the new requirements of the law apply in cases where dual coverage exists. In compliance with the language in the law, the Medicare regulations state that Medicare is secondary to employer group health plans with respect to items and services furnished on or after January 1, 1983. In recognition of the difficulties associated with the initiation of employer plan primary coverage, the operating instructions issued to the Medicare contractors limit administrative steps to identify past cases in which Medicare incorrectly paid primary benefits. However, we believe that the law requires that we pursue appropriate recovery action when such cases are identified.

Comment: Several commenters expressed concern that in view of the premium penalty provision, an individual who postponed enrollment to age 70 would have to pay 50 percent more for Part B than if he or she had enrolled at age 65. On the other hand, an individual covered under an employer plan who enrolled in Part B to avoid the surcharge, would pay Part B premiums and receive relatively little or no benefit from the Part B coverage. Also, the requirement that Part B enrollment take place only in January–March of each year with coverage effective the following July 1, can result in an individual experiencing a gap in coverage for Part B covered medical expenses if he or she drops or does not enroll in Medicare and later stops working.

Response: Section 2338 of Pub. L. 98–369 modifies sections 1837 through 1839 of the Act to provide relief for individuals age 65 through 69 who are covered under this regulation and who do not wish to be enrolled in Part B or later pay a premium penalty. The amendment allows a special enrollment period for such individuals upon termination of employer plan coverage or attainment of age 70, and provides for excluding months beginning with January 1983 in which an individual was covered under Medicare Part A and an employer plan from the months used in calculating the premium penalty for late enrollment. The amendment is effective for premiums due for September 1984 and enrollments beginning with November 1984. Because the changes are self-implementing, we have already applied them through instructions to the Social Security District Offices. However, we will also publish regulations codifying the special enrollment period and penalty relief changes.

Comment: One commenter expressed concern that the final regulations published on April 13, 1983 did not discuss the impact of the prospective payment system.

Response: The April 13, 1983 final rule did not refer to the prospective payment system because the law which established that system was not enacted

until April 20, 1983. Interim final regulations which set forth conditions and procedures under the prospective payment system were published on September 1, 1983 and final regulations were published on January 3, 1984 and amendments to these regulations were published on August 31, 1984 (49 FR 34728). For these regulations dealing with secondary Medicare payments for the working aged to apply to hospitals reimbursed under the prospective payment system, we are revising 42 CFR 405.342(b) so that it now applies to all Medicare reimbursement methods other than reasonable charge, including the prospective payment system. Also we are revising the examples so that they apply to situations where Medicare makes secondary payments to institutional providers of services under the prospective payment system as well as under the other methods.

2. General Rules—Applicability to Spouses

Comment: Seven commenters suggested that the regulations be revised to permit Medicare to pay primary benefits for spouses age 65 through 69 of employees age 65 through 69. They stated that the provision in the regulations which makes Medicare secondary for such spouses is not authorized by the Medicare law and is inconsistent with provisions of the ADEA.

Response: Section 116(b) of TEFRA and the legislative committee reports (Report of the Senate Committee on Finance (S. Rep. No. 97–494, July 12, 1982, p. 16) and the Conference Committee Report, (H.R. Rep. No. 97–760, 97th Cong., 2d Sess. 414 (1982)) stipulated that Medicare was to be secondary payer for spouses age 65 through 69 of employees age 65 through 69. EEOC implementing regulations issued on June 7, 1983, provide that employees age 65 through 69 shall be entitled to spousal coverage under the same terms and conditions as employees under age 65. To clarify this provision, the preamble to the EEOC regulations contains the following passage:

"The Commission does not believe that the regulations [of the Health Care Financing Administration and the EEOC] conflict in their treatment of spouses and notes language in the Report of the Senate Committee on Finance (S. Rept. No. 97–494 July 12, 1982) that accompanied TEFRA indicating a congressional intent that Medicare be secondary for both employees and their spouses age 65 through 69."

Accordingly, the ADEA regulations as interpreted by the EEOC were in agreement with the provision in the Medicare regulations that Medicare is secondary payer for spouses age 65 through 69 of employed Medicare beneficiaries age 65 through 69.

Section 2301(a) of Pub. L. 98–369 modified the secondary payer provision to include spouses age 65 through 69 of employed individuals through age 69, effective January 1, 1985. Although the amendment to the ADEA under TEFRA was silent with regard to spousal coverage, the amendment to section 4(g)(1) of the ADEA in section 2301(b) of Pub. L. 98–369 inserts the phrases "any employee's spouse aged 65 through 69" and "the spouse of such employee" to make spousal coverage explicit. The conference committee report makes clear that the amendment of the two Acts is an extension of existing spousal coverage provisions (H.R. Rep. No. 98–861, 98th Cong., 2d Sess. 1347 (1984)).

3. Definitions

Comment: One commenter recommended that we exempt "employee pay-all" plans from this Medicare secondary provision.

Response: We are unable to adopt this recommendation because it is not consistent with the statutory definition of "group health plan". Section 116(b) of TEFRA states that the term "group health plan" shall have the same meaning as in section 162(i)(2) of the Internal Revenue Code (IRC) of 1954. This section of the IRC defines that term as "*any plan of, or contributed to by,* an employer to provide medical care . . . to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement or otherwise" (emphasis supplied).

The phase "of, or contributed to by an employer" in this definition indicates that it encompasses not only plans to which the employer contributes, but also any plan which is under the employer's auspices even though he does not contribute to the plan.

Comment: One comment suggested that to avoid delays in payment to providers, Medicare should not wait until the primary plan pays before determining what its secondary payment should be.

Response: This comment cannot be accepted because under the statutory formula for determining the Medicare secondary payment, Medicare must know what the employer group health plan paid in order to calculate Medicare payments.

Comment: Two commenters recommended that the definition of "age 65 through 69" in the EEOC regulations and our regulations be coordinated. The EEOC regulations specify that employer group health plans are primary payer during a period which extends through the day the individual attains age 70, while our regulations stated that the period ends with the last day of the month in which the individual attains age 70.

Response: We have not accepted this recommendation. The EEOC regulations implement a change in the ADEA. Section 12(a) of that Act states that it applies "to individuals who are at least forty years of age but less than 70 years of age." In the preamble to its regulations the EEOC notes that it is limited in its authority by the age limitations in section 12(a).

We are obligated to implement section 1862(b)(3) of the Act which prior to the enactment of Pub. L. 98–369 (discussed below), stipulated that it applies ". . . for the period beginning *with the month* in which such individual becomes entitled to [Medicare Part A] benefits . . . and ending *with the month* in which such individual attains the age of 70 . . ." (emphasis supplied). "With the month" had to be interpreted consistently in both places that it occurred. The beginning month was the first full month of Medicare entitlement, i.e., usually the month of attainment of age 65. Accordingly, the ending month was the full month of attainment of age 70. Medicare law makes no provision for partial months of coverage.

As a result of section 2354(b)(31) of Pub. L. 98–369, section 1862(b)(3)(A)(iii) was amended to read "ending with the month before the month" of attainment of age 70. Therefore, effective July 18, 1984, (the date of enactment) the period in which Medicare is secondary payer ends with the last day of the month before the month in which the individual attains age 70.

Comment: Several commenters opposed the inclusion of the "Government of the United States" in the definition of "employer" in § 405.340(b)(4) of the regulations. They reasoned that, since paragraph (a) of section 116 of TEFRA amended the ADEA, and since paragraphs (a) and (b) of section 116 are complementary provisions, the ADEA definition of employer which excludes the Federal Government should be applied in implementing both paragraphs. They further reasoned that this interpretation would be consistent with the intent of Congress, since the Congressional Committee Reports on TETRA which preceded enactment stated that section 116 would not apply to employers of less than 20 employees. Since such employers are not subject to ADEA, they concluded that Congress intended

the change in the Medicare law to apply only to employers to which ADEA applies.

Response: We disagree that the two provisions are to be viewed identically. The plain wording of paragraph (a) of section 116 states that it amends only the ADEA while paragraph (b) of section 116 amends title XVIII of the Social Security Act.

More particularly the amendment to title XVIII explicitly states that the term "group health plan" has the same meaning as in section 162(i)(2) of the Internal Revenue Code (IRC) of 1954. That provision defines a "group health plan" as "any plan of, or contributed to by, an employer to provide medical care . . . to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise." "Employer" in that provision includes the Federal Government.

The definition of "employer group health plan" in the regulations is therefore the same as the IRC definition, except for the stipulation that the employer have at least 20 employees. This exception was made part of the definition to comport with statements contained in the Report of the Senate Committee on Finance that accompanied TEFRA (S. Rep. No. 97–494, July 12, 1982, pp. 16 and 17) that the provision would not apply to employers with less than 20 employees. We construe this expression of Congressional intent in conjunction with the express statutory reference to the Internal Revenue Service (IRS) definition as an indication that Congress was not incorporating other ADEA provisions into the Medicare law.

Since the amendment incorporates the IRS definition of group health plan by reference, we believe it to be in keeping with Congressional intent to use the IRS definition of "employer". Thus, the Federal Government is included in the definition of employer to conform to the IRS provision. Moreover, the Deficit Reduction Act of 1984 (Pub. L. 98–369) amended section 1862(b)(3) of the Medicare law (the Working Aged provision). At the time the Deficit Reduction Act was enacted, the working aged regulations had already been published. If Congress disagreed with the definition of "employer" contained in the regulations, it could have mandated a change in the definition by modifying the statutory definitions of employer group health plan. But the Congress did not do so.

Comment: Several commenters inquired about the status of miltiemployer plans with a mix of large and small employers. They wanted to know whether such plans would be required to pay primary benefits for all employees enrolled in the plan or only for those employed by employers of more than 20 employees. Most plans would be unable or would find it too costly to identify employees of small employers.

Response: We are clarifying the definition of "employer group health plan" (§ 405.340(b)) to include a multiemployer plan with at least one participating employer of 20 or more employees. Such a plan may be considered to be "of, or contributed to by, an employer of 20 or more employees." Therefore, the plan would be primary to Medicare for affected members of the plan. The revised definition also permits multiemployer plans to pay secondary benefits for those members they can identify who work for employers of less than 20 employees.This provision gives effect to the Congressional intent that this Medicare secondary provision does not apply to small employers which often employ many older workers.

The preamble to the EEOC regulations stipulates (in accordance with section 11(b) of the ADEA) that they apply only to employers who meet the ADEA statutory test for coverage i.e., employers with 20 or more employees during 20 or more calendar weeks of the current or preceding calendar year, and that EEOC regulations so apply regardless of employers' membership in a multiemployer plan. In the EEOC view, the provisions of section 4(g) of ADEA cannot be enforced with regard to employers of less than 20 employees in the multiemployer plan. However, we do not foresee a conflict in administering the HCFA rule, since the plans may identify which of their members work for employers of 20 or more employees and which members work for employers of less than 20 employees. In that case, the members who work for small employers would be exempt from this provision.

4. Medicare Benefits Secondary to Employer Group Health Plans

Comment: Several commenters expressed concern that the regulations require substantial additional employer health plan contributions. They contended that premiums will rise not just for employers but also for employees and that for some employers it will be economically unfeasible to provide health insurance to employed individuals age 65 through 69, thereby affecting the employability of these individuals.

Response: The regulations reflect the provisions of the statute. Moreover, it should be noted that discrimination against employees based on age is expressly prohibited by the Age Discrimination in Employment Act (ADEA). When Congress enacted this Medicare benefits secondary provision, it also enacted an amendment to the ADEA which requires that employers provide to their employees age 65–69 health insurance coverage under the same conditions as to employees under age 65. Thus, if there is any increase in health insurance premiums, it cannot be disproportionately applied to older workers. Further, an employed Medicare beneficiary who does not wish to participate in the employer's plan coverage is free to reject the employer's plan and retain Medicare for primary coverage. The legislative history indicates that Congress did consider the economic impact of this legislation, in terms of effects on small employers. The regulations conform to expressions of Congressional intent in this regard by excluding from their provisions employers with fewer than 20 employees. Such employers are statutorily exempt from the provisions of the ADEA.

Comment: Several commenters interpreted § 405.341(a)(3)(ii) to mean that spouses age 65 through 69 of any employed individual are covered by the Medicare secondary payer provision.

Response: Section 405.341(a)(3)(ii), as originally published, provided that only spouses age 65 through 69 of employees age 65 through 69 were affected by this provision. This was in accordance with the provisions of section 1862(b)(3) of the Act before the enactment of Pub. L. 98–369. Section 2301 of Pub. L. 98–369 modified section 1862(b)(3)(A)(i) effective for services furnished on or after January 1, 1985, to include spouses of any age through 69 of employed individuals of any age through 69. Since Medicare is secondary under section 1862(b)(3)(A)(iii) only for individuals age 65 or over, the effect of the amendment to section 1862(b)(3)(A)(i) is to make Medicare secondary for spouses age 65 through 69, of employed individuals of any age through 69. We have clarified § 405.341(a)(3)(ii) with respect to services furnished before January 1, 1985 and expanded it to incorporate the new provisions applicable to services furnished on or after that date.

5. Primacy of Federal Statute Over Private Contract Stating That Employer Plan is Secondary to Medicare.

Comment: Several commenters believed that the provision in the

regulation that Medicare is secondary to employer group health plans for affected individuals "even though the employer plan states that its benefits are secondary to Medicare, or otherwise excludes or limits its payment to Medicare beneficiaries," exceeds the statutory authority contained in section 116 of TEFRA. Since the statute does not state this explicitly, the commenters conclude that citing the legislative history as justification is insufficient. It is their view that, by nullifying existing provisions in private contracts, our interpretation of Section 116 violates common law and the due process clause of the Constitution.

Response: As explained in the preamble to our April 13, 1983 final rule, we believe that Congress intended section 116(b) of TEFRA to take precedence over private insurance contracts. This was fully discussed in that preamble, the language of which is repeated below:

> The legislative history of the Medicare and ADEA amendments indicates that it was the intent of Congress that employer group health plans provide the primary coverage where individuals are dually entitled to benefits under an employer group health plan and under Medicare. The Report of the Senate Committee on Finance that accompanied the Tax Equity and Fiscal Responsibility Act of 1982, H.R. 4961 (S. Rep. No. 97-494, July 12, 1982) explicitly states the Congressional intent on page 17:
>
> "Employers must offer these benefits as primary to benefits under Medicare for employees (and their spouses) aged 65 and over, but under age 70."
>
> Since the amendment to the Medicare law is clearly aimed at making Medicare secondary to employer group health plans, the provision would have little if any application or cost-saving effect if interpreted to mean that Medicare would continue paying primary benefits if the employer health plan provided benefits which only supplemented Medicare.
>
> Senator Robert Dole, Chairman of the Senate Committee on Finance, remarked as follows regarding the ADEA provision (Congressional Record-Senate, August 19, 1982 at page 10902):
>
> ". . . employers would be prevented from offering a health insurance plan or option designed to circumvent this provision by inducing employees to reject the coverage offered other employees—those under 65. The clear intent of this provision, however, is to continue to allow employers to offer limited coverage for those health care services wholly uncovered by medicare: outpatient prescription drugs for example."
>
> Since plans with benefits secondary to Medicare would circumvent the provisions that Medicare be the secondary payer, employers would not be permitted to offer such plans as alternatives. Therefore, these regulations provide that Medicare will not pay primary benefits for otherwise covered services even though the employer plan states that its benefits are secondary to Medicare or otherwise excludes or limits its payment to Medicare beneficiaries.

These regulations implement section 116(b) of TEFRA which stipulates conditions and amounts of benefits payable under the program as legislated by Congress. We, therefore, do not believe that these regulations violate common law or the Constitution.

6. Prohibition Against Employer Plans Offering Coverage Secondary to Medicare

Comment: One commenter proposed that employer plans be permitted to offer secondary benefits where Medicare is primary payer. Such plans should not be considered an inducement to employees to reject the coverage offered other employees.

Response: We believe the discussion under item 5 above adequately addresses this concern.

Senator Dole's remarks relating to section 116 of TEFRA specify that employers may continue to offer coverage of services wholly uncovered by Medicare, and that this would not be considered an inducement to reject the employer plan. The clear inference is that the offering of secondary coverage of Medicare covered services by an employer would be considered an inducement to reject the employer plan.

7. Limits on Medicare Secondary Payments

Comment: Two commenters were concerned that the regulations will shift a significant portion of the cost of health care coverage from Medicare to employees, since under some methods of coordinating employer plan benefits which applied before the enactment of this provision, the combined benefit paid by Medicare as primary payer and the employer plan as secondary was higher than either the employer plan allowable charge or the Medicare reasonable charge. The combined benefit amount would be higher, for example, where an employer plan as secondary payer would supplement Medicare up to the actual charge, and the actual charge is greater than either the employer's allowable or Medicare's reasonable charge.

Response: The formula for calculating Medicare secondary benefits is specified in the statute. The statute does not allow discretion. It is true there may be instances where the total payment made under this provision will be lower than if Medicare were primary payer, and the employer plan were secondary. However, this will occur only where the sum of the amount an employer plan pays when it is secondary payer plus the amount Medicare would pay as primary payer would exceed *both* the plan's allowable charge and the Medicare reasonable charge. (This would occur because Medicare as secondary payer on unassigned claims, supplements the amount paid by the employer plan up to the higher of the employer plan's allowable charge or the Medicare reasonable charge.) However, there will also be cases in which the combined payment under this provision will be higher than it would be if Medicare were primary payer and an employer plan were secondary. For example, if an employer plan's practice as secondary payer is to pay the excess, if any, of the employer plan's allowable charge over the primary payment and the employer plan's allowable charge was less than the amount Medicare paid on a claim, the employer plan would make no secondary payment. This can be illustrated by the following example:

A physician's charge for an operation was $2,000. The employer plan's primary payment based on its fee schedule was $1,000. The Medicare reasonable charge was $1,600. As secondary payer Medicare pays $600 (the excess of the Medicare reasonable charge over the employer plan primary payment). If Medicare had been primary payer it would have paid $1,280 (80 percent of $1,600). The employer plan would not have paid any secondary benefits since the amount paid by Medicare as primary payer exceeded the plan's allowable charge. The beneficiary would have received total benefits amounting to $1,280 under the prior law (Medicare primary) and would receive total benefits of $1,600 under the current law (employer plan primary).

8. Applicability of the Regulations to Prepayment Plans i.e., Health Maintenance Organizations and Health Care Prepayment Plans

Comment: Two commenters raised three issues. First, they believe the regulations do not specify how Medicare secondary benefits would be paid to prepayment plans which are paid on a risk or prospective payment basis. Second, since prepayment plans offer more comprehensive benefits, a higher percentage of employees will elect employer plan coverage in prepayment plans than in traditional health insurance plans. Therefore, the regulations impact more heavily on such plans than on other insurance plans. Last, the regulations do not make clear whether individuals who elect an employer prepayment plan are allowed to have secondary coverage under the prepayment plan's Medicare risk

contract or whether they waive their rights to coverage under the plan's Medicare program.

Response: First, the regulations contain formulas for payment of Medicare secondary benefits only for services furnished by entities other than prepayment plans. It was not our intent that prepayment plans be reimbursed on the basis of those formulas where Medicare is secondary. Operating instructions for prepayment plans provide for calculating Medicare secondary reimbursement to prepayment plans on the basis of actuarial techniques.

Second, the extent to which employees elect employer plan coverage depends not only on the comprehensiveness of the employer plans's benefits but on other factors, including the amount the employee must contribute, convenience of services, perceived quality of services and range of choice of physician. In addition, many employers have favored the cost containment incentives of prepayment plans. Although enrollment in prepaid health plans has grown in recent years, to date more employees are receiving care under fee-for-service arrangements than in prepayment plans. Thus, there is no evidence that prepaid plans will be disproportionately affected. Since employers will be precluded from offering special inducements to reject employer plan coverage, it is assumed that in most cases it will be to the advantage of employees to choose the employer plan as primary coverage.

On the third issue, individuals who elect employer plan coverage lose no Medicare entitlement rights. They continue to be entitled under Part A and may enroll in Part B. There is no bar to their coverage under the prepayment plan's Medicare risk contract.

9. Impact Analysis

Comment: Two commenters objected to the exclusion of a regulatory impact and flexibility analysis from the interim final rule. They contend a significant part of the economic impact of the regulations is due to our regulatory interpretation rather than the statute. They further contend that a substantial number of small entities are affected by the regulations and that the effect should be analyzed.

Response: Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354) require regulatory impact and flexibility analyses for the impact of regulations issued by an agency as follows: The Executive Order requires a regulatory impact analysis of a major rule, one that "is likely to result in an annual effect on the economy of $100 million or more . . . ". Under the Order, the impact of the statute is not considered in determining a major rule. The Regulatory Flexibility Act requires an analysis for a rule that will "have a significant economic impact on a substantial number of small entities".

In cases where the statute allows limited discretion, only those provisions where discretion is involved need to be analyzed for their impact. We have identified a few areas of limited discretion and are providing an analysis of these areas and their impact in Section V of the preamble. However, we believe that the impact of these provisions is the result of the intent of Congress as expressed by the statute and not these regulations.

III. Provisions of the Final Regulations

In consideration of the comments received, our further analysis of specific issues, and changes in the Medicare secondary payer provision made by Pub. L. 98–369, we have amended the April 1983 regulations as follows:

We have amended 42 CFR 405.340(b)(1)(i) and (ii) to clarify the definition of "employer group health plan" by including in the definition a multiemployer group health plan that has at least one participating employer with 20 or more employees. In addition, we have specified in the revised definition that if a multiemployer plan can identify members who are employees of employers of less than 20 employees, the Medicare secondary payer provisions would not apply to those employees; Medicare will pay primary benefits for those employees. This change is merely a clarification and is fully consistent with the definition of employer group plan included in the original regulations. We will apply these definitions to services furnished on or after January 1, 1983.

We have amended § 405.340(b)(3) to incorporate the change to section 1862(b)(3)(A)(iii) of the Act made by section 2354(b)(31) of Pub. L. 98–369 which changed the age limit in the working aged provision to "the month before the month of attainment of age 70", effective July 18, 1984.

As a technical clarification, we have revised § 405.341(a)(1) to make clear that the Medicare secondary payer provision applies to individuals who are entitled to Part A of Medicare based on section 226(a) of the Social Security Act, to conform to section 1862(b)(3)(A)(iii) of the Act. This provision applies to persons entitled to Part A based on their own earnings record and also those entitled based on the earnings record of another person. However, uninsured individuals who are entitled to Part A benefits based on the payment of premiums under § 408.20 are exempt from these provisions.

We have amended § 405.341(a)(3)(ii) to incorporate the change to section 1862(b)(3) by provisions of section 2301 of Pub. L. 98–369 which provide that, effective for services furnished on or after January 1, 1985 Medicare is secondary payer for the spouses age 65 through 69 of employed individuals of any age through age 69.

We have also clarified § 405.341(a)(3) to provide that Medicare is secondary payer for a spouse age 65 through 69 of an employed individual through age 69 without regard to whether the employed individual is entitled to Part A benefits or was or could be entitled to benefits based on end-stage renal disease (ESRD). The previous regulations implied that Medicare was secondary payer for a spouse age 65 through 69 only if the employed individual met the requirements of section 1862(b)(3)(A)(iii) of the Act, i.e., was entitled to Part A benefits based on age and could not become entitled based on ESRD. Section 2301 of the Pub. L. 98–369 extended the working aged provision to spouses of younger workers—a group which could not meet the requirements of section 1862(b)(3)(A)(iii) because individuals under age 65 cannot become entitled to Part A benefits based on age. This change indicates that an employed individual need not meet the requirements of section 182(b)(3)(A)(iii) in order for Medicare to be secondary for a spouse age 65 through 69.

We have also made a technical conforming change in § 405.341(a)(3)(ii) by changing the phrase "social security record", to "earnings record", since coverage under Part A of Medicare may also be based on earnings from railroad and Federal employment.

We have also revised § 405.341 to add a new paragraph (d) that specifies application of the Medicare secondary payer provision to disabled individuals age 65 through 69. The rule previously published was silent regarding individuals age 65 through 69 who are not working because of disability. Several questions were raised informally about how these individuals should be treated. The new provision specifies that beginning with services furnished on or after (30 days after publication), an individual who is receiving disability payments from his or her employer will not be considered employed by that employer for purposes of determining priority of health insurance payments if: (1) In the month prior to the month of attainment of age 65, the individual was entitled to social

security disability benefits under title II of the Social Security Act; or (2) the individual is not receiving remuneration subject to the FICA tax.

This provision is consistent with the disability provisions of the Social Security Act and provisions of the Internal Revenue Code dealing with payment of Federal Insurance Contributions Act (FICA) taxes for persons receiving disability payments from an employer. Persons receiving disability benefits from the Social Security Administration will not be considered employed because they have been determined to be unable to perform substantial gainful work. With respect to persons not receiving social security disability benefits, we have been guided by the Internal Revenue Code rules in defining employment relationships, since the statute incorporates the Internal Revenue Code definition of employer group health plans. Employer disability payments are considered wage payments subject to FICA for the first 6 months of disability under the Internal Revenue Code. To be consistent with the provisions of the Internal Revenue Code, these regulations provide that any individual receiving employer disability payments not subject to FICA will not be considered an employee who must be offered primary coverage by the employer. With respect to services furnished before the effective date of these regulations, employers may define the employment status of disabled individuals for health insurance purposes according to their usual practice.

We have changed the title of § 405.342 to "Amount of Medicare secondary payment" to more accurately describe the contents of this section. We have revised § 405.342(b) so that it encompasses payment under the prospective payment method as well as reasonable cost reimbursement. Medicare secondary payments for provider outpatient clinical diagnostic laboratory tests reimbursed on a fee schedule basis in accordance with section 2303 of Pub. L. 98–369 will also be calculated under § 405.342(b). Medicare secondary payments for clinical diagnostic laboratory tests performed by physicians and independent laboratories reimbursed on a fee schedule basis under that Act will be calculated under § 405.342(a). We have also revised § 405.343 (Limitation on rights of providers to charge beneficiaries) to make clear that it also applies to hospitals and other facilities reimbursed under the prospective payment system or on any other basis except reasonable charge.

Last, we have clarified § 405.344(e) to specify that any primary payment made for services furnished on or after January 1, 1983 to an individual entitled only to secondary benefits under Medicare is considered a conditional payment and is subject to recovery. This clarification is in accordance with the statutory provision that Medicare is secondary payer for items and services furnished on or after January 1, 1983.

IV. Waiver of Notice and Comment Procedures

We are waiving the usual notice and comment procedures with respect to changes necessitated by sections 2301 (Medicare secondary for spouses of younger workers) and 2354(b)(31) (Medicare secondary through the month before the month of attainment of age 70) of the Deficit Reduction Act of 1984. These provisions of the statute are already in effect in accordance with their own terms, and confer little discretion on the Secretary. Accordingly, notice and comment procedures would be unnecessary.

V. Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (Pub. L. 96–354) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Under both the Executive Order and the Regulatory Flexibility Act (RFA), such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost effective.

A preliminary analysis of the impact of regulations implementing section 116(b) of the Pub. L. 97–248 was published in the final rule with comment published April 13, 1983. Because of the public comments received on the preliminary analysis, we have decided to publish a voluntary final impact analysis. We consider the analysis to be voluntary because we believe the impact of these provisions is the result of the intent of Congress as expressed by the statute and not these regulations. This is because we believe that section 116(b) of Pub. L. 97–248 and sections 2301 and 2354(b)(31) of Pub. L. 98–369 allow only very limited discretion in the implementation of the statute. It is only those provisions for which we have discretion that the criteria of the Executive Order and the Regulatory Flexibility Act apply.

We believe the final rule with comment published on April 13, 1983 contained three issues which could be construed to involve some regulatory discretion. These issues are discussed in the response to comments section of this preamble and also in this part.

B. Areas of Discretion

The first area of discretion pertains to the issue of whether the time period in which Medicare is secondary includes the entire month in which the individual attains age 70. Section 1862(b)(3)(A)(iii) of the Act, before it was amended by Pub. L. 98–369, stipulated that the Medicare secondary payer provision applies "for the period beginning *with the month* in which such individual is entitled to benefits . . . and ending *with the month* in which such individual attains age 70. . ." (emphasis supplied). The beginning month was the first full month of Medicare entitlement, i.e., ordinarily the month of attainment of age 65. We believed that a consistent interpretation of identical statutory language with respect to the beginning and ending of the period required that the law be applied to both the full month of attainment of age 65 and the full month of attainment of age 70. Section 309(b)(10) of Pub. L. 97–448 (enacted January 12, 1984) made a technical correction that served to make clear that Medicare was to be secondary payer from the month of attainment of age 65 through the month of attainment of age 70. Pub. L. 98–369 provided that the period ends with the month before the month of attainment of age 70, effective July 18, 1984, with the further stipulation that the amendment was not to be construed as changing or affecting any interpretation which existed before that date.

A second area of discretion concerns designating the employers to which the provisions apply. As explained earlier in the preamble, section 116(b) of TEFRA stipulates that the term "group health plan" has the same meaning as in section 162(i)(2) of the Internal Revenue Code. No limitation is specified in the Act with respect to the to the type of employer. Since the Code's definition uses the word "employer", we construe this as an expression of Congressional

intent that the IRC definition of "employer" be used in implementing section 116(b). This definition includes the Federal government. The only viable alternative to including the Federal government as an "employer" is to exclude them from the definition. The effect of doing so is to reduce estimated Federal savings, and to not use the IRC definition of "employer" would cause this provision to be out of compliance with Congressional intent. Also, in keeping with Congressional intent as reflected in the legislative history, employers of less than 20 employees are exempt from the provisions. Alternatives to protecting this class of employer would result in adverse economic consequences to these small employers.

Finally, we addressed the issue of whether Medicare benefits are secondary even if the employer health plan states otherwise. In the preamble of our April 13, 1983 final rule, we explained that we believe Congress intended section 116 of TEFRA to take precedence over private insurance contracts. This amendment is aimed clearly at making Medicare secondary to employer group health plans. Any alternatives to this position would have little if any application or cost-saving effect if interpreted to mean that Medicare would continue paying primary benefits if the employer health plan provided beneifts which only supplemented Medicare. Thus, Federal savings could not be maximized, to protect the solvency of the trust funds, if we allowed Medicare to remain the primary payer in contradiction to Congressional intent noted in Section 116.

C. Executive Order 12291

In the April 13, 1983 final rule with comment, we estimated Medicare savings of $175 million in FY 1983 and $315 million in FY 1984. These estimates assumed that Medicare would become the secondary payer for about 375,000 beneficiaries for whom Medicare is now the primary payer. Another critical assumption was that implementation would occur by January 1, 1983.

For purposes of this final rule, we reestimated the budgetary impact to account for some delay in the full implementation of this provision, a change in our methodology to identify the working age population and the addition of section 2301 of Pub. L. 98-369. For FY 1985, we estimate that $390 million in savings would result from implementation of Pub. L. 97-248, and an additional $205 million savings would result from section 2301 Pub. L. 98-369. Although the budgetary impact is significant, and is the reason for doing this voluntary analysis, we conclude that the estimated effect is the result of the Congressional direction contained in the statute and not this final rule which implements the statute.

D. Regulatory Flexibility Act

In the rule published on April 13, 1983, the Secretary certified that the final rule would not *result* in a substantial number of small entities being significantly impacted. We further noted that it was not possible to identify the number of small entities with twenty or more employees, that would be affected by this amendment.

Our analysis for this final rule reveals that we are restricted in selecting alternatives because the Congressional intent is clear in requiring that an employer health plan be primary payer. Also, Congress did give consideration to the potential economic impact of this amendment by indicating its desire for excluding employers of less than 20 employees. This group of small, identifiable entities will therefore not be burdened by the impact of the legislation.

Because any impact experienced by small entities, or other larger entities is the result of the statute and not this final rule, the Secretary certifies under 5 U.S.C., 605(b), enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), that this final rule will not result in a significant impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart C is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

1. The table of contents is amended by revising the undesignated center heading appearing before § 405.340 and the title of § 405.342 to read as follows and the authority citation continues to read):

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

* * * * *

Limitations on Payment for Services Furnished to Employed Aged and Aged Spouses of Employed Individuals

* * * * *

405.342 Amount of Medicare secondary payment.

* * * * *

Authority: 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, 1395pp), and 31 U.S.C. 3711.

2. The undesignated center heading appearing before § 405.340 is revised to read as follows:

Limitations on Payment for Services Furnished to Employed Aged and Aged Spouses of Employed Individuals

3. Section 405.340 is revised to read as follows:

§ 405.340 General Provisions.

(a) *Applicability.* The provisions of this section and of §§ 405.341 through 405.344 implement section 1862(b)(3) of the Social Security Act. They set forth policies and procedures for payment of benefits for services furnished to employed Medicare beneficiaries age 65 through 69, their spouses age 65 through 69, and the spouses age 65 through 69 of employed individuals through age 69 who are covered under employer group health plans of employers that employ 20 or more employees. These provisions are applicable to services furnished on or after January 1, 1983 except as specified in §§ 405.340(b)(3)(ii), 405.341(a)(3)(ii), and 405.341(d).

(b) *Definitions.* For purposes of this section, and §§405.341 through 405.344, the following definitions apply:

(1) "Employer group health plan" or "employer plan" means any group health plan that provides medical care, directly or through other methods such as insurance or reimbursement, to current or former employees, or to current or former employees and their families, and—

(i) Is of, or contributed to by, an employer of 20 or more employees; or

(ii) Is a multiemployer group health plan that has at least one employer with 20 or more employees. However, if such multiemployer plan can identify members who are employees of employers with less than 20 employees, those individuals and their spouses will

be considered not to meet the conditions specified in § 405.341(a)(3).

(2) "Secondary", when used to characterize Medicare payments, means that Medicare benefits are payable to the extent that payment has not been made or cannot reasonably be expected to be made by one or more employer group health plans under which the Medicare beneficiary is covered.

(3) "Age 65 through 69" means a period beginning with the first day of the month in which an individual attains age 65 and ending with—(i) For services furnished before July 18, 1984, the last day of the month in which the individual attains age 70,

and

(ii) For services furnished on or after July 18, 1984, the last day of the month before the month in which the individual attains age 70.

An individual attains a particular age on the day preceding the anniversary of his or her birth.

(4) "Employer" means, in addition to individuals and organizations engaged in a trade or business, other entities exempt from income tax such as religious, charitable, and educational institutions, the governments of the United States, the individual States, the Territories, Puerto Rico, the Virgin Islands, Guam and the District of Columbia, and the agencies, instrumentalities and political subdivisions of these governments.

(c) *Referral of cases to Equal Employment Opportunity Commission (EEOC).* HCFA will refer cases of apparent noncompliance with the requirements of the Federal Age Discrimination in Employment Act (ADEA) to the EEOC.

4. Section 405.341 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 405.341 Medicare Benefits Secondary to Employer Group Health Plans—General rules.

(a) Effective for services furnished in months after December 1982, Medicare benefits (Parts A and B) are secondary to benefits payable by an employer group health plan for any month in which an individual age 65 through 69—

(1) Is entitled to Part A of Medicare under § 408.10 of this chapter;

(2) Is not entitled (and could not upon filing an application become entitled) to Medicare on the basis of endstage renal disease as provided in § 408.13; and

(3) Is either—

(i) Employed and covered by reason of such employment by an employer group health plan that meets the definition in § 405.340(b)(1); or

(ii) An employed individual's spouse age 65 through 69 who by reason of that individual's employment is covered by an employer group health plan, and the employed individual is:

(A) With respect to services furnished before January 1, 1985, age 65 through 69; or

(B) With respect to services furnished after December 31, 1984, any age through 69.

The spouse may be entitled to Part A of Medicare on the basis of the employed individual's earnings record or the spouse's own earnings record.

* * * * *

(d) Beginning with services furnished on or after (30 days after publication), an individual who is receiving disability payments from an employer will not be considered employed for purposes of this section if—

(1) For the month before the month of attainment of age 65, the individual was entitled to disability benefits under Title II of the Social Security Act (20 CFR 404.315 and 404.350 of the Social Security Administration regulations); or

(2) The individual is not receiving remuneration subject to tax under the Federal Insurance Contributions Act (26 CFR 32.1 of the Internal Revenue Service regulations).

5. Section 405.342 is amended by revising the section heading and paragraph (b) to read as follows:

§ 405.342 Amount of Medicare secondary payment.

* * * * *

(b) *Services reimbursed by Medicare on other than a reasonable charge basis.* The Medicare secondary payment will be the lesser of—

(1) The gross amount payable by Medicare (the amount payable by Medicare without considering the effect of the Medicare deductible and coinsurance or the payment by the employer group health plan) reduced by the applicable Medicare deductible and coinsurance; or

(2) The gross amount payable by Medicare reduced by the amount paid by the employer plan.

Example: (1) A hospital furnished 7 days of inpatient hospital care in 1984 to a Medicare beneficiary whose employer group health plan was primary payer. The provider's charges for Medicare covered services totalled $2200. The employer plan paid $1760. No part of the Medicare inpatient hospital deductible of $356 had been met.

If the gross amount payable by Medicare in this case is $2100, then as secondary payer, Medicare pays the lower of the following amounts:

(a) The gross amount payable by Medicare minus the Medicare inpatient hospital deductible: $2100 − 356 = $1744.

(b) The gross amount payable by Medicare minus the employer plan's payment: $2100 − 1760 = $340. The $356 deductible was satisfied by the employer plan so that the beneficiary incurred no out of pocket costs.

Thus, when Medicare is secondary, the hospital payment made by both the employer and Medicare on behalf of the employee is $2100. For this example, if the employee had rejected the employer plan, resulting in Medicare becoming the primary plan, the hospital payment made on behalf of the employee would be $1,744.

Example: (2) A hospital furnished 1 day of inpatient hospital care in 1984 to a Medicare beneficiary whose employer group health plan was primary payer. The provider's charges for Medicare covered services totalled $750. The employer plan paid $250. No part of the Medicare inpatient hospital deductible had been met previously, but the employer plan's payment is credited toward that deductible.

If the gross amount payable by Medicare in this case is $650, then as secondary payer, Medicare pays the lower of the following amounts:

(a) The gross amount payable by Medicare minus the Medicare deductible: $650 − 356 = $294.

(b) The gross amount payable by Medicare minus the employer plan's payment: $650 − 250 = $400.

The hospital may bill the beneficiary the $106. ($650 minus the $250 employer plan payment and minus the $294 Medicare payment = $106.)

This fully discharges the beneficiary's deductible obligation.

Thus, when Medicare is the secondary payer, the hospital payment made by both the employer plan and Medicare on behalf of the employee is $544. For this example, if the employee had rejected the employer plan, resulting in Medicare becoming the primary plan, the hospital payment made on behalf of the employee would be $294, and the employee would have paid $356 as a deductible.

* * * * *

6. Section 405.343 is revised to read as follows:

§ 405.343 Limitation on Right of Provider to Charge a Beneficiary.

A provider of services or any other facility which is reimbursed on other than a reasonable charge basis may not charge a beneficiary or any other party for Medicare covered services if the provider or facility has been paid by an employer plan an amount that equals or exceeds any applicable Medicare deductible and coinsurance amounts and any charge made under § 405.461.

7. Section 405.344 is amended by revising paragraphs (a) and (b)(2) and adding a new paragraph (e) to read as follows:

§ 405.344 Conditional payment and recovery of payments.

(a) If the conditions specified in § 405.341(a) are met, conditional Medicare payment may be made when the claimant (beneficiary, provider, or supplier) has filed a claim under the employer plan, but the claim is denied in whole or in part by the employer plan for any reason.

(b) If a conditional Medicare payment is made, the following rules apply:

(1) The claimant must reimburse Medicare up to the amount it paid if the claimant subsequently receives payment from the employer plan.

(2) If, for any reason, primary payment is not received from the plan, HCFA may—

(i) Bring an action against the employer or the plan as appropriate, and the beneficiary must cooperate in HCFA's action; and

(ii) Refer the case to the EEOC in accordance with section 405.340(c).

* * * * *

(e) Any primary Medicare payment made for services furnished on or after January 1, 1983, to an individual who meets the conditions in § 405.341(a) is a conditional payment for purposes of paragraph (b)(1) and (b)(2) of this section.

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

Dated: February 5, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: March 26, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-24305 Filed 10-10-85; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6661]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646-2717, 500 C Street, Southwest, FEMA—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt)

(enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community number	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Maine: Cumberland	Cumberland, town of	230162B	May 17, 1978, Emerg.; May 19, 1981, Reg.; Oct. 15, 1985, Susp.	Aug. 30, 1977, May 19, 1981, Oct. 1, 1983 and Oct. 15, 1985.	Oct. 15, 1985.
Massachusetts: Dukes	Gay Head, town of	250070B	Sept. 7, 1976, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Dec. 6, 1974, Oct. 1, 1983 and Oct. 15, 1985.	Do.
Region II					
New Jersey:					
Morris	Butler, town of	340337B	July 23, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Feb. 1, 1974, Apr. 30, 1976 and Oct. 15, 1985.	Do.
Do	Riverdale, borough of	340359B	Nov. 20, 1970, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	May 31, 1974, Mar. 19, 1976 and Oct. 15, 1985.	Do.
New York: Tompkins	Lansing, town of	360852C	July 24, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Sept. 20, 1974, July 2, 1976, Aug. 12, 1977 and Oct. 15, 1985.	Do.
Region III					
Maryland:					
Charles	Indian Head, town of	240091B	Jan. 28, 1974, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	July 26, 1974, Dec. 19, 1975 and Oct. 15, 1985.	Do.
Garrett	Kitzmiller, town of	240036B	May 23, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Nov. 6, 1974, Feb. 27, 1976 and Oct. 15, 1985.	Do.
Pennsylvania: Washington	North Bethlehem, township of	422560A	Oct. 17, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Jan. 10, 1975 and Oct. 15, 1985.	Do.
Virginia: Rockingham	Dayton, town of	510136B	Mar. 13, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	May 31, 1974, May 14, 1976 and Oct. 15, 1985.	Do.
Region IV					
Kentucky: Magoffin	Salyersville, city of	210159B	Mar. 12, 1974, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Feb. 22, 1974, Jan. 9, 1976 and Oct. 15, 1985.	Do.
Region V					
Illinois:					
Henderson	Gulfport, village of	170280C	Mar. 12, 1974, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Mar. 1, 1974, Jan. 23, 1976, June 8, 1979 and Oct. 15, 1985.	Do.
Pike	Pleasant Hill, village of	170558B	Oct. 4, 1974, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Nov. 16, 1973, June 11, 1976 and Oct. 15, 1985.	Do.
Indiana: Crawford and Harrison	Milltown, town of	180034B	Feb. 13, 1976, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Nov. 30, 1973, Oct. 10, 1975 and Oct. 15, 1985.	Do.
Ohio: Wyandot	Carey, village of	390590D	Apr. 2, 1975 Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	May 31, 1974, Aug. 20, 1976, Mar. 9, 1979, Apr. 30, 1982, and Oct. 15, 1985.	Do.
Wisconsin: Monroe	Wilton, village of	550292B	July 28, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	May 17, 1974, May 14, 1976 and Oct. 15, 1985.	Do.
Region II Minimals Conversions					
New York:					
Genessee	Corfu, village of	361498B	Oct. 31, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Nov. 15, 1974, Jan. 16, 1976 and Oct. 15, 1985.	Do.
Tompkins	Newfield, town of	360853B	July 23, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	June 28, 1974, May 7, 1976 and Oct. 15, 1985.	Do.
Jefferson	Watertown, city of	360354C	July 7, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Apr. 5, 1974, Nov. 21, 1975, Dec. 10, 1976 and Oct. 15, 1985.	Do.
Region III					
Pennsylvania:					
Cambria	Barr, township of	421434B	May 11, 1976, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Jan. 17, 1975, May 28, 1976 and Oct. 15, 1985.	Do.
Snyder	Beaver, township of	422032	Jan. 19, 1985, Reg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Nov. 1, 1974, July 30, 1976 and Oct. 15, 1985.	Do.
Dauphin	Jackson, township of	421593B	Feb. 5, 1981, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Jan. 31, 1975, Feb. 29, 1980 and Oct. 15, 1985.	Do.
Perry	do	421952B	Jan. 28, 1976, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Dec. 27, 1974, Apr. 25, 1980 and Oct. 15, 1985.	Do.
Wayne	Lake, township of	422166A	Sept. 17, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Nov. 29, 1974 and Oct. 15, 1985.	Do.
Chester	Lower Oxford, township of	421485B	Sept. 30, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Oct. 18, 1974, Aug. 6, 1976 and Oct. 16, 1985.	Do.
Cambria	Middle Taylor, township of	421443A	Apr. 25, 1977, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Nov. 22, 1974 and Oct. 15, 1985.	Do.
Pike	Porter, township of	422500B	Aug. 17, 1979, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Feb. 18, 1977 and Oct. 15, 1985.	Do.
Wayne	Preston, township of	422171A	May 12, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Nov. 15, 1974 and Oct. 5, 1985.	Do.

State and county	Location	Community number	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Chester	Sadsbury, township of	421468B	Dec. 31, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	June 4, 1976, Sept. 13, 1984 and Oct. 5, 1985.	Do.
Dauphin	Williams, township of	421601B	Sept. 27, 1976, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	Jan. 31, 1975, Dec. 14, 1979 and Oct. 15, 1985.	Do.
Region VIII					
Colorado: Lincoln	Hugo, town of	080108B	Aug. 8, 1975, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.	May 31, 1974, Sept. 26, 1975 and Oct. 15, 1985.	Do.
Region VI					
Texas: Harris	Unincorporated areas	480287E	May 14, 1970, Emerg.; May 26, 1970, Reg.; Oct. 28, 1985, Susp.	May 26, 1970, Mar. 10, 1972, July 1, 1974, July 30, 1976, Mar. 30, 1982 and Sept. 27, 1985.	Oct. 28, 1985.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: October 7, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-24360 Filed 10-10-85; 8:45 am]

BILLING CODE 6718-03

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1321 and 1328

Grants for State and Community Programs on Aging; and Grants to Indian Tribes for Supportive and Nutrition Services

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Final rules.

SUMMARY: The Administration on Aging (AoA) in the Office of Human Development Services is hereby providing notice that the interim final rules published April 1, 1985 (50 FR 12942) are now final rules without change. These rules are applicable to grants to States and Indian tribes under Title III and Title VI of the Older Americans Act (OAA).

This notice includes the Office of Management and Budget (OMB) approval number which has been received for the information collection in the regulations.

DATE: The interim final regulations were effective May 1, 1985 with the exception of § 1321.7–1321.13 and 1328.19 which contain information collection requirements. We received approval from OMB for these sections so that they are effective October 11, 1985. Those statutory activities required to maintain eligibility for funding remained in effect.

FOR FURTHER INFORMATION CONTACT: Donald Smith or Frederick Luhmann, Office of Management and Policy Control, Administration on Aging, Room 4639, 330 Independence Ave., SW., Washington, DC 20201, (202) 472–3057.

SUPPLEMENTARY INFORMATION

Background

The Older Americans Act was first enacted in 1965. The Act was amended ten times between 1965 and 1984. As first enacted, the Act authorized funding under Title III to support in each State a State Agency on Aging. Title III also provided funds for each State agency to initiate local community projects to provide social services to older persons. In 1972, a new Title VII was enacted which authorized funds for local community projects to provide nutrition services to the elderly. The projects were designed to provide older persons aged 60 and older with at least one hot nutritious meal five or more days a week. A second major change occurred in 1973. The amendments revised the Title III State Grant Program by requiring the State agency to: (1) Divide the entire State into planning and service areas, (2) determine in which areas an area plan would be developed, and (3) designate an area agency on aging to develop and administer the plan in each area. The 1973 amendments also added a new Title V to the Act which authorized the Commissioner to make grants directly to local community agencies to pay part of the cost of the construction, acquisition, renovation, alteration, or initial staffing of facilities for use as multipurpose senior centers.

The 1978 amendments consolidated under Title III the social services, nutrition services, and multipurpose senior center programs formerly authorized under Titles III, V and VII. This consolidation was designed to eliminate duplicative and overlapping functions that had been conducted under each Title. It also reemphasized the concept of a signal focal point for service delivery within each community. The 1978 amendments enacted a new Title VI, a new direct grant program to Indian tribal organizations for older Indians. The 1981 amendments made several technical amendments to the act and reinforced the basic direction established under the 1978 amendments. Most of the changes expand the capacity of State/area agencies and tribal organizations through increased administrative flexibility.

On March 31, 1983 the Department published a Notice of Proposed Rulemaking (NPRM) for Title III and VI of the Older Americans Act to provide flexibility to grantees in the administration of their programs, reduce reporting and paperwork requirements and delete statutory language that was merely repetitive. These rules were developed based on six principles the Department is applying in the development of all regulations. These principles are to:

(1) Insure that all regulations are clearly within the authority delegated by law and consistent with Congressional intent.

(2) Emphasize private market forces whenever feasible, rather than government mandate, when developing policies to reach desired objectives.

(3) Provide maximum flexibility to State and local governments.

(4) Minimize Federal, State, local and private costs.

(5) Prevent fraud, abuse, waste and inefficiency.

(6) Eliminate regulations not serving a compelling Federal interest or reform those not implemented in the least intrusive means available.

After consideration of the comments received on the NPRM and a review of the 1984 Amendments to the Older Americans Act, we issued interim final rules on April 1, 1985 that incorporated

changes made as a result of the public review process and made changes necessary to conform the regulations to the 1984 Amendments.

Discussion of Comments on the Interim Final Rules

During the 60 day comment period following publication of the interim final rules published in the **Federal Register** on April 1, 1985 [50 FR 12942], we received 156 letters; one letter concerned the Title VI program applicable to Indian tribes and the remainder concerned Title III, applicable to State and local agencies. The letters came from a cross section of individuals and organizations who are mainly involved in the establishment, administration and/or delivery of programs for older individuals. We received comments from members of Congress (10), national organizations (5), State agencies (5), Area Agencies on Aging (18), service providers (3), and individuals and advocacy groups (115).

We reviewed and considered all comments received. Few comments were received on the changes we made in the regulations to implement the 1984 Amendments. Many of the letters, especially those from State agencies, applauded the Administration's position that allows State and area agencies maximum flexibility under the regulations. The majority of comments, however, reiterated concerns or recommendations expressed in the previous comment period on the Notice of Proposed Rulemaking (48 FR 8964, March 2, 1983), e.g. organizational requirements of State and area agencies, State plans and State advisory boards. Since we responded in the preamble to the interim final rules, we will not address them here. In order to provide additional clarification however, we would like to respond to four areas of concern.

Section 1321.7: Amendment of Planning and Service Areas

Some commenters were concerned that the designation and redesignation of planning and service areas (PSA) might be interpreted as an annual event, and they suggested that the Commissioner on Aging and the public should be notified only if the State was planning to change PSA boundaries. They were also concerned that area agencies would be disrupted by such a process.

It is our intention that this process take place prior to submission of the State plan, every two, three or four years, except where the State has decided to amend its plan expressly for the purpose of PSA redesignation. We believe that this requirement will help to avert any major interruptions in the implementation of State and area activities under approved plans, since the Commissioner, pursuant to section 305(b)(4), is required to provide a hearing, on request, from a unit of general purpose local government, region, area, or Indian reservation that has been denied designation as a PSA by a State. As a result of that hearing, the Commissioner may disapprove the decision of the State agency concerning designation or take other appropriate action. We believe that all these matters should be settled before the State plan is submitted.

As to the issue of disrupting area agencies, area agencies are designated only after the State has designated the PSA. Accordingly, the designation and redesignation of area agencies must be determined by the State after it has met the requirements for designating PSA's as set forth in section 305 of the Act.

Section 1321.33: Advocacy Responsibilities: General and 1321.65 Advocacy Responsibilities: Area Agency

Many commenters suggested that §§ 1321.33(b) and 1321.65(b) prevented State and area agencies from fully carrying out their advocacy responsibilities under the Older Americans Act.

We do not believe these provisions are incompatible with carrying out advocacy responsibilities under the Act. The Older Americans Act clearly directs that State and Area Agencies on Aging serve as effective and visible advocates for the elderly, and we concur with the commenters regarding the importance of advocacy activities. Although the statute is clear, we conceded to the arguments made by State and area agencies that they found it helpful to have advocacy concepts reiterated in regulations, and, accordingly, inserted a modified version back in the regulations. The language of these final rules do not preclude State and area agencies from fully carrying out their advocacy responsibilities, but merely seeks to assure that advocacy activities are in keeping with the intent of the Act and does not extend to areas which are prohibited.

Section 1321.45: Designation of Area Agencies.

Some commenters indicated that they were confused about the "right of first refusal". Most of the comments focused on a concern that area agencies may be designated on an annual basis.

Section 1321.45 merely requires that the State give preference to an established office on aging if a unit of general purpose local government does not exercise its right of first refusal under section 305(b)(5)(B) of the Act. As we stated in the preamble to the interim final regulations, our only purpose in regulating this area was to clarify a possible conflict with paragraph 305(c) of the Act which also gives priority for designation to established offices on aging. Therefore, we do not believe that this concern could or should flow from an interpretation of our regulation.

Section 1321.73: Legal Assistance

Some commentors were concerned that our adaptation of the Legal Service Corporation (LSC) regulations imposed additional requirements and restrictions which would prevent Title III legal assistance providers from carrying out their responsibilities under the Older Americans Act. Most of the comments focused on the prohibited lobbying provisions in 45 CFR 1612.4 of the LSC regulations.

These final Title III legal assistance regulations are no more or less restrictive than those published in 1980, with the exception of those prohibitions against lobbying. In fact, the language as adapted provides States, area agencies, and legal assistance providers with more flexibility and more precise language. With respect to lobbying, we believe that it is appropriate that all legal assistance providers using Title III funds, whether they are LSC grantees or not, be subject to the same restrictions for lobbying. Accordingly, the Older Americans Act regulations incorporated the prohibitions against lobbying as required by the LSC regulations.

Finally, during the past five years we have received several inquiries from the General Accounting Office (GAO) about the lack of specific Title III regulations on lobbying activities. We think that these final regulations will also help to alleviate some of the concerns in this area.

Impact Analysis

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual effect on the economy of $100 million or more; result in major increase in costs or prices for consumers, any industries, any governmental agency or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete

with foreign-based enterprises in domestic or import markets.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, Pub. L. 96-354, requires that an agency prepare a regulatory flexibility analysis for a proposed or final rule if the rule would have a significant economic impact on a substantial number of "small entities," i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

Although actual delivery of services may be provided in some circumstances by proprietary, public and not-for-profit agencies or organizations under contract to the State agency, the responsibility for meeting the requirements of these regulations is on the State agencies, which are not "small entities" within the meaning of the Act. This rule will impose no significant burdens on States or other affected parties and will provide flexibility to States in implementing the provisions of the Act. For these reasons, the Secretary hereby certifies that these regulations will not have a significant impact on a substantial number of small entities.

Recordkeeping and Reporting Requirements

As required by section 3504(h) of the Paperwork Reduction Act of 1980, §§ 1321.7-1321.13 and 1328.19 which contain information collection requirements were submitted to the Office of Management and Budget (OMB). We have received OMB approval for these sections. The approval number is 0980-0170 and is effective through March 31, 1987.

List of Subjects

45 CFR Part 1321

Administrative practice and procedure, Aged, Grant programs—social programs, Nutrition, Reporting requirements.

45 CFR Part 1328

Administrative practice and procedure, Aged, Grant programs—Indians, Grant programs—social programs, Indians, Reporting requirements.

(Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special Programs for Aging, Title III Parts A and B—Grants on Aging; 13.635 Special Programs for Aging, Title III Part C—Nutrition Services); (13.655 Special Programs for Aging—Title VI—Grants for Indian Tribes.)

Dated: August 8, 1985.

Carol Fraser Fisk,

Acting Commissioner on Aging.

Approved: August 10, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: September 23, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Accordingly, for the reasons set forth in the preamble, the interim rule published at 50 FR 12942, April 1, 1985 is adopted as final with the following changes:

PART 1321—[AMENDED]

1. The authority citation for Part 1321 reads as follows:

Authority: Title III of the Older Americans Act (42 U.S.C. 3021 through 3030g).

§§ 1321.7, 1321.8, 1321.9, 1321.11, and 1321.13 [Amended]

2. The Office of Management and Budget control number is added at the end of §§ 1321.7, 1321.8, 1321.9, 1321.11, and 1321.13 as follows:

(Approved by the Office of Management and Budget under control number 0980-0170)

PART 1328—[AMENDED]

3. The authority citation for Part 1328 reads as follows:

Authority: Title VI of the Older Americans Act (42 U.S.C. 3057).

4. The Office of Management and Budget control number is added at the end of § 1328.19 as follows:

§ 1328.19 Application requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 0980-0170)

[FR Doc. 85-24395 Filed 10-10-85; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 176, 177 and 179

[Docket No. HM-188B, Amdt. Nos. 171-83, 172-100, 173-191, 174-48, 176-22, 177-66, 179-39]

Transportation of Hazardous Materials Between Canada and the United States

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The MTB is amending the Department of Transportation's Hazardous Materials Regulations (HMR) in order to permit transportation of hazardous materials, with certain conditions and limitations, in accordance with the recently published Canadian Transport of Dangerous Goods Regulations. This action is necessary in order to facilitate the movement of hazardous materials between Canada and the United States.

EFFECTIVE DATE: November 1, 1985. However, compliance with the regulations as amended is authorized as of October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 426-0656.

SUPPLEMENTARY INFORMATION: On February 6, 1985, the Canadian Government (specifically Transport Canada) published new multi-modal regulations for the transport of dangerous goods (hazardous materials) in Part II of the Canada Gazette. The regulations are officially titled "Regulations Respecting the Handling, Offering for Transport and Transporting of Dangerous Goods" or simply the "Transportation of Dangerous Goods Regulations", and have been issued pursuant to the provisions of the Canadian Transportation of Dangerous Goods Act of July 17, 1980. For the purpose of this final rule, these regulations are referred to as the "TDG Regulations". The TDG Regulations apply to the transport of dangerous goods within Canada, including shipments destined for the United States and those entering Canada from the United States. Certain parts of these regulations were effective at the time of publication, other parts became effective on April 8, 1985, but the majority of the regulations, and particularly those dealing with specific transport requirements as opposed to administrative matters, became effective on July 1, 1985. Owing to the problems concerning transportation of hazardous materials between the United States and Canada addressed in this final rule, the TDG Regulations were amended prior to becoming effective to permit, in general, shipments of hazardous materials moving between the United States and Canada to continue to be transported in accordance with the requirements of the HMR until October 31, 1985.

On May 30, 1985, the MTB pubished a notice of proposed rulemaking in the

Federal Register under Docket No. HM-188B (50 FR 23036) which proposed to amend the HMR to permit transportation of hazardous materials from Canada to the United States in accordance with the TDG Regulations subject to certain conditions and limitations. This proposal was published in response to a note delivered to the Department of State by the Embassy of Canada which formally requested that the United States take steps to amend the HMR to grant recognition to the TDG Regulations in order to facilitate the transport of hazardous materials between Canada and the United States. A public hearing was held on these proposals on June 27, 1985, and three persons offered oral comments at that time. A complete transcript of that hearing is in the public docket.

In addition to inviting comments on the proposed amendments to the HMR, and on certain specific questions posed in the notice of proposed rulemaking, the MTB raised the following questions for comment in the public hearing:

1. What are the safety implications of recognizing the corrosive gas (Division 2.4) classification in the TDG Regulations with respect to the labeling and placarding of shipments entering the United States? Would the ID number on the corrosive gas placard be adequate to ensure appropriate emergency response? Could such a placard be specifically authorized for transportation within the United States on shipments destined for Canada since TDG Regulations do not recognize the DOT placarding required for gases classed as corrosive gases by the TDG Regulations?

2. What would be the safety implications of recognizing the Canadian shipping paper requirements for explosives shipments entering the United States if the papers also contained the DOT proper shipping name and hazard class of the explosives?

3. Should the explosives labels and placards required by the TDG Regulations for shipments to the United States, which the MTB has proposed to recognize, also be allowed for transportation within the United States on shipments destined for Canada, since the TDG Regulations do not recognize the DOT explosives labels and placards?

4. Information currently available indicates that the Canadian Transport Commission will amend its regulations effective July 1, 1985, to fully incorporate the TDC Regulations. The existing § 173.8 of the DOT regulations fully recognizes shipments entering the United States in conformance with the CTC regulations. This means that effective July 1, shipments could legally enter the United States in full conformance with the CTC regulations, as modified through incorporation of the TDG Regulations (i.e., with TDG required shipping papers, labels and placards (including the "Corrosive Gas" label and placard)). Does this situation present an unacceptable risk from the safety standpoint? Should DOT take immediate action to amend § 173.8 to prevent this situation?

A total of sixteen comments, in addition to those offered at the hearing, were received in response to this notice of proposed rulemaking and the additional questions raised at the hearing. The following is an analysis, by section, of the comments and any changes made in the final rule as compared to the proposed rule. Aside from recognition of the CORROSIVE GAS placard specified in the TDG Regulations, which was discussed as an option for consideration in the notice, certain minor nonsubstantive changes have been included in this final rule consistent with changes to the TDG Regulations which became effective on July 1, 1985.

Section 171.7. This section is being amended to include the TDG Regulations, as amended as of July 1, 1985, in the matter incorporated by reference. While this was not proposed in the notice, the MTB feels that is necessary in order to more precisely specify those TDG Regulations that are being recognized under the HMR.

Section 171.12a. There was general support by commenters for this section as proposed, although one commenter, the International Association of Fire Chiefs (IAFC), expressed concern about the proposed rule because hazardous materials entering the United States from Canada ". . . would be permitted to be identified through the Canadian system." This is, of course, the principal reason for publication of the proposed rule. The MTB believes it would impose tremendous and unreasonable burdens to require that shipments entering the United States from Canada fully conform to the HMR. This would certainly be a drastic departure from past philosophy concerning recognition of Canadian regulations. The MTB believes that a total rejection of the TDG Regulations cannot be supported on safety grounds and has, therefore, adopted this section. However, the section appearing in this final rule differs in certain respects from that proposed as a result of the introduction of changes taking account of comments, to improve its presentation, and to correct certain omissions in the proposal that came to light through the continuing discussions with Transport Canada.

Paragraph (a) of § 171.12a has been expanded to include packaging authorized under the TDG Regulations. While the TDG Regulations do not currently address packaging in general, they do prescribe packaging for specific types of hazardous materials such as limited quantities and consumer commodities. Because of the similarity of the packagings prescribed to that required under the HMR for the same types of materials, the MTB believes that these TDG authorized packagings should be recognized. In addition, the reference to hazardous materials "certified" on a shipping paper in accordance with the TDG Regulations that appeared in the proposal has been removed since the TDG Regulations do not require the use of a shipper's certification. Several commenters objected to the fact that the proposal would recognize the use of class numbers rather than class names in shipping papers. In view of the fact that § 173.8 has permitted this practice for rail shipments entering the United States from Canada for several years, and because the DOT Emergency Response Guidebook, and the pocket version of the guidebook recently made available for distribution to drivers by a major trade association, contain a table explaining the meaning of these class numbers, the MTB has made no change to the proposed rule as a result of this comment.

The paragraph (a)(2)(i) that appeared in the proposal is now considered by the MTB to be superfluous and it has, therefore, been removed, with the proposed paragraphs (a)(2)(ii) and (a)(3) being combined to improve clarity. As a result, the proposed paragraphs (a)(4), (a)(5) and (a)(6) are now designated (a)(3), (a)(4) and (a)(5), respectively. One commenter suggested that the proposed paragraph (a)(5) be modified to require that only one hazardous waste manifest be required by providing that waste shipments destined for Canada be made using the Canadian hazardous waste manifest, while shipments destined for the United States be made under the United States manifest. The uniform hazardous waste manifest currently required in the United States by DOT and EPA regulations was developed through years of intensive effort and after thorough coordination with the states. Because of the impact that the change suggested by this commenter would have regarding the use of this uniform hazardous waste manifest within the United States, the MTB has not adopted this suggestion. However,

discussions are now underway between the United States Environmental Protection Agency and their Canadian counterparts, and the concerned states in an attempt to reach an agreement whereby such a reciprocal recognition of hazardous waste manifests may be possible in the future.

Finally, a provision has been added to paragraph (a)(5) to require that only "UN" or "NA" numbers may be used and that "PIN" numbers provided for in the TDG Regulations are not acceptable. This action was taken in response to a recent amendment to the TDG Regulations which no longer requires the "PIN" prefix for consignments transported to the United States. One commenter suggested that this paragraph be modified to require English text on labels and placards when text is required or present. It should be noted that when text is required on labels and placards by the TDG Regulations, both the English and the French texts are required. Also, for a number of years, the HMR have recognized either foreign text or no text on labels conforming to IMO or UN standards (see § 172.407), as well as "wordless" placards under CTC Regulations. For these reasons, the suggested change to require English text on labels and placards has not been adopted in the final rules.

Paragraph (b)(2) of § 171.12a has been changed considerably from that appearing in the proposal. In view of the general support for this section, and of the lack of any specific opposition to the proposed use of the explosives labels and placards prescribed in the TDG Regulations for shipments to the United States, the MTB has expanded the permissive use of these labels and placards to include shipments originating in the United States destined for Canada. Since the TDG Regulations do not recognize the DOT explosives labels and placards for shipments entering Canada, the MTB believes this action will reduce the burdens on shippers and carriers or explosives by eliminating the necessity to change labels and placards at the border or for dual labeling and placarding. The MTB has also decided to add a provision to paragraph (b)(2) which recognizes shipping papers for explosives prepared in accordance with the TDG Regulations provided the shipping paper also includes the letters "DOT:" followed by the DOT proper shipping name and hazard class of the explosives. This is similar to the recognition accorded shipping papers for explosives prepared in conformance with the HMR granted to United States, shipments entering Canada by the TDG Regulations. The MTB has included this provision to minimize the need for preparation of dual sets of shipping papers. Comment was specifically solicited on both of the preceding additions to this paragraph at the public hearing, and there was no negative comment regarding these suggested provisions.

The provision excluding any recognition of the TDG Regulations regarding the transport of Class 2, Division 4 materials (i.e., "Corrosive gases") that appeared in paragraph (b)(3) of the proposal has been removed. The notice specifically raised the issue of the recognition of the corrosive gas class and indicated that, on the basis of comments received, the MTB would be prepared to recognize the Corrosive gas classification, label and placard if it appeared that this would not adversely affect the ability of emergency response organizations to respond to transport emergencies.

The majority of commenters supported the recognition of the corrosive gas class. Reasons indicated by commenters for this support included:

—The presence of the UN number on placards and shipping papers which permits appropriate emergency response to be initiated through use of the DOE Emergency Response Guidebook.

—The requirement in paragraph 5.38(l) of the TDG Regulations to mark the name of the gas on each road and rail vehicle used to transport corrosive gases in bulk.

—The danger of delay and disruption of shipments resulting from the need to relabel and replacard, and to prepare new shipping papers for, consignments of corrosive gases and the increased risks and exposures associated with such delays and disruptions.

—The risk of commission of serious and dangerous errors in the course of replacarding, relabeling and redocumenting shipments and in transcribing UN numbers and other descriptive information.

—The opinion that the corrosive gas classification more accurately describes and communicates the actual hazards of these gases than does the DOT "Nonflammable gas" hazard class.

—The belief that the commonality of the gas cylinder pictogram to both the Corrosive gas and Nonflammable gas labels and placards overrides the color differences, and still enables emergency responders to recognize that a shipment contains a Corrosive gas.

—The presence of the name of the gas on shipping papers providing for easy identification of the gas.

—The speed and effectiveness of organizations and systems such as CHEMTREC (Chemical Manufacturer's Association), CANUTEC (Transport Canada) and CHLOREP (Chlorine Emergency Plan of the Chlorine Institute) in providing advice and assistance to emergency response personnel in the event of transport incidents.

—The serious facilitation and economic burdens that would be imposed on shippers and carriers by the need to change labels, placards and shipping papers at border crossings if the Corrosive gas classification is not recognized.

Those opposed to recognition of the corrosive gas class generally cited lack of familiarity on the part of emergency response personnel with this class, label and placard, and the belief that such recognition would undermine the regulatory uniformity of the HMR and of emergency response aids such as the DOT Emergency Response Guidebook, as the reasons for their opposition. Several commenters specifically noted the need to include reference to the corrosive gas class in the DOT Emergency Response Guidebook before this class is recognized for transportation of these gases within the United States.

The existing § 173.8 has permitted, for several years, the gases now classed as corrosive gases by the TDG Regulations to enter the United States by rail when classed, labeled and placarded "Poison gas" in accordance with the CTC Regulations. This was permitted, after soliciting public comment (Docket No. HM-188), on the basis that the UN number on the placard and in shipping papers provided sufficient information to initiate appropriate emergency response in the event of an accident. The MTB is unaware of any adverse experience as a result of these Canadian shipments. The MTB believes there is little difference between this situation and the use of a "Corrosive gas" placard with the appropriate UN number. Certainly, at any considerable distance, it would be difficult to distinguish between the "Corrosive gas" and "Poison gas" placards, and response actions would be based on the UN number indicated on the placard. In addition, as noted by several commenters, it must be borne in mind that paragraph 5.38(1) of the TDG Regulations requires each road or rail

vehicle used for the bulk transportation of a corrosive gas be marked on each side with the name of that gas in letters not less than 102 mm (4 inches) high. The value of this marking in aiding the identification of the contents in the case of an accident cannot be underestimated.

After consideration of the comments regarding recognition of the corrosive gas classification, and on the basis of the recent past experience with shipments made under the CTC classification of "Poison gas", the MTB believes that recognition of the corrosive gas class will not have a serious adverse effect on emergency response to accidents and this final rule permits shipments to enter the United States from Canada in conformance with the TDG Regulations concerning corrosive gases. In order to address the concerns expressed by several of the commenters, the MTB will undertake to distribute to each of the emergency response organizations to which the DOT Emergency Response Guidebook was sent, appropriate information concerning the gases classed as corrosive gases under the TDG Regulations including examples of the placard employed for such gases. The MTB believes that recognition of the corrosive gas class will not jeopardize emergency response actions, but will eliminate the costly burdens that would have been imposed if it were necessary to change labels and placards at the border. For the same reasons, and in response to a comment, the MTB has included a new paragraph (c) in § 171.12a that did not appear in the proposal, permitting the corrosive gas labels and placards (which are required for transport within Canada even for shipments originating in the United States) to be used in the United States for shipments destined for Canada provided an indication is included in the shipping papers that the placards/labels applied have been used for the purpose of transportation to Canada. As a result of the inclusion of this additional paragraph, proposed paragraphs (c), (d) and (e) are redesignated (d), (e) and (f), respectively.

The proposed paragraph (e) has been revised by adding a provision allowing the return of empty cargo tanks to Canada in conformance with the TDG Regulations. While the notice of proposed rulemaking proposed that, based on the existing provisions of § 173.8, this practice be permitted for empty rail tank cars, a similar provision for empty cargo tanks was inadvertently omitted.

Sections 172.401 and 172.502. Although not originally proposed, these sections have been amended to specifically provide that the display of any label or placard required by the TDG Regulations is not considered a prohibited display. The MTB believes this is necessary to permit the display of labels and placards required by the TDG Regulations, such as the label and placard specified for Class 9 materials, that may otherwise be considered to be a prohibited display within the United States. In this context it is noted that it is not required that a carrier maintain any display of labels or placards not required by the HMR. Therefore, the amendment of these sections will not impose any additional responsibility or burden on any person, but will permit labels and placards such as those required by the TDG Regulations for Class 9 materials to be applied in the United States when a shipment is destined for Canada.

Section 173.8. This section is being removed as proposed. There were no comments submitted regarding this proposed action.

Section 174.11. One commenter noted that as a result of the removal of § 173.8, it would be necessary to amend § 174.11 to reflect the addition of the new § 171.12a and the incorporation of the new TDG Regulations. The MTB concurs, and has amended the section accordingly.

Sections 174.59 and 177.823. One commenter requested that § 174.59 be amended to allow railroads to replace lost Corrosive gas placards with the appropriate placard required by the HMR on the basis that both railroad and emergency response personnel would be familiar with the placards required by the HMR and that it would be both unreasonable and unnecessary to expect United States' railroads to maintain supplies of the Canadian placards. The MTB agrees with the suggestion and has amended § 174.59 accordingly. A similar provision in § 177.823 has been similarly amended.

Sections 171.12, 173.314, 176.11, 177.805, 179.105–1 and 179.106–1. References to § 173.8, which has now been removed, have been revised to refer to the new § 171.12a.

Administrative Notices

A. Executive Order 12291

The MTB has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.) A regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning the size and nature of entities likely affected, I certify that this final rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Imports, Incorporation by reference.

49 CFR Part 172

Hazardous materials transportation, Labeling, packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 179

Hazardous materials transportation, Railroad safety.

In consideration of the foregoing, 49 CFR Parts 171, 172, 173, 174, 176, 177 and 179 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1806; 49 CFR 1.53, unless otherwise noted.

2. Section 171.7 is amended by adding new paragraphs (c)(32) and (d)(28) to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

(32) TDG Regulations: Canadian Government Publishing Center, Supply and Services Canada, Ottawa, Ontario, Canada K1 A 0S9.

(d) * * *

(28) "Transportation of Dangerous Goods Regulations" of Transport Canada (TDG Regulations), amended as of July 1, 1985, (Incorporating Registration Numbers SOR/85-77, SOR/85-585 and SOR/85-609).

§ 171.12 [Amended]

2. Paragraph (a) of § 171.12 is amended by replacing the section reference "§ 173.8" with the section reference "§ 173.12a".

3. Section 171.12a is added to read as follows:

§ 171.12a Canadian shipments and packagings.

(a) Notwithstanding the requirements of Part 172 and 173 of this subchapter, and except as provided in paragraph (b) of this section, a hazardous material that is classed, packaged, marked, labeled, placarded and described on a shipping paper in accordance with the Regulations Respecting the Handling, Offering for Transport and Transporting of Dangerous Goods (the Transportation of Dangerous Goods Regulations or TDG Regulations), issued by the Government of Canada, may be transported by rail or highway from the point of entry in the United States to its destination in the United States, or through the United States en route to a point in Canada, provided that it fulfills the following additional requirements as applicable:

(1) When a hazardous material is not subject to the requirements of the TDG Regulations, it must be transported as required by this subchapter.

(2) When a hazardous material, that is subject to this subchapter for transportation by rail or highway is transported under the provisions of this section, the shipping paper must include the following:

(i) The words "Dangerous When Wet" in association with the basic description when the Class 4, Division 4.3 label is required to be applied by the TDG Regulations.

(ii) The words "Poison" in association with the basic description if a liquid or solid material in a packaging meets the definition of a poison according to this subchapter, and the fact that it is a poison is not disclosed in the shipping name or by a class entry.

(3) When a hazardous material, which is subject to the requirements of the TDG Regulations, is also a hazardous substance as defined in this subchapter, the shipping paper must include the following:

(i) The name of the hazardous substance shall be entered on shipping papers in association with the proper shipping name required to be marked on the package, unless the proper shipping name required by the TDG Regulations already includes the name of the hazardous substance; and

(ii) The letters "RQ" shall be entered on the shipping paper either before or after the basic description required by the TDG Regulations and in association with the proper shipping name required to be marked on the package.

(4) When a hazardous material, which is subject to the requirements of the TDG Regulations, is also a hazardous waste as defined in this subchapter:

(i) The word "Waste" must precede the proper shipping name on shipping papers and package markings; and

(ii) It must be accompanied by a hazardous waste manifest executed as required by § 172.205 of this subchapter.

(5) Required shipping paper entries and package markings must be in English. Abbreviations may not be used in shipping paper entries or package markings unless they are specifically authorized by this subchapter. TDG Regulations class or division numbers are not considered to be abbreviations. Hazardous materials identification numbers must be preceded by "UN" or "NA". The use of an identification number preceded by "PIN" is not authorized.

(6) Shipments of radioactive materials must conform to the requirements of § 171.12(e).

(b) This section does not apply to—

(1) A material which is a forbidden material according to § 173.21 of this subchapter, or as indicated in Column (3) of the Table § 172.101 of this subchapter;

(2) A material or article meeting the definition of a Class A, B or C explosive according to this subchapter, except that, notwithstanding the requirements of Part 172 of this subchapter—

(i) For transportation between the United States and Canada, a package may be labeled and a freight container, motor vehicle or rail car placarded, with the label and placard required by the TDG Regulations provided that label or placard also indicates the appropriate DOT hazard class in accordance with Schedule V of the TDG Regulations;

(ii) Explosives may be transported from the point of entry in the United States to their destination in the United States, or through the United States en route to a point in Canada, when described on a shipping paper in accordance with the TDG Regulations provided the shipping paper also includes the letters "DOT:" followed by the proper shipping name and hazard class prescribed for explosives in this subchapter.

(c) Notwithstanding the requirements of Part 172 of this suchapter, a hazardous material included in Division 3 or 4 of Class 2 of the TDG Regulations may be transported from its point of origin in the United States to Canada, or through the United States en route to a point in Canada, when the package is labeled, and the freight container, motor vehicle or rail car is placarded, as required by the TDG Regulations provided the shipping paper contains an indication that these labels and placards have been applied in conformance with this paragraph for the purpose of transport to Canada.

(d) Except as specified in 173.301(i) of this subchapter, specification packagings made and maintained in full compliance with the corresponding specifications prescribed by the Railway Transport Committee of the Canadian Transport Commission (formerly the Board of Transport Commissioner for Canada), in its Regulations for the Transportation of Dangerous Commodities by Rail, and marked in accordance therewith (e.g., BTC, CTC, etc.) may be used for the shipment of hazardous materials within the United States.

(e) For transportation by rail, hazardous materials transported in accordance with paragraph (a) of this section may, in addition, be packaged and otherwise transported in conformance with the regulations of the Canadian Transport Commission from the point of entry in the United States to their destination in the United States, or through the United States en route to a point in Canada. Subject to the conditions and limitations of paragraphs (a) and (b) of this section, empty rail tank cars may be transported in conformity with Canadian Transport Commission regulations from point of origin in the United States to point of entry into Canada.

(f) Except as provided in paragraphs (a) and (d) of this section, hazardous materials transported by highway in accordance with this section must be packaged and otherwise transported as required by this subchapter. Subject to the conditions and limitations of paragraphs (a) and (b) of this section, empty cargo tanks may be returned to Canada in conformance with TDG Regulations provided they are otherwise transported as required by this subchapter.

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

4. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804; 49 CFR 1.53; unless otherwise noted.

5. Section 172.401 is amended by removing the word "or" at the end of paragraph (c)(2) and by revising paragraph (c)(3) and adding a new paragraph (c)(4) to read as follows:

§ 172.401 Prohibited labeling.

* * * * *

(c) * * *

(3) The ICAO Technical Instructions; or

(4) The TDG Regulations.

* * * * *

6. Section 172.502 is amended by revising paragraph (c) to read as follows:

§ 172.502 Prohibited placarding.

* * * * *

(c) The restrictions in paragraphs (a) and (b) of this section do not apply to portable tanks, freight containers, motor vehicles or rail cars which—

(1) In addition to any placards required by this part, may be placarded in conformance with the IMDG Code; or

(2) Are placarded in conformance with the TDG Regulations.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804; 1808; 49 CFR 1.53; unless otherwise noted.

§ 173.8 [Reserved]

8. Section 173.8 is removed and reserved.

§ 173.314 [Amended]

9. Section 173.314(h) is amended by replacing the section reference "§ 173.8" with the section reference "§ 173.12a".

PART 174—CARRIAGE BY RAIL

9. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804; 1808; 49 CFR 1.53, unless otherwise noted.

10. Section 174.11 is revised to read as follows:

§ 174.11 Canadian shipments and packagings.

A Canadian shipment or package may be transported by rail car within the United States if it is in compliance with the requirements of this subchapter or the TDG Regulations and the regulations of the Canadian Transport Commission as provided in § 171.12a of this subchapter.

§ 174.59 [Amended]

11. Section 174.59 is amended by adding a sentence at the end of the paragraph to read: "For Canadian shipments, required placards lost in transit, must be replaced either by those required by Part 172 of this subchapter or by those authorized under § 171.12a."

PART 176—CARRIAGE BY VESSEL

12. The authority citation for Part 176 continues to read as follows:

Authority: 46 U.S.C. 170 (7)(a-c); 49 U.S.C. 1803, 1804; 1808; 49 CFR 1.53.

§ 176.11 [Amended]

13. Paragraph 176.11(b) is amended by replacing the section reference "§ 173.8" with the section reference "§ 173.12a".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

14. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 1803; 1804; 1808; 49 CFR 1.53.

§ 177.805 [Amended]

15. Section 177.805 is amended by replacing the section reference "§ 173.8" with the section reference "§ 171.12a".

§ 177.823 [Amended]

16. Section 177.823 is amended by inserting the words "or as authorized in § 171.12a" after the words "Part 172".

PART 179—SPECIFICATIONS FOR TANK CARS

17. The authority citation for Part 179 continues to read as follows:

Authority: 49 U.S.C. 1804; 1808; 49 CFR 1.53; unless otherwise noted.

§§ 179.105-1 and 179.106-1 [Amended]

18. Sections 179.105-1 and 179.106-1 are amended by replacing the section references to "§ 173.8" with the section references "§ 171.12a".

Issued in Washington, DC on October 4, 1985, under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

[FR Doc. 85-24301 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-60-M

49 CFR Parts 172, 173, 176, 177, and 178

[Docket No. HM-189C; Amdt. Nos. 172-101, 173-192, 176-23, 177-67, 178-85]

Editorial Corrections and Clarifications

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The purpose of these amendments to the Hazardous Materials Regulations (HMR) is to correct certain editorial errors, and to make minor regulatory changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Edward T. Mazzullo, Regulations Development Branch, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION: In its maintenance of the HMR, MTB performs an annual review of the regulations to detect errors which may be causing confusion to users. Inaccuracies detected in Title 49, Code of Federal Regulations (CFR), Parts 100-199, revised as of November 1, 1984, include incorrect references to other rules and regulations in the CFR, and misstatements of certain regulatory requirements. Also, in response to inquiries which MTB received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure thereon are unnecessary. For the same reason, these amendments are effective without the customary 30 day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

The MTB has determined that this rule, as promulgated, is not a major rule under the terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment was not prepared as these amendments are not substantive changes to the HMR.

Based on limited information available concerning the size and nature of entities likely to be affected by these amendments, I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities.

The following is a section-by-section summary of the amendments.

Section 172.101. Three entries in the § 172.101 Hazardous Materials Table are revised as follows:

"Motor, internal combustion" is changed from Roman type to italics. It is not a proper shipping name and appeared in italics in editions of 49 CFR issued prior to December 31, 1976.

"Compound, polishing, liquid" is corrected by changing the section reference from "173.129" to "173.119" in column (5)(b).

"Cyclopropane" is corrected by adding the plus (+) symbol in column (1), as is done for all other specified named flammable gases.

"Coal, ground bituminous, sea, coal, coal facings, *etc.*" is revised to read "Coal, ground bituminous, sea coal, *or* coal facings". The "etc." is misleading as there are no other types of coal addressed by the entry.

Section 172.203. The example of a shipping description in the last sentence in § 172.203(i)(2)(ii) is changed to show the word "Poison" to reflect the provisions of § 173.203(k)(2) for identifying poisons.

Part 173 table of contents. The table of contents entry for § 173.134 is revised by changing "pyrophoric" to "pyroforic".

Section 173.2. The reference to 42 CFR 72.25(c) is corrected to read "49 CFR 72.3".

Section 173.119. In paragraph (m)(19), "§ 178.1" is corrected to read "§ 178.19".

Section 173.166. In paragraph (a)(3), "Spec. 14A" is corrected to read "Spec. 15A".

Section 173.193. In paragraph (a)(1) the reference "173.65(e)" is corrected to read "173.65".

Section 173.206. Obsolete section references in paragraph (a)(12) are corrected to read "§ 173.416 or 173.417(b)."

Section 173.315. In the table in paragraph (a)(1), the entry for "hexafluoro-propylene" is changed to read "See Note 7" in the third column and "DOT–51, MC–330, MC–331" in the fourth column. The erroneous references occurred when certain entries were inserted into the table immediately preceding Hexafluoro-propylene.

Section 176.700. A statement is added at the end of the section to display appropriate OMB control numbers for information collection requirements contained in paragraph (d).

Section 177.840. In paragraph (f), the word "checked" is corrected to read "chocked".

Part 177, Subpart C. The title to Subpart C is corrected to read "Subpart C—Segregation and Separation Chart of Hazardous Materials" to be consistent with the name of the chart.

Section 177.848. The section title is corrected to read "Segregation and separation chart of hazardous materials." to be consistent with the name of the chart.

Section 178.44–17. The superscript "1" after the word cylinder is removed, as it serves no purpose.

Section 178.205–16. The table in paragraph (a) is rearranged to clarify which board strengths correspond to each listed authorized gross weight.

Section 178.209–11. Paragraph (b) is revised to read "Authorized gross weight is 65 pounds." to correct an obsolete reference to § 173.66(g)(1).

Section 178.252–3. The section reference in paragraph (a) is corrected to read "§ 178.251–5(a)".

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR Parts 172, 173, 176, 177 and 178 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

§ 172.101 [Amended]

2. In the § 172.101 Hazardous Materials Table:

a. The entry "Motor, internal combustion" is revised from Roman type to italics.

b. For the entry "Compound, polishing, liquid" the column (5)(b) section reference is revised to read "173.119".

c. For the entry "Cyclopropane" the plus "+" symbol is added in column (1).

d. The proper shipping name "Coal, ground bituminous, sea coal, coal facings, *etc.*" is revised to read "Coal, ground bituminous, sea coal *or* coal facings".

§ 172.203 [Amended]

3. In § 172.203(i)(2)(ii), the last sentence is revised to read: 'For example: "Carbamate pesticide, liquid, n.o.s. (contains Xylene), Flammable liquid, UN 2758, Poison." '

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

5. In the table of contents to Part 173, for § 173.134 the word "Pyrophoric" is corrected to read "Pyroforic".

§ 173.2 [Amended]

6. In § 173.2(b)(3), the reference "42 CFR 72.25(c)" is revised to read "42 CFR 72.3".

§ 173.119 [Amended]

7. In § 173.119(m)(19), the reference "§ 178.1" is revised to read "§ 178.19".

§ 173.166 [Amended]

8. In § 173.166(a)(3), the term "14A" is revised to read "15A".

§ 173.193 [Amended]

9. In § 173.193(a)(1), the reference "§ 173.65(e)" is revised to read "173.65".

§ 173.206 [Amended]

10. In § 173.206(a)(12), the phrase "§§ 173.394 (b) or (c), § 173.395 (b) or (c), or § 173.396 (b) or (c)." is removed and the phrase "§ 173.416 or § 173.417(b)." is substituted in its place.

§ 173.315 [Amended]

11. In the table in § 173.315(a)(1), the entry for "Hexafluoropropylene" is amended as follows:

a. In the column captioned "Percent by volume", "do" is removed and "See Note 7" is inserted in its place.

b. In the column captioned "Type", "do" is removed and "DOT–51, MC–330, MC–331" is inserted in its place.

PART 176—CARRIAGE BY VESSEL

12. The authority citation for Part 176 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

§ 176.700 [Amended]

13. The following statement is added at the end of § 176.700:

(The information collection requirements in paragraph (d) were approved by the Office of Management and Budget under control numbers 2137–0534, 2137–0535 and 2137–0536).

PART 177—CARRIAGE BY PUBLIC HIGHWAY

14. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53.

§ 177.840 [Amended]

15. In § 177.840(f), the word "checked" is revised to read "chocked".

16. The title of Subpart C of Part 177 is revised to read: "Subpart C—Segregation and Separation Chart of Hazardous Materials".

§ 178.848 [Amended]

17. The title of § 177.848 is revised to read: "§ 177.848 Segregation and separation chart of hazardous materials".

PART 178—SHIPPING CONTAINER SPECIFICATIONS

18. The authority for Part 178 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

§ 178.44–17 [Amended]

19. In § 178.44–17, the superscript "1", which appears after the word "cylinder" in the first sentence, is removed.

20. The table in § 178.205–16, paragraph (a), is revised as follows:

§ 178.205–16 Authorized gross weight and parts required.

(a) Authorized gross weight (when packed) and parts required as follows:

Authorized gross weight (pounds)	Strength of fiberboard (minimum) Mullen or Cady test						
	Solid board			Doublefaced corrugated		Doublewall corrugated	
	Box	Lining[2]	Heads[1]	Box	Lining[2]	Box	Lining[2]
15	175	—	([3])	175	—	200	—
30	200	—	275	200	—	200	—
40	275	—	350	275	—	200	—
	—	—	200	175	—	—	—
55	325	—	([3])	325	—	275	—
65[4]	375	—	([3])	375	—	—	—
	—	—	—	275	175	275	—
	275	175	350	200	200	—	—

[1] For recessed heads when used. In other cases same as for box.

[2] As presribed in § 178.205–15. A complete box is acceptable in place of the lining.

[3] Recessed heads not authorized in any case.

[4] Except as otherwise authorized herein or by Part 173 of this chapter.

* * * * *

21. § 178.209–11, paragraph (b) is revised to read as follows:

§ 178.209–11 Authorized gross weight and parts required.

(a) * * *

(b) Authorized gross weight is 65 pounds.

§ 178.252–3 [Amended]

22. In § 178.252–3, the section reference "§ 178.252–5(a)" in the introductory text of paragraph (a) is revised to read "§ 178.251–5(a)".

Issued in Washington, DC on October 8, 1985 under the authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

[FR Doc. 85–24453 Filed 10–10–85; 8:45 am]

BILLING CODE 4910–60–M

Proposed Rules

Federal Register
Vol. 50, No. 198
Friday, October 11, 1985

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

Food Safety and Inspection Service

9 CFR Parts 302, 303 and 381

[Docket No. 84-030E]

Exemption of Certain Restaurant Central Kitchens; Retail Exemption Provisions

AGENCY: Food Safety and Inspection Services, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 21, 1985, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat and poultry products inspection regulations to implement Pub. L. 98-487, and to define the limits of the applicability of Federal inspection requirements to retail stores, restaurants, and similar retail-type establishments. FSIS has been requested to extend the comment period to allow more time for reviewing the proposal. FSIS is hereby extending the comment period for 30 days.

DATE: Comments must be received on or before November 20, 1985.

ADDRESS: Written comments to: Policy Office, Attention Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gonter, Director, Compliance Division, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7745.

SUPPLEMENTARY INFORMATION: On August 21, 1985, FSIS published in the **Federal Register** (50 FR 33762) a proposed rule to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to exempt restaurant central kitchens under certain conditions from Federal inspection requirements. This proposed rule would also amend the regulations by defining the limits of the applicability of Federal inspection requirements to retail stores, restaurants, and similar retail-type establishments as interpreted by the Department in conjunction with an Attorney General's opinion.

Interested persons were given until October 21, 1985, to comment on this proposed rule. FSIS has been requested by the American Meat Institute to extend the comment period to allow various Institute committees an opportunity to review the proposal. FSIS is interested in receiving additional data, and therefore has decided to extend the comment period for an additional 30 days, to November 20, 1985.

Done at Washington, DC, on: October 7, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-24432 Filed 10-10-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AEA-9]

Proposed Designation of Transition Area, Ocean City, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Ocean City, NJ. A new VOR Runway 06 instrument approach procedure has been developed to the Ocean City Municipal, NJ, Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

DATE: Comments must be received on or before November 14, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Joseph Kelly, Acting Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Docket 84-AEA-9, Fitzgerald Federal Building (formerly Federal Building) John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

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. 84-AEA-9." 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 the notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket 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 NPRMs

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Regional Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 establish a transition area at Ocean City, NJ, to provide controlled airspace from 700 feet above the surface for IFR arrival/departure aircraft at Ocean City Municipal, NJ, Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.8 dated January 3, 1984.

The FAA has determined that this amendment 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

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

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:

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.

2. Section 71.181 is amended as follows:

Ocean City, NJ [NEW]

That airspace extending upward from 700 feet above the surface within a five statute mile radius of the Ocean City Municipal, NJ Airport (lat. 38°15'49"N., long. 74°36'28"W.); and within three miles each side of the Sea Isle VORTAC 051° radial exending from the five mile radius to 5.5 miles southwest of the airport, excluding that portion which overlaps the Woodbine, NJ., and Atlantic City, NJ, transition area, and that portion outside the continental limits of the United States.

Issued in Jamaica, New York, on September 13, 1985.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 24368 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AEA-7]

Proposed Designation of Transition Area, Malone, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Malone, NY. A new VOR/DME-A instrument approach procedure has been developed to the Malone-DuFort, NY, Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

DATES: Comments must be received on or before November 14, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Joseph Kelley, Acting Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Docket 84-AEA-7, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

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. 84-AEA-7." 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 the notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket 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 NPRMs

An person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Regional Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 establish a transition area at Malone, NY, to provide controlled airspace from 700 feet above the surface for IFR arrival/departure aircraft at Malone-DuFort, NY, Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 3, 1984.

The FAA has determined that this amendment 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

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

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:

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.

2. Section 71.181 is amended as follows:

Malone, NY [NEW]

That airspace extending upward for 700 feet above the surface within a five statute mile radius of the Malone-DuFort, NY, Airport (lat. 44°51'15" N., long. 74°19'45" W.); and within 2.5 miles each side of the Massena, NY VORTAC 116° radial, extending from the five mile radius area to 14 miles east of the VORTAC.

Issued in Jamaica, New York, on September 13, 1985.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 85-24369 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-AEA-8]

Proposed Designation of Transition Area, Snow Hill, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Snow Hill, VA. A new NDB Runway 36 instrument approach procedure has been developed to the Mecklenburg-Brunswick Regional Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

DATES: Comments must be received on or before November 14, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Joseph Kelley, Acting Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Docket 84-AEA-8, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamacia, New York 11430;

An informal docket may also be examined during normal business hours in the Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administratioon, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

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. 84-AEA-8." 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 the notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket 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 NPRMs

Any personal may obtain a copy of this Notice of Proposal Rulemaking (NPRM) by submitting a request to the Office of Regional Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamacia, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 establish a transition area at Snow Hill, VA, to provide controlled airspace from 700 feet above the surface for IFR arrival/departure aircraft at Mecklenburg-Brunswick Regional Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 3, 1984.

The FAA has determined that this amendment 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

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

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:

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. 100(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Snow Hill, VA [NEW]

That airspace extending upward from 700 feet above the surface within a five statute mile radius of the Mecklenburg-Brunswick Airport (lat. 36°41'17" N., long. 78°03'17" W.); and within 3.5 miles each side of the 182° bearing from the Mecklenburg NDB extending from the five mile radius to ten miles south of the NDB.

Issued in Jamaica, New York, on September 13, 1985.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 85-24371 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Curation of Federally Owned Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to propose rulemaking and request for comments.

SUMMARY: The National Park Service intends to develop regulations on the disposition, exchange and curation of federally owned prehistoric and historic archeological collections. Issuance of such regulations is authorized under the National Historic Preservation Act of 1966 (as amended) and the Archaeological Resources Protection Act of 1979. These Acts direct the Secretary of the Interior to promulgate regulations that ensure that significant prehistoric and historic artifacts and associated records recovered in connection with Federal activities are adequately cared for. The regulations will apply to those collections of artifacts, materials and associated records recovered from prehistoric and historic archeological properties located on public and Indian lands as well as those recovered in connection with federally authorized projects and programs. The regulations will describe the responsibilities of Federal agencies to maintain and preserve federally owned archeological collections and provide guidance for Federal agencies to select appropriate repositories to curate collections. The regulations also will ensure that appropriate Indians and Indian tribes are notified concerning the disposition of materials recovered from Indian lands when the Indian owner does not wish to maintain custody of the materials and requests that a Federal agency assume custody.

DATE: Any comments and suggestions on the development of proposed rules should be submitted in writing to the Departmental Consulting Archeologist on or before November 12, 1985.

ADDRESS: Comments and suggestions should be sent to Dr. Bennie C. Keel, Departmental Consulting Archeologist, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Ms. Michele C. Aubry, Archeological Assistance Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127, commercial and FTS telephone (202) 343-4101.

SUPPLEMENTARY INFORMATION: The United States Congress has directed the Department of the Interior to issue regulations ensuring that significant prehistoric and historic artifacts and associated records recovered by Federal agencies under five Federal statutes are deposited in an appropriate repository. Section 101(a)(7)(A) of the National Historic Preservation Act of 1966 (as amended) directs the Secretary of the Interior to issue regulations ensuring that significant prehistoric and historic artifacts and associated records recovered under the authorities of the Act of 1966, the Archaeological Resources Protection Act of 1979, and the Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974, are deposited in an institution with adequate long-term curatorial capabilities. Section 5 of the Archaeological Resources Protection Act of 1979 gives the Secretary of the Interior the discretionary authority to promulgate regulations on the (1) exchange of archeological resources recovered from public and Indian lands under the Act of 1979 and the (2) ultimate disposition of archeological resources under the Act of 1979, the Antiquities Act of 1906, and the Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974. Section 5 states that exchanges, where appropriate, are between suitable universities, museums or other scientific or educational institutions. It further states that any exchange or ultimate disposition of resources excavated or removed from Indian lands shall be subject to the consent of the Indians or Indian tribe who owns or has jurisdiction over such lands.

In 1984 the National Park Service established a working group of curators, conservators, archeologists and program managers representing the Smithsonian Institution and land managing agencies in the Department of the Interior to advise the Service in drafting the regulations. In consultation with the working group, the Service has identified the following major topics to be included in the regulations: management policies; custody of collections; accountability and registration of collections; conservation in the field and in the repository; storage and security; access for educational and scholarly purposes as well as restrictions on sensitive items; disposition of collections, including loans and deaccessioning; special requirements under the Archaeological Resources Protection Act; periodic inspections and reports; and sources of and methods for funding curatorial costs. The Service also is considering issuing guidance in the form of appendices to the regulations on the following topics: Guidelines for selecting repositories; staff professional qualifications; guidelines for the disposition of human remains; and sample agreements between a Federal agency and a repository.

The National Park Service seeks comments and suggestions on this proposed rulemaking, the topics to be included, and additional topics that should be included. In addition, the Service seeks comments on the environmental impact and the economic impact, including the impact to small entities (small businesses, organizations and governmental jurisdictions), of the suggested regulation.

Dated: September 22, 1985.

P. Daniel Smith,

Acting Deputy Assisstant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-24441 Filed 10-10-85; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 414 and 416

[FRL-2911-4]

Organic Chemicals and Plastics and Synthetic Fibers Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Comment Period, Correction Notice, and Notice of Availability.

SUMMARY: On July 17, 1985, EPA published a Notice of Availability for public review and comment of technical and economic data and related documentation (50 FR 29068) received after the March 21, 1983 proposal to limit effluent discharges to waters of the United States and the introduction of pollutants to publicly owned treatment works from organic chemicals, plastics and synthetic fibers (OCPSF) manufacturing facilities (48 FR 11828). EPA is extending the period for comment on the July 17 Notice of Availability from October 15, 1985 to December 16, 1985.

This document also corrects the projected direct and indirect discharge annual priority pollutant waste loadings that appeared in the July 17 Notice.

Additionally, EPA is hereby providing a list of all items added to the rulemaking record since July 18, 1985, and additional information for the following regulatory options and technical and economic methodologies:

1. Air emissions of toxic pollutants,
2. Total suspended solids performance edits for BPT,
3. Accommodation of possible adverse economic impacts for small facilities, and
4. Alternative zinc limitations for manufacturers of rayon fibers that use the viscose process and of acrylic fibers that use zinc chloride solvent.

DATES: Comments on the July 17, 1985 and this Notice of Availability for the organic chemicals and plastics and synthetic fibers category (50 FR 29068) must be submitted to EPA by December 16, 1985.

ADDRESSES: Send comments to Mr. E.H. Forsht, Industrial Technology Divsion (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Attention: Docket Clerk, Organic Chemicals and Plastics and Synthetic Fibers Industry. The supporting information and all comments on the proposal and notice are available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213. The comments will be added to the record as they are received. The EPA Information Regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: E.H. Forsht, (202) 382-7124 for information concerning extension of the comment period and the technical data. For further information about the economic data contact Ms. Renee Rico, Analysis and Evaluation Division (WH-586), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The EPA proposed regulations on March 21, 1983, to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works (POTWs) from organic chemicals, plastics and synthetic fibers (OCPSF) manufacturing facilities (48 FR 11828). The comment period on the proposed regulations, originally scheduled to close on June 19, 1983, was extended to August 3, 1983, by the Agency to allow increased participation by interested parties (48 FR 24138).

On July 17, 1985, EPA announced the availability for public review and comment of technical and economic data and related documentation received after proposal of the regulations. Major portions of the notice and public record included: (1) Definition and Subcategorization of the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category, (2) Technology Basis for BPT Regulatory Options and Derivation of Effluent Limitations, (3) Technology Basis for BAT Regulatory Options and Derivation of Effluent Limitations, (4) Technology Basis for PSES Regulatory Options and Derivation of Effluent Standards, (5) Costing Documentation and Notice of New Information Report, (6) Evaluation of the Validity of Using Form 2C Data to Characterize Process Wastewater, (7) Calculation of Priority Pollutant Waste Loads, and (8) the Draft Economic Impact Analysis.

Based upon this new information, EPA conducted new analyses and presented the results of the analyses and several sets of regulatory options. The final regulations may incorporate any of these options, any of the options previously set forth in the proposed regulations, or any combination of these options.

The Agency has received numerous requests from the OCPSF industry for additional time to allow them to comment fully and to supply data to support their comments. The industry also requested further information on some of the issues and options being considered by the Agency. Given the size and diversity of the industry, the complexity of issues raised by this rulemaking, and the fact that there were delays of several weeks in printing the summary technical document and in making the complete rulemaking record as well as the new information contained in this notice available to the public, EPA has determined that it is necessary to extend the comment period 60 days to allow the public adequate time to review and comment on the July 17, 1985 Notice and this Notice of Availability. This extension will give all members of the public adequate time to comment fully on this regulation.

1. Corrections

This document outlines changes and corrections made after publication of the projected direct and indirect discharge annual priority pollutant waste loadings in the July 17 notice 50 FR 29091. The revised loadings are presented in Tables J-2 and J-3 respectively.

TABLE J-2—DIRECT DISCHARGE—ANNUAL PRIORITY POLLUTANT LOADINGS

[1,000 pounds per year]

	Volatiles	Semi-volatiles	Metals and CN	Total
Raw waste	80,227	38,193	34,999	153,419
Current	249	214	730	1,193
BPT/BAT I	218	186	628	1,032
BAT II	59	85	104	248
BAT III	56	67	102	225

TABLE J-3—INDIRECT DISCHARGE—ANNUAL PRIORITY POLLUTANT LOADINDS

[1,000 pounds per year]

	Volatiles	Semi-volatiles	Metals and CN	Total
Raw waste	4,302	14,398	5,519	24,219
Current	4,078	13,882	5,330	23,290
PSES II	8	9	23	40

The revised supporting documentation and computer printouts have been placed in the public record. The changes include the following items:

a. One plant's flow, originally keypunched as 100 million gallons per

day, was corrected to 100 gallons per day.

b. The method of calculating annual raw waste loads from daily raw waste loads has been revised. Product/process flow data provided by the OCPSF industries in the 1983 "Section 308" questionnaire are reported in millions of gallons per day when operating. The industry has also provided total annual production data and operating rate data by product/process. The Agency calculated operating days for each product/process at each plant by dividing the annual product/process production by the product/process operating rate. For the July 17 notice, the Agency multiplied the daily product/process raw waste load by product/process operating days to obtain annualized product/process raw waste loads. Toxic pollutant waste loads from individual product/process at a plant were then summed to yield total raw waste load for individual plants.

This method of calculating raw waste loads produced a few anomalous results. For example, in the case of a plant which manufactures five product/processes, two of the product/processes which operate several months of the year may generate a pollutant and the remaining three product/processes which operate year round may not generate this pollutant. Since effluent loadings were annualized based on average annual operating days while raw waste loadings were annualized using actual operating days for each product/process, the annualized effluent loading for this pollutant could be higher than the raw waste load. Therefore, the calculations have been revised so that annual raw waste loads are now calculated on the same annualized basis (average number of operating days) as the current, BAT, and PSES effluent projections.

The Agency has calculated the average number of operating days for a facility as the sumation of the number of operating days for each product/process divided by the number of product/processes. The Agency has multiplied the daily product/process raw waste load by the average number of operating days to obtain annualized product/process waste loads and then summed these waste loads to yield total raw waste load for individual plants.

c. The Agency has removed 4-nitrophenol from the modeled raw waste load calculations for indirect discharge facilities that did not report product mix information (Part A only questionnaire respondents). An assessment of indirect discharge facilities that reported product mix information (full questionnaire respondents), indicates that 4-nitrophenol would be present at only one full-response indirect-discharge facility and, therefore, unlikely to be present at other (Part A only) indirect discharge facilities.

d. Several unregulated priority and toxic pollutants including 2-chloronaphthalene, trichloroflouromethane, isophorone, and N-nitroso-di-n-propylamine were included in the raw waste load calculations but not in the calculated effluent loadings for the BAT and PSES options. To account for incidental removals, the Agency has assigned effluent levels for each option for these pollutants based on treatabiity levels from pollutant group averages and the technology basis for each option.

II. Air Emissions of Toxic Pollutants

In the July 17 notice, EPA discussed its concern that some volatile and semi-volatile pollutants that enter OCPSF biological treatment systems are emitted by those systems to the air rather than biologically treated, thereby transferring pollutants from the water to the air rather than removing them from the environment. Cognizant of the statutory requirement that EPA consider non-water quality environmental impacts in establishing effluent limitations and standards, EPA stated that it is seriously considering promulgating, in addition to end-of-pipe limitations, inplant prebiological limitations (based upon in-plant physical-chemical controls) for a set of 20 volatile and semi-volatile pollutants (50 FR 29083). The purpose would be to assure that the polluants are not simply transferred to the air rather than treated by the wastewater treatment system.

EPA also expressed concern that although pre-biological limitations would discourage the substitution of air stripping for treatment, they would not absolutely preclude air stripping. For example, some facilities use air strippers, or achieve some degree of air stripping in equalization basins and other devices, prior to biological treatment. EPA noted that the Clean Air Act (CAA) Provides some mechanisms by which to address such emissions (50 FR 29083). EPA is considering whether to establish any necessary standards under Clean Air Act authorities. However, it may be most appropriate to promulgate the effluent guidelines in a manner that, by adequately considering air quality impacts, obviates the need for a CAA rulemaking simply to address impacts attributable in large part to Clean Water Act regulations. Accordingly, EPA is considering additional options in the effluent guidelines limitations and standards to assure that pollutants are treated or recovered as by-products rather than transferred to the air. In any such effluent guidelines and standards EPA would be consistent, to the extent possible, with the criteria and standards applicable under the CAA.

One option would be to require that the in-plant limitations apply at a point prior to any unit or process that is capable of transferring significant quantities of volatile and semi-volatile wastewater pollutants to the air. such units or processes could be listed in the regulation. Alternatively, a certain level of air emissions (e.g., the air stripping of 20 percent or more of the pollutant(s) in question) might be designated as significant, resulting in applying the limits prior to the point where such emissions occur. Appropriate monitoring requirements would be established to determine the extent to which such air stripping is taking place.

A second option would be to simply specify in the regulation that technologies that involve significant levels of air stripping (as discussed above) are not BAT under section 304(b) of the Act because they result in significant adverse non-water quality (air) impacts. Again, this could be done by listing particular technologies or specifying numerical criteria for determining significant levels of air emissions.

A third option might be to specify technologies, such as steam stripping with recovery, as BAT. Generally, the Agency has disfavored specifying technologies and has relied exclusively upon effluent limitations and standards reflecting the selected model technologies. EPA believes that the use of numerical criteria is the method of standard-setting that Congress intended generally be used. However, the Act does not explicitly prohibit the specification of technology. Thus in exceptional circumstances, such as here, where numerical limitations alone may be incapable of assuring the use of the best available technology as mandated by Congress, the specification of technology to assure the proper implementation of numerical limitations may well be authorized under Sections 301, 304, 306, 307 and 501 of the Act. Section 501 specifically authorizes EPA to prescribe such regulations as are necessary to carry out its functions under the Act. EPA particularly invites comment on this option.

Each of these options raises legal issues as to the types of regulatory approaches which EPA is authorized to use under the Clean Water Act. EPA will be considering these legal issues, as well as the practical difficulties

presented by each option. None of the options outlined above would affect the costs or economic impacts associated with the OCPSF regulations. EPA has already assumed in developing its cost estimates that appropriate technologies such as steam stripping with recovery would be used to treat volatile and semi-volatile pollutants. The above options merely would help assure the use of these or other equally effective technologies, rather than air stripping, to remove the pollutants from wastewater.

Finally, EPA notes that the removal credits regulations set forth in 40 CFR 403.7 (49 FR 31212; Aug. 3, 1984) authorize the granting of credits to indirect OCPSF dischargers for the removal by POTWs of pollutants, including volatile and semi-volatile pollutants. For the reasons discussed above, it may be inappropriate to grant removal credits to the extent that pollutants are removed at a POTW by transfer to the air rather than by degradation in the wastewater treatment system. Therefore, in addition to developing final OCPSF regulations addressing the problem of volatile emissions, EPA is considering the proposal of amendments to the removal credits regulation to address this problem. EPA invites comment on this issue.

III. Total Suspended Solids Performance Edits for BPT Limitations

In developing BPT limitations, the performance edits used to segregate the better designed and operated plants from the poorer performers were based on BOD performance only. EPA is considering alternative editing techniques for use in evaluating the effluent TSS data used in calculating limitations. Annual effluent TSS values as high as 300 mg/l are found in some plants meeting the BOD editing criteria. However, values this high do not necessarily represent Best Practicable Control Technology for solids control. Therefore, EPA is considering using performance editing techniques designed specifically to evaluate the TSS data. Techniques being considered are as follows:

1. A TSS effluent cutoff between 75 and 100 mg/l. Data from facilities above the cutoff would not be included in the determination of subcategory long-term TSS averages.

2. Evaluating treatment system design and operating data for plants with TSS values over the subcategory long-term averages. Decisions to include facilities in the determination of subcategory long-term TSS averages would be made on a case-by-case basis.

For example, in the case of BPT Option II, which is based on facilities with biologial treatment with and without polishing ponds, the median effluent TSS is 40 mg/l and the median percent removal is 80 percent. The long-term average subcategory TSS effluent concentrations for these plants are 29, 40, 99, 46, and 62 mg/l for the thermoplastics only, thermoplastics and organics, and the commodity, bulk, and specialty organic chemical subcategories, respectively. Twelve percent of all BPT Option II facilities have effluent TSS values over 100 mg/l. If all TSS data above 100 mg/l were removed, the new long-term subcategory TSS averages would be 24, 37, 51, 39, and 48 mg/l, respectively. The rayon, other fibers, and thermosets subcategory averages would not change since they had no TSS values over 100 mg/l.

By evaluating design and operating data such as secondary clarifier overflow rates, the use of skimmers, chemical or polymer addition, and TSS percent removal, badly designed or overloaded clarifier systems can be eliminated. EPA is considering the following values as indicators of good design:

1. Secondary clarifier overflow rates between 400 and 600 gpd/ft^2.

2. TSS percent removal above 80 to 85 percent.

EPA will be assessing TSS design and operating information for those plants above the subcategory long-term average TSS values.

IV. Accommodation of Possible Adverse Economic Impacts for Small Facilities

In the July 17th Federal Register Notice, the Agency noted that small businesses (defined as facilities with less than $5 million in annual OCPSF value of shipments) may be significantly affected by the BPT and PSES regulations. This conclusion came from an evaluation of the distribution of plant and production line closures among small and large plants. EPA also plotted the relative profitability reduction, production cost increase, and liquidity reduction across sizes of plants. (This information is contained in the public record.)

The Agency will build on the analysis performed to date to determine whether alternative regulatory levels are warranted based on small business impacts. First, the Agency will use a number of screening measures to pinpoint those small businesses most affected by the regulations. Table 1 summarizes the four types of measures and the range of values that are being considered as screening criteria. These measures will be calculated for all plants. The screening criteria will be used to identify small business segments most severely affected. The four measures are:

(1) The ratio of annual treatment costs to annual plant OCPSF sales;

(2) The percentage reduction in annual plant profit (from OCPSF production only);

(3) The percentage increase in total plant production costs (for both OCPSF and non-OCPSF production); and

(4) The relative frequency of plant and production line closures among small and large plants.

The second part of the analysis is to characterize any common reasons why particular subsets of the small plants are severely affected. Factors that will be examined are: (1) Types of OCPSF production; (2) pollutants of concern in effluent wastewater; (3) percentage of OCPSF production to total plant production; (4) amount of wastewater flow; (5) age of the facility; and (6) discharge status. This analysis will enable the Agency to determine if small businesses with severe economic impacts can be classified by any of the factors listed above.

The third part of the analysis will be to structure, if warranted, alternative levels of control based on the above factors. These options include exempting small facilities from national regulations or regulating fewer pollutants or classes of pollutants at impacted small facilities. The exemption or relaxation of requirements would be targeted at those facilities identified in the analysis as heavily impacted.

TABLE 1.—SCREENING MEASURE AND CRITERIA RANGES

Screening measure	Range of screening values
Annual treatment costs to annual plant OCPSF sales	3 to 8 percent
Percentage reduction in annual plant profit	20 to 70 percent
Increase in total plant production costs	2 to 10 percent
Plant/Production line closures	Not applicable

V. Alternative Zinc BAT Limitations for Manufacturers of Rayon Fibers That Use the Viscose Process and of Acrylic Fibers That Use Zinc Chloride Solvent

Rayon manufacturers which use the viscose process as well as one acrylic fiber manufacturer which utilizes a zinc chloride solvent process, submitted comments petitioning EPA for separate zinc effluent limitations for those facilities with high zinc raw waste loads. Several of these companies

submitted raw waste and treated effluent data which showed elevated raw waste loadings of zinc as much as 100 times higher than other OCPSF facilities loadings with correspondingly higher effluent levels.

Based on an analysis which has been added to the public record, two of the four facilities which submitted long term data were retained for analysis. The end-of-pipe wastewater treatment system at the first plant consists of equalization, chemical precipitation, sedimentation, trickling filters and, rotating biological contactors with secondary clarification and sedimentation. The second plants' end-of-pipe treatment system consists of equalization, screening, primary clarification with chemical addition and polishing, and activated sludge with secondary clarification.

Data from one facility was deleted because only final effluent data were submitted with no raw waste or treatment plant influent data to document day-to-day performance. Rayon manufacture at the other deleted plant constitutes only 19 percent of total production. Thus co-dilution of rayon wastewater by other subcategory wastewater tends to lower zinc concentrations of this facility.

A preliminary statistical analysis of the effluent data for the two facilities retained for analysis yields a long-term median of 1.21 mg/1 for total zinc, a daily maximum variability factor of 2.73 and a maximum monthly average variability factor of 1.46. These calculations result in a daily maximum zinc effluent limitation of 3.31 mg/1 and a maximum monthly average effluent limitation of 1.77 mg/1.

There are currently no indirect discharge viscose rayon fibers or zinc chloride solvent acrylic fiber manufactures. If the Agency bases zinc Pretreatment Standards for New (or existing) Sources on physical/chemical treatment alone rather than BAT technology, then the physical/chemical treatment performance from the same two facilities would provide the basis for the standards. A preliminary statistical analysis of the chemical precipitation with sedimentation and the primary clarification with chemical addition and polishing unit operation effluent data yields a long-term median of 2.24 mg/l for total zinc, a daily maximum variability factor of 2.88 and a maximum monthly average variability factor of 1.50. These calculations result in a daily maximum PSNS (or PSES) zinc effluent standard of 6.45 mg/l and a maximum monthly average effluent standard of 3.36 mg/l.

The Agency is also considering basin zinc pretreatment standards for new (or existing) sources on physical/chemical and biological treatment. In this case, the pretreatment standards would equal BAT.

EPA invites comment on establishing these alternative zinc limitations for rayon manufacture by the viscose process and acrylic fiber manufacture utilizing a zinc chloride solvent process.

VI. Information Added to the Record Since July 18, 1985

The following information has been added to the OCPSF public record since July 18, 1985:

1. Coded unedited data listings for the organic and metal toxic pollutants and conventional and non-conventional pollutants from the 12-plant field sampling efforts.
2. Wastewater treatment costing analysis
   (a) Expanded definition of column headings in Appendices A, B, and C of the June 17, 1985 "Supplement to Costing Documentation and Notice of New Information" and crosswalk between the costing and regulatory options.
   (b) Duplication of BPT, BAT, and PSES regulatory compliance costs for the OCPSF Federal Register Notice of Availability.
   (c) Background files for costing analysis—Dilution factors documentation.
3. Block diagrams for each wastewater treatment system and aggregated product listings for the 12-plant field sampling effort.
4. Assessment of alternative zinc limitations for viscose rayon and zinc chloride solvent acrylic fiber manufacturers.
5. TSS performance editing alternatives.
6. Revised toxic pollutant waste loading calculations.
7. Back-up computer printouts for the BPT subcategorization analysis of variance assessment.
8. Coded data base for the economic impact analysis inserted as Item 13–2.10.11 of the Economic Data portion (Section IX) of the public record.
9. Draft Report, "Toxic Substance Removal in Activated Sludge and PAC Treatment Systems." Prepared for EPA, Water Engineering Research Laboratory by the University of Michigan, Grant No. CR 806030. March 1985.
10. Draft Report, "Fate of Specific Organics in an Industrial Biological Wastewater Treatment Plant." Prepared for EPA, Industrial Environmental Research Laboratory by Union Carbide Corporation, Contract No. CR 81028501. June 1984.
11. Draft, "Methodology for Health Score Evaluations." EPA, Integrated Environmental Management Division. May 9, 1985.
12. Draft, "Health Score Evaluations for Pollutants: Toluene." EPA, IEMD. December 21, 1984.
13. Draft, "Health Score Evaluations for Pollutants: Dichlorobenzenes (DCBs). "EPA, IEMD. December 21, 1984.
14. A series of draft EPA, IEMD reports—"Health Score Evaluations for Pollutants in the Santa Clara Valley Integrated Environmental Management Program:"
   a. Methylene Chloride: October 1, 1984.
   b. Benzene: September 19, 1984.
   c. 1,2-Dichloropropane and 2,3-Dichloropropylene: October 1, 1984.
   d. 1,2-Dichloroethane: December 7, 1984.
   e. Tetrachloroethylene: October 1, 1984.
   f. Chloroform: October 4, 1984.
15. EPA, Integrated Environmental Management Divisions Draft Memorandums:
   a. New Methods for Calculating Teratogenic Risks: July 1, 1985.
   b. Renaming Health Effect "Terata" to "Fetal": September 17, 1985.

The following information has been added to the confidential record since July 18, 1985:

1. Field sampling chain-of-custody traffic reports, field notes, and final field sampling reports for the 12-plant field sampling effort.
2. Individual plant analyses of long-term zinc data for viscose rayon and zinc chloride solvent acrylic fiber manufacturers.
3. Key to coded data base for the economic impact analysis inserted as Item 13–2.10.12 of the confidential economic record.

Dated: October 8, 1985.

Edwin L. Johnson,

Acting Assistant Administrator for Water.

[FR Doc. 85–24511 Filed 10–10–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Ch. II

[Docket No. R–101]

Approval of Marine Hull Underwriters

AGENCY: Maritime Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) has accepted only American insurance underwriters, or certain British underwriters, as hull insurers of subsidized vessels or vessels on which there are outstanding Title XI vessel obligation guarantees. MARAD further requires that 75 percent of the required hull insurance coverage be placed in the American market when the rates and conditions are competitive, and limits an underwriter's risk on any single vessel. MARAD is considering whether to conduct a rulemaking, or take other administrative action, with respect to its policies on the placement of hull insurance. Specifically, MARAD is considering approval of non-British foreign hull underwriters and revision of its requirements for American market placement and limitations on a single underwriter's risk. Such action would give shipowners greater flexibility in negotiating their insurance programs and enable them to take advantage of lower rates which may be offered by foreign marine hull insurance underwriters that have been excluded from competing for this business.

DATE: MARAD will consider all written comments by interested persons received on or before November 12, 1985. Those submitting comments that wich to receive acknowledgement that MARAD received their comments should include a stamped, self-addressed postcard.

ADDRESS: Send comments (the original plus five copies, are requested but not required) to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. All comments will be made available for inspection during normal business hours in Room 7300 at this address.

FOR FURTHER INFORMATION CONTACT: William B. Ebersold, Office of the Associate Administrator for Maritime Aids, Maritime Administration, 400 Seventh Street, SW. Washington, DC 20590, Tel: (202) 382-0364.

SUPPLEMENTARY INFORMATION: MARAD has a longstanding policy of accepting hull insurance written only by American underwriters, as well as members of select British insurance groups (London market). Acceptance of the London market insurers has been based on their own stringent financial requirements and self-policing that MARAD believes afforded adequate security for U.S. operators. MARAD presently also accepts hull insurance written by a U.S. subsidiary of a foreign underwriter, since it believes that state regulation of the subsidiary provides the shipowner with adequate financial security and legal protection.

In recent years, the London market underwriters have, in many instances, offered lower hull insurance rates than the American underwriters. With higher new vessel values, a larger percentage of the coverage has gone to the London market. Several American underwriters have either discontinued or severely limited their hull insurance exposure. Today, it is extremely difficult to obtain 75 percent American market placement of hull insurance for oceangoing commercial vessles, at competitive rates.

During this same period, adverse economic conditions in the shipping business have forced shipowners to seek ways to cut costs dramatically, including the cost of various vessel insurance coverages. MARAD has received requests from shipowners to purchase hull insurance from underwriters, other than approved American or British underwriters, that are offering substantial premium savings. Shipowners have complained to MARAD that the American market has been unresponsive to its needs, both in term of rates and capacity.

Because of the perceived need to give shipowners greater flexibility in negotiating their insurance programs, and because of the potential costs savings involved, it would seem appropriate for MARAD to reconsider its current policy and criteria for acceptance of underwriters. Besides the immediate premium savings that might be offered by certain foreign underwriters the participation of additional underwriters would beneficially increase competition. A reduction of premium costs for subsidized operators might also give the Government a commensurate savings in subdsidy payments for the insurance costs.

In order to effectively administer a new policy which involves approval of additional underwriters, it may be necessary to develop approval criteria which can be applied consistently. Therefore, any comments on the basic policy change under consideration should specifically address possible acceptance criteria. Such comments will aid in the development of any criteria or any action deemed appropriate. MARAD is, therefore, requesting that any person, firm or corporation having any interest or desiring to offer views and comments on a change in policy to submit them in writing. After reviewing the comments, MARAD will determine whether to adopt a policy change with respect to the placement of hull insurance for subsidized vessels or vessels with obligation guarantees.

The public is advised that MARAD is not, through the issuance of this ANPRM, committed to the initiation of a rulemaking on the subject. The purpose of this ANPRM is merely to solicit information and views from commenters that MARAD can use in evaluating its policy with respect to the placement of hull insurance, and in deciding whether to proceed with a rulemaking. Any rulemaking action would neither by major, pursuant to Exective Order 12291 (February 17, 1981), nor significant under DOT Order 2100.5 (February 26, 1979), and would not exert a significant economic impact in a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612).

Dated: October 7, 1985.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 85-24318 Filed 10-10-85: 8:45 am]

BILLING CODE 4910-81-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-No. 17)]

Authorized Carrier Lease of Equipment and Drivers to Private Carriers and Shippers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In Ex Parte No. MC-122 (Sub-No. 2), *Lease of Equipment and Drivers to Private Carriers*, 132 M.C.C. 756 (1982); 49 FR 7885, February 23, 1982 the Commission determined that unregulated entities could lease equipment and drivers, in a single transaction, to private carriers and shippers to perform transportation that would be treated as private carriage if six minimum criteria were met. In that proceeding, we concluded that there was no reason why authorized carriers could not lawfully engage in leasing equipment and drivers to private carriers and shippers. Accordingly, we announced our intention to institute this proceeding to determine whether authorized carriers also should be allowed to lease equipment and drivers, in a single transaction, to private carriers and shippers. We seek public comment on whether § 1057.41 of the Commission's leasing regulations should

be repealed or modified to permit such transactions.

DATES: Comments are due November 12, 1985.

ADDRESS: An original and 15 copies, if possible, of comments should be sent to: Ex Parte No. MC–43 (Sub-No. 17), Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Robert G. Rothstein, (202) 275–7912
or
Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call 275–7428.

Initial Regulatory Flexibility Analysis

Under 5 U.S.C. 601 *et seq.*, we are required to analyze the potential impact of the proposed rule on small entities. We conclude that the proposed rule may have a significant beneficial economic impact upon a substantial number of small entities.

Our decision in Ex Parte No. MC–122 (Sub-No. 2), *supra*, discusses at length the advantages to be gained by permitting leasing by unregulated lessors of equipment and drivers in a single transaction to private carriers and shippers. These advantages include increased competition and better equipment utilization. We think regulated lessors, including the more than 1,000 owner-operators possessing authority to transport foodstuffs under sections 5(a)(3) and 10(a)(2) of the Motor Carrier Act of 1980 (MCA), will similarly benefit by this proposal. Also, there are over 24,000 Class III motor carriers (less than $1 million gross annual revenues), a substantial number of which meet the SBA's definition of a small business concern. As authorized carriers gain the ability to complete with unregulated lessors, their equipment could be utilized more efficiently.

Shippers are also potential beneficiaries. The number which qualify as small entities cannot be ascertained with any degree of accuracy. Shippers, however, are perceived as direct beneficiaries of the proposed rule since they will have an additional source (authorized carriers) from which to secure equipment and drivers for use in their proprietary transportation operations.

We are unaware to any regulatory burdens imposed by this proposal, or of any alternative to the proposal that would result in a lesser burden upon small entities. As explained in Ex Parte No. MC–122 (Sub-No. 2), *supra*, the tenor of the MCA supports the policy of permitting unrelated lessors to lease equipment and drivers to shippers. We think the same reasons support a move to permit authorized carriers to participate in the benefits accruing from the implementation of the Sub-No. 2 decision.

List of Subjects in 49 CFR Part 1059

Motor carriers, Leasing regulations, Private carriers and shippers.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 11107 and 10321 and 5 U.S.C. 553.

Decided: September 23, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James N. Bayne,
Secretary.

Appendix

PART 1057—[AMENDED]

49 CFR Chapter X of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 1057 is revised to read as follows:

Authority: 49 U.S.C. 11107 and 10321, 5 U.S.C. 553.

2. Section 1057.41 if not removed, would be revised to read as follows:

§ 1057.41 Authorized carrier lease of equipment and drivers to private carriers and shippers.

Regardless of the leasing regulations set forth in this part, authorized common and contract carriers may lease equipment and drivers, in a single transaction, to private carriers and shippers. Provided the following minimum criteria are set forth in a lease of equipment between authorized carrier-lessors and private carrier-lessees, a rebuttable presumption will arise that the resulting transportation is private carriage, exempt from Commission jurisdiction under 49 U.S.C. 10524(a). Parties may or may not desire to address in the lease other issues characterizing a transportation service, some of which are identified in Ex Parte No. MC–122 (Sub-No. 2), *Lease of Equipment and Drivers to Private Carriers*, 132 M.C.C. 756, and in this Part.

(a) The period for which the lease applies shall be for 30 days or more.

(b) The equipment subject to the lease shall be exclusively committed to the lessee's use for the term of the lease.

(c) During the term of the lease, the lessee shall accept, possess, and exercise exclusive dominion and control over the leased equipment. The lessee shall further assume complete responsibility for the operation of the equipment.

(d) The lessee shall maintain public liability insurance, in amounts required by law or shall otherwise accept responsibility to the public for any injury to persons or damage to property sustained during the performance by it of any transportation with leased equipment and drivers. The lessee agrees to display appropriate identification on all equipment leased by it, showing operation by the lessee during the performance of such transportation.

(e) During performance by it of transportation, the lessee shall accept responsibility for, and bear the cost of, compliance with safety and other requirements imposed by the Interstate Commerce Commission, the Department of Transportation (Bureau of Motor Carrier Safety), and the various State and local requirements. This includes, but shall not be limited to, compliance with drivers' hours-of-service rules, driver licensing, acquisition of applicable permits, and length and weight requirements.

(f) The lessee agrees to maintain in effect, throughout the period of the lease, adequate cargo loss and damage insurance coverage covering the property being transported, or to otherwise remain liable for such cargo damage and/or loss.

[FR Doc. 85–24466 Filed 10–10–85; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 50946–5146]

Foreign Fishing

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

ACTION: Proposed rule.

SUMMARY: NOAA proposes the 1986 foreign fee schedule for foreign vessels fishing in the fishery conservation zone. Under this fee schedule, foreign vessels would pay $167 per fishing permit application and 22.3 percent of the FY 1985 Magnuson Fishery Conservation and Management Act costs. Comments are requested on this fee schedule. This action will comply with section

204(b)(10) of the Magnuson Fishery Conservation and Management Act.

DATE: Comments must be received on or before November 12, 1985.

ADDRESS: Send comments to: Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235.

Copies of the draft regulatory impact review (RIR) and a detailed breakdown of NMFS costs are available at this adress.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202–634–7432.

SUPPLEMENTARY INFORMATION: NOAA proposes a schedule of foreign fishing permit application and poundage fees for fishing during 1986 by foreign vessels in the fishery conservation zone (FCZ). The new schedule would result in collections of about $49.7 million. This amount is determined as described below. As in previous years, no fee will be collected by the Federal government for U.S.-caught fish received at-sea by foreign-flag processing vessels (joint ventures). NOAA has reviewed and consulted with the Coast Guard and the Department of State on this proposal. The Coast Guard has agreed with this proposal and the Department of State approves of its publication for public comments.

NOAA is publishing the proposed 1986 fee schedule as a single unit containing both foreign poundage and permit application fees. Readers are advised, however, that the final fees may be published separately should there be delays in adopting either final poundage or final permit application fees.

Background

Section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that owners or operators of foreign fishing vessels for which pemits are issued pay fees * * * "at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act * * * during [fiscal year 1985] the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during [1984] bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during [1984]."

Fees have been collected for foreign fishing since 1977 under annual schedules contained at § 611.22. Fees collected under these schedules were $7.1 million in 1977, $8.8 million in 1978, $10.8 million in 1979, $16.7 million in 1980, $24.1 million in 1981, $33.4 million in 1982, $41.3 million in 1983, and $42.9 million in 1984. Collections have not been completed for 1985, but $40.3 million is anticipated. Poundage fees were assessed at a rate of 3.5 pecent of the ex-vessel value of a species until 1980. Fees were increased in 1981 by amendment of the Magnuson Act, Pub. L. 96–561 to recover at least the foreign share of the Federal cost of carrying out the purposes of the Magnuson Act. In proposing the fee schedule for 1983, NOAA established but did not exercise authority to collect fees in excess of the amounts specified as the foreign share above. (47 FR 51336).

The target foreign fees proposed for 1986 are $49.7 million [substantially more than the $40.3 million foreign fee collection target in 1985]. This amount is determined by applying the ratio of the foreign catch in the FCZ to the total catch in the FCZ and territorial waters, 22.3 percent, against the total Magnuson Act costs for fiscal year (FY) 1985, $222.832 million. As in prior years, fees are apportioned by vessel application and also among the species by projecting the value of the 1986 foreign harvest of each species (as discussed later). For 1986, NOAA proposes to continue to forego adjustments of fees for management considerations. This decision was made in the 1985 fee schedule and applies in 1986 as well. Adjustments had been made in every schedule from 1981 through 1984; however, they did not effectively reduce the foreign incidental harvest of the species deemed important to U.S. fishermen or cause an increase in the foreign harvest of species of lower value to U.S. and foreign fishermen. Many representatives of foreign fishing nations who commented on prior schedules opposed these adjustments. Therefore, the fees for all species are based on a uniform percentage of their exvessel values. The proposed 1986 species fees are shown in the table of § 611.22 of the amendatory text and discussed later.

FY 1985 Costs for Purposes of the Magnuson Act

The Federal government's costs of carrying out provisions of the Magnuson Act in FY 1985 were calculated by using the general estimating techniques that were used to estimate costs required for the fee schedules for 1982 (see 46 FR 55729), for 1983 (see 47 FR 51336 and 48 FR 27075), for 1984 (see 48 FR 49670 and 49 FR 595) and for 1985 (See 49 FR 40615 and 50 FR 460). All National Marine Fisheries Service (NMFS) units submit documentation of the planned use of their funding allocations. The documents are "operations plans," which include a narrative description of activities and the amounts budgeted for labor, travel, contracts, etc. Operations plans are analyzed to identify the costs of performing functions directed toward provisions of the Magnuson Act, without regard to legislative authorizations for certain activities predating the Magnuson Act. NOAA's policy is to calculate the full direct and indirect costs, not incremental costs, for performing services for others (NOAA Budget Handbook, Chapter 2, Section 3). Documentation of NMFS's determination of Magnuson Act costs is available at the above address. The documentation specifies, by unit, the amount of each operations plan considered to contribute to carrying out provisions of the Magnuson Act (Magnuson Act costs).

There were some specific improvements in the estimating techniques which are reflected in the FY 1985 Magnuson Act costs for each unit shown in Table 1. In March 1985, the General Accounting Office (GAO) concluded a review of the NMFS fee setting process. Discussions with GAO auditors caused the Agency to take certain steps to refine its process for estimating Magnuson Act costs. As in other years, initial operations plans were the basic documents for these estimates, but in 1985, each FMC was instructed to show all FY 1985 increases and decreases as adjustments. In addition, more specific instructions were issued for estimating appropriate Magnuson Act costs of grants (and associated overhead costs) and reimbursable work, inter-NOAA transfers of funds, underutilized species development, marine recreational fisheries programs, and salmon research. Thus, the NMFS costs shown by FMC in Table 1 include not only the allocations of portions of overall funding increases as Magnuson Act costs, but also increases resulting from the Agency's discussions with the GAO auditors. In a few cases, tasks were related to the Magnuson Act which had not been in former years. Other NOAA costs were also reviewed in line with the Agency's discussions with GAO. Certain improvements are made in the NOAA FY 1985 estimates of costs with the major changes occurring in costs of the Regional Administrative Services Centers (decreases) and Sea Grant Office costs (increases). More current Sea Grant data will be available in October and incorporated prior to publication of the final rule.

Using this process, the total FY 1985 NMFS cost was determined to be $78.435 million. The NMFS FY 1985 costs are 23.8 percent above its actual revised FY 1984 costs of $63.327 million. Other NOAA and Depaartment of Commerce Magnuson Act costs are $11.670 or 1.0 percent above FY 1984 costs. FY 1985 cost data for establishing the 1986 fee target are shown in Table 1, together with comparative data from FY 1983 for all Federal agencies incurring Magnuson Act costs.

The Department of State (DOS) estimates its FY 1985 costs at $299,600, a slight increase above the levels for FY 1982 through FY 1984. The U.S.-Canadian boundary negotiations are not included within this DOS figure. NOAA costs in the Northeast Fisheries Center and the Northeast Regional office include $247,600 for these negotiations.

Costs for Coast Guard's fisheries enforcement activities in FY 1985 were determined using the same methods as in prior years with one major exception which resulted from discussions with GAO auditors. Section 204(b)(10) of the Magnuson Act requires compilations of total cost recovery. There was a contention that total costs were not being compiled because NMFS had not requested that Coast Guard include indirect program support costs in its annual Magnuson Act cost summaries, and Coast Guard summaries therefore did not include such indirect costs. As the result, NMFS asked Coast Guard to include indirect program support costs as part of its FY 1985 Magnuson Act costs. Additionally, an adjustment made in Coast Guard's FY 1984 costs (for the 1985 fee schedule) which deducted costs for Cooperation with Other Agencies (COOP) and Marine Science Activities (MSA) in the categories of administration and support was reconsidered. (COOP is defined as support provided to other law enforcement agencies that is unrelated to any of the Coast Guard's law enforcement or other responsibilities. MSA refers to Coast Guard's oceanographic and meteorological activities.) A deduction was made in the FY 1984 costs to facilitate publication of a timely fee schedule (because a better analysis could have delayed publication); it was noted at that time that adjustments in future years would be smaller. A careful review has now shown that the categories of administration and support should have no deductions for COOP and MSA, but that shore facilities costs in FY 1985 should be reduced by 1.22% of actual costs. As the result of the decision to include indirect costs and the analysis of deductions for COOP and MSA, $132.313749 million, which make up 90 percent of Coast Guard's total fishing program costs, are attributed to the Magnuson Act. This is a 2.7 percent increase over actual costs in FY 1984, had indirect costs incurred in FY 1984 been included, or 45.5 percent over actual FY 1984 costs if indirect program support costs for FY 1984 are excluded as in prior years.

The estimated total cost of carrying out the provisions of the Magnuson Act in FY 1985 is $222.832 million. This total is proposed to be adopted for the calculation of the foreign fishing fee target in 1986.

TABLE 1.—FISCAL YEAR 1985 AGENCY COSTS FOR PURPOSES OF THE MAGNUSON ACT AND COMPARISONS WITH FISCAL YEARS 1983 AND 1984 COSTS

[In thousands of dollars]

Agency line offices	Fiscal year 1983		Fiscal year 1984		Fiscal year 1985	Comments
	Costs	Differences	Costs	Differences	Costs	
NMFS:						
W/O	$14,426.4	+82.6	$14,509.6	$+798.2	$15,307.2	
F/NEC	11,378.8	+478.9	11,857.7	−128.2	11,729.5	
F/SEC	6,680.9	+773.6	9,454.5	+2,723.2	12,177.7	29% of 43% funding increase for M/A.
F/SWC	5,318.2	+57.1	5,375.3	+785.5	6,160.8	15% funding increase for M/A.
F/NWC	10,865.0	+40.0	10,905.0	+7,150.0	18,055.0	116.6% funding increase/66% for M/A.
F/NER	2,755.3	+511.7	3,267.0	+1,503.0	4,770.0	Increase for programs not included prior years.
F/SER	2,582.0	−87.0	2,495.0	+714.0	3,209.0	23% from funding increase/5.6% new items.
F/SWR	2,013.4	−87.3	1,926.1	+647.8	2,573.9	21% from funding increase/12.6% new items.
F/NWR	2,455.7	−301.7	2,154.0	+363.0	2,517.0	10% from funding increase/6.9% new MRF item.
F/AKR	1,404.1	−20.3	1,383.8	+551.1	1,943.9	39% from funding increase/reprogramming.
Subtotal	61,879.8	+1,447.6	63,327.4	+15,107.6	78,435.0	
Other NOAA:						
Ships	9,502.8	+680.6	10,183.0	−90.4	10,092.6	
Admin	532.9	−347.3	185.6	+98.7	284.3	
Seagrant	493.0	0.0	493.0	+270.1	763.1	
RASCS	490.0	−115.2	374.8	−184.7	190.1	
NESDIS	254.8	+9.7	264.5	+11.3	275.8	
Subtotal	11,273.5	+227.4	11,500.9	+105.0	11,605.9	
DOC Support	153.9	+15.3	169.2	+8.2	177.4	
Commerce Department	73,307.2	+1,890.3	74,997.5	+15,220.8	90,218.3	
Coast Guard	97,272.7	−2,491.2	94,781.5	+37,532.2	132,313.7	Increase from indirect costs; Decrease from COOP/MSA.
State Dept	280.0	0.0	280.0	0.0	280.0	
Grand total	170,859.9	−800.9	170,059.0	+52,753.0	222,812.0	

Note: M/A above refers to Magnuson Act; MRF means marine recreational fisheries programs.

Ratio of the 1984 Foreign Catch to Total Catch

The GAO auditors noted that the catch data used to determine the foreign share of the total harvest for each fee schedule since 1982 were taken from published statistics. Published statistics predate annual fee schedules by two years, and are felt by GAO to be inconsistent with the provision of the Magnuson Act to employ statistics from the prior year. (For example, this fee schedule was prepared in 1985 and precedes the effective 12 month period of the schedule, 1986. The most recent final statistics available at the time of its preparation are the catch statistics published in April 1985 for the preceding year, 1984. Thus, the statistics used to apportion the foreign share in the 1986 fee schedule are two years old and allegedly one year out of date for purposes of the Magnuson Act.) NOAA reconsidered this method for determining the foreign share of the costs, and its decision in 1982 to use the most current published statistics

available for the preparation of fee schedules. No change is made here, however, because the current method provides the margin for ensuring that the fees collected during a calendar year are at least equal to the foreign share of the costs when that share is recalculated by using the statistics according to requirements of the Magnuson Act. This margin is within five percent and is necessary because annual fee schedules are prepared well before decisions for the fee year are made on fishing strategies, allocations, policies, and other matters affecting the foreign catches. From 1982 through 1984, NOAA's collections fell short of the targets established in the annual fee schedules by an average of $1.8 million each year, but exceeded the minimum foreign share required by the Magnuson Act by an average $1.6 million per year.

Principles applied since enactment of Pub. L. 96-561 for estimating the ratio of the foreign catch to the total catch in the fishery conservation zone (FCZ) and territorial waters are therefore employed for the 1984 ratio. The 1984 catch data are the most current official data now available for the year preceding preparation of this fee schedule.

The U.S. catch in international waters and freshwater and U.S. catch of tunas is subtracted from the total U.S. reported commercial catch to obtain the U.S. commercial catch in the FCZ and territorial waters (which include internal marine waters). The resulting commercial catch is corrected to international standards by adding the weight of mollusk shells. The total U.S. catch in the FCZ and the territorial waters is obtained by adding the preliminary recreational catch estimate to the corrected commercial catch. The foreign catch in the FCZ is taken from "Fisheries of the United States" but adjusted by removing the Canadian catch in the then disputed portion of the FCZ. The ratio for the 1986 fee schedule is 22.3 percent. Table 2 lists the 1984 data for this ratio.

TABLE 2.—ESTIMATE OF RATIO OF FOREIGN CATCH TO TOTAL CATCH, 1984 (INCLUDING INTERNAL WATERS)

		Metric tons
Total U.S. reported catch [1]		3,761,282
Exclusions:		
International Waters (exc. Tunas)	12,570	
Tunas	264,410	
Freshwater (inc. G. Lakes alewives)	66,119	
Total		(343,099)
U.S. commercial catch in Territorial Waters and Fishery Conservation Zone (FCZ)		3,418,183
Correction for mollusks [2]		1,007,036
Recreational catch [3]		*294,545
Total U.S. catch, Territorial Waters and FCZ		4,719,764

TABLE 2.—ESTIMATE OF RATIO OF FOREIGN CATCH TO TOTAL CATCH, 1984 (INCLUDING INTERNAL WATERS)—Continued

	Metric tons
Foreign catch, FCZ [4] (Canadian catch is excluded)	1,353,722
Total catch, Territorial Waters and FCZ (Pub. L. 94-265 as amended) (6,073,486 if Canada is excluded)	6,073,486
Ratio of foreign catch to total is 22.3 percent (Canadian catch is excluded)	

[1] This figure and all following figures for U.S. commercial catch from pages 8-11, "Fisheries of the United States, 1984." Calculated in pounds and converted to metric—figures may not add to total.

[2] Addition of mollusk shells. U.S. statistics for internal use include only edible portions of mollusks, but international standard is whole animal.

[3] Based on Atlantic, Gulf, Pacific 1982 data, Western Pacific 1981 data, and Caribbean 1979 data. Inlcudes catch types A and B1, assumes average weight of B1 is similar to A.

[4] From page 22, "Fisheries of the United States, 1984."

* Sportfish figures per Mark Holiday (Recreational Program).

The 1986 Foreign Fishing Fee Collection Target

Section 204(b)(10) of the Magnuson Act requires that foreign fishing vessel owners or operators pay at least the amount calculated from the ratio of the foreign catch to the total catch in the FCZ and territorial waters. Therefore, at least 22.3 percent of the total costs ($22.832 million calculated in Table 1) should be paid by foreign vessel owners or operators in 1986. That portion of the total costs is $49.7 million and is calculated as shown.

Fee target (1986) = ($222.832 million) x (0.223) = $49.691 million

The foreign fee collection target to be achieved from poundage fees and proposed for 1986 is $49.5 million. Approximately $184,000 is expected to be received for 1986 permit applications fees (see below). This is subtracted from $49.7 million to arrive at the amount to be collected in poundage fees. The 1986 proposed poundage fee target is $9.3 million higher than the $40.2 million target in 1985. Although the ratio of the foreign catch to total catch decreased 1.5 percent between 1983 and 1984, the large increase in Magnuson Act costs for FY 1985 resulting from NMFS consideration of the results of the GAO audit overrides any reduction due to a decrease in foreign fishing.

Permit Application Fees

NOAA determines foreign fishing permit application fees annually by estimating the costs of processing an application during that fee year (45 FR 82267, December 15, 1980). The estimated costs used to develop the proposed 1986 permit application fee are as follows:

Department of State	
Salaries	$30,000
Duplicating	600
Mailing	700
Computer	3,500
Travel	1,200
Total	36,000
Department of Commerce	
Salaries	$94,300
Benefits	10,700
Computer	20,000
Printing forms	200
Federal Register	22,848
Total	148,048
Grant total	184,048

The total estimated cost of processing each permit application in 1986 is $167. The total cost is apportioned to each application by estimating that 1,100 applications will be received in 1986 and then rounding the average unit cost of $167 per application. Foreign applicants would pay $167 but no surcharge for each application in 1986 (see below). Applicants for 1986 permits should pay this amount at the time of making application pending a final rule. NOAA will bill for any additional permit application fees or credit to future fees any differences in the amounts paid if the final permit application fee is different from the fee proposed.

The increase in the permit application fee results from a greater apportionment of the Fees, Permits and Regulations Division budget to the application review process, particularly joint venture applications, and from the inclusion of benefits. These costs were formerly recovered, in part, by poundage fees. This revison is consistent with the intent of NOAA to accept the GAO findings and properly attributes greater costs to processing joint venture applications, which are not recovered in the poundage fees.

Proposed Species Fee

Since implementing the Magnuson Act, NOAA has collected the major portion of the foreign fees by charging tonnage fees for species caught by foreign vessels. These are the poundage fees. The fee per ton for a species is based on an estimate of "exvessel value" of that species, that is, the value to fishermen on delivering the catch to the first buyer. The Japan Fisheries Association (JFA) litigated the 1984 fee schedule on the grounds that some species fees selected for that schedule did not take into account relevant value considerations or were in error. In settling that suit NOAA reduced the fee for Alaska flatfish taken in the Bering Sea and Aleutian Islands management areas and said it would work more closely with Japan (and by implication with other nations) to determine

exvessel values appropriate for the fee schedule.

On March 26, 1985, the Deputy Assistant Administrator for Fisheries Resource Management requested information on current foreign exvessel values from representatives of foreign fishing in the fishery conservation zone. Replies to this request where few, but a list of exvessel values for setting fees in 1986 was prepared using some new information furnished by respondents and data held by NMFS. That list was provided to the foreign representatives on July 23, 1985, for their information and supplemental comments. This action by NOAA meets its commitment to work closely with Japan (and other nations) as part of the settlement of the JFA's suit on the 1984 foreign fees.

Methods used to determine appropriate exvessel values for the 1986 fee schedule were nearly identical to the methods adopted in the 1985 schedule. NOAA continues to hold the view that prices paid to U.S. joint venture fishermen do not approximate exvessel values of the various species of fish to foreign fishing companies for the reasons stated in the 1985 fee schedule, see response to Comment 3.b at 50 FR 460. Joint venture prices for different species in a fishery complex may be useful, however, for establishing the relative values of the fish species which make up that complex. The methods used for establishing 1986 exvessel values in the main depend on foreign price information and other data held by NMFS, with some use of joint venture prices for relative pricing within a fishery. In a few cases, joint venture prices were used to establish the absolute price when other information was unavailable. However, such joint venture prices were first adjusted to include consideration of the fees which would be paid for the foreign harvest. Specific prices by fishery were determined as follows:

The Alaska Groundfish Fisheries

The price information available for developing exvessel values in these fisheries was similar to the information used to develop the 1985 fee schedule. Representatives of Korean fishing interests provided average exvessel values by species by month for Alaska groundfish landed in Korean ports. The Japan Fisheries Association provided data on fresh Alaska pollock and fresh Pacific cod landings for the Kushiro Wholesale Market and Ishinomaki Wholesale Market data on frozen blocks of almost all species of flounders, Pacific cod, Pacific ocean perch, other rockfish, sablefish, and squid. The information used covered the period April 1984 through March 1985. Additionally, Japanese market information contained in the Foreign Fishery Information Release appended to the NMFS Market News Report was used to establish the exvessel value of Alaskan pollock. The method used to convert surimi to exvessel prices in the 1985 fee schedule was also applied in the schedule. Data on average prices paid to U.S. fishermen by foreign buyers for fish purchased in the FCZ were also considered to check relative pricing consistency.

Alaska pollock was again considered the index for Alaska groundfish prices. The exvessel value of $122/mt adopted for the 1985 fee scheule was found to be appropriate for the 1986 schedule as well. This conclusion was based on consideration of frozen surimi block wholesale prices for the Tokyo Central Wholesale Market which ranged from $0.75 to 0.79 per pound for mothership-processed, joint venture trawl-processed, and Japanese trawl-processed products. The price distinctions which in former years indicated the joint venture to be of lower value were not present in these data. NOAA is told this results from improved quality of the joint product. Frozen surimi prices were reduced to exvessel values using the analysis described for the 1985 schedule (see 49 FR 40615). One change was made this year in selecting the appropriate exvessel value. Special attention was given to factoryship prices because about 57 percent of the 1984 Japanese catch of pollock in the Bering Sea and Aleutian Islands was processed aboard factoryships. The mean exvessel value of $118/mt derived for pollock processed aboard trawl and mothership vessels was weighed with the derived factoryship exvessel value of $124.4/mt to derive the exvessel value for Alaska pollock for the 1986 fee schedule. That value is $122/mt and identical to value used in the 1985 fee schedule. This value is supported by joint venture prices paid in 1984 after adjustments are made for the cost of foreign fishing fees, which are not paid for the U.S. catch received by foreign vessels.

Wholesale prices of Pacific cod provided by JFA for the Kushiro fresh fish market and the International wholesale (frozen block) market were used to relate prices of frozen blocks of the other groundfish species on the Ishinomaki Market to frozen blocks of pollock. Limited numbers of pollock blocks are sold on the Ishinomaki Market; so the ratio of the fresh pollock price to the fresh Pacific cod price in the Kushiro market was assumed to reflect the price relation between pollock and Pacific cod frozen blocks on the Ishinomaki Market. The ratios of other groundfish block prices to Pacific cod blocks' in the Ishinomaki Market were then really related to this theoretical price of a pollock block on the Ishinomaki Market.

NOAA did not adopt the exvessel value for Pacific cod derived from this ratio, however, for the same reason given in the 1985 fee schedule, i.e., frozen cod prices (and NOAA assumes fresh prices as well) in Japan may reflect compositons other than pure cod. Instead, NOAA selected the average of Japanese and Korean prices of $286/mt for Pacific cod as appropriate.

Prices relative to the Pollock index were derived from the Japanese and Korean frozen block data and established the exvessel values for the remaining groundfish species. As in the 1985 fee schedule, only one value is proposed for Alaska flatfish, although the flatfish category contains many different flatfish species having different market values. The Alaska flatfish exvessel value selected represents a weighted average value derived from the individual price ratios of the component species to the pollock price. Weights were based on the catch compositions of the Gulf of Alaska (GOA) flounder group and the subgroups of flounders, turbots, and yellowfin sole which make up the Bering Sea and Aleutian Islands (BSA) flatfish group. Species catch compositions for flatfish were taken from the 1984 observer sampling report. Using this method, NOAA derived an exvessel value of $156/mt for Alaska flatfish, which is $26/mt more than last year's value.

There was a wide range of average prices for sablefish in the Japanese and Korean markets, in the order of $150/mt. The initial exvessel values provided on July 23, 1985, to representatives of foreign fishing for comment were $614/mt and $323/mt in the GOA and BSA fisheries respectively. NOAA has reviewed these values further and instead adopted a mean of the Japanese and Korean prices. The mean price was then reduced to specific GOA and BSA fishery prices by using relative values determined from joint venture pricing in the GOA and BSA fisheries and the 1984 foreign catches in each fishery. Exvessel values of $730/mt and $384/mt are adopted for the sablefish in the GOA and BSA fisheries respectively.

NOAA has no new information on

exvessel values for BSA snails and it is therefore adopting last year's price of $256/mt in the 1986 fee schedule.

Table 3 lists the exvessel values proposed for the Alaska groundfish fisheries and snails.

TABLE 3.—PROPOSED 1986 EXVESSEL VALUES FOR ALASKA FISHERIES

Species	Fishery	Ratio	Sources	Proposed value (per metric ton)	1985 value (per metric ton)
Alaska pollock	BSA/GOA	1.0	TCWM/SURIMI	$122	$122
Pacific cod	BSA/GOA	2.3443	Mean JA/KS	286	283
Pacific ocean perch	BSA/GOA	3.2705	JA	399	385
Other rockfish	BSA/GOA	3.7869	JA/KS/JV mean	462	363
Atka mackerel	BSA/GOA	1.5082	JA/KS mean	184	201
Flatfish	BSA/GOA	1.2787	JA/wgtd mean	156	130
Pacific squid	BSA/GOA	1.8361	KS	224	226
Sablefish	BSA	3.1476	JA/KS mean	384	247
	GOA	5.0836	J/V weighted	730	616
Other species	BSA/GOA	1.2377	KS	151	151
Snails	BSA		1985 F/S	256	256

Generally, exvessel values proposed for 1986 are near the values adopted in the 1985 schedule. There is a minor reduction in the Atka mackerel exvessel value. There is a slight increase in valuation of Pacific ocean perch and a large increase in valuation of "other rockfish." The increase of $26/mt in the value of flatfish is well supported by the foreign data. The remaining increases are in the fishery values of sablefish. Although the sablefish data are soft, these increases are of minor effect owing to insignificant foreign catches of sablefish projected in 1986.

The Pacific Groundfish Fishery

No data were received on current exvessel or frozen block values of Pacific whiting. U.S. exvessel values for Pacific whiting increased from $150/mt in 1984 to $198/mt through May 1985. This is in contrast to a drop in prices to U.S. fishermen on the fishing grounds during the same period. Because of these opposing trends NOAA concludes that a proposal to continue the 1985 exvessel value of $122/mt into 1986 would be reasonable to obtain public comments.

The exvessel values proposed for other species taken in the Pacific groundfish foreign trawl fisheries under the incidental catch provisions provided for by the Pacific Groundfish Fishery Management Plan are domestic prices and taken from the Pacific Fishery Management Council's preliminary Port Group Report: Commercial Groundfish, estimated prices per pound for 1984 for all areas. The largest increase is in the exvessel value for jack mackerel. Use of domestic pricing does not significantly affect the economics of foreign fishing in this fishery, because incidental catch constitutes only 0.05 percent of the Pacific whiting catch. The selected exvessel values for these incidental species are shown in Table 4 below.

TABLE 4.—EXVESSEL VALUES PROPOSED FOR INCIDENTAL FOREIGN HARVEST OF PACIFIC GROUNDFISH

Species/group	1985 price per pound equals proposed 1986	Exvessel proposed value (per metric ton)	1984 exvessel value (per metric ton)
Sablefish	$0.261	$576	$551
Pacific ocean perch	.249	549	479
Other rockfish, excluding Pacific ocean perch	.267	589	461
Flatfish	.275	607	598
Jack mackerel	.231	510	214
Other species	.264	582	595

Northwest Atlantic Ocean Fisheries

Loligo and *Illex* squids and butterfish harvested by U.S. vessels are competitive in price with the foreign harvest of these species in the Atlantic. Therefore, exvessel squid values proposed in this fee schedule consider adjusted joint venture prices as well as the current average exvessel values for U.S. landings, and are shown in Table 5 below. NOAA has no new information on which to base a change in the adopted exvessel value of butterfish, and therefore continues the exvessel value of $618/mt adopted last year.

NOAA has reviewed confidential economic data received on the Atlantic mackerel fisheries and concluded that the exvessel value of $190/mt adopted for 1985 should be continued in the 1986 fee schedule.

The exvessel values proposed for red and silver hakes, and other finfish are the same as the values used in 1985 because NOAA has no information to support any changes in 1986. Confidential data on exvessel values for river herring suggest a reduction in 1986 to $139/mt. Proposed 1986 values are shown below.

TABLE 5.—EXVESSEL VALUES PROPOSED FOR SPECIES FISHED IN THE NORTHWEST ATLANTIC OCEAN FISHERIES.

Species	Proposed 1986 exvessel value (per metric ton)	Adopted 1985 value (per metric ton)
Squid, *Illex*	$390	$221
Squid, *Loligo*	633	441
River herring	139	179
Butterfish	618	618
Atlantic Mackerel	190	190
Red Hake	369	369
Silver Hake	393	393
Other finfish	268	268

Western Pacific Fisheries

NOAA has not received any information to cause a revision of the exvessel values adopted in the final schedule for 1985. Therefore, NOAA proposes that the same values be used for the 1986 schedule unless subsequent public comments provide a basis for changing these values. These values are shown in Table 6 below.

TABLE 6.—VALUES PROPOSED FOR THE WESTERN PACIFIC FISHERIES

Species	Proposed ex-vessel values
Western Pacific corals	$206/kg
Seamount groundfish	$397/mt
Dolphin fish	$5,515
Wahoo	$2,206
Sharks, Pacific	$1,103
Striped Marlin	$1,854
Billfish	$1,985
Pacific swordfish	$2,337

Summary of Proposed 1986 Species Fees

The fee per ton for any species harvested by foreign vessels is determined as a percentage of the exvessel value of that species. As in 1985 this percentage is uniform for all species and calculated from the ratio of the poundage fee collection target to the estimated total exvessel value of the foreign catch in 1986. The total value of the foreign catch is calculated by multiplying the exvessel value of each species by the projected catch of that species in 1986. Catch projections were provided by NMFS Regional Offices based on current understandings of the TALFFs which may be available in 1986. The total value of the 1986 foreign catch is the sum of the values of the catches of all species. Table 7 shows the data used for these calculations and lists the entire set of proposed 1986 species fees. The ratio of the poundage fee collection target ($49.5 million) to the estimated total exvessel value of the 1986 foreign catch ($139.9714 million) results in a percentage rate of 35.7 percent of the exvessel value for 1986.

The proposed 1986 percentage rate of 35.7 percent is significantly greater than the 1985 final rate of 25.9 percent. This large increase results from the refinements in NOAA and Coast Guard methods of determining Magnuson Act costs. For example, the inclusion of Coast Guard's indirect costs adds over eight million dollars to the fee target; NMFS increases add over three million dollars. Over six percent of the 9½ percent increase in the 1986 fee percentage rate is due to recovery of increased Magnuson Act costs from a constant level of harvest. Three percent results from recovery of constant costs for a decreasing foreign catch in the FCZ. The average exvessel value in 1985 was $129.46/mt; the 1986 average is $138.21/mt (up 6.8 percent). The average 1986 proposed fee is, however, $48.88/mt which is an increase of $15.52/mt (up 46.7 percent) over the 1985 average fee of $33.35/mt.

TABLE 7.—DETERMINATION OF VALUE OF 1986 FOREIGN CATCH

	Fishery(ies)	Proposed 1986 exvessel value	1986 estimated foreign catch	Value of 1986 foreign estimated catch	Proposed species fee
	xl	*Per metric tons*		*Per metric tons*	
Alaska pollock	All Alaska	$122	762,000	$92,964,000	$43
Pacific cod	All Alaska	286	24,700	7,064,200	101
Pacific ocean Perch	All Alaska	399	100	39,900	141
Other rockfish	All Alaska	462	126	58,212	163
Atka mackerel	All Alaska	184	10	1,840	65
Flatfish	All Alaska	156	116,400	18,158,400	55
Pacific squid	All Alaska	224	2,700	604,800	79
Sablefish	GOA	730			258
	BSA	384	200	76,800	136
Other species	All Alaska	151	10,400	1,570,400	53
Snails	BSA	256	325	83,200	91
Pacific whiting	WOC	122	60,000	7,320,000	43
Sablefish	WOC	576	0	0	204
Pacific ocean Perch	WOC	549	4	2,196	194
Other rockfish	WOC	589	443	260,927	208
Flatfish	WOC	607	0	0	215
Jack mackerel	WOC	510	468	238,680	180
Other species	WOC	582	53	30,846	206
Squid *Illex*	NWA	390	4,200	1,638,000	138
Squid *Loligo*	NWA	633	5,725	3,795,675	224
River herring	NWA	139	400	55,600	49
Butterfish	NWA	618	600	370,800	219
Atlantic mackerel	NWA	190	20,000	3,800,000	67
Red hake	NWA	369	100	36,900	131
Silver hake	NWA	393	3,000	1,179,000	139
Other finfish	NWA	268	1,000	268,000	95
Atlantic sharks	Atlantic	423	100	423,000	150
		Per kilograms			
Coral	W Pacific	50			18
Groundfish, Seamount	W Pacific	397	0	0	140
Dolphin fish	W Pacific	5,515	0		1,951
Wahoo	W Pacific	2,206	0		780
Pacific Sharks	W Pacific	123	0		44
Striped marlin	W Pacific	3,752	0		1,327
Pacific billfish	W Pacific	1,503	0		532
Pacific swordfish	W Pacific	2,337	0		827
Total			1,012,729	$139,971,376	

Surcharge

The Assistant Administrator for Fisheries, NOAA, has determined that the Fishing Vessel and Gear Damage Compensation Fund established by the Fishermen's Protective Act (22 U.S.C. 1980(10)(f)) continues to be sufficiently capitalized to pay any claims in 1986. Capitalization of the fund is derived from a surcharge on the foreign fishing fees imposed under section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). NOAA proposes to maintain the surcharge at zero percent, effectively waiving the surcharge in 1986 as it was in 1984 and 1985. Therefore, no change is proposed for § 611.22(b) by this notice. NOAA reserves the right to modify the surcharge at a later date if unanticipated claims occur.

Classification

NOAA has prepared a regulatory impact review (RIR) that discusses the economic consequences and impacts of the proposed fee schedule and its alternatives. Copies of the RIR are available at the above address. Based on the RIR, the Administrator, NOAA, has determined that the proposed schedule does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrates that the proposed fee schedule complies with the requirements of section 2 of E.O. 12291.

The General Counsel for the Department of Commerce has certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This certification has been forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities, a regulatory flexibility analysis is not required.

NOAA Directive 02–10 published at 45 FR 49312 (July 24, 1980) adopts internal procedures to implement the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*). Under those procedures, programmatic functions with no potential for significant environmental impacts are generally excluded from NEPA requirements.

The proposed fee schedule has no direct impact on the fishery resources in the FCZ. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels and result in a different species mix being removed from the environment; however, the

proposed schedule meets the criterion that fees should minimize disruption of traditional fishing patterns on target species. The proposed schedule is a change from the 1985 fee schedule, but it will not prevent the harvesting of the total allowable level of foreign fishing (TALFF). The environmental impact of harvesting the TALFF is described for each fishery management plan, and no further environmental assessment is necessary.

This proposed rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 611

Fish, fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: October 8, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fishies Resource Managment, National Marine Fishies Service.

PART 611—[AMENDED]

For the reasons above, 50 CFR Part 611 is proposed to be amended as follows:

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801.

2. Paragraphs § 611.22(a), (b)(1), and (c) are revised to read as follows:

§ 611.22 Fee schedule.

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $167 per vessel, plus the surcharge, if required under paragraph (c) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA", must be sent to the Division Chief, Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Room 414, Washington, D.C. 20235. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(b) *Poundage fees.*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (c) of this section.

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	219
2. Hake, red	131
3. Hake, silver	139
4. Herring, river	49
5. Mackerel Atlantic	67
6. Other finfish, Atlantic	95
7. Squid, *Illex*	138
8. Squid, *Loligo*	224
Atlantic and Gulf fisheries:	
9. Atlantic Shark	150
10. Shrimp, royal red	(1)
Alaska fisheries:	
11. Pollock Alaska	43
12. Cod, Pacific	101
13. Pacific ocean perch	141
14. Other rockfish (Alaska)	163
15. Mackerel, Atka	65
16. Squid, Pacific	79
17. Flatfish, Alaska	55
18. Sablefish, Gulf of Alaska	258
Bering Sea and Aleutian Islands	136
19. Other species	53
20. Snails	91
Pacific fisheries:	
21. Whiting, Pacific	43
22. Sablefish	204
23. Pacific ocean perch	194
24. Other rockfish	208
25. Flounders	215
26. Mackerel, jack	180
27. Other species	206
Western Pacific fisheries:	
28. Coral	[2]18
29. Groundfish, Seamount	140
30. Dolphin fish	1,951
31. Wahoo	760
32. Sharks, Pacific	44
33. Striped marlin	1,327
34. Pacific billfish	532
35. Pacific swordfish	827

[1] Reserved.
[2] Dollars per kilogram.

* * * * *

(c) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraphs (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge for 1986 fees.

* * * * *

[FR Doc. 85-24482 Filed 10-10-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 198
Friday, October 11, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agriculture Stabilization and Conservation Service

Feed Grain Donations for the Cheyenne River Sioux Indian Reservation in South Dakota.

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Cheyenne River Sioux Indian Tribe in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Cheyenne River Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 15, 1986, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C., on October 8, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-24431 Filed 10-10-85; 8:45 am]

BILLING CODE 3410-05-M

Agriculture Stabilization and Conservation Service
Commodity Credit Corporation

1986 Upland Cotton Marketing Quota and Acreage Allotment Program

ACTION: Proposed and final determinations with respect to the marketing quota and acreage allotment program for the 1986 crop of upland cotton.

SUMMARY: The purpose of this notice is to announce final determinations and proposed determinations with respect to the 1986 upland cotton marketing quota program. The following final determinations are announced for the 1966 crop of upland cotton: (a) A national marketing quota of 17,133,333 bales; (b) a national acreage allotment of 16,000,000 acres; and (c) the method of apportionment of the national acreage allotment to States, counties, and farms. These determinations are made in accordance with sections 342 and 344 of the Agricultural Adjustment Act of 1938, as amended (the "1983 Act"). In addition, this notice includes proposed determinations, for which public comments are requested, with respect to the following: (a) The method of balloting, and voter eligibility requirements, for a marketing quota referendum of producers to be held prior to December 15, 1985; (b) the amounts of acreage allotment permitted to be reserved by States and counties; (c) the level of price support to cooperators if the national marketing quota is approved; and (d) whether price support should be made available to noncooperators. The proposed determinations are made in accordance with sections 343 and 344 of the 1938 Act and sections 101, 103, 104, and 401 of the Agricultural Act of 1949, amended (the "1949 Act").

EFFECTIVE DATE: The final determinations are effective October 15, 1985. Comments with respect to proposed determinations must be received on or before November 15, 1985, in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 475–4645. The Regulatory Impact Analysis describing the options considered in developing this notice is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs to which this notice applies are: Title-Cotton Production Stabilization; Number 10.052; and Title-Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is applicable to the provisions of this notice and an Initial Regulatory Flexibility Analysis has been completed and is available upon request.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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).

Certain determinations for which comments are requested in this notice with respect to the 1986 Upland Cotton Marketing Quota Program must be made by the Secretary of Agriculture before the producer referendum is conducted. The referendum must be conducted not later than December 15, 1985.

Accordingly, it has been determined that the public comments must be received on or before November 15, 1985. This will allow the Secretary sufficient time to consider properly the comments received before the final program determinations are made.

1. (a) National Marketing Quota

Section 342 of the 1938 Act provides that, whenever during any calendar year the Secretary determines that the total supply of cotton for the marketing year that begins in such calendar year will exceed the normal supply of cotton for such marketing year, the Secretary shall proclaim such fact and shall determine and proclaim a national marketing quota for the crop produced in the next calendar year. Such proclamation shall be made not later than October 15 of the calendar year in which such determination is made. Section 301(b)(16)(C) of the 1938 Act defines "total supply" of upland cotton for any marketing year to be the carry-over at the beginning of such marketing year, plus the estimated production of cotton in the U.S. during the calendar year in which such marketing year begins and the estimated imports of cotton into the U.S. during such marketing year. Section 301(b)(10)(C) of the 1938 Act defines the "normal supply" of upland cotton for any marketing year as the sum of (1) the estimated domestic consumption for the marketing year for which such normal supply is being determined, (2) the estimated exports for such marketing year, and (3) 30 per centum of the sum of such consumption and exports, as an allowance for carryover.

Section 342 of the 1938 Act requires that the amount of the national marketing quota be adequate, together with the estimated carryover at the beginning of the marketing year that begins in the next calendar year and the estimated imports during such marketing year, to make available a normal supply of cotton. Section 342 further provides that, beginning with the 1961 crop, the national marketing quota shall not be less than a number of bales equal to the sum of the estimated domestic consumption and estimated exports (less estimated imports) for the marketing year for which the quota is proclaimed. The Secretary is required, however, to adjust the amount of the quota as the Secretary determines necessary to assure the maintenance of adequate but not excessive stocks to provide a continuous and stable supply of cotton in the U.S. and in foreign cotton consuming countries, and for purposes of national security. However, in making such an adjustment, the Secretary may not reduce the national marketing quota below (1) one million bales less than the sum of the estimated domestic consumption and estimated exports, or (2) ten million bales, whichever is larger. In addition, Section 342 specifies that, notwithstanding any other provisions of the 1938 Act, the national marketing quota for upland cotton for 1959 and subsequent years shall not be less than the number of bales required to provide a national acreage allotment for each such year of sixteen million acres.

(b) National Acreage Allotment

Section 344(a) of the 1938 Act provides that, whenever a national marketing quota is proclaimed under section 342, the Secretary shall determine and proclaim a national acreage allotment for the crop of cotton to be produced in the next calendar year. The national acreage allotment for cotton shall be that acreage, based on the national average yield per acre of cotton for the four years immediately preceding the calendar year in which the national marketing quota is proclaimed, required to make available from such crop an amount of cotton equal to the national marketing quota.

(c) State, County and Farm Acreage Allotments

Section 344 further provides for apportioning the national acreage allotment for upland cotton among States, for apportioning the State allotments among counties, and for apportioning the county alloments among farms. Section 506 of the Agriculture and Food Act of 1981 (the "1981 Act") provides that the permanent State, county, and farm base acreage allotments for the 1977 crop of upland cotton, adjusted for any underplantings in 1977 and reconstituted as provided in section 379 of the 1938 Act shall again become effective as preliminary allotments for the 1986 crop. In addition, the Senate Report (Senate Report Number 95–180) accompanying the Food and Agriculture Act of 1977, which act contained the same language as that found in section 506 of the 1981 Act, indicated that the percentage share of each State in the national acreage allotment shall not be less than the State's percentage share of the national base acreage allotment for the 1977 crop under section 350(b) of the 1938 Act. Accordingly, since there is no legislative history to the contrary in the 1981 Act, it has been determined that this methodology shall be utilized in determining the percentage share of each State with respect to the 1986 national acreage allotment.

Since the national marketing quota, the national acreage allotment, and the State, county and farm allotments for the 1986 crop of upland cotton are calculated in accordance with formulas prescribed in the 1938 Act and the 1981 Act and since the proclamation of the national quota and allotment is required to be made by October 15, 1985, it has been determined that public comment with respect to the proclamation of the quotas and allotments is unnecessary and impracticable.

2. (a) Producer Referendum

Section 343 of the 1938 Act provides that, not later than December 15 following the issuance of the marketing quota proclamation provided for in section 342, the Secretary shall conduct a referendum, by secret ballot, of farmers engaged in the production of cotton in the calendar year in which the referendum is held, to determine whether such farmers are in favor of, or opposed to, the quota so proclaimed. Section 343 further provides that, if more than one-third of the farmers voting in the referendum oppose the national marketing quota, the quota shall become ineffective upon proclamation of the referendum results. The Secretary shall proclaim the results of the referendum within thirty days after it is held.

(b) State Acreage Reserves

Section 344(e) of the 1938 Act provides that the State Agricultural Stabilization and Conservation (ASC) committee may reserve not more than 10 percent of its State acreage allotment (15 percent if the State's 1948 planted acreage was in excess of one million acres and less than half its 1943 allotment) which shall be used to make adjustments in county allotments for trends in acreage, for counties adversely affected by abnormal conditions affecting plantings, for small or new farms, or to correct inequities in farm allotments and to prevent hardship.

(c) County Acreage Reserves

Section 344(f)(3) of the 1938 Act provides that the county ASC committee may reserve not more than 15 percent of the county allotment which shall be used for (1) establishing allotments for farms on which cotton was not planted (or regarded as planted under Pub. L. 12, Seventy-ninth Congress) during any of the three calendar years immediately preceding the year for which the allotment is made, on the basis of land, labor, and equipment available for the production of cotton, crop-rotation practices, and the soil and other physical facilities affecting the

production of cotton; and (2) making adjustments of the farm acreage allotments so as to establish allotments which are fair and reasonable in relation to the above factors and abnormal conditions of production on such farms, or in making adjustments in farm acreage allotments to correct inequities and to prevent hardship.

(d) Price Support for Upland Cotton

Section 103(a) of the 1949 Act provides that, if farmers have approved marketing quotas for a crop of upland cotton, price support shall be available to cooperators for such crop at a level which is not more than 90 percent nor less than 65 percent of the parity price for the crop of upland cotton.

Section 401(b) of the 1949 Act provides that the following factors shall be taken into consideration in determining the level of support in excess of the minimum level prescribed for upland cotton: (1) The supply of the commodity in relation to the demand therefor, (2) the price levels at which other commodities are being supported, (3) the availability of funds, (4) the perishability of the commodity, (5) the importance of the commodity to agriculture and the national economy, (6) the ability to dispose of stocks acquired through a price-support operation, (7) the need for offsetting temporary losses of export markets, (8) the ability and willingness of producers to keep supplies in line with demand, and (9) changes in the cost of producing upland cotton.

Section 101(d)(3) of the 1949 Act provides that the level of price support to cooperators for upland cotton for which marketing quotas have been disapproved by producers shall be 50 percent of the parity price for the crop of upland cotton. Section 101(d)(5) provides that price support may be made available to noncooperators at such levels, not to exceed the level or price support to cooperators, as the Secretary determines will facilitate the effective operation of the program. Section 408(b) of the 1949 Act defines a cooperator as a producer on whose farm the acreage planted to upland cotton does not exceed the farm acreage allotment.

Accordingly, the Secretary has made final determinations and proposes to make other determinations with respect to the 1986 crop of upland cotton as follows:

Final Determinations

1. *National Marketing Quota.* In accordance with section 342 of the 1938 Act, it is hereby determined that the total supply of upland cotton for the 1985–86 marketing year will exceed the normal supply of upland cotton for such marketing year. Therefore, it is hereby announced that a national marketing quota for upland cotton shall be in effect for the 1986–87 marketing year. These determinations are based upon the following:

Item	Bales
A. *Total supply*	
Carryover, August 1, 1985	4,022,000
Estimated production, 1985 crop	13,512,000
Estimated imports, 1985 marketing year (MY) (Aug. 1, 1985–July 31, 1986)	10,000
Total supply	17,544,000
B. *Normal supply*	
Estimated domestic consumption, 1985 MY	5,350,000
Estimated exports, 1985 MY	3,910,000
Subtotal	9,260,000
Allowance for carryover (30 percent of estimated domestic consumption and exports)	2,778,000
Normal supply	12,038,000

2. *Amount of the National Marketing Quota.* In accordance with section 342 of the 1938 Act, the amount of the national marketing quota is hereby determined to be 17,133,333 bales. This determination is based upon following:

A. The amount of the marketing quota must be adequate, together with estimated carryover on August 1, 1986 and estimated imports during the 1986 marketing year, to make available a normal supply.

Item	Bales
Normal supply, 1986 MY	9,700,000
Less estimated beginning carryover, 1986 MY	8,350,000
Subtotal	1,350,000
Less estimated imports, 1986 MY	10,000
Total	1,340,000

B. The amount of the marketing quota cannot be less than the total of the estimated domestic consumption plus estimated exports less estimated imports, plus an adjustment to assure adequate but not excessive stocks. The stock adjustment may not be used to reduce the marketing quota below the higher of: (1) One million bales less than the sum of domestic consumption plus exports, or (2) ten million bales.

Item	Bales
Estimated domestic consumption, 1985 MY	5,000,000
Estimated exports, 1985 MY	2,500,000
Subtotal	7,500,000
Less estimated imports, 1986 MY	10,000
Plus stock adjustment [1]	0
Total	7,490,000

[1] The stock adjustment is determined to be zero since any negative stock adjustment would further reduce the national marketing quota below 10.0 million bales.

C. Further, the national marketing quota cannot be less than the amount needed to provide for a national acreage allotment of 16,000,000 acres. The amount of 16,000,000 acres times the national four-year average (1981–1984) yield per acre of 514 pounds divided by 480 pounds per bale equals the national marketing quota of 17,133,333 bales.

3. *National Acreage Allotment.* In accordance with Section 344 of the 1938 Act, the national acreage allotment is hereby determined to be 16,000,000 acres. This determination is based upon the following:

National marketing quota (bales)	17,133,333
Times pounds per standard bale	480
Equals national marketing quota in pounds	8,224,000,000
Divided by national average yield per acre	514
Equals national acreage allotment (acres)	16,000,000

4. *Apportionment of National Acreage Allotment to States, Counties, and Individual Farms.* Section 344 of the 1938 Act provides authority for apportioning the national acreage allotment to States, counties, and individual farms. Because each State's share of the 1977 base allotment, as adjusted for any underplantings in 1977 and reconstitutions during the period 1978–1985, State and county allotments will also be adjusted for the administrative transfer of farms between States or between counties within a State during the period 1978 through 1985, decreases resulting from farms no longer engaged in agricultural production, and decreases for farms losing an allotment due to failure to plant upland cotton during 1975–77.

Proposed Determinations

1. *Producer Referendum and Eligibility Requirements.* The Secretary intends to conduct the marketing quota referendum for the 1986 crop of upland cotton by mail ballot during the period December 9–13, 1985.

A person will be considered to be engaged in the production of upland cotton in accordance with section 343 of the 1938 Act and eligible to vote in the referendum if that person is at least 18 years old and:

(a) Is entitled to share in the 1985 crop of upland cotton, or the proceeds thereof, because that person shares in the risks of production of the upland cotton crop as an owner, landlord, tenant or sharecropper.

(b) Has received a cash land diversion payment under the 1985 upland cotton program; or

(c) Is an owner or an operator of a farm for which a farm allotment has been established for the 1986 crop of upland cotton.

Notwithstanding the foregoing provisions, a landlord whose return from the 1985 crop of upland cotton was fixed is not eligible to vote in the referendum unless otherwise eligible. In addition, any failure to harvest the 1985 crop because of conditions beyond the control of an individual shall not affect that individual's status as a person engaged in the production of upland cotton.

Comments are requested on the referendum period, method of balloting, and voter eligibility requirements for the 1986 national marketing quota referendum.

2. *State Acreage Reserves.* As provided by section 344(e) of the 1938 Act, State ASC committees will be permitted to reserve up to 10 percent of their State acreage allotments which shall be used to make adjustments in county allotments for trends in acreage, for counties adversely affected by abnormal conditions affecting plantings, for small or new farms, or to correct inequities in farm allotments and to prevent hardship.

Comments are requested on the level of State reserves.

3. *County Acreage Reserves.* As provided by section 344(f)(3) of the 1938 Act, county ASC committees will be permitted to reserve up to 15 percent of their county allotments which shall be used for (1) establishing allotments for farms on which cotton was not planted or regarded as planted during 1983, 1984, or 1985; and (2) making adjustments of the farm acreage allotment in order to establish allotments which are fair and reasonable or to correct inequities and prevent hardship.

In any case in which the owner or operator of a farm believes that the upland cotton acreage allotment established for a farm is incorrect, including cases where records of 1977 allotments are unavailable, the owner or operator of the farm may appeal to the county ASC committee to have the upland cotton acreage allotment corrected. Such appeals shall be conducted in accordance with the administrative Appeal Regulations found at 7 CFR Part 780. The total increase in upland cotton acreage allotments in any county approved under this paragraph shall not exceed that total reserve established for the county which is derived from the 1986 upland cotton acreage allotment established for the State.

Comments are requested on the level of county reserves.

4. *Price Support Levels.*

A. If the national marketing quota is approved in the referendum, the Secretary proposes to establish the level of price support for upland cotton for cooperators at 65 percent of the parity price for upland cotton as of August 1, 1986.

B. If the national marketing quota is disapproved, the level of price support for upland cotton for cooperators shall be established at 50 percent of the parity price for upland cotton as of August 1, 1986 as required by section 101(d)(3) of the 1949 Act. It is proposed that price support be extended only to cooperators. Producers will be eligible for price support only with respect to upland cotton produced on farms on which producers plant within their allotments.

Comments are requested on the proposed levels of price support.

Authority: Secs. 301, 342, 343, 344, 52 Stat. 38, as amended, 56, as amended, 57, as amended (7 U.S.C. 1301, 1342, 1343, 1344); Secs. 101, 103, 401, 408, 63 Stat. 1051, as amended, 72 Stat. 989, as amended, 63 Stat. 1054, as amended, 1055, as amended (7 U.S.C. 1441, 1444(a), 1421, 1428); Sec. 506, 95 Stat. 1241 (7 U.S.C. 1342 note).

Signed at Washington, DC, on October 4, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-24396 Filed 10-10-85; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

Arkansas Electric Cooperative Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulation (40 CFR Parts 1500–1508), and REA Environmental Policy and Procedures (7 CFR Part 1794) has made a Finding of No Significant Impact with respect to a project proposed by Arkansas Electric Cooperative Corporation (AECC). The project consists of construction of a 161 kV transmission line and a 33 MW hydroelectric generating plant at the existing Lock and Dam No. 13 which is located on the Arkansas River in Crawford County, Arkansas. On October 18, 1983, the Federal Energy Regulator Commission (FERC) issued a license to AECC of construction of the project. The environmental findings contained in License No. 3043 have been adopted by REA.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact (FONSI) and Environmental Assessment (EA), the License No. 3043 issued by FERC and AECC's Borrower's Environmental Report (BER), may be reviewed at or obtained from the office of the Chief, Distribution and Transmission Engineering Branch, Southwest Area Electric, Room 0009, South Agriculture Building, Rule Electrification Administration, Washington, D.C. 20250, telephone (202) 382–1915, or at the office of Arkansas Electric Cooperative Corporation, (Carl S. Whillock, Manager), 8000 Scott Hamilton Drive, Little Rock, Arkansas 72219, telephone (501) 562–0220, during regular business hours. Questions or comments on the proposed project should be sent to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for approval from AECC, has reviewed the license issued by FERC as well as the BER and other documents prepared and submitted by AECC and has determined that they represent an accurate assessment of the environmental impact of the proposed project. AECC's project consists of a powerhouse containing three 11MW hydroelectric genarating units which will be be located on the north side of the Arkansas River proximate to the U.S. Army Corps of Engineers' existing Lock and Dam No. 13. A 15.6 km (9.7. miles) long 161 kV transmission line will connect the project to the existing Van Buren substation. The 161/69 kV interchange substation is jointly owned by Oklahoma Gas and Electric Company and Southwestern Electric Power Company. Operation of the dam and reservoir would not be affected by the installation and operation of the hydroelectric generating facilities.

REA determined that the proposed project will have no effect on cultural resources, floodplains, wetlands, prime forest land or rangeland or threatened and endangered species. The transmission line will cross areas defined as important farmland. However, less 0.2 ha (0.5 a) of land identified as prime farmland and farmland of statewide importance will be impacted by the wood H-fram structures.

There is a national policy which encourages the addition of hydroelectric facilities at existing dams and there is no practicable alternative that would reduce the amount of important farmland that will be converted.

Alternatives examined for the proposed project include no action and alternative line routes. REA determined that the proposed project is an environmentally acceptable project for AECC to supply part of its member's needs with energy from a renewable resource.

Based upon support documents, FERC made a Finding of No Significant Impact and issued a license to AECC on October 18, 1983 for construction of the proposed facility. The FERC document supplements the EA prepared by REA. REA has independently evaluated the proposed project and has concluded that approval of the project would not constitute a major Federal action significantly affecting the quality of the human environmemt.

In accordance with the regulations, FERC published notices and requested comments on the application submitted by AECC in the **Federal Register** and newpapers local to the project. There were no adverse comments. AECC published notices and requested comments on the transmission facilities in local newspapers in August, 1985. No comments were received. The notices published by FERC and AECC meet the REA notice requirements contained in 7 CFR Part 1794.62.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850-Rural Electrification Loans and Loan Guarantees.

Dated: October 8, 1985.

Jack Van Mark,

Acting Administrator.

[FR Doc. 85-24510 Filed 10-10-85; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 35-85]

Foreign-Trade Zone 2—New Orleans, LA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans (the Port), grantee of Foreign-Trade Zone 2, requesting authority to expand its zone to include an industrial park site in New Orleans, within the New Orleans Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 30, 1985.

On July 16, 1946, the Port received authority from the Board to establish a foreign-trade zone in New Orleans (Board Order 12, 11 FR 8235, 7/31/46). In 1984 the Board authorized a new 76-acre site within the Almonaster-Michoud Industrial District on the Inner Harbor Navigation Canal and the Mississippi River Gulf Outlet (Board Order 245, 49 FR 15006, 4/16/84).

The Port is now requesting an industrial park site for large scale users that cannot be accommodated at the approved facilities. The proposed expansion site involves the 700-acre Newport Industrial Park, adjacent to the Almonaster-Michoud Industrial District on the Mississippi River Gulf Outlet at Bayou Bienvenue in New Orleans.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal St., New Orleans, LA 70130; and Colonel Eugene S. Witherspoon, District Engineer, U.S. Army Engineer District New Orleans, P.O. Box 60267, New Orleans, LA 70160.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 11, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 432 International Trade Mart, 2 Canal Street, New Orleans, LA 70130

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, N.W., Washington, D.C. 20230

Dated: October 7, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-24421 Filed 10-10-85; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

[Docket No. 51064-5164]

Enforcement Responsibilities of Commerce and Customs Under the Export Administration Act

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Procedures.

SUMMARY: The International Trade Administration is publishing procedures setting forth the responsibilities of the United States Department of Commerce (Commerce) and the United States Customs Service (Customs) for enforcing the Export Administration Act of 1979, 50 U.S.C. app. section 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (EAA).

DATE: These procedures are effective October 11, 1985. For further information contact: Commerce: Cecil Hunt, Assistant General Counsel for Export Administration, 202/377–5301; Customs: Steven Basha, Office of the Chief Counsel, 202/566–6245.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce, with the concurrence of the Secretary of the Treasury, is publishing these procedures pursuant to the requirements of section 12(a)(7) of the EAA.

These procedures are exempt from the requirements of the Administrative Procedure Act under section 13(a) of the EAA and from Executive Order 12291 because they relate to agency management and military and foreign affairs functions of the United States.

Accordinly, the procedures establishing enforcement responsibilities of Commerce and Customs under the EAA are issued as set forth below.

Enforcement Responsibilities of Commerce and Customs Under the EAA

1. Introduction

A. In accordance with the requirements of section 12 (a)(7) of the Export Administration Act of 1979, 50 U.S.C. App sections 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (EAA), the Secretary of Commerce, with the concurrence of the Secretary of the Treasury, hereby publishes procedures setting forth the responsibilities of the United States Department of Commerce (Commerce) and the United States

Customs Service (Customs) for enforcing the EAA.

B. By the terms of the EAA and by Presidental delegation of authority, the Secretary of Commerce is responsible for administering the export control and antiboycott provisions of the EAA, for imposing the civil penalties, administrative sanctions and temporary denial order provided for by EAA sections 11(c) and 13 and for issuing such regulations as are necessary to carry out the EAA. The EAA specifies certain other enforcement functions and authorities to be exercised by Commerce and Customs. Both Commerce and Customs can be involved in the conduct of inspections and the investigation of suspected export control violations, with particular procedures and areas of responsibility being specified herein. The Department of Commerce is responsible for the imposition of recordkeeping or reporting requirements under the EAA.

C. The procedures set forth herein specify each agency's enforcement responsibilities in three major areas—domestic enforcement, foreign enforcement and sharing of information. They are intended to define the roles of the two agencies in enforcing United States export controls under the Act and to give the affected public a general understanding of the agencies' roles. They are not intended to define either agency's specific operational conduct of an investigation, nor to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers or any person.

2. Domestic Enforcement

A. At borders and ports of entry to or exit from the United States, Customs shall have primary responsibility for EAA enforcement and investigations, and the exercise by Commerce at such borders and ports of entry or exit of its EAA section 12(a)(3)(A) authority to search, seize and detain is subject to the concurrence of Customs. Commerce must give Customs notification prior to its exercise of any other EAA investigative or enforcement activity in these areas.

B. Within the United States, except at the border and at ports of entry to or exit from the United States, Commerce and Customs may conduct EAA investigations, either independently or jointly, and Commerce shall focus its efforts on the discovery and deterrence of domestic circumvention of the export licensing system.

3. Foreign Enforcement

A. Customs shall be responsible for EAA investigations outside the United States. Commerce may assist Customs in foreign investigations with Customs concurrence and subject to coordination by Customs. Except for Customs responsibility for EAA investigations outside the United States, Commerce, subject to the role assigned by law to the Department of State with respect to negotiations with foreign governments, shall be responsible for dealings with foreign authorities on EAA policy and operational matters relating to licensing or administrative sanctions. Commerce's EAA enforcement responsibilities outside the United States shall consist of (1) pre-license checks and post-shipment verifications and (2) investigations of suspected antiboycott violations.

B. If, during the conduct by Commerce of any of the activities specified in paragraph A. above, Commerce receives or discovers an allegation or evidence of wrongdoing, Commerce shall promptly inform Customs. Customs shall then be responsible for pursuing the foreign aspects of the investigation.

4. Sharing of Information

A. To ensure their effective cooperation in export control, Commerce and Customs will routinely and promptly exchange licensing and enforcement information, including advising as to the opening and closing of investigations and the referral of cases to the Department of Justice for criminal prosecution.

B. Customs shall be responsible for supplying information and evidence developed in Customs investigations to Commerce so as to facilitate timely and coordinated pursuit by Commerce of civil penalties, administrative sanctions or temporary denial orders. Commerce shall be responsible for supplying Customs information so as to facilitate appropriate action on forfeitures.

Dated: October 9, 1985.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85-24569 Filed 10-9-85; 8:45 am]

BILLING CODE 3510-DT-M

[C-433-402]

Countervailing Duty Order—Certain Carbon Steel Products From Austria

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the United States Department of Commerce (the Department) determined that certain carbon steel products (i.e., cold-rolled carbon steel plates and sheets and hot-rolled carbon steel sheets) from Austria are receiving benefits which constitute subsidies within the meaning of the countervailing duty law. In a separate investigation, the United States International Trade Commission (ITC) determined that cold-rolled carbon steel plates and sheets are materially injuring a United States industry. The ITC also determined that hot-rolled carbon steel sheets are not injuring or threatening material injury to, a United States industry, or materially retarding the establishment of an industry in the United States.

Therefore, based on these findings, all entries or withdrawals from warehouse for consumption of cold-rolled carbon steel plates and sheets from Austria on or between March 20, 1985, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and July 26, 1985, will be liable for the possible assessment of countervailing duties. In addition, entries and withdrawals from warehouse, for consumption, on or after the date of publication of the ITC final determination in the **Federal Register** will be liable for the possible assessment of countervailing duties. Entries of cold-rolled carbon steel plates and sheets from Austria on or between July 26, and the day prior to the date of the publication of the ITC final determination in the **Federal Register** are *not* liable for the assessment of countervailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final ITC injury determination.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-0167 (Nguyen) or (202) 377-3464 (Martin).

SUPPLEMENTARY INFORMATION: The products covered by this order are cold-rolled carbon steel plates and sheets which are fully described in the attached appendix.

In accordance with section 703 of the Act (19 U.S.C. 1671b), on March 20, 1985, the Department published preliminary determinations which stated that there

was reason to believe or suspect that imports of certain carbon steel products from Austria received benefits which constitute subsidies within the meaning of the countervailing duty law (50 FR 11220). In accordance with section 705 of the Act (19 U.S.C. 1671d), on August 19, 1985, the Department published its final determinations that these imports are being subsidized (50 FR 33369).

On September 25, 1985, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC notified the Department of its determination that imports of cold-rolled carbon steel plates and sheets from Austria are materially injuring a United States industry and that imports of hot-rolled carbon steel sheets are not materially injuring, or threatening material injury to, a United States industry, or materially retarding the establishment of an industry in the United States. Hence not-rolled carbon steel sheets are excluded from this order.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department directs the United States Customs Service to assess, upon further advice by the administering authority pursuant to section 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the estimated net subsidy for all entries of cold-rolled carbon steel plates and sheets from Austria. These countervailing duties will be assessed on all unliquidated entries of cold-rolled carbon steel plates and sheets from Austria entered, or withdrawn from warehouse, for consumption, on or between March 20, 1985, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determinations" in the **Federal Register**, and July 26, 1985, and on all entries and withdrawals of the subject merchandise from warehouse, for consumption, on or after the date of publication of the ITC final determination in the **Federal Register**. Entries of cold-rolled carbon steel plates and sheets on or between July 26 and the day prior to the date of publication of the ITC final determination in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final ITC injury determination.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit of 2.27 percent *ad valorem* on all entries of cold-rolled carbon steel plates and sheets from Austria.

The Department also directs that all estimated countervailing duties deposited on entries of hot-rolled carbon steel sheets be refunded and the appropriate bonds or other security be released at the time of liquidation.

This determination constitutes a countervailing duty order with respect to certain carbon steel products from Austria pursuant to section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 U.S.C. 355.36).

We have deleted from the Commerce Regulations Annex III to 19 CFR Part 355 which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of an updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Mr. Richard Moreland (202) 377–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1617e) and § 355.36 of the Commerce Regulations (19 U.S.C. 355.36).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

October 4, 1985.

Appendix—Description of Products

Austria

1. The terms *"cold-rolled carbon steel plates and sheets"* cover cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, nor pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and 0.1875 or more in thickness, as currently provided for in item 607.8320 of the *TSUSA;* or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

[FR Doc. 85–24419 Filed 10–10–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–401–401]

Countervailing Duty Order: Certain Carbon Steel Products from Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations, the United States Department of Commerce (the Department) has determined that certain carbon steel products from Sweden, as described in the appendix to this notice, are receiving benefits which constitute subsidies within the meaning of the countervailing duty law, and the United States International Trade Commission (ITC) has determined that imports of cold-rolled carbon steel flat-rolled products from Sweden are materially injuring, or threatening to materially injure, a U.S. industry. The ITC also has determined that carbon steel plate and hot-rolled carbon steel flat-rolled products from Sweden are not injuring, or threatening to materially injure, a U.S. industry.

Therefore, based on these findings, all entries, or withdrawals from warehouse, for consumption of cold-rolled carbon steel flat-rolled products from Sweden on or after March 20, 1985, the date on which the Department published its preliminary countervailing duty determinations in the the **Federal Register**, and before July 26, 1985, will be liable for the possible assessment of countervailing duties. In addition, entries, or withdrawals from warehouse, for consumption on or after the date of publication of the ITC final determination in the **Federal Register** will be liable for the possible assessment of countervailing duties.

Entries of cold-rolled carbon steel flat-rolled products from Sweden made on or between July 26 and the day prior to the date of the publication of the ITC final determination in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot impose suspension of liquidation on the subject merchandise for more than 120 days without the issuance of a final ITC injury determination.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Davies or Barbara Tillman, Office of Investigations, Import Adminmistration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–1785 (Davies) or 377–2438 (Tillman).

SUPPLEMENTARY INFORMATION:

Scope of Countervailing Duty Order

The products covered by this countervailing duty order are cold-rolled carbon steel flat-rolled products, as described in the appendix to this notice. The ITC found that imports from Sweden of carbon steel plate and hot-rolled carbon steel flat-rolled products, as descrided in the appendix, are not materially injuring, or threatening to materially injure, a U.S. industry; therfore, these products are excluded from this order.

Case History

In accordance with section 703 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671(b), on March 20, 1985, the Department published its preliminary determinations which stated that there was reason to believe or suspect that imports of certain carbons steel products from Sweden received benefits which constitute subsidies within the meaning of the countervailing duty law (50 FR 11224). In accordance with section 705 of the Act (19 U.S.C. 1671d), on August 19, 1985, the Department published its final determinations that these imports are being subsidized (50 FR 33375).

On September 25, 1985, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC notified the Department of its determination that imports of cold-rolled carbon steel flat-rolled products from Sweden are materially injuring, or threatening to materially injure, a U.S. industry. The ITC also found that imports from Sweden of carbon steel plate and hot-rolled carbon steel flat-rolled products are not materially injuring, or threatening to materially injure, a U.S. industry.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department directs the U.S. Customs Service to collect, upon further advice by the administering authority pursuant to section 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the estimated net subsidy of 8.77 percent *ad valorem* for all entries of cold-rolled carbon steel flat-rolled products from Sweden. These countervailing duties will be collected on all unliquidated entries of cold-rolled carbon steel flat-rolled products from Sweden entered, or withdrawn from warehouse, for consumption on or after March 20, 1985, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determinations" in the **Federal Register**, and before July 26, 1985, and on all entries, or withdrawals from warehouse, for consumption on or after the date of publication of the ITC final determination in the **Federal Register**.

Entries of cold-rolled carbon steel flat-rolled products made on or between July 26 and the day prior to the date of publication of the ITC final determination in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot impose suspension of liquidation on the subject merchandise for more than 120 days without the issuance of a final ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit of 8.77 percent *ad valorem* on all entries of cold-rolled carbon steel flat-rolled products from Sweden.

Furthermore, U.S. Customs officers should liquidate all entries of carbon steel plate and hot-rolled carbon steel flat-rolled products from Sweden and at the time of liquidation refund any cash deposits and release the appropriate bonds or other security on the merchandise.

This determination constitutes a countervailing duty order with respect to cold-rolled carbon steel flat-rolled products from Sweden pursuant to section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 U.S.C 355.36).

We have deleted from the Commerce Regulations, Annex III to 19 CFR Part 355 which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of an updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that if requested it will commence an administrative review of this order. For further information regarding this review, contact Mr. Richard Moreland (202) 377-2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 U.S.C. 355.36).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

October 4, 1985.

Appendix—Description of Products

Sweden

A. *Products Covered By Countervailing Duty Order:*

1. The term *"cold-rolled carbon steel flat-rolled products"* covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness, as currently provided for in item 607.8320 of the *Tariff Schedules of the United States Annotated* (TSUSA); or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils, as currently provided for in items 607.8350, 607.8355, or 607.8360 of the TSUSA.

B. *Products Excluded From Countervailing Duty Order:*

1. The term *"carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not pickled; not cold-rolled; not in coils, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width, as currently provided for in items 607.6620 and 607.6625 of the TSUSA. Semi-finished products of solid rectangular cross-section with a width at least four times the thickness and processes only through primary mill hot-rolling are not included.

2. The term "hot-rolled carbon steel flat-rolled products" covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled, as currently provided for in item 607.8320 of the TSUSA; and not pickled and in coils, as currently provided for in item 607.6610, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, wither or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the TSUSA.

[FR Doc. 85-24420 Filed 10-10-85; 8:45 am]

BILLING CODE 3510-DS-M

Auburn University; 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 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and

Constitution Avenue, NW., Washington, DC.

Docket No. 85-071. Applicant: Auburn University, Auburn, AL 36849. Instrument: Mass Spectrometer/Data System, Model MM7070 EHF and DS 11/250. Manufacturer: VG Instruments, United Kingdom. Intended use: See notice at 50 FR 4996.

Comments: We have considered comments received from Nicolet Analytical Instruments for factual information contained therein. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides (1) a mass range of 1 to 3 100 atomic mass units at 5 000 volts accelerating potential, (2) a rapid scan rate of 0.2 seconds per decade up to mass 2 000 and (3) a resolution up to 20 000 in FAB operating mode. The National Institutes of Health advises in its memorandum dated May 30, 1985 that the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-24422 Filed 10-10-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Herman Gucinski

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Herman Gucinski (P362).

b. Address: Environmental Center, Anne Arundel Community College, 101 College Parkway, Arnold, MD 02543.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Unspecified number of mysteceti.

4. Type of Take: Observational data, skin smears and patches will be taken.

5. Location of Activity: Northwest Atlantic.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC;

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: October 7, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-24447 Filed 10-10-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Jim Harvey

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Jim Harvey (P368).

b. Address: College of Oceanography, Oregon State University, Marine Science Center, Newport, Oregon 97365.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Harbor seals (Phoca vitulina), 15.

4. Type of Take: The animals may be inadvertently harassed during feeding experiments and release.

5. Location of Activity: Newport, Oregon.

6. Period of Activity: Two (2) years.

The arrrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.W. BIN C15700, Seattle, Washington, 98115.

Dated: October 7, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-24448 Filed 10-7-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals: Permit Modification; West Coast Whale Research Foundation; Modification No. 1 to Permit No. 493

Notice is hereby given that pursuant to the provisions of §§ 216.33(c) and 216.33(d) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and Section 220.24 of the regulations on endangered species (50 CFR Parts 217–227), Scientific Research Permit No. 493 issued to West Coast Whale Research Foundation, c/o Elizabeth A. Mathews, Applied Sciences 273, Center for Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064 on February 28, 1985 (50 FR 9481) is modified as follows: Section B.1 is replaced by:

1. The research shall be conducted by the means, in the areas and for the purposes set forth in the application and the modification request.

Section B.7 is replaced by:

7. The Holder shall provide written notification to the appropriate NMFS Regional Director at least two weeks in advance of initiation of the research. The appropriate Regional Director will coordinate the date and location of the research effort with other researchers to insure maximum benefit from all available data, and determine the desirability of a NMFS designated observer aboard the research vessel or aircraft. The Western Pacific Program Office shall be notified when research is to be conducted in Hawaii.

This Modification is effective on October 4, 1985.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC;

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802;

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington, 98115; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 7, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–24446 Filed 10–10–85 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, October 30–31, 1985, at The Cavalier, 42nd and Atlantic Avenue, Virginia Beach, VA (telephone: 804–425–8555), to discuss the Striped Bass, Bluefish, Atlantic Mackerel, Squid and Butterfish Fishery Management Plans, the Surf clam and ocean quahog fishery, a task force project, as well as other fishery management matters. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Date: October 7, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation National Marine Fisheries Service.

[FR Doc. 85–24449 Filed 10–10–85; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Rescheduled Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The October 16–17, 1985, public meeting of the Pacific Fishery Management Council's Groundfish Select Group, as cited in the **Federal Register**, September 26, 1985 (50 FR 39027), has been rescheduled for October 22–23, and will be convened in Portland, OR. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Date: October 7, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 85–24450 Filed 10–10–85; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic and Gulf of Mexico Fishery Management Councils; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic and Gulf of Mexico Fishery Management Councils will convene separate and joint public meetings at the Sheraton Yankee Trader Hotel, 303 North Atlantic Blvd., Fort Lauderdale, Florida as follows:

South Atlantic Fishery Management Council

The Council will convene separate public meetings October 28 through November 1, 1985, to discuss habitat, mackerel, spiny lobster, snapper-grouper, large pelagics, law enforcement, financial and personnel issues. A portion of the November 1 session will be closed to the public to discuss personnel matters.

Gulf of Mexico Fishery Management Council

The Council will convene separate public meetings October 28–30, 1985, to discuss swordfish, mackerel, spiny lobster, law enforcement, administrative policy and personnel issues. Committee meetings of the Gulf Council will be held October 28–29 1985. Personnel matters will be closed to the public during both Committee and Council sessions.

South Atlantic and Gulf of Mexico Fishery Management Councils

The Councils will convene joint public meetings on October 31 to discuss mackerel and spiny lobster issues. Other fishery management business may be addressed at any session as deemed necessary. A detailed agenda will be available to the public around October 15. For further information contact David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407; telephone (803) 571–4366, or contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone (813) 228–2815.

Date: October 7, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 85-24451 Filed 10-10-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Navy

Academic Advisory Board to the Superintendent United States Naval Academy; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, will meet on November 8, 1985, in Rickover Hall, Room 301, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 1:15 p.m. and terminate at 4:30 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him in improving educational standards and in solving Academy problems. The meeting will be open to the public for observation to the extent that space is available.

For further information concerning this meeting, contact: Major D. L. Smith, USMC, Military Secretary to the Academic Advisory Board, Office of the Academic Dean, United States Naval Academy, Annapolis, Maryland 21402-5000, Telephone No. (301) 267-2500.

Dated: October 8, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-24383 Filed 10-10-85; 8:45 am]

BILLING CODE 3810-AE-M

Intent To Prepare a Draft Supplemental Environmental Impact Statement for Northeast Surface Action Group Homeporting Facility at Staten Island, NY; Amended Notice

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act, Title 40 CFR, the Navy announces modification of its previous Notice of Intent to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the proposed Surface Action Group Homeporting at the Stapleton-Fort Wadsworth Complex in Staten Island, New York, which was published in the **Federal Register** on July 26, 1985.

The U.S. Army Corps of Engineers has agreed to act as a cooperating agency, pursuant to 40 CFR 1501.6. The Corps of Engineers will be reviewing a Navy permit application for this project pursuant to authorizations found in section 10 of the River and Harbor Act of 1899, section 404 of the Clean Water Act and section 103 of the Marine Protection, Research and Sanctuary Act of 1972.

It is estimated that the DSEIS will be available for public review in December 1985. If further information is required regarding this amended Notice of Intent, please contact Robert Ostermueller at (215) 897-6262.

Dated: October 2, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-24365 Filed 10-10-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Aircraft Modernization Requirements Panel will meet on November 1, 1985, at the Naval Ocean Systems Center, San Diego, California. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to finalize the draft report. The agenda will consist of an Executive Session dedicated to a review of material received to date and discussion among the Panel members in order to prepare the final report. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: October 8, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-24364 Filed 10-10-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Assessment Policy Committee, National Assessment of Educational Progress (NAEP)

AGENCY: Department of Education.

ACTION: Notice of Meeting.

SUMMARY: The Secretary of Education has scheduled a meeting of the Assessment Policy Committee of the National Assessment of Educational Progress (NAEP). The purpose of the meeting is to provide guidance and direction to the National Institute of Education supported NAEP project. The entire meeting will be open to the public.

DATE: October 19, 1985, 8:30 a.m. to 5:00 p.m.

Location: Embassy Suites Hotel, 2000 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Barton, Liaison — APC, National Assessment of Educational Progress, CN 6710, Princeton, NJ 08541-6710, telephone: (800) 223-0267.

SUPPLEMENTARY INFORMATION: One of the primary purposes of NAEP is to assess the performance of children and young adults in the basic skills of reading, mathematics, and communication. The Assessment Policy Committee (APC) is established by section 405 (k)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1221e (k)(2)(A). The Committee is responsible for the design of the National Assessement including the selection of learning E.E. areas to be assessed, the development and selection of goal statements and assessement items, the assessment methodology, and the form and content of the reporting and dissemination of the assessment results. The Committee is also responsible for the implementation of studies to evaluate and improve the form and utilization of the National Assessment.

The Agenda for the meeting includes—

- Review of NAEP's Renewal Application Proposal for 1986;
- Content Areas for the 1988 Assessment;

- NAEP Policy Relevance and Analysis: The Process;
- Future Issues;
- Dissemination Plans.

To assure adequate seating arrangements, and to obtain an advance copy of the final agenda, individuals wishing to attend the meeting may contact Mr. Paul Barton at the addres above.

(Catalog of Federal Domestic Assistance Number 85.117, Educational Research and Improvement)

Dated: October 9, 1985.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 85-24545 Filed 10-10-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Endowment Grant Program; Application Notice for New Endowment Grants for Fiscal Year 1986

Applications are invited for new endowment grants for FY 1986 under the Endowment Grant Program.

Authority for this program is contained in section 333 of Title III of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. 1065a.

Under the Endowment Grant Program, the Secretary is authorized to make grants to eligible institutions of higher education for the purpose of establishing or increasing endowment funds at those institutions. The Federal grant funds must be matched dollar-for-dollar by the institution selected to receive a grant.

Closing date for transmittal of applications: An application for an endowment grant must be mailed or hand-delivered by December 2, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention 84.031G, Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept a hand-delivered application betwen 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

General program information: Under the Endowment Grant Program, the Secretary awards grants to eligible institutions of higher education to establish or increase endowment funds. Grantees must match the Federal grant funds dollar-for-dollar. The Federal grant and the institutional match is called the "endowment fund corpus." Institutions must invest, and may not spend, the endowment fund corpus for the 20 year grant period. Afterwards, the institution may use the endowment fund corpus for any educational purpose.

As to income earned on the endowment fund, a grantee may spend up to 50 percent of the income. A grantee may use that 50 percent portion of the endowment fund income to defray any expenses necessary to operate the institution. A grantee must invest the other 50 percent portion of the endowment fund income for the 20 year grant period. Afterward, the grantee may use all endowment fund income for any educational purpose.

Eligible applicants: The Endowment Grant Program is one of four Institutional Air Programs authorized by Title III of the Higher Education Act of 1965 (HEA), as amended. The other three are the Strengthening, Special Needs, and Challenge Grant Programs. Under section 333(b)(4) of the HEA, an institution is eligible to receive a grant under the Endowment Grant Program if it qualifies as an eligible institution under the Challenge Grant Program. An institution, in turn, qualifies as an eligible institution under the Challenge Grant Program if it qualifies (1) as an eligible institution under 34 CFR 627.2 (b) or (d) of the Challenge Grant Program regulations, (2) as an eligible institution for the Strengthening Program under 34 CFR 625.2 and 625.3 of the Strengthening Program regulations, or (3) as an eligible institution for the Special Needs under 34 CFR 626.2 and 626.3 of the Special Needs Program regulations.

Under each of the above programs, the Secretary determines an institution's eligibility based in part upon an institution's education and general (E&G) expenditures, and the amounts of Pell Grants and other Title IV HEA student financial assistance students attending that institution receive for a particular award year.

Potential applicants, including current grantees under one or more of the other Institutional Aid Programs mentioned above, are advised that a notice was published in the **Federal Register** on May 16, 1985 (49 FR 20477-20487) explaining how an institution becomes eligible for the Endowment Grant Program. Under that notice, institutions were required to submit eligibility requests by July 1, 1985. The Secretary's will consider funding only those institutions determined eligible to apply for a grant under the Endowment Grant Program in FY 1986 pursuant to the May 16, 1985 notice.

Application information: Under § 628.20(b) of the Endowment Grant Program regulations, an applicant must submit a long-range development plan (referred to in the application form as an "institution narrative") as part of its application, unless the applicant, at the closing date established by the Secretary for submission of an endowment grant application, (1) is a recipient of a development grant under the Strengthening, Special Needs, or Challenge Grant Programs; (2) has applied in FY 1986 for a development grant under the Strengthening or Special Needs Programs; or (3) has applied in FY 1986 for a Strengthening Program planning grant solely to prepare an application for a development grant. The Secretary requests that the long-range development plan not exceed thirty double-spaced typewritten pages.

Fund raising deadline: The Administration has requested that Congress extend the availability of fiscal year 1986 Endowment Grant funds beyond September 30, 1986. Such an extension would help ensure that applicants for such funds have a reasonable time period in which to raise required matching funds. Since Congress provided a two-year availability of the fiscal year 1984 and 1985 endowment funds, it is reasonable to assume that

they will do the same for fiscal year 1986 funds. If this happens, the fund raising deadline will most likely be July 15, 1987. However, if these funds are only available for one year, then the fund raising deadline will most likely be July 15, 1986.

After the Congress enacts the fiscal year 1986 appropriation for the Endowment Grant program, the Secretary will announce in the **Federal Register** the deadline by which an institution selected to receive an endowment grant in the fiscal year 1986 competition must raise matching funds and certify the amount of such funds raised by the institution. (34 CFR 628.41(b))

Available funds: Fiscal year 1986 funds have not yet been appropriated for the Endowment Grant Program. However, applications for new grants under the Endowment Grant Program are being requested at this time so they can be evaluated and the grants process completed as early as possible in order that selected institutions can have as long a fund-raising period as possible.

The Administration's fiscal year 1986 budget request included $141,208,000 for the Institutional Air Programs. Of that amount $23,208,000 was requested for FY 1986 grants under the Endowment Grant Program.

Grants awarded under the Endowment Grant Program in FY 1986 will range from $50,000 to $500,000. Applicants are urged to request grants in an amount that they will realistically be able to match by the end of the fund-raising period. The Secretary anticipates awarding approximately 60 grants in FY 1986.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

With funds transferred from the Special Needs Program to the Endowment Grant Program, the Secretary awards endowment grants so that the amounts required under 34 CFR 626.31(a) and (b) of the Special Needs Program regulations to be awarded to junior or community colleges and to institutions with special needs that have historically served substantial numbers of black students will be so awarded. (20 U.S.C. 1065a, 1069c). The Administration's fiscal year 1986 budget request recommended that $45,741,000 of the monies appropriated for the Institutional Aid Programs be available for awards to historically black colleges and universities. This reservation may limit funds available to institutions that are not historically black institutions under this competition.

Application Forms: Application forms and program information packages are expected to be ready for mailing by October 18, 1985. Interested parties may obtain a copy of the application form by writing to the Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza Station, Post Office Box 23868, Washington, DC 20024. The program information packages will include the Endowment Grant Program regulations.

An application must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing this program.

The Secretary strongly urges that applicants not submit information that is not required. (Approved by the Office of Management and Budget under Control Number 1840-0531).

Applicable regulations: Regulations applicable to the Endowment Grant Program include:

(1) The regulations in 34 CFR 624.1 through 624.3, 624.6, 624.10, 624.20, 624.22 and 624.40.

(2) The regulations in 34 CFR 625.2, 626.2 and 627.2.

(3) The regulations in 34 CFR Part 628 published in the **Federal Register** on July 12, 1984 (49 FR 28520-28536) and amended on September 21, 1984 (49 FR 37325).

(3) The regulations in 34 CFR Part 628 published in the **Federal Register** on July 12, 1984 (49 FR 28520-28536) and amended on September 21, 1984 (49 FR 37325).

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 74.62(h); 34 CFR 74.80 through 74.85; 34 CFR 75.100 through 75.102 and 75.217; and 34 CFR Part 78.

Further Information: For further information, contact Ms. Anne Price-Collins, Chief, Challenge Grant and Endowment Branch, Division of Institutional Development, Department of Education, Room 3045, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 245-9091.

(20 U.S.C. 1064-1069c)

(Catalog of Federal Domestic Assistance No. 84.031G—Endowment)

Dated: October 8, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 24175 Filed 10-10-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Nevada Operations Office, Dose Assessment Advisory Group; Open Meeting

Correction

In FR Doc. 85-24002, appearing on page 40992 in the issue of Tuesday, October 8, 1985, make the following correction:

In the first column, the third and fourth lines of meeting description should have read:

Date and Time: Thursday, October 24, 1985, 8:30 a.m.—5:00 p.m.; Friday, October 25, 1985, 8:30 a.m.—4:00 p.m.

BILLING CODE 1505-01-M

Office of Conservation and Renewable Energy

[Case No. F-014]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnaces Test Procedures to Magic Chef Co., Inc.

AGENCY: Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order [Case No. F-014] granting Magic Chef Company, Inc. a waiver for its Ultra series warm air furnaces from the existing DOE furnace test procedures.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-112, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9127;

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9513.

SUPPLEMENTAL INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Magic Chef

Company, Inc. has been granted a waiver for its Ultra series warm air furnaces, permitting the company to use an alternate test method.

Issued in Washington, DC, September 27, 1985

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

Decision and Order of the Department of Energy, Office of Conservation and Renewable Energy

[Case No. F-014]

In the Matter of: Magic Chef Company, Inc.

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations, by adding § 430.27, to allow the Department to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. 45 FR 64108 (September 26, 1980).

Pursuant to § 430.27(g), the Department shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

Magic Chef Company, Inc. (Magic Chef), filed a "Petition for Waiver" in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** the Magic Chef petition and solicited comments, data, and information respecting the petition. 50 FR 24288 (June 10, 1985). No comments were received. DOE consulted with the Federal Trade Commission on July 29, 1985, concerning the Magic Chef petition.

Assertions and Determinations

Magic Chef's petition seeks a waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and the starting of the circulating air blower. Instead, Magic Chef requests the allowance to test using a 20 second blower time delay when testing its Ultra series gas furnaces. Magic Chef states that the 20 second delay is indicative of how the Ultra series models actually operate and because such a delay results in an improvement in efficiency of approximatley 0.5%, the waiver should be granted.

The blower controls incorporated on the Magic Chef furnace are designed to impose a 20 second blower delay in every instance of start-up. Since the current provisions do not specifically address this type of control and since no comments objecting to the petition were received, DOE agrees that a waiver should be granted to allow the 20 second blower time delay when testing the Magic Chef Ultra series furnances. Accordingly, with regard to testing the Ultra series furnaces only, today's decision and order exempts Magic Chef from the existing provisions regarding blower controls and allows testing with the 20 second delay.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Magic Chef Company, Inc. (F-014), is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR, Part 430, Subpart B, Magic Chef Company, Inc. shall be permitted to test its Ultra series gas furnaces on the basis of the test procedure specified in 10 CFR, Part 430, with the modification set forth below:

(i) Section 9.3.1 of ANSI/ASHRAE Standard 103-1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocopule grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time result in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ± 0.01 in. of water gauge of the manufacturer's recommended on-period draft.

(ii) With the exception of the modification set forth in subparagraph (i) above, Magic Chef Company, Inc. shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes final test procedures appropriate to the Ultra series warm air furnace controls manufactured by Magic Chef Company, Inc.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, September 27, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary Conservation and Renewable Energy.

[FR Doc. 85-24437 Filed 10-10-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-016; OFP Case No. 67043-9280-20-22]

Order Granting the City of Santa Clara, CA, Proposed Peaking Facility, Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting the city of Santa Clara, California proposed peaking facility, exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 .

SUMMARY: On May 28, 1985, the city of Santa Clara, California (Santa Clara), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemption from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

Santa Clara requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of one General Electric 29.4 MW gas turbine, generator auxiliaries and associated facilities. The proposed unit is to be installed in the northwest portion of the city of Santa Clara, California. The powerplant will be capable of burning natural gas and petroleum.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to Santa Clara a

permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine installation at the facility in the city of Santa Clara, California.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on December 10, 1985.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Office, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone: (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence, Avenue, SW. Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. Santa Clara has filed a petition for a permanent peakload powerplant exemption to use natural gas as a primary fuel source with distillate fuel as a backup emergency fuel in its proposed simple-cycle combustion turbine installation in Santa Clara, California.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this unit in the **Federal Register** on July 18, 1985 (50 FR 29251), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of Santa Clara's petition to the Environmental Protection Agency (EPA) for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments for requesting a public hearing closed September 3, 1985. No comments were received and no hearing was requested.

Santa Clara certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric generating unit must be "a powerplant, the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

Santa Clara certified that the maximum generation expressed in megawatt hours will not exceed the net design capacity of 29.4 MW multiplied by 1,000 hours or 29,400 MW hours during any 12-month period.

Santa Clara has also certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ETA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the administrator of the EPA or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is, or would be, exceeded.

Decision and Order: Accordingly, based upon the entire record of this proceeding, ERA has determined that Santa Clara has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants Santa Clara a permanent exemption for a peakload powerplant to be installed at its facility in the city of Santa Clara, California, permitting the use of natural gas or petroleum as a primary energy source in the unit.

After review by ERA's Coal and Electricity Office, of Santa Clara's completed environmental checklist submitted pursuant to 10 CFR 503.13, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on October 2, 1985.

Robert L. Davies,

Director, Coal and Electricity Office, Economic Regulatory Administration.

[FR Doc. 85-24381 Filed 10-10-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85-20-NG]

Natural Gas Imports, Northwest Pipeline Corp.; Application To Amend Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on September 24, 1985, of the application of Northwest Pipeline Corporation (Northwest) for an amendment to ERA Opinion and Order No. 87 (Order No. 87) issued September 10, 1985, (1 ERA ¶ 70,604). The application requests the ERA to extend Northwest's authority granted in Order No. 87 to import Canadian gas from its Canadian supplier, Westcoast Transmission Company Limited (Westcoast), for three months from November 1, 1985, to January 31, 1986. This would extend the demand-commodity pricing structure and take provisions approved in Order No. 87 for three months while Northwest and Westcoast complete their negotiations for a competitive long-term arrangement.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111 (49 FR 6690, 2-22-84).

Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on November 12, 1985.

FOR FURTHER INFORMATION CONTACT:

Clifford Tomaszewski, Office of Natural Gas Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9760.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy,

Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION:

Northwest is currently authorized to import gas from Westcoast under Order No. 87. This authorization allows Northwest to import gas from Westcoast under the terms of an October 1, 1984, letter of agreement which amends for one year Northwest's previous import arrangements. The letter of agreement establishes a two-part, demand-commodity pricing structure estimated to result in an average unit rate of $3.40 per MMBtu based upon a 33 percent load factor sales projection. The demand charge is $6 million per month. The commodity charge was initially $2.78 per MMBtu, subject to quarterly adjustment based upon the price of No. 6 fuel oil in the Seattle-Portland area, and as of July 1, 1985, was reduced to $2.51 per MMBtu. The agreement may be renegotiated if either party determines that a price change is necessary to respond to changing circumstances in market demand, alternate fuel and domestic gas prices, or other relevant factors. The agreement requires that Northwest purchase a minimum daily volume of 130 MMcf and a minimum annual volume of 1) 42.5 percent of Northwest's actual sales up to 262 Bcf, plus 2) 75 percent of Northwest's actual sales over 262 Bcf.

Northwest and Westcoast entered into the October 1, 1984, agreement to make Northwest's existing import arrangements more consistent with both the DOE natural gas import policy guidelines and the Canadian National Energy Board policy for natural gas exports while Northwest and Westcoast continued their negotiations for a new market-responsive, long-term sales agreement. It was contemplated at the time the October 1, 1984, agreement was signed that a new long-term sales agreement would be in place by October 31, 1985. Thus, the term of the October 1, 1984, letter of agreement was from November 1, 1984 to October 31, 1985.

On May 10, 1985, Northwest filed an application with the ERA for approval of the October 1, 1984, agreement and on September 10, 1985, the ERA issued Order No. 87 approving the application. Northwest states that due to market and regulatory uncertainties it has been unable to conclude a new long-term sales agreement with Westcoast. Consequently, Northwest and Westcoast entered into a September 17, 1985, letter agreement which extends the terms and provisions of the October 1, 1984, agreement for three months to January 31, 1986. This, Northwest states, will permit the maintenance of the beneficial pricing provisions of the October 1, 1984, letter agreement while long-term contract negotiations continue.

The September 17, 1985, agreement defines the term "contract year" as the period of 12 consecutive months beginning on February 1, 1985, and ending on January 31, 1986. According to the September 17, 1985, agreement "[a]ll other terms and conditions of the current one-year amendment, as set out in the October 1, 1984, letter agreement as amended by the letter agreement dated September 9, 1985, shall remain in full force and effect until January 31, 1986." The September 9, 1985, letter agreement referenced above is under separate consideration in ERA Docket No. 85-21-NG.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (490 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of the protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Office of Natural Gas Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. November 12, 1985.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If a additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest's application is available for inspection and copying in the Office of Natural Gas Program's Docket Room GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C., on October 2, 1985.

Paula A. Daignault,

Director, Office of Natural Gas Programs Economic Regulatory Administration.

[FR Doc. 85-24377 Filed 10-10-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85-21-NG]

Natural Gas Imports, Northwest Pipeline Corp.; Application To Amend Authorization To Import Natural Gas From Canada To Allow Off-System Sales

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to allow blanket authority to make off-system sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on September 24, 1985, of the application of Northwest Pipeline Corporation (Northwest) for an amendment to its existing import authorization to allow off-system sales from the date of approval through January 31, 1986. Northwest requests the ERA to grant it blanket authority to import gas for new off-system sales in accordance with the provisions of a September 9, 1985, letter agreement between Northwest and its Canadian supplier, Westcoast Transmission Company Limited (Westcoast). Northwest proposes to use previously authorized import volumes, which are in excess of the quantities required by Northwest to serve its system market requirements, to serve off-system markets under sales arrangements which Northwest will consummate at a later time.

The application is filled with the ERA pursuant to section 3 of the Natural Gas Act and Delegation Order No. 0204–111 (49 FR 6690, 2–22–84). Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notice of intervention, as applicable, and written coments are to be filed no later than 4:30 p.m. on November 12, 1985.

FOR FURTHER INFORMATION CONTACT:

Clifford Tomaszewski, Office of Natural Gas Programs, Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–9760

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION:

Northwest is currently authorized to import gas from Westcoast under DOE/ERA Opinion and Order no. 87 (Order 87) issued September 10, 1985 (1 ERA ¶ 70,6042). This authorization allows Northwest to import gas from Westcoast under the terms of an October 1, 1984, letter of agreement which amends for one year Northwest's previous import arrangements. The letter of agreement establishes a two-part, demand-commodity pricing structure estimated to result in an average unit rate of $3.40 per MMBtu based upon a 33 percent load factor sales projection. The demand charge is $6 million per month. The commodity charge was initially $2.78 per MMBtu, subject to quarterly adjustment based upon the price of No. 6 fuel oil in the Seattle-Portland area, and as of July 1, 1985, was reduced to $2.51 per MMBtu. The agreement may be renegotiated if either party determines that a price change is necessary to respond to changing circumstances in market demand, alternate fuel and domestic gas prices, or other relevant factors. The agreement requires that Northwest purchase a minimum daily volume of 130 MMcf and a minimum annual volume of (1) 42.5 percent of Northwest's actual sales up to 262 Bcf, plus (2) 75 percent of Northwest's actual sales over 262 Bcf.

Northwest and Westcost entered into the October 1, 1984, agreement to make Northwest's existing import arrangements more consistent with both the DOE natural gas import policy guidelines and the Canadian National Energy Board policy for natural gas exports while Northwest and Westcoast continued their negotiations for a new market-responsive, long-term sales agreement. It was contemplated at the time the October 1, 1984, agreement was signed that a new long-term sales agreement would be in place by October 31, 1985. Thus, the term of the October 1, 1984, letter of agreement was from November 1, 1984 to October 31, 1985.

On May 10, 1985, Northwest filed an application with the ERA for approval of the October 1, 1984, agreement and on Sepember 10, 1985, the ERA issued Order No. 87 approving the application. Northwest states that due to market and regulatory uncertainties it has been unable to conclude a new long-term sales agreement with Westcoast. Consequently, Northwest and Westcoast entered into a September 17, 1985, letter agreement which extends the terms and provisions of the October 1, 1984, agreement for three months to January 31, 1986. The September 17, 1985, letter agreement is under separate consideration by the ERA in Docket No. 85–20–NG.

On September 9, 1985, Northwest and Westcoast entered into an agreement that would permit Northwest to purchase gas from Westcoast for off-system sales. Under this agreement any gas sold by Westcoast to Northwest for these off-system sales will be sold at commodity prices and volumes which shall be agreed upon by Westcoast and Northwest at least five days prior to the time the sales are to start. Northwest will resell the Westcoast gas at the agreed upon price plus transportation costs to the point of delivery. The volumes of gas sold under such sales agreements will not be subject to the pricing mechanisms or the minimum bill provisions of the October 1, 1984, agreement. New price and volume provisions will be negotiated for each off-system sale. Northwest maintains that the negotiated price and volume levels would be responsive to the identified markets and consistent with the competitive requirements of the DOE import policy guidelines.

Previously authorized import volumes which are in excess of the quantities needed to serve the Northwest system market requirements and to meet the purchase requirements under the October 1, 1984, agreement will be used for these sales. Northwest estimates that up to 200 MMcf per day of the Westcoast imports could be available for these sales. The proposed off-system markets could include pipelines, distribution companies, and end users not located in Northwest's traditional market areas.

Northwest requests that the ERA grant it blanket authority to import gas from Westcoast for these sales and that the terms of the authorization be made coincident with the authorization of the October 1, 1984, agreement and any extension granted to that authorization.

Northwest alleges that the implementation of the proposed imports and the subsequent sales will help it in its negotiations for a long-term market-responsive import arrangement with Westcoast. Further, Northwest maintains that unless it is successful in efforts like the off-system sales proposal to increase both the load factor of its purchases and the total volume of gas which it purchases from Westcoast, it and Westcoast will not get the support of Westcoast's producer-suppliers in renegotiating a long-term contract with provisions and terms superior to the October 1, 1984, agreement. The support of the producer-suppliers is necessary to get the Canadian National Energy Board to approve any long-term agreement between Northwest and Westcoast.

Northwest requests that, pursuant to § 590.403 of the ERA's administrative procedures, that the ERA issue an emergency interim order to allow the proposed import for off-system sales to proceed while the ERA's proceeding on this application continues. Northwest claims that the opportunity to purchase gas from Westcoast under the September 9, 1985, agreement is only available for the duration of the October 1, 1984, agreement. Without immediate approval the availability of this supply and the opportunity for Northwest to compete in the off-system spot market

going into this winter's heating season will be lost.

Northwest's request for an emergency interim order is denied. While it is true that Northwest has only a short time available for off-system sales under the September 9, 1985, agreement, it has not shown that depriving interested parties of their opportunity to comment on this proposed blanket arrangement before it is implemented is in the public interest. There was sufficient interest and opposition to Northwest's application in ERA Docket No. 85–12–NG, (which resulted in issuance of Order NO. 87 approving the October 1, 1984, agreement) that the ERA is certain that there will be interest in this proposed amendment. It is the ERA's intention to provide interested parties opportunity to comment on this proposed amendment and to provide information which the ERA should use in evaluating the September 9, 1985, agreement.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of the protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR 590. They should be filed with the Office of Natural Gas Programs, Economic Regulatory Administration, Room GA–033–B, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. November 12, 1985.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complet understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest's application is available for inspection and copying in the Office of Natural Gas Programs' Docket Room GA–033–B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C., on October 2, 1985.

Paula A. Deigneault,

Director, Office of Natural Gas Programs, Economic Regulatory Administration.

[FR Doc. 85–24378 Filed 10–10–85; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 85–18–NG]

Natural Gas Imports, Salmon Resources Ltd.; Application To import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada For Short-Term and Spot Markets.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 20, 1985, of an application filed by Salmon Resources, Ltd. (Salmon) for blanket authorization to import up to 100 Bcf of Canadian natural gas. The gas would be purchased from Shell Canada Resources Limited, the applicant's Canadian parent corporation, or from any other Canadian supplier over a two-year period beginning on the date of first delivery for short-term, direct sales to U.S. purchasers. The details of individual transactions including identification of purchasers, volumes, prices, and terms will be negotiated before the gas is delivered. The applicant proposes to make quarterly reports to the ERA.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111 (49 FR 6690, 2–22–84). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on November 12, 1985.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Office of Natural Gas Programs, Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6050

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION: On September 20, 1985, Salmon filed an application for blanket authorization to import up to an aggregate of 100 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The applicant is a corporation with headquarters in the State of Colorado. It is a wholly-owned subsidiary of Shell Canada Resources Limited, a Canadian corporation engaged in the production and marketing of crude oil and natural gas.

Salmon asserts that all the gas to be imported will be purchased from the parent company and from other individual producers, producer groups and associations, or pipeline companies

who sell natural gas in Canada. U.S. purchasers are expected to include but not be limited to industrial end users, agricultural users, electric utilities, pipelines, and distribution companies. Salmon's role in importing the gas will be solely that of a reseller. It is expected that the majority of the short-term and spot sales will be used to displace higher-priced energy supplies.

The applicant intends to use existing transmission systems and does not require the construction of new or separate facilities in order to import the gas. Salmon requests authority to use any existing pipeline facilities at the United States-Canada border to effect delivery of the imported volumes.

Salmon states that the specific terms of each sale will be the result of negotiations between it and U.S. purchasers, and will be responsive to current market conditions for natural gas. The terms of each supply contract will include the price paid to the supplier, the volume, the duration of the agreement, and, where applicable, contract adjustment and take provisions.

Salmon claims that, in order to be able to compete with available domestic supplies in the developing U.S. spot markets, it must be able to quickly negotiate and execute contracts with its U.S. purchasers and with the Canadian suppliers. It believes that submitting these individual short-term sales contracts for regulatory review prior to each import sale could result in the loss of most short-term and spot sales, which would in turn foster the inefficient allocation of competitive energy sources in the market. Salmon states that the ERA will be able to retain regulatory control through Salmon's proposed periodic reporting procedures. Under those procedures, Salmon proposes to file, within 40 days following each calendar quarter, a summary of all market sales it has made. Each sale summary would include the import and sale prices, amount of gas imported, duration of the sales agreement, contract adjustment and take provisions (if any), and a description of the U.S. market served.

Salmon asserts that approval and implementation of its import application will have a positive impact on the environment in cases where its gas displaces the consumption of high sulfur fuel oil or coal. When Salmon's natural gas is displacing natural gas that is not competitively priced in the market place, no adverse environmental impact is anticipated by Salmon. The applicant also maintains that the importation of Canadian natural gas will serve the public interest because the terms, including the price, for each of its sales will be freely negotiated, thus ensuring the market-competitiveness of each import arrangement and promoting the efficient allocation of gas in the marketplace. Salmon states that these features of its anticipated import arrangements are in full conformance with the February 1984 policy guidelines and the delegation orders issued by the Secretary of Energy.

This application is one of a number received by the ERA concerning purchases of imported gas for spot and short-term market opportunities. The authorization sought would provide applicant with blanket import approval to negotiate and transact individual short-term, direct sale arrangements without further regulatory action. In many respects, this application is similar to other blanket imports the ERA has recently approved.

Public comment on this application is encouraged by this notice. Intervention requirements will be liberally applied and the views expressed by interested parties will be given careful and thorough consideration in evaluating Salmon's application. The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). The objective of this policy, with its strong emphasis on competitive arrangements and contract flexibility, is to free commercial parties from undue government interference in determining contract terms and reflects the importance of buyer-seller negotiation. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Office of Natural Gas Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., November 12, 1985.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Salmon's application is available for inspection and copying in the Office of Natural Gas Programs' Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 2, 1985.

Paula A. Daigneault,

Director, Office of Natural Gas Programs, Economic Regulatory Administration.

[FR Doc. 85-24379 Filed 10-10-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85-19-NG]

Natural Gas Imports, Texas Eastern Transmission Corp.; Application for Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 20, 1985, of the application of Texas Eastern Transmission Corporation (Texas Eastern) for authorization to import up to 51,000 Mcf of Canadian natural gas per day to be purchased from ProGas Limited (ProGas) at the international border near Niagara Falls, Ontario. The applicant seeks authorization for a term of twelve years beginning on the date of initial deliveries of natural gas, anticipated to be November 1, 1988, and ending on October 31, 2002, and for an additional period of one year to take quantities of gas paid for but not taken. The gas is proposed to be transported through the yet-to-be constructed Niagara Interstate Pipeline System (NIPS). The proposed agreement between Texas Eastern and ProGas (1) establishes a demand/commodity rate structure with a base price at the border of $3.50 (U.S.) per MMBtu; (2) provides for periodic price review and renegotiations; and (3) sets take-or-pay at 60 percent of annual purchase volumes.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111 (49 FR 6690, 2-22-84). Protests, motion to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on November 12, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Office of Natural Gas Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9482.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The application noticed herein is the latest of several imports proposed by Texas Eastern which are intended to be transported through the NIPS. This proposed import of 51,000 Mcf per day of natural gas is in addition to the proposed import from ProGas of 50,000 Mcf per day (ERA Docket No. 82-05-NG) and the proposed import from TransCanada Pipelines Limited of 50,000 Mcf per day of natural gas (ERA Docket No. 82-07-NG). The portion of the joint application in ERA Docket No., 81-02-NG which relates to Texas Eastern's application to import from Pan-Alberta Gas Ltd. 51,000 Mcf per day of natural gas at the Niagara Falls delivery point is being withdrawn concurrently with the filing of this application. Thus, the total quantity of natural gas that Texas Eastern proposes to import at Niagara Falls and transport by the NIPS remains 151,000 Mcf per day.

By this application Texas Eastern seeks authority to import on an as-billed basis up to 51,000 Mcf per day of natural gas from ProGas at the Canadian-United States border near Niagara Falls, Ontario, for a term of 12 years beginning on the date of initial deliveries, anticipated to be November 1, 1988, and ending on October 31, 2002, and for an additional period of one year to take quantities of gas paid for but not taken.

The proposed import would be made in accordance with an August 12, 1985, agreement between Texas Eastern and ProGas. As of February 1, 1985, the initial base price under this agreement consisted of a monthly demand charge of $28.8958 per Mcf of daily contract quantity and a commodity charge of $2.55 per MMBtu which can be adjusted quarterly to reflect changes in the average price of No. 6 fuel oil and No. 2 heating oil competing in Texas Eastern's markets. The price and pricing provisions may be renegotiated annually based on the price of competing energy sources, including natural gas.

In addition, the price may be renegotiated in the event Texas Eastern makes a new purchased gas adjustment filing whereby its average gas purchase cost varies upward or downward by more than five percent. On February 1, 1985, at 100 percent load factor, the price at the border would have been $3.50 and the delivered price $3.97. The agreement also includes a take-or-pay provision of 60 percent of annual contract quantity, an agreement by Texas Eastern to purchase annual volumes of gas on an equitable basis with its purchase of other comparably priced gas available to it, and an agreement to purchase during the seven summer months not less than 38 percent of the volumes purchased over the whole contract year.

In support of its application, Texas Eastern submits that the proposed import of Canadian gas is a part of its system requirements and that the import agreement is essential to meet its future market requirements.

In addition, Texas Eastern asserts that the proposed amendment meets the policy guidelines of the DOE because it (1) provides sufficient flexibility to permit pricing and volume adjustments as required by market conditions and available competing fuels including domestic natural gas; (2) contains provisions that will make the imported gas remain competitive in Texas Eastern's markets over the life of the import; and (3) contains price renegotiation provisions that will permit contractual price adjustments in the event of changed circumstances. Furthermore, based upon the historic reliability of Canadian import supplies, Texas Eastern contends that the imported gas supplies are a secure, reliable source of gas supply.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. (49 FR 6684, February 22, 1984). The objective of this policy, with its strong emphasis on competitive arrangements and contract flexibility, is to free commercial parties from undue government interference in determining contract terms and reflects the importance of buyer-seller negotiation. Parties who may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written

comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Office of Natural Gas Programs, Economic Regulatory Administration, Room GA-033, RC-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., November 12, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues.

A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Texas Eastern's application is available for inspection and copying in the Office of Natural Gas Programs' Docket Room GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on October 3, 1985.

Paula A. Daigneault,

Director, Office of Natural Gas Programs, Economic Regulatory Administration.

[FR Doc. 85-24380 Filed 10-10-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-152-001]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

October 8, 1985.

Take notice that on September 30, 1985, Inter-City Minnesota Pipelines Ltd., Inc. (Minnesota Pipelines) tendered for filing Twenty-sixth Revised Sheet No. 4 to Original Volume No. 1 of Minnesota Pipelines' FERC Gas Tariff. This filing is in accordance with § 154.38(d)(4)(vi)(a) of the Commission's regulations, the Commission's order dated June 28, 1985 in Docket No. RP85-152-000 and the Commission's order of November 1, 1984 in Docket No. CP83-25 and in conditionally tendered. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until October 2, 1985.

Minnesota Pipelines states the filing and proposed tariff adjustment are required by the expiration on November 1, 1985 of the 36-month period since the effective date of Minnesota Pipelines' most recent general rate proposal and it is, therefore, required to restate its base tariff rates at this time. However, Minnesota Pipelines also has pending before the Commission a general rate filing in Docket No. RP85-152-000. Effective December 1, 1985, the tariff sheets effecting the rates proposed and suspended in Docket No. RP85-152-000 (adjusted for actual plant in service as of December 1, 1985) will become effective subject to refund. The proposed tariff sheet is intended to be effective for the month of November 1985 only.

The tariff sheet and supporting schedules demonstrate that the present base rate does not exceed the restated base rate. Therefore, Minnesota Pipelines states, to avoid the costs of regulatory review, including the costs of filing fees, it will withdraw Twenty-sixth Revised Sheet No. 4 and accept its present rates, subject to the surcharge adjustment proposed on September 27, 1985 in Docket No. TA86-1-45-000, in lieu of the rates set out herein. Minnesota Pipelines also requests waiver of the required filing fee and of any Commission regulations required to effectuate this filing.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be file on or before October 15, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24427 Filed 10-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-274-011]

Mountain Fuel Resources, Inc.; Post-Audit Cost-of-Service Report

October 8, 1985.

Take notice that on September 30, 1985, Mountain Fuel Resources, Inc. (MFR), filed a post-audit cost-of-service report pursuant to the provisions of Opinion No. 221 (27 FERC ¶ 61,316), which approved a corporate reorganization of MFR and its affiliate, Mountain Fuel Supply Company.

MFR indicates that the report is required under the provisions of a stipulation and agreement approved in Opinion No. 221, which establishes initial base rates to be collected subject to refund pending a post-audit review. MFR further states that the report set forth MFR's actual cost of service during the initial 12 months of operations under the reorganization, beginning July 1, 1984.

Copies of this filing have been served on all parties in Docket No. CP80-274-000 and -001, and on all MFR'S jurisdictional customers.

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 Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 15, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24428 Filed 10-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-28-000]

Panhandle Eastern Pipe Line Co.; Filing

October 8, 1985.

Take notice that on September 30, 1985, Panhandle Eastern Pipe Line Co. (Panhandle) filed its Summary Of Purchased Gas Costs Adjusted For Renegotiated Prices. This Summary sets forth in detail the results of Panhandle's efforts to renegotiate its gas purchase costs during the time March 1, 1985 through August 31, 1985. Panhandle states that it has reduced its gas costs during this period by $62,495,000, fully $655,000 more than projected, and therefore requests the removal of all conditions imposed in the Commission's order issued February 28, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 15, 1985. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24429 Filed 10-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-52-002]

Western Gas Interstate Co.; Compliance Filing

October 8, 1985.

Take notice that on September 26, 1985, Western Gas Interstate Company (Western), pursuant to the Commission's Letter Order dated September 4, 1985, in Docket Nos. TA85-3-52-000 and -001 (Letter Order) submitted for filing Substitute Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1. Said tariff sheet is proposed to become effective as of August 1, 1985. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until October 2, 1985.

Western states that this tariff sheet is being submitted in order to comply with the requirement in the Letter Order that Western refile its tariff sheets, originally filed on August 5, 1985, in order to reflect rates filed by El Paso Natural Gas Company (El Paso) in its Docket No. TA85-3-33-003. Those El Paso rates were approved, effective July 1, 1985, by a letter order issued by the Commission on August 14, 1985. Therefore, Western states, the instant compliance filing tracks the El Paso rates, which affect only Western's Rate Schedule G-S. The effect of this filing is to establish a rate under Western's Rate Schedule G-S of 378.76¢ per Mcf.

In support of this compliance filing, Western has also submitted a revised set of schedules which set forth the development of the rate order under Rate Schedule G-S.

Any person desiring to be heard or to protect said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any persons 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24430 Filed 10-10-85; 8:45 am]

BILLING CODE 6717-01-M

Office of the Secretary Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in October 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Coordinating Subcommittee on U.S. Petroleum Refining will hold its eighth meeting on Thursday, October 31, 1985, starting at 9:00 a.m., in the Whitney Room of the Four Seasons Hotel, 1400 Lamar Street, Houston, Texas.

The tentative agenda for the Coordinating Subcommittee on U.S. Petroleum Refining meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discussed any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Petroleum Refining 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 Coordinating Subcommittee on U.S. Petroleum Refining will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klyn, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy 301/353-2709, prior to the meeting and reasonable provisions will be made for their appearance on the agenda.

Summary minute 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 at Washington, DC on October 4, 1985.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85-24434 Filed 10-10-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-898-000, et al.]

Natural Gas Certificate Filings; Arkla Energy Resources, et al., a Division of Arkla, Inc.

October 4, 1985.

Take notice that the following filings have been made with the Commission.

1. Arkla Energy Resources, et al., a division of Arkla, Inc.

[Docket No. CP85-898-000]

Take notice that on September 23, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-898-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps and related jurisdictional facilities necessary to enable Arkla to deliver gas from six of its jurisdictional pipelines to six or more consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc., under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 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.

It is stated that Arkla proposes to construct and operate (1) a sales tap on its Line 12 in Grant County, Oklahoma, to deliver gas to Derry Cole, who would use approximately 200 Mcf per year for residential purposes; (2) a sales tap on its Line AM-163 in Grant County, Arkansas, to deliver gas to F.G. Beauregard, who would use approximately 100 Mcf per year for residential purposes; (3) a sales tap on its Line ADM-2 in Grady County, Oklahoma, to deliver gas to Monty McCarty, who would use approximately 200 Mcf per year for residential purposes; (4) a sales tap on its Line 4C in Grant County, Oklahoma, to deliver gas to Craig Tebow, who would use approximately 200 Mcf per year for residential purposes; (5) a sales tap on its Line A-3 in Kay County, Oklahoma, to deliver gas to Steven Wooderson, who would use approximately 200 Mcf per year for residential purposes, and (6) a sales tap on its Line 8-G-4 in Jackson County, Oklahoma, to deliver gas to James Marshall, who would use approximately 200 Mcf per year for residential purposes.

Arkla states that this would be a routine delivery of gas to customers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc. The gas would be delivered from Arkla's general system supply, which it is stated is adequate to provide the service.

Arkla estimates the cost of constructing each tap to be $1,330.00.

Comment date: November 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Mountain Fuel Resources, Inc.

[Docket No. CP85-894-000]

Take notice that on September 20, 1985, Mountain Fuel Resources, Inc. (Mountain Fuel), 79 South State Street, P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP85-894-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate two new delivery points, as replacements for existing delivery facilities, for the sale of gas to Mountain Fuel Supply Company (MFSC), under the blanket certificate issued in Docket No. CP82-491-000 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.

Mountain Fuel proposes to construct and operate a metering station at the Payson Canyon city gate for delivery of gas to MFSC in Utah County, Utah, consisting of a 12-inch and two 10-inch meter runs at an estimated cost of $230,000. Mountain Fuel states that this new facility would replace the existing station, which would be abandoned in place, as it is not accurately measuring the gas, and sold to MFSC, at the net depreciated book value of $3,641.92, which would use the facility to monitor gas deliveries to its distribution system. Mountain Fuel also proposes to construct and operate a metering station at the Sunset city gate for delivery of gas to MFSC in Davis County, Utah, consisting of a 12-inch meter run, at an estimated cost of $89,160. The existing Sunset city gate would be abandoned and dismantled as the meter run is damaged and not serviceable, it is explained.

Comment date: November 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Central Pipeline Corporation

[Docket No. CP85-905-000]

Take notice that on September 24, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-905-000 a request pursuant to § 157.205 of the Commission's Regulation under the Natural Gas Act (18 CFR 157.205) for authorization (1) to reclaim the Valley Center town border measuring, regulating and appurtenant facilities, (2) to abandon in place approximately 0.5 mile of 4-inch lateral pipeline, (3) to abandon by transfer to the Kansas Power and Light Company (KPL) three direct sale customers, and (4) to construct new Valley Center town border measuring, regulating and appurtenant facilities, all in Sedgwick County, Kansas, under the authorization issued in Docket No. CP82-479-000 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.

Northwest Central states that the existing facilities are obsolete and located on property currently undergoing commercial development. Therefore, Northwest Central proposes to reclaim the existing facilities and construct new facilities at an existing tap on Northwest Central's 16-inch pipeline located approximately one-half mile to the east. It is indicated that relocating the delivery point would enable Northwest Central to abandon in place approximately 0.5 mile of obsolete 4-inch pipeline. Northwest Central also states that the three direct sale customers on the lateral line to be abandoned would be transferred to KPL. Northwest Central estimates the cost to reclaim at $780 with an estimated salvage value of $1,160 and the cost of construction at $30,360 which would be paid from treasury cash.

Northwest Central states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: November 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP84-577-016]

Take notice that on September 4, 1985, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-577-016 a request pursuant to Section 7 of the

Natural Gas Act and § 157.205 of the Regulations under the Natural Gas Act for authorization to make an off-system sale of natural gas. The request is pursuant to authorization granted by the Commission's order issued October 29, 1984, in Docket No. CP84-577-000, authorizing a sale for take-or-pay relief program (STOPR), all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Applicant proposes to make an off-system sale of gas to Northern Illinois Gas Company (NI-Gas), a local distribution company. Pursuant to the terms of a service agreement dated June 17, 1985, between Applicant and NI-Gas, Applicant would deliver up to 200,000 Mcf of gas per day, on an interruptible basis, to Midwestern Gas Transmission Company (Midwestern), for the account of NI-Gas, at an existing point of interconnection between Applicant and Midwestern near Potomac, Vermilion County, Illinois. Pursuant to a transportation agreement dated August 15, 1985, between Applicant and Midwestern, Midwestern would deliver that gas to NI-Gas at an existing sales delivery point near Joliet, Illinois.

Applicant indicates that NI/Gas would use the gas for system supply for resale within its service area. Applicant would sell gas to NI-Gas at $2.7024 per dt equivalent of gas. It is explained that the sales price consists of Applicant's average cost of gas, the GRI surcharge, Midwestern's transportation charge, and an added margin pursuant to the authorization in the STOPR order.

It is stated that the service is conditioned upon the availability of capacity sufficient to provide service without detriment to Applicant's existing customers. The term of the service under the authorization sought herein would be from the date of the first delivery, with termination to coincide with the expiration under the STOPR program.

Comment date: November 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24388 Filed 10-10-85; 8:45 am]

BILLING CODE 6717-01-M

City of Nashua, NH, et al.; Application Filed With the Commission

October 8, 1985.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 3442-004.

c. Date Filed: September 19, 1985.

d. Applicant: City of Nashua, New Hampshire, and Seaward Construction Company, Inc. (Licensee); Mine Falls Limited Partnership (Transferee).

e. Name of Project: Mine Falls Project.

f. Location: Nashua River, Hillsborough County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Gregory D. Woodworth, One Monument Square, Portland, ME 04101, Ph. (207) 773-6411.

i. Comment Date: October 28, 1985.

j. Description of Transfer:

On September 19, 1985, City of Nashua, New Hampshire and Seaward Construction Company, Inc. (Licensee), and Mine Falls Limited Partnership (Transferee), filed a joint application for transfer of a major license for the Mine Falls Project No. 3442.

The application proposes the transfer of the license from the City of Nashua and Seaward Construction Co., Inc. to the City of Nashua and Mine Falls Limited Partnership to be held jointly.

Seaward Construction Company, Inc. plans to sell its interest in the Mine Falls Project to the Transferee, who will operate and maintain the project. Transferee must therefore be a licensee under the license for the Mine Falls Project, as provided by the Federal Power Act.

Transferee states that it will comply with all the terms and conditions of the license.

k. This notice also consists of the following standard paragraphs: B and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24385 Filed 10-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-264-002, et al.]

Electric Rate and Corporate Regulation Filings; Duquesne Power & Light Co., et al.

October 4, 1985.

Take notice that the following filings have been made with the Commission:

1. Duquesne Power and Light Company

[Docket No. ER85-264-002]

Take notice that on September 30, 1985, Duquesne Power and Light Company submitted for filing a Compliance Report in accordance with the directions of the Commission.

Comment date: October 17, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. New York Electric & Gas Corporation

[Docket No. ER86-2-000]

Take notice that New York State Electric & Gas Corporation (NYSEG), on October 1, 1985, tendered for filing proposed changes in its FERC Rate Schedules Nos. 27, 28, 30, 33 and 35. It is estimated that the proposed changes would increase revenues from jurisdictional sales and service by about $1,000 based on the 12 month period ended July 31, 1985.

Pursuant to Ordering Clause No. 3 of Opinion 85-8 issued by the Public Service Commission of the State of New York on April 9, 1985 at the end of NYSEG's previous major rate case, NYSEG made a "second stage" filing of revised leaves to Schedule PSC No. 115—Electricity, which were allowed to become effective August 29, 1985. These increased rates are the result of the increased revenue requirement for wage expenses. Rate Schedule PSC No. 115 is incorporated in the previously noted FERC schedules.

NYSEG has filed with its jurisdictional customers, copies of this proposed notice, the filing letter, the pertinent revenue effect schedules and applicable tariff leaves.

Comment date: October 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Tampa Electric Company

[Docket No. ER86-1-000]

Take notice that on October 1, 1985, Tampa Electric Company (Tampa Electric) tendered for filing an Agreement for Interchange Service between Tampa Electric and the Orlando Utilities Commission (Orlando). The Agreement was supplemented with Service Schedules A, B, C, D, and X, providing for emergency, scheduled, (short-term) economy, long-term and extended economy interchange service, respectively. Tampa Electric states that the Agreement and accompanying schedules supersede Tampa Electric's Rate Schedule FERC No. 10.

Tampa Electric proposes an effective date of October 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Orlando and the Florida Public Service Commission.

Comment date: October 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Public Service Company

[Docket No. ES85-60-000]

Take notice that on September 26, 1985, Central Illinois Public Service Company (Applicant), filed an application with the Commission, pursuant to section 204 of the Federal Power Act, seeking authorization to issue from time to time, short-term debt obligations in the aggregate maximum principal amount not exceeding $120,000,000 outstanding at any time with final maturities not later than December 31, 1987.

Comment date: October 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. West Texas Utilities Company

[Docket Nos. ER85-81-005 and ER85-251-003]

Take notice that on September 27, 1985, West Texas Utilities Company ("WTU") submitted for filing a refund compliance filing pursuant to the Commission's letter order in these proceedings dated August 21, 1985.

WTU's compliance filing included tabulations for each wholesale customer showing the monthly billing determinants, revenue receipt dates and revenues under prior, interim and settlement rates; the monthly revenue refunds, the monthly interest and a summary of all refunds; and workpapers underlying the interest calculations.

Comment date: October 17, 1985, in accordance with Standard Paragraph H at the end of this notice.

6. Southeastern Power Administration

[Docket No. EF86-3011-000]

Take notice that on Oct. 1, 1985, the Deputy Secretary of the Department of Energy confirmed and approved, on an interim basis effective midnight September 30, 1985, Rate Schedules GA-1-A, GA-2-A, GU-1-A, GAMF-2-E, ALA-1-E, ALA-3-A, MISS-1-E, MISS-2-A, SC-1-E, SC-2-E, CAR-1-F and SCE-1-A for power from Southeastern Power Administration (SEPA) Georgia-Alabama Projects. The approval extends through September 30, 1990.

The Deputy Secretary states that the Commission, by order issued December 17, 1984, in Docket No. EF84-3011, confirmed and approved Rate Schedules GAMF-1-D, GAMF-2-D, ALA-1-D, MISS-1-D, SC-1-D, SC-2-D, CAR-1-E and CAR-2-D through September 30, 1985.

SEPA proposes in the instant filing to replace Rate Schedule GAMF-1-D with GA-1-A, GA-2-A, GU-1-A, MISS-2-A, and ALA-3-A and to replace Rate Schedules GAMF-2-D, ALA-1-D, MISS-1-D, SC-1-D, SC-2-D, and CAR-1-E with Rate Schedules GAMF-2-E, ALA-1-E, MISS-1-E, SC-1-E, SC-2-E, and CAR-1-F respectively. Rate Schedule SCE-1-A has been added to provide rates for preference customers in the South Carolina Electric & Gas Company area, and Rate Schedule CAR-2-D has been eliminated. The rate adjustment will increase annual revenues on an average by $26,244,000 over the five-year rate review period, an increase of approximately 44 percent. The increase is due primarily to general inflation at the generating projects, the inclusion of two additional units at the Richard B. Russell Project, and increased transmission charges. The interim rate schedules are submitted for confirmation and approval on a final basis pursuant to the authority vested in the Commission by Delegation Order No. 0204-108. Approval is requested for a period ending September 30, 1990.

Comment date: October 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Dr. Gloria M. Shatto

[Docket No. ID-2210-000]

Take notice that on September 30, 1985 Dr. Gloria M. Shatto (applicant) tendered for filing, pursuant to section 305(b) of the Federal Power Act, an application for authority to hold interlocking positions. Applicant lists the following as positions within the purview of section 305(b) of the Federal Power Act for which authorization is sought:

Position	Name of corporation
Director	Georgia Power Company.
Director	National Services Industries, Inc.

Comment date: October 17, 1985, in accordance with Ordering Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy

Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24387 Filed 10-10-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $68,172.54 obtained as a result of a consent order which the DOE entered into with James Petroleum Corporation, a reseller-retailer of petroleum products located in Bakersfield, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATES AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All Comments should conspicuously display a reference to case number HEF-0099.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulation of the Department of Energy, 10 CFR 205:282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $68,172.54 plus accrued interest obtained by the DOE under the terms of a consent order entered into with James Petroleum Corporation. The funds were provided to the DOE by James to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period January 1, 1980 through April 30, 1980.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline from James. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from James and to demonstrate that it was injured by James' pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased cost were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: October 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

October 3, 1985.

Name of Firm: James Petroleum Corporation

Date of Filing: October 13, 1983

Case Number: HEF-0099

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with James Oil Company (James).

I. Background

James is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR § 212.31 and is located in Bakersfield, California. A DOE audit of James' records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between January 1, 1980 and April 30, 1980, James committed possible pricing violations amounting to $60,433.68 with respect to its sales of motor gasoline.

In order to settle all claims and disputes as to the firm's sales of motor gasoline during the audit period, James and the DOE entered into a consent order on November 10, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The consent order also states that James does not admit to any violations of the regulations.

The consent order required that $60,433.68 plus installment interest be paid by James in 24 equal monthly installments. The first payment was received on December 1, 1981 and the last payment was remitted October 25, 1983.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons'

[1] The total consent order payment including installment interest amounted to $68,172.54. We have used this figure as the principal amount. As of August 30, 1985, the escrow account contained $89,770.39, includig accrued interest.

injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of refined petroleum products who may have been injured by James' pricing practices during the period January 1, 1980 through April 30, 1980. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the James refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by James' alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making proposed finding that end users of James products were injured by James' pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a redund equal to the number of gallons purchased from James times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.019937 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that claimants seeking small refunds were injured by James' pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. As a result, without some simplified procedures, injured parties would be deprived of an opportunity to receive a refund. This presumption also accelerates the refund process by eliminating the need for a claimant to assemble and provide, and OHA to analyze, detailed proof of the occurrence and extent of injury.

Under the small-claims presumtion, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. One is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984); *Office of Special Counsel*, 11 DOE ¶85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[3]

However, if a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have experienced injury. This is true because

> [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Accordingly, we propose that resellers and retailers which made only spot purchases from James not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

As noted, we are proposing a finding of injury with respect to end users which purchased motor gasoline from James. An important aspect of this finding is that many, if not all, of the members of

[2] This figure is derived by dividing the $68,172.54 settlement amount by the 3,419,394 gallons of products sold by James during the consent order period.

[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶85,029 at 88,125 (1982) (Ada).

this group were not subject to the requirements of the petroleum regulations during the consent order period. As a result, these firms were not required to base their pricing decisions on cost increases or to keep records which would show whether cost increases were passed on as price increases. Under these circumstances, an analysis of the impact of the alleged overcharges on these unregulated end users would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶85,072 (1983) *(PVM); see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[4] Therefore, to prove injury, end users must document only their purchase volumes.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of James' alleged violations of the DOE regulations would routinely be passed through to the firm's customers. Similarily, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶82,539 (1982) *(Tenneco), and Office of Special Counsel*, 9 DOE ¶82,545 at 85,244 (1982) *(Pennzoil)*. Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other resellers.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases from James. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owner or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by James Petroleum Corporation pursuant to the consent order executed on November 10, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-24384 Filed 10-10-85; 8:45 am]

BILLING CODE 6450-01-M

[4] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $4,800,000 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with Quaker State Oil Refining Corp. of Oil City Pennsylvania (Case No. HEF-0219). The fund will be available to customers who purchased refined petroleum products from Quaker State during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Quaker State Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-0219.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to a consent order entered into by Quaker State Oil Refining Corp. of Oil City, Pennsylvania and the DOE. The consent order settled possible pricing violations with respect to the firm's sales of refined petroleum products to customers during the January 1, 1973 through January 28, 1981 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order

discussing the distribution of the consent order funds was issued on May 7, 1985, 50 FR 20491 May 16, 1985.

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased refined petroleum products from Quaker State during the consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: October 1, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

October 1, 1985.

Name of Firm: Quaker State Oil Refining Corporation

Date of Filing: October 13, 1983

Case Number: HEF-0219

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Quaker State Oil Refining Corporation (Quaker State) of Oil City, Pennsylvania. Quaker State is engaged in the production, refining, and sale of crude oil, the marketing of refined petroleum products, and other petroleum products, and other petroleum related activities. Quaker State was therefore subject to the Mandatory Petroleum Allocation and Price Regulations set forth at 10 CFR Parts 210, 211 and 212.

A DOE audit of Quaker State's refining and marketing operations during the period August 1, 1973 through December 1978 revealed possible regulatory violations with respect to the firm's pricing of refined petroleum products.[1] In order to settle all claims and disputes between the parties concerning Quaker State's (and its affiliates' and subsidiaries')[2] compliance with the price and allocation regulations during the period January 1, 1973 through January 28, 1981 (the consent order period),[3] Quaker State and the DOE executed a consent order on March 5, 1982. In that agreement Quaker State agreed to deliver to the Strategic Petroleum Reserve of the United States (SPR) a quantity of crude oil valued at $4,800,000 or, in the alternative, to pay the DOE the balance of its refund obligation. The consent order refers to the DOE's allegations of regulatory violations, but notes that no findings of violation were made. Additionally, the consent order states that Quaker State does not admit that it committed any such violations. Notice of the proposed consent order was published on April 12, 1982 (47 FR 15641), and interested persons were invited to submit comments. On September 3, 1982, the proposed consent order was made final with few modifications. 47 FR 38968 (September 3, 1982). On that same date, in accordance with Paragraph 404(h) of the final consent order, Quaker State deposited $4,800,000 with the DOE in lieu of delivering crude oil to the SPR.

On May 7, 1985, the OHA issued a Proposed Decision and Order tentatively setting forth procedures to distribute the funds received pursuant to the consent order to parties who were injured by Quaker State's alleged regulatory violations. *See Quaker State Oil Refining Corp.*, Case No. HEF-0219 (May 7, 1985) (Proposed Decision), 50 FR 20491 (May 16, 1985). In the Proposed Decision, we described a two-stage process for distribution of the funds made available pursuant to the Quaker State consent order. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by Quaker State's alleged overcharges during the consent order period. We stated that money available after payment of refunds to eligible claimants in the first stage would be distributed through a second-stage process, but that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

We received comments regarding the proposed procedures from one firm which was a customer of Quaker State, Highway Services, Inc. (Highway Services). These comments address an issue that was not discussed in the Proposed Decision, i.e., the type of showing that will be required of claimants who allege that, as a result of Quaker State's pricing practices, they lost business due to their lack of competitiveness in the market. These comments will be discussed later in this Decision.

We also received comments on the Proposed Decision from several States concerning the disposition of funds in the second stage of the proceedings. This Decision and Order establishes the procedures to be used for filing and processing claims in the first stage of the Quaker State refund process. We will not, therefore, determine second stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*).

II. Jurisdiction

The Subpart V procedural regulations fo the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as a part of settlement agreements *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the Proposed Decision, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Quaker State consent order fund. The OHA will therefore grant the ERA's petition and assume jurisdiction over the funds received pursuant to the Quaker State consent order.

[1] The alleged violations included the misallocation of crude oil costs, improper treatment of product exchanges, improper treatment of cost overrecoveries, cessation of customary credit practices to dealers and to Quaker State credit card customers, and overcharges in motor oil sales.

[2] Quaker State's subsidiaries includes Corn Brothers, Inc., Jamestown Design and Machine Corp., Fetterley Oil Company, Producers Gathering Company, Inc., Truck-Lite Company, Inc., Corey Oil Company, and Palmer Oil Company, Inc.

[3] Quaker State's crude oil sales and rights or obligations under the Entitlements Program were expressly excluded from the settlement agreement. *See* Consent Order ¶ 501.

III. Refund Procedures

Since we did not receive any comments objecting to the first stage procedures tentatively established in the Proposed Decision, we have concluded that those procedures should be adopted. The Quaker State consent order fund will be distributed to claimants who satisfactorily demonstrate that they were injured by Quaker State's alleged regulatory violations. The information available to us at this time regarding Quaker State's operations during the consent order period indicates that Quaker State operated primarily in Pennsylvania, West Virginia, New York, and Ohio, but that the firm's primary refined products, lubricating oils, were sold through intermediate resellers and retailers throughout the United States. We expect that claimants will fall into two general categories: (i) refiners, resellers and retailers (hereinafter collectively referred to as resellers) who resold Quaker State petroleum products and (ii) individuals or firms that consumed Quaker State petroleum products for their own use (end-users). Although the consent order period covers the period from January 1, 1973 through January 28, 1981, applicants may only claim refunds with respect to purchases of a particular product during the time it was subject to price controls.[4]

A. Showing of Injury

Resellers of Quaker State products are generally required to demonstrate injury in order to receive a refund. To demonstrate injury, a reseller claimant must provide evidence that it would have maintained its prices for the petroleum products purchased from Quaker State at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased petroleum products from Quaker State, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, a reseller that files a claim based upon Quaker State's pricing practices will be required to make a convincing demonstration that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,123 (1982); *Standard Oil Co. (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 (1985). This requirement is generally satisfied by a showing that the reseller maintained "banks" of unrecovered increased product costs. The presence of banks alone, however, does not automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron U.S.A.* 10 DOE ¶ 85,014 (1982).

As we proposed, we will adopt certain presumptions commonly used in these refund proceedings. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. *See* 10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we will adopt a presumption that the effects of the alleged price violations were dispersed equally in all sales of products sold by Quaker State during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims. Third, we will adopt a presumption that spot purchasers of Quaker State's products are not eligible for refunds.

B. Volumetric Presumption

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by Quaker State. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. A volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of products sold by the consent order firm during the consent order period. In the present case, based on the information available to us at this time, the volumetric refund amount is $0.001628 per gallon, exclusive of interest ($4,800,000 consent order fund divided by 2,949,106,155 gallons, the estimated total volume of refined petroleum products sold by Quaker State during the consent order period). Since a consent order is necessarily the result of compromise, the volumetric refund amount derived from that consent order settlement is also a compromise. The volumetric refund amount does not purport to calculate the exact amount that a customer may have been overcharged. Rather, it is a method by which we can estimate the portion of the consent order fund that should be allocated to a given purchaser. However, we recognize that the impact on an individual purchaser could have been greater than this volumetric refund amount, and any purchaser may file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

C. Small Claims Presumption

We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of Quaker State petroleum products. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,115 (1984); *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,014 (1984)(*Texas Oil*). We propose to adopt such a procedure in this case. Therefore, we propose that any applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.

D. Spot Purchasers

A reseller that made only spot purchases from Quaker State shall be presumed not to have suffered an injury, and will therefore be ineligible to receive a refund, even one below the threshold level, unless it makes a showing that rebuts this presumption. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full

[4] Motor gasoline was decontrolled on January 28, 1981, middle distillates were decontrolled on June 30, 1976, and lubricants were decontrolled on August 31, 1976. *See* Fed. Energy Guidelines, Petroleum Regulations 1974–1981, ¶ 14,535 at 14,014–15.

amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers 8 DOE at 85–396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it would be inappropriate to presume that the firm had discretion as to where and when to make the purchases(s) upon which the refund claim is based.

E. End-Users

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to he petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil*, 12 DOE at 88,209 and cases cited therein. End-users of Quaker State petroleum products will need only to document their purchase volumes from Quaker State to make a sufficient showing that they were injured by the alleged overcharges.

F. Agricultural Cooperatives

Agricultural cooperatives will not be required to show that they did not pass increased costs through to their member customers. By its very nature, an agricultural cooperative would routinely pass through any overcharges to its member customers. Similarly, any refunds received by an agricultural cooperative would influence the prices charged or dividends paid to member customers. Therefore, we have held that agricultural cooperatives are not required to prove injury. *E.g., Apco Oil Corp.*, 12 DOE ¶ 85,149 (1985). Instead, an agricultural cooperative's refund application should explain fully the manner in which refunds will be passed through to its customers and how its members will be advised of the cooperative's receipt of the refund money. Sales by cooperatives to non-members, however, will be treated the same as sales by any other reseller.

G. Allocation Claims

Athough the information we have reviewed in the Quaker State audit files did not reveal any alleged allocation violations, the consent order covers the firm's compliance with the allocation regulations. Therefore, we will accept claims based on Quaker State's allocation practices. We will adopt the guideline described below which have been used for evaluating allocation claims in previous special refund cases. *See generally Office of Special Counsel*, 9 DOE ¶ 82.538 at 85,205–207 (1982).

Claims for refunds based on alleged allocation violations are substantially different than those based on alleged overcharges. Allocation claims are based on the consent order firm's alleged failure to furnish product which it was obliged to supply to the claimant under the DOE allocation regulations, 10 CFR Part 211. An allocation claimant should have been aware of the alleged violation at the time when it occurred, and should have taken some contemporaneous action to mitigate the injury. *Office of Special Counsel*, 10 DOE § 85,048 at 88,220 (1982). We therefore shall exclude from eligibility any allocation claimant which had not contemporaneously complained of Quaker State's alleged allocation violation. In addition, the measure of injury from the alleged violation is different for an allocation claimant. Allocation claimants have been awarded refunds in the natue of damages attributable to the monetary loss which was cause by the failure to deliver product. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982)(*RFI*). An allocation claimant should submit sufficient information to make a reasonable demonstration that its claim is well-founded, including the best available evidence of the injury which was sustained.

H. Lost Business Claims

In its comments on the proposed procedures, Highway Services seeks guidance with regard to establishing injury due to operating losses. Highway Services claims it incurred these losses as a result of a decrease in its petroleum product sales and in related businesses, e.g., food and lodging services that were not patronized because of the decline in business at the gas station. A purchaser submitting this type of claim must supply detailed information to substantiate that the decrease in sales of the petroleum product was the direct and sole result of Quaker State's pricing practices and not due to other factors, e.g., general decline of travel in the vicinity of the service station, or poor management of the facility. As with allocation claims, the burden of proof of injury above the volumetric amount lies with the claimant, and an applicant must, using the best available evidence, calculate the amount by which it was injured and document how it arrived at the amount.

We will not, however, consider claims of decreased sales of other goods and services that were not covered by the Mandatory Petroleum Price Regulations. The ERA audit focused only on alleged overcharges for refined petroleum products, and the consent order settled allegations of violations only in these areas. It never contemplated providing restitution to Quaker State's customers for lost profits in non-petroleum business operations. It would be beyond the scope of the Subpart V regulations for this Office to analyze the impact of Quaker State's pricing practicies on a claimant's non-petroleum related operations. A claimant which wishes to obtain damages based upon its allegations that Quaker State's violations of the DOE price regulations caused it to experience losses in non-petroleum operations, may seek vindication of its rights through a private lawsuit under section 210 of the Economic Stabilization Act of 1970, 12 U.S.C. 1904 note. *Cf. RFI*, 10 DOE at 88,042 (inappropriate to base refund on applicant's "damages.")

I. Minimum Refund Level

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

IV. Refund Application Procedures

We have determined that the procedures described in the Proposed Decision are the most equitable and efficacious means of distributing the Quaker State consent order fund. Accordingly, Applications for Refunds will now be accepted from parties who purchased Quaker State petroleum products during the consent order period. The following information should be included in all Applications for Refund:

1. Case No. HEF–0219 and the applicant's name at the top of the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. How the claimant used the Quaker State petroleum product, i.e., whether it

was a refiner, reseller, retailer, or end-user.

4. The volume of each Quaker State petroleum product it purchased by month for the period of time for which it is claiming it was injured by the alleged overcharges. If the product was not purchased directly from Quaker State, the claimant must include a statement setting forth the reasons for believing the product originated from Quaker State.

5. If the applicant is a reseller (or retailer or refiner) who wishes to claim a refund in excess of $5,000 it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations up through decontrol of the product category concerned,

(b) State whether it or any of its affiliates have filed any other Applications for Refund in which it referred to its level of banks as a basis for a refund, and

(c) Submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

6. Whether the claimant was in any way affiliated with Quaker State. If so, it should state the nature of the affiliation.

7. Whether there has been any change in ownership of the entity that purchased Quaker State petroleum products since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

8. Whether it is or has been involved as a party in any DOE enforcement or private Section 210 actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

9. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate. A copy of each Application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the confidential material has been deleted, together with a statement specifying why the information is privileged or confidential.

All Applications should be sent to: The Quaker State Oil Refining Corporation Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Applications must be postmarked within 90 days after the publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.286. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Quaker State Oil Refining Corporation pursuant to the consent order executed on September 3, 1982, may now be filed.

(2) All Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: October 1, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-24383 Filed 10-10-85; 8:45 am]

BILLING CODE 6450-01-M

Order Implementing Departmental Policy Regarding Crude Oil Overcharges

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice.

SUMMARY: Notice is given of an Order implementing departmental policy to fund entitlement exception relief receive orders using a portion of crude oil overcharge funds maintained in escrow by the Deparment of Energy.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger J. Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2094 (Mann); 252-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the attached Decision and Order issued by the Office of Hearings and Appeals (OHA) concerning 17 Applications for Refund. Each of those refund applications involved claims that the applicant had received an unpaid final order for additional benefits through the Crude Oil Entitlements Program codified at 10 CFR 211.67 (1981).

In an Order dated June 21, 1985, the OHA stated its intention to implement two previously announced policies of the Department of Energy (DOE). 50 FR 27,402 (1985). Those policies relate to the disposition of funds in escrow representing alleged crude oil overcharges. *See* 50 FR 27400 (1985); 50 FR 1919 (1985). First, the June 21 order announced that the OHA would hold in escrow funds relating to miscertifications of crude oil whose impact was spread by the Entitlements Program to all domestic refiners in order to permit the Congress the opportunity to select the means of making indirect restitution. Alternatively, should Congress decline to act on the issue by the fall of 1986, the funds will be deposited into the general fund of the United States Treasury. Second, the OHA announced that those funds would be used to fund finally adjudicated entitlements exception relief receive orders. The June 21 order directed that any holder of such an order apply for payment within 30 days of publication of the June 21 order in the **Federal Register.** Interested parties were also given an opportunity to file comments and objections to the implementation of these policies within 30 days of publication in the **Federal Register.**

In response to the June 21 order, 37 parties filed comments and objections and 17 parties filed claims. The attached order discusses those comments and objections and concludes that the policies announced in the June 21 order should be implemented. In addition, 14 of the 17 claims filed are found to be valid, and the OHA has directed the DOE's Office of the Controller to establish interest-bearing escrow accounts in the names of the 14 claimants for a total amount of $69,252,045.

Dated: October 1, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Supplemental Order

October 2, 1985

Names of Petitioners: Amber Refining Inc. and Petitioners listed in Appendix A

Case Numbers: RF171-5 *et. al.*

Dates of Filing: July 22, 1985, *et al.*

This supplemental order concerns claims for payment filed by certain recipients of exception relief from the Crude Oil Entitlements Program, 10 CFR

§ 211.67. On June 21, 1985, the Office of Hearings and Appeals, (OHA) of the Department of Energy (DOE) issued an order that required firms with finally adjudicated "entitlements exception relief receive orders" to submit an appropriate claim within 30 days of publication of the June 21 order in the Federal Register 50 FR 27,402 (1985); Energy Guidelines (CCH) ¶ 90,506. Seventeen firms submitted claims for payment pursuant to that order. After reviewing the claims we have determined that 14 of them are valid. Pursuant to the June 21 order, funds sufficient to pay these claims will be segregated into an interest-bearing escrow account under the name of each claimant in the amounts listed in Appendix. A.

I. Regulatory Background

The claims which are the subject to this determination arose under the DOE's Crude Oil Entitlements Program, a part of the system of mandatory petroleum price and allocation controls in effect from August 1973 until their elimination by President Reagan in January 1981. The Entitlements Program has been extensively described by the OHA in Report of the Office of Hearings and Appeals, *In re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., Filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (hereinafter cited as the "OHA stripper Well Report"), and by the Temporary Emergency Court of Appeals (TECA) in *Union Oil Co.* v. *DOE*, 688 F.2d 797 (Temp. Emer. Ct. App. 1982), *cert. denied, 459 U.S. 1202 (1983)*.

As explained in the OHA Stripper Well Report and the TECA *Union Oil* decision, the program was intended to generally equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this end, refiners were required to make transfer payments among themselves through the purchase and sale of entitlements. In order for refiners to report the information required to run the Entitlements Program, and for the DOE to analyze this information there was a two-month lag between the processing of crude oil by refiners and the publication of an Entitlements Notice establishing the purchase and sales obligations for that crude oil.

Because of the way the program worked, it also had the effect of dispersing overcharges resulting from crude oil miscertifications throughout the domestic refinning indistry. This characteristic of the Entitlements Program is especially significant, because it provides part of the factual underpinning for the Department's policy decision to use crude oil overcharge settlement funds for the payments of Entitlement exception relief receive orders.

As a result of the lag built into the program, Entitlements Notices reflecting crude oil refining done in the final weeks before decontrol had yet to be published when the President signed the Executive Order on January 27, 1981. Following deregulation, the DOE planned to publish Entitlements Notices for December 1980, and the first 27 days of January 1981, and to make final "clean-up" adjustments in the Entitlements Program to correct regulatory action taken on misinformation or miscalculation about refining activities. Ruling 1981–1, 46 FR 12945, 12946 (1981). However litigation initiated by various oil companies prevented the DOE from issuing these Notice until 1983. By that time, however, the DOE had determined that issuing further notices would disrupt the marketplace and be contrary to the objectives of the enabling legislation. Emergency Petroleum Allocation Act of 1973, Pub. L. No. 93–159, section 4(b). Accordingly, the DOE announced its decision not to issue any further Entitlements Notices on June 28, 1984. 49 FR 27,410 (1984). That decision is the subject of ongoing litigation in *Texaco Inc.* v. *DOE*, Nos. 3–44 through 3–49 (Temp. Emer. Ct. App. filed ——, 1935).

For purposes of this proceeding, "receive orders" are final administrative or judicial orders that permit a firm, after netting all outstanding dispense orders, to receive money representing entitlements exception relief. They arose under a number of different situations. For example, "adjustments" to a firm's entitlements position under the former DOE regulations were occasionally made to alleviate a serious hardship or gross inequity attributable to the impact of the DOE regulations on the form. *See* 10 CFR Part 205, Subpart D, which implemented section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194. Individual exception applications seeking this type of relief were considered on a case-by-case basis. Most of the applicants seeking relief through this process were small and independent refiners. Generally, successful applicants were granted except relief from their entitlement purchase obligations by the minimum amount necessary to afford them an opportunity to achieve in their current fiscal year either a profit margin or return on invested capitol consistent with their historical operating position. *See Delta Refinning Co.*, 2 FEA ¶ 83,275 (1975). The maximum amount of exception relief was limited to the value of the firms's net prospective entitlements purchase obligations for the fiscal year involved. In other words, exception relief only reduced regulatory obligations: it did not increase benefits. *See Beacon Oil Co.*, 3 FEA ¶ 83,209 (1976). Exception decisions issued under the *Delta/Beacon*, line of cases were generally based upon projected financial and entitlements data. Therefore, any exception relief approved was conditioned upon a subsequent review of the appropriateness of the level of relief based upon actual financial and entitlements data which became available, in certified form, only after the end of the fiscal year involved. If the year-end review found that a *Delta/Beacon* firm had not received enough relief to attain its historical level of profitability, additional relief was approved in the form of the extra entitlements to sell. Conversely, if a firm's actual financial results outstripped the projections on which exception relief was granted, it was later required to buy addiitional entitlements to recompense the system for the unnecessary relief. A number of the claims at issue in this decision have been submitted by firms which received orders permitting them to sell additional entitlements after the projected level of relief was reviewed at the end of the fiscal year. Finally, other firms obtained adjustments to their entitlements position in litigation.

II. Policies Regarding Crude Oil Overcharges

In January 1985, the DOE announced that an appropriate portion of crude oil overcharges collected by the DOE through its enforcement activities would be used to fund final entitlements exception relief receive orders if the OHA determined that refiners as a class were injured by crude oil overcharges. 50 FR 1919 (1985).

At the time the DOE's January 1985 policy announcement was issued, the OHA was actively considering whether refiners as a class were injured by crude oil overcharges in connection with the DOE Stripper Well Exemption Litigation, MDL No. 378 (D. Kan.). The District Court had previously referred that case to the OHA for fact-finding to determine who bore the impact of the overcharges at issue and in what amounts. *In re the Department of Energy Stripper Well Exemption Litigation*, 578 F.Supp. 586 (D. Kan. 1983). On June 19, 1985, the OHA issued its report to the District Court in the Stripper Well Exemption Litigation. OHA Stripper Well Report. In

its report, the OHA concluded that it is impossible to trace the specific impact on individual refiners of overcharges resulting from crude oil miscertifications that were spread by the Entitlements Program. The OHA Stripper Well Report also found that is was impossible to trace specific crude oil overcharges through an individual refiner's marketing system to the ultimate consumer. Nevertheless, using econometric modeling, the OHA concluded that refiners as a class absorbed between 2.3 and 8.1 percent of the stripper well overcharges dispersed by the Entitlements Program. *Id.*

The findings in the OHA Stripper Well Report formed the basis for DOE to establish a restitutionary policy regarding crude oil overcharges. On June 21, 1985, the Deputy Secretary of Energy issued the Department's Statement of Restitutionary Policy with respect to crude oil overcharges that were spread through the Entitlements Program. 50 FR 27,400 (1985). The statement concluded that since the OHA Stripper Well Report found that direct restitution based on individual proof of harm was shown to be impossible, some indirect means of effectuating restitution must be used. The policy statement accordingly announced that the Department would maintain such overcharges in escrow to afford the Congress the opportunity to select the means of making indirect restitution. Should the Congress decline to act on the issue by the fall of 1986, the DOE stated that the funds should be paid to the miscellaneous receipts account of the United States Treasury in order to benefit all Americans.[1]

III. The Present Proceeding

Also on June 21, 1985, the OHA issued an order announcing how the Department would implement its policy decision to use crude oil overcharge funds to pay outstanding entitlements receive orders. 50 FR 27,402 (1985), Fed. Energy Guidelines ¶ 90,506. In that order the OHA stated:

> The decision to place the overcharge funds in escrow pending Congressional action is now DOE policy. In the *Stripper Well Exemption* proceeding, of course, this office was acting solely as a finder of fact under the orders of the Kansas court, and the companion DOE policy statement is a recommendation to that court. However, as to the other overcharge funds representing entitlements-period crude oil miscertification violations being administered under the authority of 10 CFR Part 205, Subpart V, this office will apply that policy to refund proceedings involving those funds.
>
> We are also announcing today that another previously-enunciated DOE policy now will be implemented by its own terms a a result of the factual findings made by this office. On January 9, 1985, DOE decided that, in view of the determination not to publish any further entitlements notices, those refiners with adjudicated final "receive orders" arising from the entitlements program would be funded from overcharge money "[i]f OHA determines that a portion of [this] money corresponds to injury to refiners as a class. . . ." 50 FR 1919, 1921 (January 14, 1985). We have found in the stripper well proceeding that refiners, as a class, absorbed some part of crude oil overcharges.

Id. at 27,403. The June 21 orde required any holder of a finally adjudicated entitlements receive order to apply for payment within 30 days of publication of the order in the Federal Register. Any person alleging that it was adversely affected by the June 21 order was provided an opportunity to file objections within the same period. Pursuant to that opportunity, 17 parties have applied for payment, and 37 persons have filed comments and objections. Before addressing the specific claims, we will consider those comments and objections.

IV. Comments and Objections

The comments and objections which 37 parties filed in this proceeding fall into three general categories. The first group of comments attack the validity of the Restitutionary Policy Statement which the DOE issued on June 21, 1985 on both procedural and substantive grounds. *E.g.*, Comments of Marathon Petroleum Company, National Council of Farmer Cooperatives, and National Governors' Association. A second group of comments addressed the DOE's decision to use crude oil overcharge settlement money for funding receive orders. *E.g.*, Comments on Placid Refining Company and Commonwealth Oil Refinig Company, Inc. The third and final group of comments addressed the June 21, 1984 OHA order announcing implementation of the January 9, 1985 decision. *E.g.*, Comment of Air Transport Association of America. Each of these groups of comments is discussed below.

A. The Statement of Restitutionary Policy

A number of comments filed in this proceeding challenge the validity of the Statement of Restitutionary Policy issued by the DOE on June 21, 1985. Those commenters argue that the policy announced in the statement is arbitrary and capricious. *E.g.*, Comments of Texaco Inc. and Air Transport Association of America. In that regard, several commenters maintain that methods exist to determine the injurious impact of crude oil overcharges on individual refiners. *E.g.*, Comment of Sun Company, Inc. Other commenters argue that under no circumstances should oil overcharge funds be deposited into the United States Treasury. *E.g.*, Comment of Dorchester Gas Corporation. Various other commenters urge that the policy adopted in the Statement should be changed. Comments of Mobil Oil Corporation, Petroleum Marketers Association of America and The Jobbers Group, and the State of Rhode Island.

The comments attacking the Statement of Restitutionary Policy are without merit. The policy statement is based upon a factual finding by the Office of Hearings and Appeals that it is impossible to trace crude oil overcharges spread by the Entitlements Program through an individual refiner's refining and marketing systems. *See generally* OHA Stripper Well Report. The statement announced that in light of the OHA finding that direct restitution is impossible, the Department concluded that a claims process was not appropriate for crude oil overcharges that were spread through the Entitlements Program.

The Department has long maintained that it has broad discretion in fashioning appropriate restitutionary remedies. *See* Ruling 1984–1, Fed. Energy Guidelines § 16,082. That there exists discretion not to implement a claims process in cases involving crude oil overcharges has recently been affirmed by the Temporary Emergency Court of Appeals (TECA). In *United States* v. *Exxon Corp.*, —— *F.2d* ——, Fed. Energy Guidelines ¶ 26,539 (Temp. Emer. Ct. App. July 1, 1985), *petition for cert. filed* No. 85—— (September 13, 1985). TECA held that a District Court did not abuse its descretion when it directed payment to the states in a case involving crude oil overcharges. Indeed, the court held in that case that any effort to trace the crude oil overcharges there at issue, which were spread through the Entitlements Program, "would be futile," Slip op. at 92, and "impossible." *Id.* at 94. The discretion of the DOE in these cases is just as broad as that of the courts. *Sauder* v. *DOE*, 648 F.2d 1341 (Temp. Emer. Ct. App. 1981). Hence, the DOE has broad discretion to determine the remedy for crude oil overcharges. *Citronelle-Mobile Gathering, Inc.* v *Edwards*, 669 F.2d 717 (Temp. Emer. Ct. App.), *cert. denied*, 459 U.S. 877 (1982). The claim that the DOE does not have the discretion to deposit these funds into the United States Treasury has likewise

[1] The Department's Statement of Restitutionary Policy was also filed with the United States District Court for the District of Kansas as the Department's recommended plan for making restitution of the stripper well overcharges at issue in that case.

been rejected by TECA, *Payne 22, Inc.* v. *United States*, 762 F.2d 91 (Temp. Emer. Ct. App. 1985), and any argument that Congress cannot legislatively provide a means for making indirect restitution was also rejected in *RJG Cab. et al.* v. *Hodel*, No 83–3265 (E.D. Pa. Aug. 20, 1985). Finally, the argument advanced by some commenters that they know of methodologies that measure the impact on specific refiners of crude oil violations is merely a rehash of arguments that were advanced and rejected in the Stripper Well evidentiary proceeding and by TECA in *United States* v. *Exxon Corp.*

B. The Funding of Receive Orders

A number of comments were also filed that addressed DOE's decision to fund receive orders from overcharge moneys. These commenters were unanimous in their support of the policy. A few commenters urged that in addition to any interest that will accrue once the escrow accounts are established, "retroactive" interest should also be paid from the dates of their receive orders. *E.g.*, Gulf States Refining Company; VGS Corporation d/b/a Southland Oil Company. Their theory is that the decision to allow "prospective" interest to accrue on the escrow accounts does not compensate refiners whose payment has been delayed by the years it has taken to resolve disputes about how to terminate the Entitlements Program, and that without the payment of retroactive interest, they will permanently lose the time value of their money. While some of these commenters acknowledge that the entitlements regulations themselves did not provide for payment of any interest, they support their position primarily by citing equitable considerations and the Department's policy to recover interest in overcharge cases.

For the reasons explained below, we are not persuaded by these arguments. As noted above, the regulations governing the Entitlements Program did not authorize the payment of retroactive interest when entitlements payments were delayed. 10 CFR 211.67. Thus, if the final Entitlements Notices were to be issued, DOE would clearly lack the authority under those regulations to require refiner-buyers to add interest to their payments to refiner-sellers.[3] As the Department's January 9, 1985 decision makes clear, the use of the crude oil overcharge money at this time is strictly a substitute method for funding receive orders that would have been funded by means of the Entitlements Notices during the period when the Program was operational.[3] Thus, since the overcharge money is being used in lieu of Entitlements Notices, we do not believe that we are required to add retroactive interest to these payments. Because we would pay the receive order amounts set forth in the Appendix immediately upon issuing this decision if it were not for the pendancy of the *Texaco* case before TECA, the Department has decided to let prospective interest accrue from the date on which the individual escrow accounts are established by the Controller. But the present situation is clearly unique and therefore does not constitute a concession on the part of the DOE that retroactive interest should be paid to these claimants.

Nor has any claimant persuaded us that equitable considerations dictate that retroactive interest should be added to these claims. In support of their position, claimants argue that without the payment of retroactive interest they will lose the time value of their money. While this is true, time lags were always an integral part of the operation of the Entitlements Program, and the regulations governing that program have never provided for the assessment of interest to compensate firms for the lost time value of delayed entitlements benefits. For example, interest was never assessed when a refiner refiled its monthly entitlements reports to correct errors, even where that amendment was filed several years later. Finally, the clean-up rule adopted by the DOE to end the program does not provide for interest. 10 CFR 211.69; *see* 47 FR 33434 (1982).

The DOE has consistently applied this policy in the exceptions area as well. Never in the history of the Entitlements Program has the Office of Hearings and Appeals or the FERC assessed interest when approving entitlements exception relief.[4] In many cases, firms have waited a relatively long period of time to receive entitlements exception relief. For example, many of the receive orders which form the basis for claims in this proceeding involve year-end reviews of entitlements exception relief previously granted. Where a determination was reached in a year-end review that a firm received too little relief, it was permitted to sell additional entitlements. No interest was ever approved in those cases. Similarly, where a determination was made in a year-end review that a firm received too much relief and should be required to purchase additional entitlements, no firm was ever required to include interest in that obligation. *Mid-America Refining Company, Inc.*, 11 DOE ¶ 81,017 at 82,599 (1983). Even where firms did not receive entitlements benefits because the purchaser of the entitlements refused to consummate the entitlements purchase transaction, no interest has ever been awarded. *Hempstead Resources Recovery Corp.*, 7 DOE ¶ 81,090 at 82,761 n.*. The claimants who assert that the delays at issue are unprecedented in the history of the program are simply incorrect. While the program was in operation, payment of adjustments to entitlements benefits often was delayed for years while refiners pursued their claims through this Office, the Federal Energy Regulatory Commission and the courts.[5] There is no reason why the DOE should treat delays caused by litigation over the termination of the program any differently. Finally, the DOE's policy of collecting interest in overcharge cases is irrelevant to the present proceeding, since the claims at issue do not involve overcharges.

C. The OHA Implementation of Departmental Policies

A number of commenters with outstanding receive orders supported the manner in which OHA announced it would implement the DOE policy to use oil overcharge moneys to fund receive orders. One commenter urged restraint and suggested delay in implementing the policy. Comment of Exxon Corporation. Others urged the OHA to pay receive order firms immediately rather than wait until litigation involving the Entitlements Program is resolved. Comment of Navajo Refining, Inc. Some commenters suggested that the current proceeding violates the DOE procedural regulations, which require the issuance

[3] Because of the *Texaco* litigation, the issuance of further Entitlements Notices continues to be a possibility. No commenter discussed the interest issue in this context.

[3] Nor are we aware of any other source of funds to pay such claims.

[4] Several claimants also relied on our decision in Getty Oil Co., 7 DOE ¶ 82,504 (1980), which is not an entitlements exception case and does not support their position. In that case, we granted Getty's petition for special redress relief where it had been ordered to reduce its prices for unleaded gasoline as a result of an erroneous remedial order that was withdrawn by the Department. To permit Getty to have the opportunity to recover the revenues it had lost as a result of this mistake, we exercised our descretion and authorized the firm to make an appropriate adjustment to its cost banks, which took into account interest on the lost revenues. The situation involved in *Getty* is thus not relevant to the instant case.

[5] Nor were refiners litigating claims to excess benefits later disallowed required to pay interest on the money for the periods during which they retained it.

of a proposed decision, a comment period, and the issuance of final claims procedures before refunds may be paid. Comment of Kerr-McGee Corporation. Other commenters asserted that the OHA's order implementing DOE policy is contrary to previous policy statements of OHA and other parts of the agency. Comment of State of New Jersey and Commonwealth of Pennsylvania. Various other comments suggest that OHA must find that the policy is correct before implementing it. *E.g.*, Comment of State of Alabama, California, Connecticut, Indiana, Maryland, Michigan, Mississippi, New York, Ohio and Wisconsin. Another group of commenters objected to the implementation of DOE policies by the OHA. *E.g.*, Comments of Tenneco Oil Company and Mobil Oil Corporation. Finally, some firms requested that OHA establish a method for paying contested entitlements exception relief orders now pending on appeal before the Federal Energy Regulatory Commission. *E.g.*, Comment of Caribou Four Corners, Inc.

There is simply no merit to the comments referred to above which disagree with the implementation of the policy to pay receive orders with crude oil overcharge funds. The policy is based upon our fact-finding in the OHA Stripper Well Report and is within the DOE's restitutionary authority. OHA's delegation expressly subjects it to the Department's policies, Department of Energy Delegation Order No. 0204–24 (March 30, 1978), as amended November 2, 1978, and May 5, 1980, and detrminations such as this one by the OHA, are governed by Departmental policy. *See* 50 FR 1919, 1920 n.1 (1985).

V. The Claims

Appendix A to this supplemental order sets forth the names of 17 parties that filed claims pursuant to the June 21, 1985 order, and the amount of each claim that we find is valid. The following section discusses these claims.

A. Chevron U.S.A. Inc., Case No. RF171–1

Chevron U.S.A. Inc. filed a claim in this proceeding based upon an order of the Federal Energy Regulatory Commission. In 1983, the FERC granted Chevron entitlements exception relief from the "entitlement penalty" associated with purchases of Alaska North Slope crude oil during the period January 1 through March 31, 1978. *Chevron U.S.A. Inc.*, 22 FERC ¶ 61,323 (1983). Pursuant to that order, Chevron was eligible to sell entitlements valued at $17,408,302. Chevron's claim is for that sum.

After analyzing Chevron's claim, we find that it should be adjusted by $2,184,440. In 1981, the OHA issued an order which required Chevron to purchase $2,184,440 in entitlements. *Chevron U.S.A. Inc.*, 8 DOE ¶ 82,550 (1981). That order was predicated upon a finding that the ERA incorrectly stated Chevron's entitlements obligations on the December 1978 Entitlements Notice. It has never been implemented. This purchase obligation should be "netted" against the Chevron claim. In the January 9, 1985 notice, the DOE discussed whether payments made pursuant to receive orders should be "netted" with orders requiring the purchase of entitlements. The DOE stated that;

> DOE believes that netting is not unfair and discriminatory since it was never the intent of any exception order to give a firm more than the net amount of its adjudicated received orders and adjudicated dispense orders. Accordingly, DOE believes OHA should continue netting in carry out the policy announced in this Notice.

50 FR 1919, 1924 (1985). Under this policy, all outstanding obligations of each claimant should be netted with receive orders to result in a net position with respect to the Entitlements Program. In the present case, Chevron's net position is $15,223,862. Those funds will be placed in an interest-bearing escrow account identified under Chevron U.S.A. Inc.'s name pending the outcome of litigation concerning the entitlements program. *See Texaco Inc.* v. *DOE, supra. see also* 50 FR 27,402, 27,403 n.1.

B. Louisiana Land & Exploration Co., Case No. RF171–2

Louisiana Land & Exploration Co. filed a claim for payment of $934,675. That claim is based upon a 1982 order in which the OHA corrected certain errors which occurred in the November and December 1980 Entitlements Notices. There are no other outstanding orders that affect LL&E's entitlements position. Accordingly, $934,675 will be placed in an interest-bearing escrow account identified under LL&E's name pending the outcome of litigation concerning the Entitlements Program.

C. Commonwealth Oil Refining Company, Inc., Case No. RF171–3

In 1984, the FERC approved for purposes of calculations on a January list an adjustment in the formula used to calculate entitlements benefits for qualifying purchases of naphtha by the Commonwealth Oil Refining Company, Inc. *Commonwealth Oil Refining Company, Inc.*, 27 FERC ¶ 61,265 (1984). If effected, the adjustment would result in CORCO receiving additional entitlements benefits. The amount that CORCO has claimed in this proceeding is $813,330. However, by its terms the adjustment approved by the FERC applies to CORCO's operations during the period January 1 through 27, 1981. Since the DOE has determined not to issue any Entitlement Notice for that period, CORCO's claim is contingent at the present time. Consequently, it will be denied.

D. Gulf States Oil & Refining Company, Case No. RF171–4

Gulf States Oil & Refining Company filed a claim for $426,957. That claim is based upon a 1981 order in which the OHA granted the firm runs credits for crude oil that the firm received in September 1980 to expand its inventory. *Gulf States Oil & Refining Company*, 9 DOE ¶ 81,012 (1981). There are no other outstanding orders that affect Gulf States' entitlements position. Accordingly, $426,957 will be placed in an interest-bearing escrow account identified under Gulf States' name pending the outcome of litigation concerning the Entitlements Program.

E. Amber Refining, Inc., Case No. RF171–5

Amber Refining, Inc. (formerly Winston Refining Company) filed a claim for $778,197 based upon an order issued by the OHA in 1983. *Winston Refining Company*, 11 DOE ¶ 81,010 (1983). In that determination the OHA granted exception relief to alleviate crude oil cost disparitiees for the period January through October 1980. That amount of exception relief was affirmed by the FERC at 32 FERC ¶ 62,195 (1985). There are no other outstanding orders that affect Amber's entitlements position. Accordingly, $778,197 will be placed in an interest-bearing escrow account identified under Amber Refining's name pending the outcome of litigation concerning the Entitlements Program.

F. Pennsylvania Company, Case No. RF171–6

The Pennsylvania Company, on behalf of Edgington Oil Company, filed a claim for $560,142. In 1982, the FERC granted Edgington *Delta*-type exception relief for that amount for the period January through March 1979. *Edgington Oil Company, Inc.*, 20 FERC ¶ 61,262 (1982). However, there are two outstanding orders that should be considered in analyzing whether this amount should be paid. In 1981, the OHA reviewed the *Delta* exception relief that Edgington received for its 1978 fiscal year and

concluded that the firm should be accorded $724,036 in additional entitlements exception relief. *Edgington Oil Company, Inc.*, 8 DOE ¶ 82,599 (1981). Also in 1981, the OHA reviewed the *Delta* exception relief that the firm received for its 1977 fiscal year and determined that Edgington received $1,001,588 in excessive relief for that year. *Edgington Oil Company, Inc.*, 8 DOE ¶ 82,600 (1981). Adding $724,036 to the firm's claim and subtracting $1,001,588, we find that $282,590 should be place in an interest-bearing escrow account identified under the Pennsylvania Company's name pending the outcome of litigation concerning the Entitlements Program.

G. Kern Oil & Refining Co., Case No. RF171–7

In 1982, the FERC granted Kern $4,320,620 in additional *Delta* exception relief for the firm's 1979 fiscal year. *Kern Oil & Refining Co., Inc.*, 20 FERC ¶ 61,391, *affirming*, 19 FERC ¶ 62,610 (1982). There are no other outstanding orders that affect Kern's entitlements position. Accordingly, $4,320,620 will be placed in an interest-bearing escrow account identified under Kern's name pending the outcome of litigation concerning the Entitlements Program.[6]

H. USA Petroleum Corp., Case No. RF171–8

USA Petroleum Corp. bases its claim on an order issued by the Federal Energy Regulatory Commission. In 1982, the FERC granted the firm $3,719,318 in exception relief from entitlements purchase obligations related to Alaska North Slope crude oil that the firm received in May 1980. *USA Petroleum Corp.*, 23 FERC ¶ 61,016 (1983), *affirming*, 19 FERC ¶ 62,609 (1982). There are no other outstanding orders that affect USA's entitlements position. Accordingly, $3,719,318 will be placed in an interest-bearing escrow account identified under USA Petroleum's name pending the outcome of litigation concerning the Entitlements Program.[7]

I. Beacon Oil Co., Case No. RF171–9

Beacon Oil Co. filed a claim for $3,433,633. According to the firm, that amount represents the sum of two outstanding orders. In 1981, the OHA determined that Beacon should receive additional entitlements exception relief of $816,112 for its 1979 fiscal year. *Beacon Oil Co.*, 8 DOE ¶ 82,604 (1981). In 1982, the FERC approved additional *Delta* exception relief of $2,617,521 for the period June through August 1980. *Beacon Oil Co.*, 21 FERC ¶ 61,130 (1982). These two orders, however, should be netted with two other OHA orders involving entitlements exception relief for the firm. In *Beacon Oil Co.*, 8 DOE ¶ 82,603 (1981), the OHA determined that Beacon had excessive *Delta* exception relief of $2,717,740 for the firm's 1978 fiscal year and ordered Beacon to purchase that amount of entitlement. However, in *Beacon Oil Co.*, 8 DOE ¶ 82,548 (1981), the OHA reduced the firm's purchase obligation to $672,464. Accordingly, Beacon has a net received order of $2,761,169 ($3,433,633 minus $672,464), and that amount will be placed in an interest-bearing escrow account identified under Beacon's name pending the outcome of litigation concerning the Entitlements Program.

J. Pioneer Refining, Inc., Case No. RF171–10

Pioneer Refining, Inc. based its claim for $228,347 on an order issued by the OHA in 1982. *Pioneer Refining, Inc.*, 9 DOE ¶ 81,020 (1982). In that determination, the OHA approved exception relief for the firm to receive runs credits for crude oil that the firm purchased during the period November 1980 through January 1981 for inventory expansion purposes. The entire amount of relief approved in that order was $230,264.60. However, since $1,917.60 of the relief approved pertained to crude oil receipts in January 1981, the firm filed a claim for only $228,347. There are no other outstanding orders that affect Pioneer's entitlements position. Accordingly, $228,347 will be placed in an interest-bearing escrow account identified under Pioneer's name pending the outcome of litigation concerning the Entitlements Program.

K. Morgan Products, Inc., Case No. RF171–11

Morgan Products, Inc. filed a claim for $77,000. The firm's request for payment is not based upon any outstanding receive order. Rather, Morgan claims that it paid a very high cost for crude oil it purchased in January and February 1981 and requests a refund. Since no receive order has ever been issued to the firm, this is the wrong proceeding for the firm to advance its claim. Accordingly, no relief will be approved for Morgan.

L. Southland Oil Co/VGS Corp., Case No. RF171–12

Southland Oil Co./VGS Corp. based the claim of $5,956,449 it filed upon an order issued by the FERC. *Southland Oil Co./VGS Corp.*, 27 FERC ¶ 61,205 (1984). In that determination, the FERC found that the firm had received excessive *Delta* exception relief of $7,441,967 for its 1977 and 1978 fiscal years. Since Southland had already purchased $13,398,466 in entitlements based upon an OHA year-end review, the FERC determined that Southland should receive $5,956,499. There are no other outstanding orders that affect Southland's entitlements position. Accordingly, $5,956,499 will be placed in an interest-bearing escrow account identified under Southland's name pending the outcome of litigation concerning the Entitlements Program.

M. Navajo Refining, Inc., Case No. RF171–13

Navajo Refining, Inc. filed a claim for $4,072,222 based on three orders. In 1981, the OHA reviewed the *Delta* exception relief that the firm received for its 1980 fiscal year and determined that the firm should receive $1,744,645 in additional relief for that fiscal year. *Navajo Refining Company*, 7 DOE ¶ 82,596 (1981). In 1983, the FERC approved an additional $318,536 in relief for the firm's 1979 fiscal year. *Navajo Refining, Inc.*, 23 FERC ¶ 61,017 (1983). Thirdly, in 1985 the OHA reviewed the *Delta* exception relief that Navajo received for the period August through December 1980 and determined that the firm should receive $2,009,041 in additional relief. *Navajo Refining Company*, 12 DOE ¶ 81,034 (1985). There are no other outstanding orders that affect Navajo's entitlements position. On July 23, 1985, the United States District Court for the District of New Mexico issued a mandatory order directing the DOE to implement Navajo's entitlements exception relief. *Navajo Refining Co.* v. *DOE*, No. 83–1492M Civil (July 23, 1985), *appeal pending*, TECA No. 10–62 (filed August 22, 1985). Under the procedures established in the June 21 order, $4,072,222 will be placed in an interest-bearing escrow account identified under Navajo's name pending the outcome of litigation concerning the Entitlements Program.

N. Plateau, Inc., Case No. RF171–14

There are two orders that pertain to Plateau, Inc.'s claim in this proceeding. In 1982, the FERC approved *Delta* exception relief of $4,777,518 for Plateau for the period October 1979 through

[6] On September 20, 1985, the United States District Court for the District of Columbia ordered the DOE to restore this amount to Kern within 30 days. Unless stayed, the DOE will comply with that court order.

[7] On September 20, 1985, the United States District Court for the District of Columbia ordered the DOE to restore this amount to Kern within 30 days. Unless stayed, the DOE will comply with that court order.

March 1980. *Plateau, Inc.*, 20 FERC ¶ 61,372 (1982). In 1983, however, the OHA reviewed Plateau's actual financial data for the period October through December 1980 and concluded that Plateau received $429,802 in excessive entitlements exception relief. *Plateau, Inc.*, 11 DOE ¶ 81,013 (1983). Netting these two amounts results in a valid claim for payment of $4,347,716. That amount will be placed in an interest-bearing escrow account identified under Plateau's name pending the outcome of litigation concerning the Entitlements Program.

O. Placid Refining Company, Case No. RF171-15

Placid Refining Company filed a claim in which it requested that it be paid $3,246,858. That claim is based on two outstanding orders. In *Placid Refining Co.*, 10 DOE ¶ 81,006 (1982), the OHA recalculated Placid's small refiner bias benefits for the period June through September 1979 and concluded that Placid should receive $1,096,677.70 in additional entitlements benefits. Placid has also claimed $2,150,180 in additional entitlements relief relating to Alaska North Slope crude oil which the firm received in May and June 1980, based on a Proposed Order of the Presiding Officer in *Placid Refining Co.*, 30 FERC ¶ 62,323 (March 27, 1985). As Placid recognizes, that Proposed Order was not final at the time it filed its claim. However, after Placid filed its claim the Commission finalized the proposed order and directed additional entitlements relief of $2,150,180 for Placid. *Placid Oil Refining Company*, 32 FERC ¶ 61,387 (1985). Accordingly, $3,246,858 will be placed in an interest-bearing escrow account identified under Placid's name pending the outcome of litigation concerning the Entitlements Program.

P. Little America Refining Co., Case No. RF171-16

Little America Refining Co., Inc. (LARCO) filed a claim for payment of $4,049,654. The amount of the claim was based upon *Little America Refining Co., Inc.*, 9 DOE ¶ 82,502 (1981), in which the OHA concluded that LARCO should receive $4,049,654 in additional *Delta* exception relief for the firm's 1977 fiscal year.

In filing its claim, LARCO failed to identify three orders that affect its entitlement position. In *Little America Refining Co., Inc.*, 13 DOE ¶ 82,509 (1985), the OHA reviewed the amount of *Delta* exception relief the firm had received for its 1979 and 1980 fiscal years and concluded that LARCO should receive additional relief in the amounts of $9,796,480 for its 1979 fiscal year and $3,296,436 for its 1980 fiscal year. In *Little America Refining Co., Inc.*, 9 DOE ¶ 82,502 (1981), the OHA determined that LARCO received excessive *Delta* exception relief of $19,164,968 for its 1978 fiscal year. In *Little America Refining Co., Inc.*, 9 DOE ¶ 81,022 (1982), the OHA denied LARCO's exception request and ordered the firm to refund temporary exception relief of $29,941,377.28 previously received by the firm.

A review of the orders cited above indicates that the firm's net entitlements position is negative. In other words, the receive orders issued to LARCO are more than offset by LARCO dispense orders. Accordingly, LARCO's claim for payment of $4,049,654 is denied.

Q. Consumers Power Company, Case No. RF171-17

In *Consumers Power Company* v. *DOE*, 742 F.2d 1468 (Temp. Emer. Ct. App. 1984), the Temporary Emergency Court of Appeals upheld Consumers Power's right to participate in the Entitlements Program and to receive entitlements benefits for the period November 1974 through June 1976. In the January 9, 1985 notice the DOE indicated that the entitlements appeal of Consumers Power should be treated as a receive order under the policy decision announced in that notice. 50 FR 1,919, 1,925 (1985). Consumers Power claims that it should receive $23,164,732 in entitlements benefits for the period covered by its entitlements appeal. In addition, the firm claims accrued interest of $47,571,576, for a total claim of $70,736,276.

While we have found that claimants have no basis to claim retroactive interest, on August 14, 1985, the United States District Court for the Eastern District of Michigan ordered the DOE to:

> (1) report to the Court the exact amount of entitlement benefits, to which the Plaintiff is entitled, within thirty days of the effective date of this Order, (2) sequester and place funds in an interest-bearing escrow account within fifteen days thereafter, which shall be sufficient to cover (a) the Plaintiff's calculated entitlements benefits, and (b) the interest accruing at a rate which has been set forth in the Department of Energy regulations for the period from and including Sepetember 8, 1982 until the date that the escrow account is established . . . . (4) neither release nor disburse the escrowed funds until the further Order of the Court.

Order Granting Plaintiff's Motion to Sequester Funds and for Accrual of Interest, *Consumers Power Company* v. *DOE*, Civil Action No. 81-71112 (Order Filed August 14, 1985). According to DOE's calculations, Consumers' entitlement benefits total $22,953,015. This figure is somewhat lower than Consumers own estimate because its calculations fail to take into account certain of its obligations under the program and incorrectly determine the effect of the small refiner bias. In compliance with the August 14 court order, $22,953,015 in entitlements benefits and interest will be placed in an interest-bearing escrow account identified under Consumers Power's name.[8] As the court ordered, those funds will not be disbursed pending further order of the court.

VI. Conclusion

Pursuant to the June 21 order implementing Departmental policy the amounts indicated in Appendix A to this order will be sequestered within the DOE Deposit Fund Escrow Account in the name of each individual claimant. The money in that account is for the most part invested in United States Treasury bills, and interest will accrue at market rates on all money sequestered. These amounts will be paid to each firm, with interest accrued from the date when the money is segregated, if the DOE prevails in the entitlements lawsuit currently pending before the Temporary Emergency Court of Appeals, *Texaco Inc.* v. *DOE, supra*. In the event that DOE is obliged to issue further Entitlements Notices, this money representing crude oil overcharges will *not* be used to fund the receive orders. In that event, these firms will be placed as sellers of entitlements on the Notices, and they will not get the benefit of the interest which will have accrued in the individual accounts set up under the terms of this determination.

It is therefore ordered that:

(1) The claims filed by the firms listed in Appendix A to this decision and Order are hereby granted in the amounts set forth therein.

(2) The Assistant Controller for Financial Systems and Accounting of the Department of Energy shall take appropriate action to establish accounts within the DOE Deposit Fund Escrow Account maintained in the United States Treasury under the names of the firms listed in Appendix A for the amounts set

[8] Because of the court's order, we are escrowing interest on Consumers Power's benefits. However, the DOE has requested that court to reconsider its award of interest and has filed a protective notice of appeal in TECA on the issue. The interest has been calculated from September 8, 1982, at the rate at which interest has accrued on the overcharge funds. As of August 31, 1985, interest totals $7,168,227. We believe that this reflects the intent of the court's order concerning the rate at which interest should be calculated, inasmuch as the DOE regulations do not prescribe a specific rate.

forth in the appendix. Interest shall accrue in each of those accounts as of the date each such separate account is established.

(3) The Assistant Controller for Financial Systems and Accounting shall add to the account established pursuant to paragraph (2) above in the name of Consumers Power Company an amount of interest accrued as if $22,953,015 had been deposited into the DOE Deposit Fund Escrow Account on September 8, 1982.

(4) No disbursements shall be made from the accounts established pursuant to paragraph (2) above until further order of the Office of Hearings and Appeals.

Dated: October 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A

Case No.	Name of petitioner	Amount of claim approved
RF171-1	Chevron U.S.A. Inc	$15,223,862
RF171-2	Louisiana Land & Exploration Co	934,675
RF171-3	Commonwealth Oil Refining Co., Inc.	0
RF171-4	Gulf States Oil & Refining Co	426,957
RF171-5	Amber Refining, Inc	778,197
RF171-6	Pennsylvania Co	282,590
RF171-7	Kern Oil & Refining Co	4,320,620
RF171-8	USA Petroleum Corp	3,719,318
RF171-9	Bescon Oil Co	2,761,169
RF171-10	Pioneer Refining, Inc	228,347
RF171-11	Morgan Products, Inc	0
RF171-12	Southland Oil Co./VGS Corp	5,956,499
RF171-13	Navajo Refining, Inc	4,072,222
RF171-14	Plateau, Inc	4,347,716
RF171-15	Placid Refining, Inc	3,246,858
RF171-16	Little America Refining Co., Inc	0
RF171-17	Consumers Power Co	[1] 22,953,015
Total		69,252,045

[1] This and the other amounts shown in this chart do not include any interest.

[FR Doc. 85-24382 Filed 10-10-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2610-6]

Allocation of Fiscal Year 1986 Funds Under Section 106 of the Clean Water Act for State Ground-Water Protection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of fiscal year 1986 funds under section 106 of the Clean Water Act for State ground-water protection activities.

SUMMARY: In fiscal year 1986, the Environmental Protection Agency (EPA) will make available $7 million under section 106 of the Clean Water Act to support State ground-water protection activities. This notice is to inform States, interested groups, and the public of EPA's decisions concerning the management and allocation of these section 106 ground-water funds. A detailed description of the process for management of section 106 ground-water funds is provided in EPA guidance dated May 24, 1985.

FOR FURTHER INFORMATION CONTACT: For further information concerning this subject, please contact: Marian Mlay, Director, Office of Ground-Water Protection, 401 M Street SW., Washington, DC 20460; (202) 382-7077.

SUPPLEMENTARY INFORMATION:

Background

In August of 1984, the EPA published a Ground-Water Protection Strategy. The Strategy reviews the seriousness of the ground-water pollution problem, identifies States as having the principal role in ground-water protection, and describes steps EPA will take to support States in this area. The Strategy also provides for an assessment of unaddressed sources of groundwater contamination, establishes a common policy base for EPA programs, and outlines improvements to EPA's institutional capability to protect ground water.

A major aspect of EPA support to States is financial assistance through grant funds to support development and implementation of State ground-water strategies and related ground-water protection programs. In fiscal year 1986, $64.9 million is available for grants under section 106 of the Clean Water Act. These funds traditionally support a wide range of water program development and implementation activities and are allotted among States according to an established formula. In fiscal year 1986 the Agency will make available $7 million of section 106 funds to specifically support State ground-water protection activities. While this funding is the primary source of EPA support for ground-water protection activities, states may also draw on certain other EPA grants (sections 106, 205(j), and 205(g) of the Clean Water Act, section 1443(b) of the Safe Drinking Water Act, and section 3011 of the Resource Conservation Recovery Act) where the activities are consistent with statutory eligibility requirements.

Management of Ground-Water Funds

States may use section 106 ground-water funds to conduct a range of program development and implementation activities related to ground-water protection.

State program development activities might include: (1) Develop a ground-water strategy and action plan, (2) identify and remove legal and institutional barriers to comprehensive ground-water management,(3) design or develop State ground-water protection plans, (4) conduct selected resource assessment activities, and (5) compile existing ground-water data and create data management systems to increase the usefulness of data. For fiscal year 1986, EPA encourages States to give high priority to development of a strategy and action plan.

Use of the section 106 ground-water funds for program implementation may be appropriate in some States. States should assure that any ground-water program implementation activities take place in the context of a well planned State ground-water protection strategy and carefully designed protection program.

States which choose to use funds for program implementation activities should direct funds to the implementation of ground-water strategies or programs originated at the State level. The intent of this policy is to concentrate funds on State ground-water programs which do not already have a base of Federal support. This policy will also foster a wide range of program responses to ground-water problems and help States to develop innovative control programs.

In fiscal year 1986, EPA will require that each State prepare a discrete work program providing a single, consolidated statement of the State's annual ground-water protection program in order to receive its full portion of section 106 ground-water funds. This work program should be a brief but comprehensive description of how the State is developing or implementing its ground-water strategy, or addressing its ground-water priorities, with a more detailed description of the program elements funded with section 106 ground-water funds. It should also address related ground-water program elements funded under other EPA grants including activities related to cost-sharing/maintenance of effort requirements. For program management purposes, States are encouraged to reference those activities funded under other State authorities.

Allocation of Ground-Water Funds

The section 106 ground-water funds (i.e., $7 million) will be divided among States in the same way as was done in fiscal year 1985. This allotment is based on a minimum funding level and the existing formula for allocation of other section 106 grant funds among States.

A minimum allotment of $100,000 for each State and $50,000 for each Insular Area government (Territory) has been established. The Agency Ground-Water Protection Strategy points to the existence of ground-water contamination problems in virtually every area of the country. State responses to these problems have been varied with some States having taken only modest steps to control ground-water pollution. This minimum allotment assures that all States and Insular Areas will have the minimum funding necessary to begin assessment of ground-water pollution problems and development of management responses.

Section 106 ground-water grant funds above the minimum allotment will be allotted based on the current section 106 formula. This allotment will be limited to those States and Insular Areas which would have received funding above the minimum amount if the current formula has been used to allot all ground-water funds.

The Agency has decided that interstate agencies, which currently receive funds from the base amount of the section 106 grant, will not receive a direct allocation of ground-water funds at the national level. However, a Regional Administrator may award grants from allotted funds directly to interstate agencies after consultation with the affected States. In addition, to the extent that a State determines that a particular activity should be performed by an interstate agency, it may enter into an intergovernmental agreement to have the interstate agency conduct the activity.

The total allotments of section 106 ground-water funds to States and Insular Areas will be provided in EPA's advice of allowance to Regional offices. These figures will be national grant allotments which may be used by the Regional Administrator in development of State planning targets. Planning targets and any regional ground-water funding policies, priorities, and procedures should be communicated to States in Regional guidance.

Dated: October 3, 1985.

Edwin L. Johnson,

Acting Assistant Administrator for Water.

[FR Doc. 85-24409 Filed 10-10-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51592; FRL-2911-2]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-1516 and 85-1517—December 25, 1985.

P 85-1518, 85-1519, 85-1520, 85-1521, 85-1522, 85-1523, and 85-1523, and 85-1524—December 28, 1985.

P 86-1, 86-2, 85-3, 86-4, 86-5, 86-6, 86-7, 86-8, 86-9 and 81-10—December 29, 1985.

P 86-11, 86-12, 86-13 and 86-14—December 30, 1985.

P 86-15, 86-16, 86-17, 86-18, 86-19, 86-21, and 86-22—December 31, 1985.

Written comments by:

85-1516 and 85-1517, November 25, 1985.

85-1518, 85-1519, 85-1520, November 28, 1985.

P 85-1521, 85-1522, 85-1523 and 1524

P 86-1, 86-2, 86-03, 86-4, 86-5, 86-6, 86-7, 86-8, 86-9 and 86-10—November 29, 1985.

P 86-11, 86-12, 86-13 and 86-14—November 30, 1985.

86-15, 86-16, 86-17, 86-18—December 1, 1985.

P 86-19, 86-21 and 86-22.

ADDRESS: Written comments, identified by the document control number "[OPTS-51592]" and the specific PMN number should be sent to:

Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-1516

Importer. Confidential.

Chemical. (G) Polyester containing amide groups.

Use/Import. (G) Surfactant. Import range. Confidential.

Toxicity Data. Acute oral: 5.0 g/kg; Irritation: Skin—Minimal; Eye—Inconsequential irritant.

Exposure. Processing: Dermal.

Environmental Release/Disposal. Less than 0.1 kg/batch released to water. Disposal by navigable waterway.

P 85-1517

Manufacturer. Confidential.

Chemical. (G) Bis(substituted arylazo substituted sulfo aryl)transition metal complex.

Use/Production. (G) Dye. Prod. Range. Confidential.

Toxicity Data. Acute oral: 2 g/kg; Irritation: Skin—Non-irritant; Eye—Minimal; Median effective concentration (Green algae): 29 mg/l; Median effective concentration (Daphnia magna): >100 mg/l; Median lethal concentration (Rainbow trout): >100 mg/l; Skin sensitization: Non-sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 85-1518

Manufacturer. Confidential.

Chemical. (G) Isocyanate terminated ployester urethane.

Use/Production. (G) Adhesive. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. 5 kg/batch incinerated.

P 85-1519

Manufacturer. The Dow Chemical Company.

Chemical. (G) TDI-polyol prepolymer.

Use/Production. (S) Industrial isocyanate component of a two-part system to produce a high density semi-rigid cellular polyurethane plastic. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.

Environmental Release/Disposal. Less than 1 kg/batch and <25 kg/cleaning cycle released to land. Disposed of a non-hazardous solid waste or neutralized.

P 85–1520

Manufacturer. The Dow Chemical Company.

Chemical. (G) Isocyanate terminated prepolymer.

Use/Production. (S) Industrial urethane elastomer. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.

Environmental Release/Disposal. Less than 1 kg/batch and <25 kg/cleaning cycle released. Disposal by residue will be reacted to form an article or be neutralized.

P 85–1521

Manufacturer. Confidential.

Chemical. (G) Polyester of adipic acid, isophthalic acid with alkyl diols.

Use/Production. (S) Industrial resin component of a spray applied industrial coating. Prod. range. 180,000–675,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 31 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 6 to 172 kg/batch released to land. Disposal by landfill and incineration.

P 85–1522

Manufacturer. Confidential

Chemical. (G) Modified polymer of rosin and polyol.

Use/Production. (G) Organic polymer having an open use in the formulation of an industrial and commercially used mixture. Prod. range. 750,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 101 workers, up to 8 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. 0.5 to 38 kg/batch released to land. Disposal by incineration and landfill.

P 85–1523

Manufacturer. Confidential.

Chemical. (G) Acrylate modified polyster of a carbomonocyclic acid, tall oil fatty acids and diols.

Use/Production. (G) Paint ingredient. Prod. range. 100,000–200,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 31 workers, up to 6 hrs/da, up to 155 da/yr.

Environmental Release/Disposal. 3 to 15 kg/batch released to land. Disposal by incineration and landfill.

P 85–1524

Manufacturer. Shell Oil Company.

Chemical. (G) Alpha-substituted-3-phenoxybenzyl alcohol.

Use/Production. (G) Destructive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 86–1

Manufacturer. Confidential.

Chemical. (G) Polyester of unsaturated dicarboxylic acid, diglycol, bisbenzoic acid.

Use/Production. (G) Open, non-dispersive use in an article. Prod. range. 1,800–7,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 9 workers, up to 2.0 hrs/da, up to 35 da/yr.

Environmental Release/Disposal. Less than 12 to <35 kg/batch incinerated.

P 86–2

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Perfluoroalkyl methacrylate copolymer latex.

Use/Production. (G) Non-dispersive fabric finish applied industrially on consumer products. Prod. range. Confidential.

Toxicity Data. Acute oral: 11,000 mg/kg; Irritation: Skin—Mild; Eye—Non-irritant; LC_{50} 96 hr (Fathead minnow): 88 mg/L.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–3

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Perfluoroalkyl acrylate copolymer latex.

Use/Production. (G) Non-dispersive fabric finish applied industrially on consumer products. Prod. range. Confidential.

Toxicity Data. Acute oral: >11,000 mg/kg; Irritation: Skin—Slight; Eye—Mild; LC_{50} 96 hr (Fathead minnow): 55 mg/L.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–4

Manufacturer. Confidential.

Chemical. (G) N–PMI styrenic terpolymer.

Use/Production. (S) Industrial injection molding processes. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–5

Importer. Emser Industries.

Chemical. (S) Polymer of terephthalic acid, isophthalic acid, adipic acid, trimellitic anhydride, 2,2-dimethyl-1,3 propane diol, ethylene glycol and hexanediol.

Use/Import. (S) Industrial polymer as a component for producing fine powder for metal coating by electrostatical spraying onto the metal and curing afterwards by heat with the incorporated hardner. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Inhalation.

Environmental Release/Disposal. No release.

P 86–6

Importer. Emser Industries.

Chemical. (S) Polymer of terephthalic acid, isophthalic acid, adipic acid, trimellithic anhydride, 2,2-dimethyl-1,3-propanediol and ethylene glycol.

Use/Import. (S) Industrial polymer as a component for producing fine powder for metal coating by electrostatical spraying onto the metal and curing afterwards by heat with the incorporated hardner. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Inhalation.

Environmental Release/Disposal. No release.

P 86–7

Importer. Emser Industries.

Chemical. (S) Polymer of terephthalic acid, isophthalic acid, adipic acid, trimellitic anhydride, 2,2-dimethyl-1,3-propaneodiol and ethylene glycol and trimethylolpropane.

Use/Import. (S) Industrial polymer as a component for producing fine powder for metal coating by electostatical spraying onto the metal and curing afterwards by heat with the incorporated hardner. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Inhalation.

Environmental Release/Disposal. No release.

P 86–8

Importer. Emser Industries.

Chemical. (G) Polymer of terephthalic acid, isophthalic acid, adipic acid, 2,2-dimethyl-1,3-propanediol, ethylene glycol and trimethylolpropane.

Use/Import. (S) Industrial polymer as a component for producing fine powder for metal coating by electostatical spraying onto the metal and curing afterwards by heat with the

incorporated hardner. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Inhalation.

Environmental Release/Disposal. No release.

P 86-9

Importer. Confidential.

Chemical. (S) Copper complex of 1-hydroxy 2-(4'-ethyl sulfony sulfuric acid ester potassium salt phenylazo) napthalene-4-sulfonic acid potassium salt.

Use/Import. (S) Reactive dye for textiles. Import range. 10,000 kg/yl.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 86-10

Importer. Confidential.

Chemical. (S) (4'-ethyl sulfonyl sulfuric acid ester sodium salt phenyl sulfonamide) 1',4(sulfonic acid sodium salt) 1,6-sulfonamide of copper phthalocyanine.

Use/Import. (S) Reactive dye for textiles. Import range. 10,000 kg/yl.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 86-11

Importer. Boots Laboratories Inc.

Chemical. (G) Reaction product of bismaleimide with amino aryl hydrazide.

Use/Import. (S) Industrial matrix resin for reinforced plastics based on fibers given as carbon, glass, aramid, quartz, etc. Prod. range. Confidential.

Toxicity Data. Ames Test: Non-mutagenic.

Exposure. Manufacture: Dermal, a total of 4 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. No data submitted.

P 86-12

Importer. Boots Laboratories, Inc.

Chemical. (G) Reaction product of bismaleimide with amino aryl hydrazide.

Use/Import. (S) Industrial matrix resin for reinforced plastics based on fibres such as carbon, glass, aramid and quartz. Import range. Confidential.

Toxicity Data. Ames test: Non-mutagenic.

Exposure. Manufacture: Dermal, a total of 4 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Release to air.

P 86-13

Manufacturer. Confidential.

Chemical. (G) Polyarylether ketone.

Use/Production. (G) Resin for molded or extruded articles. Prod. Range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-14

Manufacturer. Confidential.

Chemical. (G) Polyarylether ketone.

Use/Production. (G) Resin for molded or extruded articles. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-15

Importer. Confidential.

Chemical. (G) (Dialkylcarbomonocyclic)aminophenol.

Use/Import. (G) Intermediate. Import range. Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 0.5 mL; Ames test: Non-mutagenic.

Exposure. Use: Dermal, a total of 1 worker, up to 1 hr/da, up to 4 da/yr.

Environmental Release/Disposal. 1 to 3 kg/batch released to water. Disposal by publicly owned treatment works (POTW).

P 86-16

Manufacturer. Confidential.

Chemical. (G) [(Dialkylcarbomonocyclic)amino] xanthylium salt.

Use/Production. (S) Industrial site-limited intermediate. Prod. range. Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant.

Exposure. Manufacture: Dermal, a total of 6 workers, up to 2 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. 5 to 10 lbs released to water. Disposal by POTW.

P 86-17

Manufacturer. Confidential.

Chemical. (G) [(Dialkylcarbomonocyclic)amino] xanthylium salt, methylheteromonocyclic, phenylheteromonocyclic, formal polymer.

Use/Production. (S) Industrial intermediate. Prod. range. Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames test: Non-mutagenic.

Exposure. Manufacturer: Dermal and inhalation, a total of 4 workers, up to 2 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. 2 to 8 lbs released to air. Disposal by POTW.

P 86-18

Manufacturer. Confidential.

Chemical. (G) [(Dialkylcarbomonocylic)amino] xanthlyium salt, methylheteromonocyclic, phenylheteromonocyclic formal polymer, alkanoic-sulfamic acid salt.

Use/Production. (S) Industrial paper dye. Prod. range. Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames test: Non-mutagenic.

Exposure. Manufacture: Dermal and inhalation, a total of 2 workers, up to 1 hr/da, up to 2 da/yr.

Environmental Release/Disposal. 5 to 10 lbs released to water. Disposal by POTW.

P 86-19

Manufacturer. Alpha Resins Corporation.

Chemical. (G) Unsaturated polyester polymer.

Use/Production. (G) Polyester resin system component. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Confidential.

P 86-21

Manufacturer. Callaway Chemical Company.

Chemical. (G) Polymer of methacrylic acid and mixed alkyl methacrylate esters and amido amines.

Use/Production. Confidential. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-22

Manufacturer. Callaway Chemical Company.

Chemical. (G) Polymer of methacrylic acid and mixed alkyl methacrylate esters and amido amines.

Use/Production. Confidential. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: October 7, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-24400 Filed 10-10-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59204A-FRL-2911-1]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-64 and TME-85-65. The test marketing conditions are described below.

EFFECTIVE DATE: October 4, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Matthai, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611C, 401 M St. SW., Washington, DC 20460, (202) 382-3385.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-64 and TME-85-65. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time peirod and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use and the number of customers must not exceed that specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME-85-64 and TME-85-65. A bill of lading accompanying each shipment must state that use of the substances are restricted to that approved in the TMEs. In addition, each Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain a copy of the bill of lading that accompanies each shipment of the TME substance.

T 85-64

Date of Receipt: August 27, 1985.

Notice of Receipt: September 9, 1985 (50 FR 36665).

Applicant: Confidential.

Chemical: (G) Substituted phenoxy alkyl acid ester.

Use: (G) Destructive Use Intermediate.

Production Volume: 2,700 kilograms.

Number of Customers: Confidential.

Worker Exposure: Manufacture: A total of up to 6 workers for a period of up to 1 hour/day.

Test Marketing Period: One year.

Commencing on: October 4, 1985.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T 85-65

Date of Receipt: August 28, 1985.

Notice of Receipt: September 9, 1985 (50 FR 36665).

Applicant: Westvaco Corporation.

Chemical: (G) Modified lignosulfonic acid sodium salt.

Use: (G) Fluid loss additive.

Production Volume: 4,600 kilograms.

Number of Customers: One.

Worker Exposure: Manufacture: dermal, a total of up to 4 workers, up to 2 hrs/day for up to 9 days/year each. Processing/Use: dermal, a total of up to 25 workers, up to 8 hours/day for up to 75 days/year each.

Test Marketing Period: Six months.

Commencing on: October 4, 1985.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, EPA has concluded that the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: October 4, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-24396 Filed 10-10-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59735; FRL 2910-8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule pulished in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period.

Y 85-170, 85-171 and 85-172—October 20, 1985

Y 86-1, 86-2 and 86-3—October 22, 1985

Y 86-4—October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m.,

Monday through Friday, excluding legal holidays.

Y 85–170

Importer. Urethane Concepts, Inc.
Chemical (G) Ethylene oxide-propylene oxide copolymer triol ether.
Use/Import. (S) Industrial polyol component in flexible polyurethane foam. Prod. range. 122,000–135,000 kg/yr.
Toxicity Data. No data submitted:
Exposure. Importer: Dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

Y 85–171

Importer. Urethane Concepts, Inc.
Chemical. (G) Polypropylene oxide triol ether.
Use/Import. Industrial polyol component inflexible polyurethane foam. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Importer: Dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

Y 85–172

Importer. Urethane Concepts, Inc.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. Industrial polyol component for coatings, paints and adhesives. Prod. range. 16,000–18,000 kg/yrs.
Toxicity Data. No data submitted.
Exposure. Importer: Dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

Y 86–1

Importer. Confidential.
Chemical. Polymer partial ester.
Use/Import. (S) Emulsifying agent with lubricating and anti-corrosion properties. Prod. range. Confidential.
Toxicity Data. Acute oral: Male/female > 15 ml/kg; Irritation: Skin—Non-irritant; Eye—Non-Irritant; Biodegradability: Inherent biodegradable; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–2

Importer. Confidential.
Chemical. (G) Polymer partical ester.
Use/Import. (S) Emulsifying agent with lubricating and anti-corrosion properties. Prod. range. Confidential.
Toxicity Data. Acut oral: Male/female > 15 ml/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Biodegradability: Inherent biodegradable; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–3

Manufacturer. C.J. Osborn Chemicals, Inc.
Chemical. (G) Epoxy ester.
Use/Production. (S) Clear and pigmented finishes. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 1½ hrs/da, up to 6 da/yr/.
Environmental Release/Disposal. No release.

Y 86–3

Manufacturer. The Kendall Company.
Chemical. Further clarification needed before information can be released to the public files.
Use/Production. (G) Pressure sensitive adhesive. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated October 7, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–24399 Filed 10–10–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2910–4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed September 30, 1985 Through October 4, 1985 Pursuant to 40 CFR 1506–9

EIS No. 850419, Final, BLM, NV, Esmeralda-Southern Nye Planning Area, Wilderness Designation, Nye and Esmeralda Counties, Due: November 12, 1985, Contact: Stephen Mellington (702) 388–6405.

EIS No. 850426, Draft, BLM, ID, Lemhi Resource Area, Resource Management Plan, Lemhi County, Due: January 13, 1986, Contact: Jerry Wilfong (208) 756–2201.

EIS No. 850427, Draft, FHW, TN, TN–34 Bypass Construction, TN–34 to TN–137, Washington County, Due: November 25, 1985, Contact: Thomas Ptak (615) 251–5394.

EIS No. 850428, Draft, BLM, CO, Federal Prototype Oil Shale Tract C-A, Offtract Leasing, Oil Shale Operations and Waste Material Disposal, Rio Blanco County, Due: December 9, 1985, Contact: Butch Smith (303) 878–3601.

EIS No. 850429, Final, SCS, LA, West Franklin Watershed Multipurpose Plan, Ouachita River Basin, Richland and Franklin Parishes, Due: November 12, 1985, Contact: Harry Rucker (318) 473–7751.

EIS No. 850430, Final, SCS, LA, Bayou Mallet Watershed Flood Prevention Project, Mermentau River Basin, Acadia, Evangeline, and St. Landry Parishes, Due: November 12, 1985, Contact: Harry Rucker (318) 473–7751

EIS No. 850431, Final, AFS, KY, Daniel Boone National Forest, Land and Resource Management Plan, Due: November 12, 1985, Contact: Richard Wengert (606) 745–3100.

EIS No. 850432, DSuppl, AFS, CO, Arapaho and Roosevelt National Forests and Pawnee National Grassland, Land and Resource Management Plan, Mineral Leasing Criteria, Due: November 25, 1985, Contact: Raymond Benton (303) 482–5155.

EIS No. 850433, Final, FHW, LA, Eden Isles Interchange Construction, I–10 Access Point, St. Tammany Parish, Due: November 29, 1985, Contact: Kenneth Perret (504) 389–0466.

EIS No. 850434, Final, FHW, OH, Cross County Highway/OH–126 Completion, Colerain Avenue/US–27 to Galbraith Road/US–42, Hamilton County, Due: November 12, 1985, Contact: John McBee (604) 469–6896.

EIS No. 850435, Final, FHW, NJ, NJ–18 Freeway Completion, Section 3B and 3C Construction, Deal Road to Wayside Road, Monmouth County, Due: November 12, 1985, Contact: Lloyd Jacobs (609) 989–2291.

EIS No. 850437, Final, AFS, ID, WY, UT, Caribou and Cache National Forests and Curlaw National Grassland, Land and Resource Management Plan, Due: November 12, 1985, Contact: Paul Nordwall (208) 236–6741.

EIS No. 850438, Final, NRC, PA, Beaver Valley Power Station, Unit 2, Operating License, Ohio River, Beaver County, Due: November 12, 1985, Contact: Marilyn Ley (301) 492–7000.

EIS No. 850439, Final, USAF, UT, NV, Gandy Range Extension, Supersonic Flight Training Areas, Designation, Hill AFB, Tooele Co., UT and Elko Co., NV, Due: November 12, 1985, Contact: Larry Summers (801) 777–5201.

EIS No. 850440, Final, COE, MI Keweenaw Waterway Navigation Channel, Polluted Dredged Material Confined Disposal Facility, Construction, Houghton County, Due: November 25, 1985, Contact: Judith Limburg (313) 226–6753.

EIS No. 850441, Draft, FHW, OR, 6th and 7th Avenue Couplet/OR–99 Extension, Garfield Street to West 11 Avenue/OR/126/Florence-Eugene Highway, Lane County, Due: December 6, 1985, Contact: Dale Wilken (503) 399–5749.

EIS No. 850442, Draft, FHW, MA, Merrimack River Bridge and Approach Roads Construction, US–3 to Mammoth Road, Middlesex County, Due: December 2, 1985, Contact: Edwin Holahan (617) 494–2469.

EIS No. 850443, Final, CDB, MI, Cobo Hall Convention Center Renovation and Expansion, UDAG/CDBG, Wayne County, Due: November 12, 1985, Contact: Thomas Andrews (312) 224–6380.

EIS No. 850444, Final, FHW, TN, Pellissippi Parkway/TN–162 Extension, I–40/75 to TN–115/Alcoa Highway, Knox and Blount Counties, Due: November 12, 1985, Contact: Thomas Ptak (615) 251–5394.

EIS No. 850445, Final, FSuppl, BLM, MT, ND, WY, CO, UT, NM, AL, Federal Coal Management Program, Continuation or Implementation of a New Program Due: November 12, 1985, Contact: Andrew Strasfogel (202) 343–4793.

Dated: October 8, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85–24454 Filed 10–10–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2910–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 23, 1985 through September 27, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–AFS–G65043–NM, Rating LO, Gila Nat'l. Forest, Land and Resource Mgmt. Plan, NM. Summary: EPA has no objection to the proposed action as described.

ERP No. D–AFS–L65094–00, Rating E02, Idaho Panhandle Nat'l Forest, Land and Resource Mgmt. Plan, ID, WA, MT. Summary: EPA's comments centered on two major concerns. First, EPA believes that the DEIS and Plan did not clearly show that any seriously considered alternative (in particular, the preferred alternative) could comply with State of Idaho Water Quality Standards. Second, the documents did not adequately address the potential impacts to domestic water supplies. EPA believes that the FEIS and Plan can adequately and reasonably address these concerns.

ERP No. DS–COE–H34015–NB, Rating EC2, Harlan County Lake Multiple Purpose Project, Continuing Operation and Maintenance, Republican R., NB. Summary: EPA believes that decreasing low flow releases from the lake during on-irrigation periods will result in severe downstream water quality impacts as well as adverse impacts to downstream fisheries and recreation. EPA has environmental concerns with the DEIS because it does not provide sufficient information to support the development of alternatives to mitigate adverse imapcts on downstream water quality and fisheries. EPA recommends the irrigation interests be balanced with the Fish and Wildlife interests.

Final EISs

ERP No. F–FHW–F40164–IN, US–27 Improvement, County Rd. 50 S. to County Rd. 850 N. and A Connector From US 33 to US 27, Widening and Alignment, IN. Summary: EPA expressed concern that acceptable procedures for determining C02 concentrations were not used and that there was not adequate discussion of soil erosion control, 404 permit, revegetation, and borrow pit management.

ERP No. F–FHW–L40126–AK, Fairbanks, Urban Reconnaissance Geist Rd. Extens., Connection, Steese Expressway to Downtown Fairbanks, AK. Summary: EPA made no formal comments. EPA reviewed the FEIS and found the project to be satisfactory.

ERP No. F–ICC–J53003–MT, Tongue R. Railroad Construction, Operation, Finance Docket 30186, Miles City to Ashland, Certificate, 404 Permit, MT. Summary: EPA remains concerned about potential adverse water quality impacts if the railroad is constructed as proposed in the FEIS. EPA recommends that the four proposed bridge crossings of the Tongue R. and Otter Creek be constructed to permit flood flows to pass, leave river channels unchanged, and leave fish passages unobstructed. The mitigation plan describing aquatic resource sampling and implementation of corrective actions, as required, should be a condition of the ICC permit. The potential wetlands impacts from construction of the railroad should be discussed in the mitigation plan.

ERP No. F–OSM–J01066–MT, Rosebud Mine Area D Expansion, Approval and Permits, MT. Summary: EPA made no formal comments. EPA reviewed the FEIS and found the project to be satisfactory.

Regulations

ERP No. R–CEQ–A86217–00, "Worst Case Analysis", Incomplete or Unavailable Information, Amendment to 40 CFR 1502.22, Regs. Implementing NEPA (50 FR 32234. Summary: EPA fully supports the Council's effort to improve the regulation dealing with situations where there is incomplete or unavailable information relevant to significant impacts. We believe that the proposed amendment, together with the conforming guidance to be developed, will clarify this issue. EPA did, however, offer several specific suggestions to help clearly define the proposed regulation.

Dated: October 8, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85–24455 Filed 10.10–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–81012A; FRL 2910–9]

TSCA Chemical Substances Inventory; Removal of 104 Incorrectly Reported Chemical Substances From the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA, in an earlier notice published in the **Federal Register** of May 7, 1985 (50 FR 19284), announced its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 106 chemical substances which were incorrectly reported and listed. Three comments were received in response to the May 7, 1985 notice. EPA has now determined that 2 of the chemical substances listed in the May 7, 1985 notice were correctly reported, and that 104 of the chemical substances listed in the May 7, 1985 notice were incorrectly reported and listed. Accordingly, the 104 chemical substances are no longer on the TSCA Inventory as of the date of

publication of this notice in the Federal Register.

DATE: Effective on October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, DC 20460. Toll-Free: 800-424-9065. In Washington, D.C.: (554-1404). Outside the U.S.A.: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

A. Background

EPA announced in the Federal Register of May 7, 1985 (50 FR 19284) its intent to remove from the Toxic Substances Control Act Chemical Substance Inventory 106 chemical substances which were believed to have been incorrectly reported and listed. Prior to the May 7, 1985 notice, persons who had reported 105 of the chemical substances informed EPA that the chemical identities originally reported to EPA and included on the Inventory were incorrect. The corrected identities for these 105 chemical substances have been provided by the original submitters and added to the Agency's Master Inventory File. EPA checked each of these 105 chemical substances, as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No others were found at that time.

The remaining chemical substance proposed for removal from the Inventory was identified as a result of the Agency's review of a group of structurally related alkyltin compounds listed on the Inventory. Under the authority of section 4(e) of TSCA, the Interagency Testing Committee (ITC) had previously designated the alkyltin compounds as candidate substances for testing (48 FR 51361; November 8, 1983). In reviewing the ITC recommendations, EPA discovered that one of these substances, tributyl fluoro stannane (CAS Registry Number 1983-10-4), had been inappropriately reported for the Inventory. This substance was found to be used solely as a pesticide under FIFRA, and has no reported TSCA commercial uses. According to section 3 of TSCA, any substance which is manufactured, processed, or distributed in commerce for use solely as a pesticide would not be eligible for listing on the Inventory. The Inventory Reporting Regulations further specify that any chemical substance reported for the Inventory must have been manufactured, imported, or processed for a TSCA commercial purpose in the United States since January 1, 1975. Therefore, the substance in question was not eligible for listing on the Inventory when it was reported, and is a candidate for removal from the Inventory.

With the exception of tributyl fluoro stannane, each of the chemical substances was reported by only one submitter—the person who subsequently notified EPA that the chemical substance was misreported. In accordance with established EPA guidelines, an erroneously or incorrectly reported chemical substance should be removed from the Inventory.

The Federal Register notice of May 7, 1985 solicited public comments on the proposed removal action. The Agency was specifically interested in knowing whether any of the 106 chemical substances had been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulations (40 CFR Part 710.2 (p)), by anyone during the period January 1, 1975 through May 7, 1985. The Agency was also interested to know whether any person could show that any of the 106 chemical substances could have been properly reported for the Inventory. EPA also solicited comments from anyone who believed that any of the chemical substances should not be removed from the TSCA Inventory for any reason.

EPA received three comments in response to the May 7, 1985 Federal Register notice. Two comments requested that two of the 106 chemical substances not be removed from the Inventory. The remaining comment addressed the fact that the Inventory is an authoritative source of data which advises industry of chemical substances which may be manufactured, imported, or processed without the need of premanufacture notification (PMN). This comment requested that the Agency provide precise explanations on how each of the 106 chemical substances had been corrected. The administrative record supporting this action provides explanations of these actions for each of the 106 chemical substances. Where confidentiality claims were made for information relating to the substances and the changes, such information is not included in the public file in accordance with EPA policy. A public version of the administrative record is available for public inspection in the OPTS Reading Room, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-107, East Tower, 401 M St., SW., Washington, D.C. 20460.

The remaining comment also requested the Agency to republish the listing of 106 incorrectly reported chemical substances along with their correct Inventory listings. The Agency intends to publish a listing of the 104 incorrectly reported chemical substances along with their correct Inventory listings in the Agency's *TSCA Chemicals-in-Progress Bulletin* in the future.

B. Substances Not to be Removed

Two comments requested the Agency not to remove from the Inventory the chemical substances identified by the following Chemical Abstracts Service (CAS) Registry Numbers and CAS Index Names:

*68815-62-3	3,5,9-Undecatrien-2-one,6,10-dimethyl-, cyclized, by-products from, fractionation residues
70198-29-7	Butanedioic acid, polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol

* CAS Registry Numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representations.

The submitters of the two comments concerning these chemical substances indicated that they are currently in commercial production. The agency has therefore determined that these two chemical substances will remain on the Inventory and premanufacture notifications will not be required.

C. Substances That are Removed From the Inventory

Since EPA received no comments on any of the remaining 104 chemical substances during the comment period, The Agency concluded that these chemical substances have not been manufactured, imported, or processed for TSCA commercial purposes since January 1, 1975, and thus were not and are not eligible for the Inventory. Effective with the publication of this notice, the 104 chemical substances are removed from the Inventory—the presence of their names in any previously published version of the Inventory notwithstanding. PMN requirements of section 5(a) of TSCA would apply to future manufacture or

import of any of these 104 chemical substances. The chemical substances that are removed from the Inventory are listed below in ascending Chemical Abstracts Service (CAS) Registry Number sequence. Each of the 104 chemical substances is further identified by its corresponding Chemical Abstracts Preferred Name.

Chemical Substances Removed From the TSCA Inventory

590-66-9 Cyclohexane, 1,1-dimethyl-
625-27-4 2-Pentene, 2-methyl-
822-50-4 Cyclopentane, 1,2-dimethyl-, *trans*
1192-18-3 Cyclopentane, 1,2-dimethyl-, *cis*
1638-26-2 Cyclopentane, 1,1-dimethyl-
1983-10-4 Stannane, tributylfluoro-
6505-91-5 Chromate(5-), bis[7-[[5-chloro-2-hydroxyphenyl]azo]-8-hydroxy-1,8-naphthalenedisulfonato(4-)]-, pentasodium
10127-05-6 Chromate(2-), [2-[[4,5-dihydro-3-methyl-1-(2-methyl-4-sulfophenyl)-5-oxo-1*H*-pyrazol-4-yl]azo]-4-sulfobenzoato (4-)]hydroxy, disodium
14245-97-7 1,3-Naphthalenedisulfonic acid, 7-[(*p*-amino-*o*-tolyl)azo]-, disodium salt
14387-10-1 Benzeneacetic acid, 4-ethyl-
15623-66-2 2,7-Naphthalenedisulfonic acid, 5-(benzoylamino)-3-[[4-[[4-chloro-6-[(4-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-4-hydroxy-
19074-59-0 Phenol, 2,5-dimethyl-, phosphate
24704-54-9 Benzenesulfonic acid, 4-[4,5-dihydro-4-[3-[5-hydroxy-3-methyl-1-(4-(sulfophenyl)-1*H*-pyrazol-4-yl)-2-propenylidene]- 3-methyl-5-oxo-1*H*-pyrazol-1-yl]-
26951-10-0 2,5-Furandione, polymer with 2,2'-[1,2-ethanediylbis(oxy)]-bis[ethanol]
29874-65-5 2,7-Naphthalenedisulfonic acid, 4-amino-6-[[5-[[4-chloro-6-(2-ethoxyethoxy)-*s*-triazin-2-yl]amino]-2-sulfophenyl] azo]-3-[(2,5-disulfo-phenyl)azo]-5-hydroxy-
32781-74-1 2-Naphthalenesulfonic acid, 6-(2,3-dibromo-propionamido)3-[[5-(2,3-dibromopropionamido)-2-sulfophenyl]azo]-4-hydroxy
36508-10-8 3-Pyridinemethanesulfonic acid, 5-[[5-[[4-chloro-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-ethyl-1,2-dihydro-6-hydroxy-4-methyl-2-oxo-
38489-07-5 Butanamide, *N*-(5-chloro-2-methylphenyl)-2-[(4-chloro-2-nitrophenyl)azo]-3-oxo-
39951-98-9 Benzoic acid, 4,4'-[1,3-phenylenebis[imino(6-chloro-1,3,5-triazine-4,2-diyl)imino(8-hydroxy-3,6-disulfo-1,7-naphthalenediyl)azo]]bis-
41992-21-6 2-Azo-8-germaspiro[4.5]decane-1,3-dione, 2-[3-(dimethylamino)propyl]-8,8-diethyl-
55067-15-7 7-Benzothiazolesulfonic acid, 2-[4-[[2-(cyanoimino)hexahydro-4,6-dioxo-5-pyrimidinyl]azo]phenyl]-6-methyl-, compd. with 2,2,' 2"-nitrilotris[ethanol](1:1)
55719-33-0 2-Propenoic acid, polymer with 2-hydroxypropyl 2-propenoate
56548-81-3 2,7-Naphthalenedisulfonic acid, 3,3'-[1,3-phenylenebis[imino(6-chloro-1,3,5-triazine-4,2-diyl)imino(6-sulfo-3,1-phenylene)azo]]-bis[5-amino-4-hydroxy-6-[(4-sulfophenyl)azo]-
60006-10-2 1-Pyrrolidinecarboxamide, *N,N'*-(2-methyl-1,3-phenylene)bis-
63133-92-6 Benzoic acid, 4-[1-chloro-3,3-dimethyl-2-oxo-1-[[[3-[(1-oxo-2-(3-pentadecylphenoxy)-butyl]amino]-phenyl]-amino]carbonyl]butyl]-
63589-31-1 Benzenamine, *N*-(2-methylhexyl)-2-nitro-
64346-41-4 1,5-Naphthalenedisulfonic acid, 3,3'-[carbonyl bis[imino(5-methoxy-2-methyl-4,1-phenylene)azo]]bis-, tetralithium salt
65072-06-2 Hexanedioic acid, dimethyl ester, polymer with 1,4-butanediol and 1,2-ethanediol
65072-27-7 Benzoic acid, 4-[[1-hydroxy-6-[[[[5-hydroxy-6-[(2-methyl-4-sulfophenyl)azo]-7-sulfo-2-naphthalenyl]amino]-carbonyl]amino]-3-sulfo-2-naphthalenyl]azo]-, tetrasodium salt
65072-59-5 Benzoic acid, 5-[(4-aminophenyl)azo]-2-hydroxy-3-methyl-
65104-46-3 Nonanoic acid, 2,2-dimethyl-, oxiranylmethyl ester, polymer with 1,2-ethanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-furandione and 1,3-isobenzofurandione
65151-41-9 1,3-Naphthalenedisulfonic acid, 7,7'-[carbonylbis (imino(5-methoxy-2-methyl-4,1-phenylene)azo]]bis-, tetralithium salt
65168-18-5 1,3-Naphthalenedisulfonic acid, 7'-[carbonyl bis[imino(2-methyl-4,1-phenylene)azo]]bis-, tetralithium salt
65293-91-6 1*H*-Pyrazole-3-carboxylic acid, 4-[3-[3-carboxy-5-hydroxy-1-(4-sulfophenyl)-1*H*-pyrazol-4-yl]-2-propenylidene-4,5-dihydro-5-oxo-1-(4-sulfophenyl)-, disodium salt
65005-67-6 2-Propenoic acid, butyl ester, polymer with *alpha*-fluoro-*omega*-[2-[(2-methyl-l-oxo-2-propenyl)oxy]-ethyl]poly(difluoro methylene) and oxiranylmethyl 2-propenoate
67892-72-2 Nonanoic acid, 2,2'-dimethyl-,oxiranylmethyl ester, polymer with ethenylbenzene, 2-propenoic acid and 3a,4,7,7a-tetrahydro-1, 3-isobenzofurandione
67892-89-1 Cyanogen chloride, polymer with 4,4'-(1-methylethylidene)bis[2,6-dibromophenol] and 4,4'-(1-methylethylidene)-bis[phenol]
67893-12-3 1*H*-Indene-1,3(2*H*)-dione, 2-benzo[*f*]quinolin-3-yl-, monosulfo deriv.
*68081-80-1 1,3-Benzenedicarboxylic acid, polymer with 1,3-benzenediamine, 1,4-benzenedicarboxylic acid, and 2,4-diaminobenzenesulfonic acid calcium salt (2:1), reaction products with benzoyl chloride
68132-89-8 1,5-Naphthalenedisulfonic acid, 3-[[4-[(6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-5-methoxy-2-methylphenyl]azo]-, lithium salt, compd. with 2,2', 2"-nitrilotris[ethanol]
68140-23-8 1,3-Naphthalenedisulfonic acid, 7-[[4-[(8-amino-l-hydroxy-3-sulfo-2-naphthalenyl)azo]-5-methoxy-2-methoxy-2-methylphenyl]azo]-, lithium salt, compd. with 2,2', 2"-nitrilotris[ethanol]
*68188-78-3 Fatty acids, tall-oil, [2-(1-methylenenortall-oil alkyl)-4(5*H*)-oxazolylidene]bis(methylene) esters, polymers with acrylonitrile, Et acrylate and Me methacrylate
68239-31-6 2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, polymer with ethenylbenzene and tridecyl 2-methyl-2-propenoate
68311-01-3 9,12-Octadecadienoic acid (*Z,Z*)-, dimer, polymer with (chloromethyl)oxirane, 1,2-ethanediamine and 4,4'-(1-methylethylidene)bis[phenol]

Chemical Substances Removed From the TSCA Inventory—Continued

*68457-88-5	1,3,5-Triazine-2,4,6-triamine, C_{16-22}-alkyl methoxymethyl derivs.
68541-16-2	2-Propenoic acid, 2-methyl-, 3-(triethoxysilyl)propyl ester, polymer with 2-ethylhexyl 2-propenoate and 2-propenamide
68541-18-4	2-Propenoic acid, 2-methyl-, ethyl ester, polymer with butyl 2-propenoate and 3-(triethoxysilyl)propyl 2-methyl-2-propenoate
68541-79-7	2-Propenoic acid, 2-methyl-, 3-(triethoxysilyl)propyl ester, polymer with ethenylbenzene, 2-[ethyl (heptadecafluoro-octyl)-sulfonyl]amino]ethyl 2-propenoate and 2-hydroxyethyl 2-propenoate
*68551-54-2	Castor oil, hydrogenated, polymer with *p*-tert-butylbenzoic acid, pentaerythritol and phthalic anhydride
*68552-99-8	Fatty acids, vegetable-oil, polymers with phthalic anhydride and rosin
*68605-40-3	Fatty acids, tall-oil, [2-(1-methylenenortall-oil alkyl)-4(5*H*)-oxazolylidene]bis(methylene) esters, polymers with Bu methacrylate, 2-(diethylamino)ethyl methacrylate, hydroxyethyl acrylate and Me methacrylate
*68606-21-3	Glycols, C_{10-16}
*68649-56-9	1,3-propanediamine, *N,N'*-dimethyl-, reaction products with chlorinated polybutadiene
68758-91-8	2-Propenoic acid, 2-methyl-, butyl ester, polymer with 3-(triethoxsilyl)propyl 2-methyl-2-propenoate
68758-93-0	2-Propenoic acid, 2-methyl-, 3-(triethoxysilyl)propyl ester, polymer with isooctyl 2-propenoate and 2-propenamide
68797-37-5	2-Propenoic acid, 2-methyl-, 3-(triethoxylsilyl)propyl ester, polymer with ethenylbenzene, isooctyl 2-propenoate and 2-propenoic acid
*68815-22-5	Wastes, tonka bean extn.
*68908-41-8	2-Propenoic acid, 2-methyl-, 1-methyl-1,3-propanediyl ester, polymer with diethenylbenzene, ethenyl- ethylbenzene, methyl 2-propenoate and 2-propenenitrile, reaction products with triethylenetetramine
*68915-62-8	Fatty acids, lineseed-oil, [2-(1-methylenenorlinseed-oil alkyl)-4(5*H*)-oxazolylidene]bis(methylene) esters, polymers with Bu methacrylate, 2-(diethylamino)ethyl methacrylate, hydroxyethyl acrylate and Me methacrylate
*68951-88-2	Protein hydrolyzates, ammonium salts
*68951-89-3	Protein hydrolyzates, Et esters, hydrochlorides
*68951-90-6	Protein hydrolyzates, reaction products with oleoyl chloride, potassium salts
*68951-91-7	Protein hydrolyzates, reaction products with 10-undecenoyl chloride, compds. with triethanolamine
*68951-92-8	Protein hydrolyzates, reaction products with 10-undecenoyl chloride, potassium salts
*68952-05-6	Wastes, cola nut extn.
*68952-06-7	Wastes, *Liatris odoratissima* extn.
*68952-07-8	Wastes, hydrolyzed chicken feather
*68952-08-9	Wastes, vanilla bean extn.
*68952-15-6	Acid chlorides, coco, reaction products with protein hydrolyzates
*68952-16-9	Acid chlorides, coco, reaction products with protein hydrolyzates, compds. with triethanolamine
*68956-73-0	Phosphoric acid, di-C_{8-12}-alkyl esters, compds. with 2-ethyl-1-hexanamine
68964-64-7	Poly(oxy-1,2-ethanediyl), *alpha*-(3-carboxy-1-oxo-2-propenyl)-*omega*-isononylsulfophenoxy)-, disodium salt, (*Z*)-
*69011-41-2	2-Propenoic acid, methyl ester, polymer with diethenylbenzene, ethenylethylbenzene and 2-propenenitrile, hydrolyzed, reaction products with triethylenetetramine
69847-36-5	Manganate(1-), [3-hydroxy-4-[(4-methyl-2-sulfophenyl)azo]-2-naphthalenecarboxylato(3-)]-, hydrogen
69847-63-8	1,3-Benzenedicarboxylic acid, polymer with 1,3-benzenediamine, 1,4-benzenedicarboxylic acid and 2,4-diaminobenzenesulfonic acid calcium salt (2:1)
69858-13-9	Butanedioic acid, compd. with *tert*-dodecenamine
*70247-95-9	Phenol, sulfonated, condensed, sodium salts
70615-24-6	1,3-Benzenedicarboxylic acid, dimethyl ester, polymer with 1,3-diisocyanatomethylbenzene, dimethyl 1,4-benzenedicarboxylate, dimethyl nonanedioate and 1,2-ethanediol
*70892-39-6	Phenol, 4-amino-, reaction products with *m*-phenylenediamine, *p*- phenylenediamine, sodium sulfide (Na_2S), sulfur and *p*-toluidine
*70892-52-3	Formaldehyde, reaction products with *N,N'*-dimethyl-1,3-propanediamine and isobutylenated phenol
71002-44-3	Nickel, bis[(cyano-*N*) triphenylborato(1-)]bis (methanimine)-
71598-37-3	Cobaltate(1-), [4-hydroxy-3-[(2-hydroxy-1-naphthalenyl)azo]-*N*-(1-methylethyl) benzene-sulfonamidato(2-)][4-hydroxy-3-[(2-hydroxy-1-naphthalenyl)azo]-*N*-phenyl benzenesulfonamidato(2-)]-, hydrogen
*71608-42-9	Benzoic acid, 2-hydroxy-, reaction products with benzyl alc. and bisphenol A–1, 2-cyclohexanediamine-epichlorohydrin polymer
71878-16-5	Propanedioic acid, diethyl-, polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol
72102-94-4	Benzamide, 3,3'-[(2,5-dichloro-1,4-phenylene) bis [imino(1-acetyl-2-oxo-2,1-ethanediyl)azo]]bis[4-chloro-*N*-[2-(4-chlorophenoxy)-5-(trifluoromethyl)phenyl]-
72208-14-1	Benzenesulfonic acid, 4-[[3,5-bis[(dimethylphenyl)azo]-2,4-dihydroxyphenyl]azo]-,compd. with *N,N'*-bis(2-methylphenyl)guanidine
72208-16-3	Benzenesulfonic acid, 4-[[5-[(dimethylphenyl)azo]-2,4-dihydroxyphenyl]azo]-, compd. with *N,N'*-bis(2-methylphenyl)guanidine (1:1)
72208-18-5	Benzenesulfonic acid, 4,4'-[[5-[(dimethylphenyl)azo]-2,4-dihydroxy-1,3-phenylene]bis(azo)bis-, compd. with *N,N'*-bis(2-methylphenyl)guanidine (1:2)
72496-65-6	1-Naphthalenesulfonic acid, 5-[[2-amino-4-[[4-[2-(4-nitro-2-sulfophenyl)ethenyl]-3-sulfophenyl]azo] phenyl]azo]-, trisodium salt
72727-58-3	5-Octen-3-one, 2,7-dimethyl-
*73138-57-5	Fatty acids, tall-oil, [2-[1-(tall-oil alkyl)ethenyl]-4(5*H*)-oxazolylidene]bis(methylene) esters, polymers with Bu methacrylate, 2-[(1,1-dimethyl)amino]ethyl methacrylate and Me methacrylate
73179-38-1	Phosphoric acid, 2,5-dimethylphenyl bis(2,4,6-trimethylphenyl) ester
73179-40-5	Phosphoric acid, 2,5-dimethylphenyl diphenyl ester
73179-42-7	Phosphoric acid, 2,5-dimethylphenyl phenyl 2,4,6-trimethylphenyl ester
73179-45-0	Phosphoric acid, 2,5-dimethylphenyl 2,6-dimethylphenyl phenyl ester
73179-46-1	Phosphoric acid, 2,5-dimethylphenyl 2,6-dimethylphenyl 2,4,6-trimethyl phenyl ester
73179-47-2	Phosphoric acid, bis(2,5-dimethylphenyl) 2,4,6-trimethylphenyl ester
73179-48-3	Phosphoric acid, 2,5-dimethylphenyl bis(2,6-dimethylphenyl) ester

Chemical Substances Removed From the TSCA Inventory—Continued

73179-49-4	Phosphoric acid, bis(2,5-dimethylphenyl) 2,6-dimethylphenyl ester
73507-72-9	Chromate(3-), bis[3-[[(4,5-dihydro-3-methyl-5-oxo-1-phenyl-1*H*-pyrazol-4-yl)methylene]amino]-2-hydroxy-5-nitrobenzenesulfonato(3-)], trisodium
*74499-25-5	Fatty acids, soya, 2-(1-soya alkylethenyl)-4(5*H*)oxazolylidenebis(methylene) esters, polymers with acrylic acid, dodecyl methacrylate, Me methacrylate and styrene
74578-11-3	1,5-Naphthalenedisulfonic acid, 3,3'[carbonylbis [imino(2-methyl-4,1-phenylene)azo]]bis-, tetralithium salt
75752-18-0	1,3-Naphthalenedisulfonic acid, 7-[[4-[[[4-[(4,8-disulfo-2-naphthalenyl)azo]-2-methoxy-5-methylphenyl]amino]-carbonyl]-amino]-5-methoxy-2-methylphenyl]azo]-, tetralithium salt
75752-19-1	1,3-Naphthalenedisulfonic acid, 7-[[4-[[[4-[(4,8-disulfo-2-naphthalenyl)azo]-3-methylphenyl]amino]carbonyl]-amino]-2-methyl-phenyl]azo]-, tetralithium salt

*CAS Registry Numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representations.

Dated: Oct. 3, 1985.

Susan F. Vogt,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 85-24414 Filed 10-10-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 20, 1985

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on August 20, 1985.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that economic activity is probably expanding in the current quarter at a moderately faster rate than in the first half of the year. In July, industrial production continued to move somewhat higher and total retail sales rose modestly after two months of decline. On the other hand, housing starts fell somewhat in July. Information on business capital spending suggests further growth, though at a much less rapid pace than earlier in the economic expansion. Total nonfarm payroll employment continued to increase in July, although employment in manufacturing declined slight further. The civilian unemployment rate remained at 7.3 percent in July, unchanged since February. Broad measures of prices and wages appear to be rising at rates close to those recorded in 1984.

Since the Committee's meeting in July, the trade-weighted value of the dollar against major foreign currencies has depreciated further. The merchandise trade deficit widened in the second quarter to the highest rate on record. Both agricultural and nonagricultural exports fell substantially, while imports registered a small increase.

Based on data for July and early August, M1 has been growing relatively rapidly. Demand deposits have shown little change on balance, but other checkable deposits have expanded substantially. Growth in M2 has continued at around the upper end of its 1985 range, while relatively sluggish growth in M3 recently has brought this aggregate to the midpoint of its range. Expansion in total domestic nonfinancial debt has remaind high relative to the Committee's monitoring range for the year. Most interest rates have risen somewhat since the July meeting of the Committee.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee at the July meeting reaffirmed ranges for the year of 6 to 9 percent for M2 and 6 to 9½ percent for M3. The associated range for total domestic nonfinancial debt was reaffirmed at 9 to 12 percent. With respect to M1, the base was moved forward to the second quarter of 1985 and a range was established at an annual growth rate of 3 to 8 percent. The range takes account of expectations of a return of velocity growth toward more usual patterns, following the sharp decline in velocity duing the first half of the year, while also recognizing a higher degree of uncertainty regarding that behavior. The appropriatlleness of the new range will continue to be reexamined in the light of evidence with respect to economic and financial developments including developments in foreign exchange markets. More generally, the Committee agreed that growth in the aggregates may be in the upper parts of their ranges, depending on continuing developments with respect to velocity and provide that inflationary pressures remain subdued.

For 1986 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1985 to the fourth quarter of 1986, of 4 to 7 percent for M1, 6 to 9 percent for M2, and 6 to 9 percent for M3. The associated range for growth in total domestic nonfinancial debt was provisionally set at 8 to 11 percent for 1986. With respect to M1 particularly, the Committee recognized that uncertainties surrounding recent behavior of velocity would require careful reappraisal of the target range at the beginning of 1986. Moreover, in establishing ranges for next year, the Committee also recognized that account would need to be taken of experience with institutional and depositor behavior in response to the completion of deposit rate deregulation early in the year.

In the implementation of policy for the immediate future, the Committee seeks to maintain the degree of pressure on reserve positions sought in recent weeks. This action is expected to be consistent with growth in M2 and M3 at annual rates of around 8½ and 6½ percent, respectively, during the period from June to September. M1 growth is expected to slow from its recent pace, but given the rapid growth in recent weeks, expansion over the June-to-September period may be at an 8 to 9 percent annual rate. Somewhat greater restraint would be acceptable in the event of substantially higher growth in the monetary aggregates. Somewhate lesser restraint would be acceptable in the event of substantially slower growth. In either case such a change would be considered in the context of appraisals of the stength of the business expansion, developments in foreign exchange markets, progress against inflation, and conditions in domestic and international credit markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, October 7, 1985.

Stephen H. Axilrod,

Secretary.

[FR Doc. 85-24452 Filed 10-10-85; 8:45 am]

BILLING CODE 6210-01-M

[1] The Record of policy actions of the Committee for the meeting of August 20, 1985, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

FEDERAL TRADE COMMISSION

Commission Proposal To Introduce New Procedures into the FTC Cigarette Testing Methodology and To Solicit Comments

AGENCY: Federal Trade Commission.

ACTION: Announcement of Commission Proposal to Implement New Procedures into the FTC Cigarette Testing Methodology and Commission Request for Comments on Specific Questions Concerning the New Procedures.

SUMMARY: This document announces the Commission's proposal to implement new procedures in its cigarette testing methodology and its determination to request further comment on specific questions regarding the proposed new procedures. The Commission will accept comments until December 10, 1985.

FOR FURTHER INFORMATION CONTACT: Judith P. Wilkenfeld, Federal Trade Commission, Bureau of Consumer Protection, Washington, D.C. 20580, (202) 376-8648.

COMMENTS: Comments should be filed in Room 136, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580, no later than December 10, 1985.

SUPPLEMENTARY INFORMATION: On April 13, 1983, the Commission announced its determination that the present FTC cigarette testing methodology does not assess Barclay cigarettes accurately and requested comments on possible testing modifications. 48 FR 15953, clarified 48 FR 22992 (May 23, 1983). On June 4, 1984, the Commission issued a **Federal Register** Notice (49 FR 23120) reopening the comment period to receive additional comments. The April 13, 1983, Federal Register Notice proposed for consideration two specific cigarette holders for use on the FTC testing machine: (1) MKII Filtrona holder and (2) a form rubber ring modification (the Philip Morris or PM holder). It also solicited comments on one general proposal, that is, development of a holder designed to block 1, 2, or 3 ventilation channels of a Barclay cigarette. The June 4, 1984, notice reiterated the same proposals and also solicited comments on a new holder, the "Kamm" holder. Summaries of the comments have been placed on the public record in this matter.[1]

In addition to receiving comments on possible testing modifications, the Commission entered into an interagency agreement with the Department of Energy, Oak Ridge National Laboratory (ORNL) to test the three proposed cigarette holders and assist the Commission in designing an overall proposal for modifying the FTC method of testing cigarettes. The results of that testing as well as additional communications from the principal researcher, Dr. Roger Jenkins, have been placed on the public record.

As a result of its review of the comments and the ORNL test results, the Commission is announcing its intention to implement two new proposed procedures as additions to the FTC testing methodology. These procedures, which are described below, are not being implemented at this time. Instead, the Commission is soliciting comments on them and inviting commenters to proposed other alternatives.

I. Proposal One—Screening Procedure

A screening procedure that identifies filter cigarettes that are significantly affected by the pressure at which they are smoked, held or handled and/or are influenced by the draping of lips over the end of the filter during smoking will become the first step in the testing protocol. The screening procedure will be performed on a resistance to draw measurement device (Instrument Technical Representative's Model PDI/DDI Combination Pressure Drop/Dilution Tester) and will use both the PM holder and the Kamm holder.

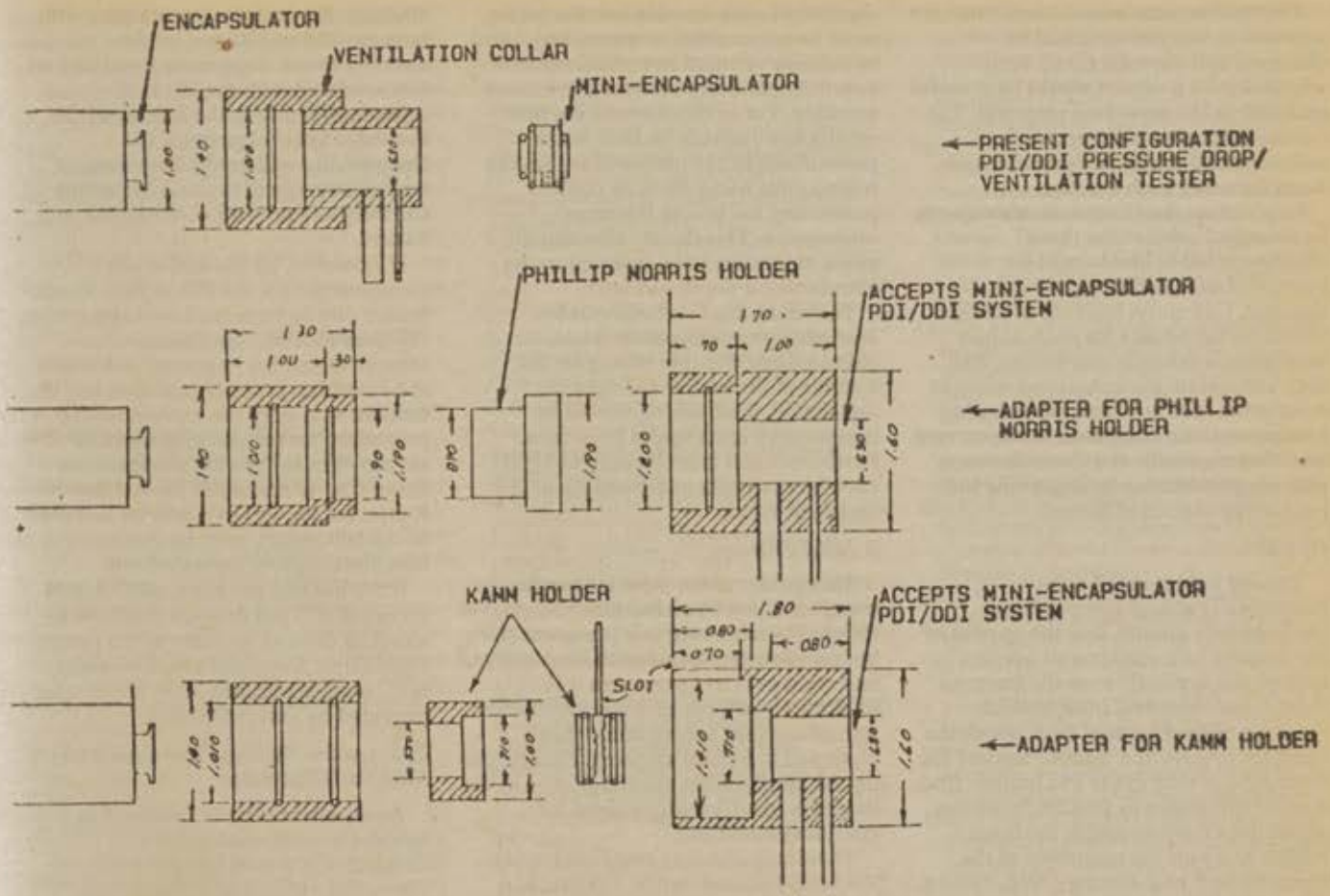
A sample of each brand of filter cigarettes will be tested for RTD/pressure drop using first the measurement device unaltered and then the same procedure with the device modified with two holders—the PM holder, and the Kamm holder pressurized to 100 inches of water.[2] Those brands exhibiting a pressure drop change of 25% or 20mm of water between the standard testing and one or both of the two modified testing configurations (PM and Kamm) will be excluded from the regular testing procedure. these cigarettes will be tested for tar, nicotine and CO ratings under one of the alternatives listed in Proposal Two, *infra*. cigarettes that do not exhibit such large changes in RTD will continue to be tested for tar, nicotine and CO ratings under the current procedure.

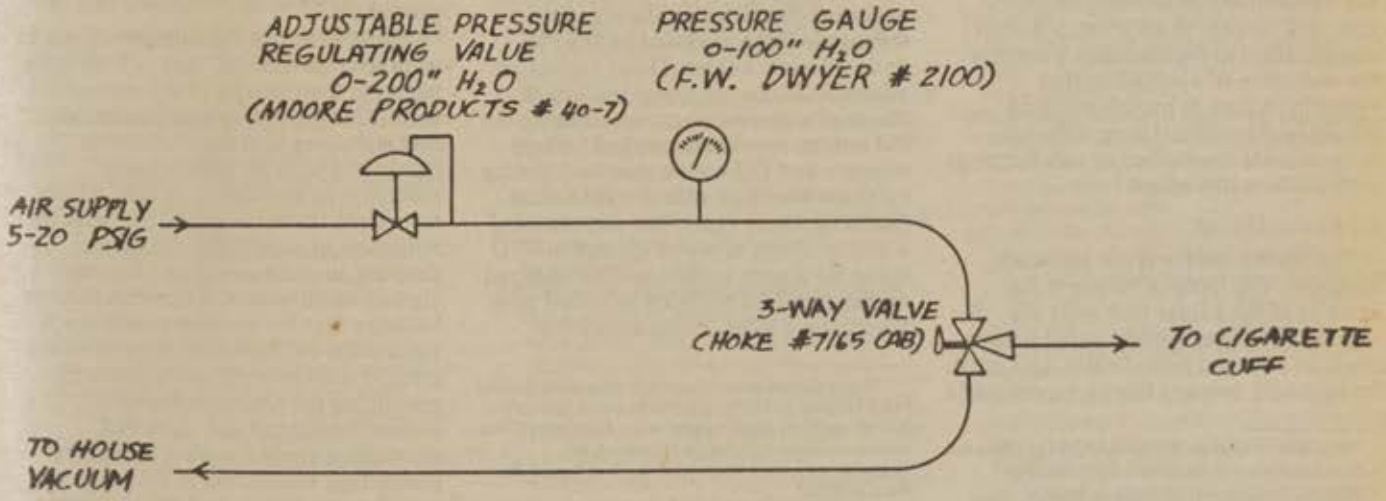
The Commission proposes to measure the RTD of all filter cigarettes under the three test configurations because RTD is an excellent measure of the extent of the changes in ventilation of a filter cigarette when subjected to pressure or simulated lip drape. At present, it is the only practical methodology for measuring, on a wide-scale basis, changes occurring in filter cigarettes as they are subjected to different testing configurations. However, our consultants have suggested that if a simple method existed to measure directly degree of ventilation using the three test configurations detailed above (standard, PM and Kamm), it would be a preferable procedure because changes in the degree of ventilation relate directly to, and in fact cause, changes in tar delivery of filter cigarettes. The consultants further believe that a simple collar could be designed to be used in the PDI/DDI testing, which would allow testing of ventilation characteristics directly. The collar would be constructed of glass or cast acrylic and would fit into the PDI/DDi cigarette encapsulator and be able to encapsulate the PM and Kamm holder (slightly different designs will be necessary for the two holders). Below are detailed diagrams of what the consultant believes the devices could look like as well as appropriate dimensions.

BILLING CODE 6750-01-M

[1] No comments were received on the general proposal (blocking of 1, 2 or 3 channels). In addition, our consultants believed it to be an unworkable proposal. We will, therefore, exclude it from future considerations.

[2] If the Kamm holder is modified to withstand greater pressure (as reguested *infra*) we will raise the pressure to 150 to 200 inches of water, which would more closely approximate the ventilation reduction observed.


ENCAPSULATOR
VENTILATION COLLAR
MINI-ENCAPSULATOR
←PRESENT CONFIGURATION PDI/DDI PRESSURE DROP/ VENTILATION TESTER
PHILLIP MORRIS HOLDER
ACCEPTS MINI-ENCAPSULATOR PDI/DDI SYSTEN
←ADAPTER FOR PHILLIP MORRIS HOLDER
KANN HOLDER
SLOT
ACCEPTS MINI-ENCAPSULATOR PDI/DDI SYSTEN
←ADAPTER FOR KANN HOLDER


ADJUSTABLE PRESSURE REGULATING VALVE 0-200" H_2O (MOORE PRODUCTS # 40-7)
PRESSURE GAUGE 0-100" H_2O (F.W. DWYER # 2100)
AIR SUPPLY 5-20 PSIG
3-WAY VALVE (HOKE #7165 CAB)
TO CIGARETTE CUFF
TO HOUSE VACUUM

The Commission seeks comments on whether such a device could be designed and manufactured, and whether such a device would be a useful addition to the screening proposal. The Commission also is interested in soliciting assistance in designing and manufacturing such a collar.

In addition, the Commission's experts have suggested that the three recommended holders could be improved with additional design changes. Currently, because of design problems the results for each holder vary somewhat from test-to-test, and may understate the actual reduction in ventilation that has been measured in human smoking compared to the current test. Consequently, the Commission is soliciting assistance in improving the holders as described below.

(1) PM

The PM holder is the most theoretically straightforward and mechanically simple. It is the easiest of the devices to maintain and use, but may produce variable results because there is no objective, independent measure of the firmness with which the operator presses the cigarett against the foam rubber stop in the PM holder. And, a small difference in that firmness can affect the extent to which the foam rubber seals off the periphery of the cigarette butt end. During ORNL testing, differences in RTD values were obtained by two different operators using the PM holder. In addition, the PM holder may understate the degree of reduction of ventilation that occurs when Actron filter cigarettes are smoked by humans.

Therefore, a design modification to standardize the pressure of insertion of the tested cigarettes would be desirable. such a device could be a modification to the holder itself or an independent insertion device. In addition, a design modification to replicate more exactly the reduction of ventilation that typically occurs in human smoking would be desirable. Using different materials for the baffles or annular rings may achieve this effect.[3]

(2) Kamm holder

The Kamm holder is mechanically complex. The flexible tubing in the interior of the holder that grips the cigarette requires special maintenance, must be changed periodically, and must be specially ordered from a supplier at a significant cost. In addition, the tubing must be pressurized to a very high level to achieve ventilation reductions that approximate those observed in human smoking. Yet at those levels the test results are variable. In fact, when pressurized to 150 inches of water, the tubing pulls away from its contact points and the holder becomes inoperative. This device also should allow cigarettes to be inserted to the standardized depth of 10mm.

Therefore, for this holder to be workable on a wide-scale basis, standardized flexible tubing for the interior of the holder needs to be developed. Such tubing should be inexpensive and require little care. Furthermore, it must be able to yield consistent results at a pressure of 200 inches of water.

3. MKII Filtrona

This holder is the most mechanically complex of the three holders.[5] When it is inflated to relatively low pressures (50 inches of water) it becomes inoperative, and even at lower pressures it is unlikely to achieve realistic ventilation reductions that approximate those observed in human smoking. Finally, the dental dam (rubber sheeting) used in the device is insufficiently rugged for continual operation.

Therefore, changes required for the the MKII Filtrona would include, at a minimum, replacement of the dental dam and tubing with material that could remain operative at pressures up to 200 inches of water.[6]

II. Proposal Two—Test Procedures for Excluded Cigarettes

A. Current Test Modified with Kamm and/or PM Holders

The Commission would conduct a standard tar/nicotine assay of the excluded cigarettes on the standard testing machine modified by the PM and/or Kamm holder. Those cigarettes whose RTD change exceeded 25% or 20mm of water when screened using the PM holder, would be assayed for tar/nicotine and CO on the standard testing machine modified with the PM holder. Similarly, those cigarettes experiencing a 25% or 20mm of water change in RTD using the Kamm holder, will be assayed on the standard machine modified with the Kamm holder. Those cigarettes "failing" the screening procedure with both the PM and Kamm holders will be assayed twice, once using the standard test modified with the PM holder and once modified with the Kamm holder. For these latter cigarettes, the Commission will report both a range and an average of the two tar/nicotine/CO numbers arrived at during the two assays.

If, however, by the end of the comment period, the PM and/or Kamm holder can be improved, as suggested in the prior section, the Commission intends to use the improved holders in the screening procedure, and to use the holders to modify the current testing procedure for tar, nicotine and CO ratings. The ratings for all cigarettes listed (*i.e.*, with the PM holder, the Kamm holder, or both) will be included in the test report, with an explanation of how the numbers were derived.

If the holders are not modified, this proposal will not provide numbers as exact as desired because of the design limitations. Nevertheless, the numbers will be more accurate than the number provided by current testing.

B. Standard Testing Procedure with Modified Cigarettes

As an alternative to Proposal A, if the holders are not modified the Commission would test the excluded cigarettes using only the standard (unmodified) assay testing procedure. However, the assay test or the excluded cigarettes would be done twice, once with all the intake holes on the cigarette filter taped shut and once as is normally done with the cigarette unaltered. The resulting tar/nicotine and CO numbers obtained from these two assays would then be average. The average number would be reported in test reports, accompanied by an explanation of the procedure.

Again, although the ratings will not be as precise as desired, they will be more accurate than results of the current tests. This procedure provides results that simulates that results of tests conducted with an approximate reduction in ventilation of 50%, which tests have shown is consistent with the reduction of ventilation in human smoking in some ventilated low tar cigarettes. However, if the manufacture believes that the average reduction in ventilation estimated by the test was too great, it may refute these number by presenting the Commission with a properly designed and executed ventilation study showing the correct percentage ventilation in actual human smoking conditions and the resultant tar/nicotine/CO numbers from a

[3] This device also should be modified to allow for a 10mm insertion of the tested cigarette. It is important that this insertion depth be used to maintain comparability with the standard FTC test methodology.

[5] The proposed new procedures do not involve the MKII Filtrona holder at present because this holder has the most mechanical problems. However, if this holder could be sufficiently improved, the Commission would consider using it in lieu of the Kamm holder.

[6] The holder should also provide for a 10mm insertion depth.

standard assay. The Commission would then report the numbers derived from the manufacturer's test.

The Commission will carefully consider comments on all aspects of its proposed screening procedure and alternative test procedures for cigarettes excluded for the current test by the screening procedure.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-24356 Filed 10-10-85; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction and Waiting Period Terminated Effective—

(1) 85-1002—Loews Corporation's proposed acquisition of voting securities of CBS, Inc.—September 11, 1985

(2) 85-1004—GoldStar TeleElectric Co., Ltd.'s proposed acquisition of voting securities of Vodavi Technology Corporation—September 11, 1985

(3) 85-1023—Sural Corporation's, (Ralph J. Roberts, UPE) proposed acquisition of assets of Maclean Hunter Limited—September 11, 1985

(4) 85-1038—General Electric Company's proposed acquisition of Elano Corporation; Elano-East Corporation, Acme Screw Products Corp.; Enlo, Inc.; and certain real property used by the above ("Elano Group"), (C.J. Nutter, UPE)—September 11, 1985

(5) 85-1044—The Vinton Corporation's proposed acquisition of voting securities of Arkansas Cement Corporation, (Arkla, Inc., UPE)—September 11, 1985

(6) 85-1045—WEI Associates, L. P.'s proposed acquisition of assets of Westinghouse Electric Corp.—September 11, 1985

(7) 85-1058—Lehigh Valley Industries Inc.'s proposed acquisition of voting securities of Nico, Inc.—September 11, 1985

(8) 85-1076—Georgia-Pacific Corporation's proposed acquisition of assets of Convenience Products Division, (R.B. Pamplin Corporation, UPE)—September 11, 1985

(9) 85-1078—Robert Fleming Holdings Limited's proposed acquisition of assets of F. Eberstadt & Co., Inc., (Federal Research Corporation, UPE)—September 11, 1985

(10) 85-1080—Nortek, Inc.'s proposed acquisition of voting securities of Transway International Corporation—September 11, 1985

(11) 85-1008—SFC Agribusiness, Inc.'s proposed acquisition of assets of Superior Farming Company, (Mobil Corporation, UPE)—September 13, 1985

(12) 85-1082—Colgate-Palmolive Company's proposed acquisition of voting securities of Institutional Financing Services, Inc., (Michael J. Rippey, UPE)—September 13, 1985

(13) 85-1105—Amoco Corporation's proposed acquisition of assets of John J. Christmann—September 13, 1985

(14) 85-1132—Sudbury Holdings, Inc.'s proposed acquisition of voting securities of Iowa Mold Tooling Co., Inc.—September 13, 1985

(15) 85-1087—Kotobuki Fudosan Ltd.'s proposed acquisition of voting securities of Kentwod Spring Water, Inc., (Louise L. Levy, UPE)—September 16, 1985

(16) 85-1036—Owens Corning Fiberglass Corporation's proposed acquisition of voting securities of Hitco; Oregon Metallurgical Corporation; Ladish Co.; CHR Industries, Inc.; and Olympic Fastening Systems, Inc., (Armco, Inc., UPE)—September 17, 1985

(17) 85-1097—ITT Corporation's proposed acquisition of assets of BankAmerica Corporation—September 17, 1985

(18) 85-1103—PSA, Inc.'s proposed acquisition of voting securities of Statex Petroleum, Inc.'s, (CalMat Co., UPE)—September 17, 1985

(19) 85-1092—Robert S. Jepson, Jr.,'s proposed acquisition of assets of Fairchild Burns Company, (Fairchild Industries, Inc., UPE)—September 18, 1985

(20) 85-1015—Chrysler Corporation's proposed acquisition of voting securities of Newco, a corporate joint venture—September 18, 1985

(21) 85-1066—Mitsubishi Heavy Industries, Ltd.'s proposed acquisition of voting securities of Newco, a corporate joint venture—September 18, 1985

(22) 85-1096—Walgreen Co.'s proposed acquisition of assets of Ribordy Drugs, Inc., (Denis Ribordy, UPE)—September 18, 1985

(23) 85-1098—American Medical International, Inc.'s proposed acquisition of assets of Anclote Manor Hospital, Inc.—September 18, 1985

(24) 85-1011—MidCon Corp.'s proposed acquisition of voting securities of United Energy Resources, Inc.—September 19, 1985

(25) 85-1012—MidCon Corp.'s proposed acquisition of voting securities of United Energy Resources, Inc.—September 19, 1985

(26) 85-1020—MidCon Corp.'s proposed acquisition of voting securities of United Texas Transmission—September 19, 1985

(27) 85-1050—First Savings Association's of Orange, Texas proposed acquisition of voting securities of Gulf Coast Investment Corp., (Mary Cullinan Cravens, UPE)—September 19, 1985

(28) 85-1051—First Savings Association's of Orange, Texas proposed acquisition of voting securities of Gulf Coast Investment Corp., (Malcolm Cravens, UPE)—September 19, 1985

(29) 85-1090—Nalco Chemical Company's proposed acquisition of voting securities of Day-Glo Color Corp.—September 19, 1985

(30) 85-1130—ConAgra, Inc.'s proposed acquisition of voting securities of Cropmate Company, (Scoular Investment, UPE)—September 19, 1985

(31) 85-1140—Craig Hall's proposed acquisition of voting securities of May Petroleum Inc.—September 19, 1985

(32) 85-1161—Central Life Assurance Company's proposed acquisition of voting securities of B.C. Christopher and Company—September 19, 1985

(33) 85-1174—Multimedia, Inc.'s proposed acquisition of voting securities of M M Acquiring Corp.—September 19, 1985

(34) 85-1075—USLICO Corporation's proposed acquisition of voting securities of International Bank—September 20, 1985

(35) 85-1067—Ryder System, Inc.'s proposed acquisition of voting securities of Aviall, Inc.—September 23, 1985

(36) 85-1068—Ryder System, Inc.'s proposed acquisition of voting securities of Aviall, Inc.—September 23, 1985

(37) 85-1147—Halliburton Company's proposed acquisition of assets of a Division of Warren Oilfield Services Company, (DeNovo Resources, Inc., UPE)—September 23, 1985

(38) 85-1148—GB-Inno-BM S.A.'s proposed acquisition of voting securities of A-OK of Delaware, Inc.—September 23, 1985

(39) 85-1156—Hutzler Brothers Company's proposed acquisition of B A Acquisition Corp., (B. A. Realty Associates, UPE)—September 23, 1985

(40) 85-1021—Gannett Co., Inc.'s proposed acquisition of assets of radio station KTKS-FM, Denton, Texas, (American Broadcasting Companies, Inc., UPE)—September 24, 1985

(41) 85-1122—Abbott Laboratories' proposed acquisition of voting securities of Boston Scientific Corporation—September 24, 1985

(42) 85-1134—Crown X, Inc.'s proposed acquisition of assets of TriMedical Professional Managers, Inc.—September 24, 1985

(43) 85-1157—Federated Development Company's proposed acquisition of voting securities of Horizon Corporation—September 24, 1985

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Legal Technician,

Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-24357 Filed 10-10-85; 8:45 am]

BILLING CODE 6750-01-M

Delegation of Authority To Review Health Warning Rotation Plans Submitted Pursuant to the Comprehensive Smoking Education Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Pursuant to Reorganization Plan No. 4 of 1961, the Commission has delegated its authority under the Comprehensive Smoking Education Act to review health warning rotation plans to the Associate Director for Advertising Practices.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Judith P. Wilkenfeld, Program Advisor, Cigarette Advertising and Testing, 6th and Pennsylvania Avenue NW., Washington, DC 20580 (202) 376-6648.

SUPPLEMENTARY INFORMATION: Authority to review health warning rotation plans submitted pursuant to section 4(c) of the Comprehensive Smoking Education Act, as amended by sections 11, 12 and 13 of the Nurse Education Amendments of 1985, has been delegated by the Commission to the the Associate Director for Advertising Practices. Where significant issues not previously considered by the Commission are present, however, those plans will be referred by the Associate Director for Advertising Practices to the Commission in the first instance. This delegation is authorized by section 1(a) of Reorganization Plan No. 4 of 1961. The Commission believes that this delegation will enhance efficiency and result in expedited treatment of these plans.

Pursuant to section 1(b) of the Reorganization Plan, the Commission will retain the the discretionary right to review the actions of the delegate. Any petitioner may, within thirty (30) days of the delegate's action, file with the Secretary of the Commission a request that the full Commission review the action. If no review is sought by petition of a party of intervenor in such action, or upon the Commission's own initiative within thirty days of such action, or if such review is sought and denied within this time period, the delegate's action shall be deemed, for all purposes, to be the action of the Commission.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-24415 Filed 10-10-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 4, 1985.

Health Care Financing Administration

Subject: Medicaid Management Information System—HCFA-R-4—Extension (0938-0247)

Respondents: State/local governments

Subject: Medicaid Program Budget Report—HCFA-25—Extension (0938-0101)

Respondents: State/local governments

Subject: Annual Expenditure Report for Home and Community Based Waivers—HCFA-372—Revision (0938-0272)

Respondents: State/local governments

Subject: Section 2405.3 of the Provider Reimbursement Manual—Single Day Method for Counting Interns and Residents to Facilitate Payment of Indirect Medical Education Costs—HCFA-R-68—New

Respondents: Businesses or other for-profit institutions

Subject: Information Collection Requirements in Subpart J—Hospital Conditions of Participation—HCFA-R-48—Extension (0938-0328)

Respondents: Businesses or other for-profit institutions, non-profit institutions, small businesses or organizations

Subject: Survey of Section 2176 Home and Community Based Medicaid Waiver Programs (Survey for the Developmentally Disabled and Chronically Mentally Ill)—Survey for the Impaired Elderly or other Physically Disabled Programs)—HCFA 431—Reinstatement (0938-0349)

Respondents: State/local governments, small businesses or organizations

OMB Desk Officer: Fay S. Iudicello

Public Health Service

Health Resources and Services Administration

Subject: Indian Health Service Community Health Representative Activity Reporting—New

Respondents: State/local governments

Respondents: Quarterly Debt Management Report (QDMR) for Schools Participating in the Nursing and Health Professions Student Loan Programs—Extension (0915-0046)

Respondents: Non-profit institutions

Centers for Disease Control

Subject: Health Risk Appraisal (HRA) Community Evaluation Study—New

Respondents: Individuals or households

OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Medical Device Registration—Extension (0910-0060)

Respondents: Drugs and medical device manufacturers

OMB Desk Officer: Bruce Artim

Social Security Administration

Subject: Establishment Reporting Plan List of Establishments or Reporting Units—SSA-5019—Revision (0960-0005)

Respondents: Businesses or other for-profit institutions

Subject: Quarterly Application for Grant Award—OCSE-65—Extension (0960-0239)

Respondents: State/local governments

Subject: Final Regulation—Information Collection Requirements Contained in Regulations that Implement the Majority of the Provisions of the Child Support Enforcement Amendments of 1984—Revision (0960-0385)

Respondents: Individuals of households, state/local governments, small businesses or organizations

OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington,

D.C. 20503, Attn: (name of OMB Desk Officer)

Dated: October 7, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-24423 Filed 10-10-85; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) **Federal Register**, Vol. 49, No. 133, pp. 28119-28122, dated July 10, 1984) is amended to reflect the Associate Administrator for Management and Support Services approval of changes to the organizational structure within the Office of the Associate Administrator for Policy, Bureau of Eligibility, Reimbursement and Coverage (BERC), Office of Reimbursement Policy (ORP), of HCFA. A brief summary of the changes follows:

- The ORP Division of Provider Payment and Policy (DPPP) has been abolished to achieve sound position management within ORP. The functions and staff of DPPP have been consolidated with two other divisions within ORP.
- The organizational list of the Division of Audit and Payment Policy (DAPP), also in ORP, has been changed to the Division of Payment and Reporting Policy (DPRP), to more accurately reflect the responsibilities of the division.
- The Division of Dialysis and Transplant Payment Policy (DDTPP), is amended by deleting the functional statement and replacing it with a new division functional statement that reflects the addition of specific functions previously done in DPPP. The administrative code remains the same.

The specific changes to Part F. are detailed below:

- Section FQ.20.4.d. is amended by the following actions:

1. Delete Section FQ.20.4.d., Division of Provider Payment Policy, in its entirety.

2. Delete the functional statement for Section FQ.20.A.4.e., Division of Audit and Payment Policy and replace it with the revised functional statement and new organizational title. The administrative code remains the same.

e. Division of Payment and Reporting Policy (FQA58)

Develops and evaluates national policies, regulations, and standards for reimbursement of the costs incurred by providers of services including hospitals not under the prospective payment system (PPS) and other classes of providers under both the health insurance and medical assistance programs. Collaborates in and coordinates the development of overall payment policies involving prospective payment and cost reimbursement. Ensures that interrelated policies are consistent. Directs the planning and analysis of Medicare reimbursement initiatives including studies and recommendations for solutions to program related problems. Evaluates the effectiveness of general payment policies in meeting the goals and objectives of HCFA. Evaluates and interprets policy issues and initiatives that cross Division lines, such a PPS under Medicare and State cost control systems. Provides technical and advisory services to HCFA, the Department of Health and Human Services (DHHS), officials at the policymaking level, and to officials with similar authority within the executive branch, congressional committees, individual congressmen, and private organizations interested in HCFA's reimbursement policies. Initiates and collaborates in the development and review of legislative proposals on general Medicare and Medicaid payment policies, interprets law (considering intent), and develops policy directives and basic payment policy decision statements which derive from such applicable law and which are reflective of the minimum requirements of such law (i.e., the broad parameters). Develops detailed reimbursement specifications which constitute the basis for regulations promulgating reimbursement policies and pertinent public notices. Reviews and evaluates written regulations to be certain they are technically complete and accurately reflect specifications as developed. Develops and issues implementing instructions consistent with overall payment policy, directives, and specifications applicable to Medicare. Reviews alternative reimbursement and rate-setting systems for potential adaptation to the health insurance and medical assistance programs. Compiles materials, reports, and decisional memoranda and makes recommendations for action by principal administrative policymakers and congressional staffs on Federal health care programs. Establishes policies, principles, and guidelines related to circumstances requiring typical reimbursement practices. Plans, develops, and maintains a continuing program of surveillance and evaluation of HCFA auditing, accounting practices, general payment policy, and billing procedures at Central Office, regional intermediary, and carrier levels which impact on Office of Reimbursement Policy (ORP) functions in order to identify emerging problems and to develop and promulgate corrective policies and procedures. Collaborates with other components in maintaining consistency among the various payment activities conducted within ORP. Formulates and evaluates national policies for all Medicare and Medicaid program provider financial filing and reporting requirements. Develops policies pertaining to the use of all reporting forms, schedules, and related instructions necessary for reimbursing health care institutions. Receives and analyzes all reported expense data from providers and health care institutions facilities and serves as a source of information on payment data for HCFA and DHHS. Develops policies pertaining to the validity of accounting and audit policies and procedures. Develops and maintains a system of internal controls for the validation of policy decisions. Provides intepretation of overall cost and charge reimbursement policies to regional offices, State agencies, Medicare contractors, providers of services, other health care facilities, congressional staffs, other DHHS offices, and others. Identifies problem areas and develops solutions to such problems, as appropriate. Maintains continuing liaison with Medicare contractors' advisory groups, provider associations, the American Institute of Certified Public Accountants, and others. Chairs the Technical Advisory Group. Develops policies related to accounting and auditing of provider costs and policies for assisting States in implementing programs for auditing institutions participating in Medicare assistance programs. Provides technical assistance to regional offices, Medicare contractors, and State agencies on the application of cost-based data reporting requirements and policies and procedures for cost accounting and audit. Formulates and evaluates national policies governing reimbursement of skilled nursing facilities (SNFs, home health agencies (HHAs), hospital outpatient departments, outpatient physical therapy facilities, and comprehensive outpatient rehabilitation facilities under the health insurance program and the medical assistance plans. Develops

policies pertaining to determining the reasonable costs and charges, where appropriate, for the services of these providers and facilities. Prepares and evaluates regulations, program guidelines and instructions for providers, Medicare contractors, and State agencies related to reimbursement for the services of these providers and facilities. Formulates the basic principles and policies for developing and applying limitations to the costs of health care. Develops methods for classifying SNFs and HHAs and their service for the purpose of developing effective limitations. Develops and evaluates the criteria for exceptions to the limitations and reviews and makes decisions on the intermediary recommendations on provider's requests for exceptions. Analyzes cost data, develops actual limitations which will be applied to health care costs, promulgates required notices of limitations, and issues companion instructions and policies needed to implement the limitations. Works with other offices of the Department of Health and Human Services (DHHS) in developing changes in the cost reimbursement system which are designed to improve provider efficiency through the use of financial incentives or penalties. Reviews policies and operational guidelines and instructions developed by other components for their impact on reimbursement and cost containment policies for these providers and facilities. Provides interpretations of established policies and technical assistance on the application of reimbursement and cost limits policies to regional offices, State agencies, Medicare contractors, providers of services and health care facilities, congressional staffs, and other DHHS offices. Maintains continuing liaison with provider assocations and others. Participates in the development and evaluation of proposed legislation pertaining to reimbursement and cost containment for these providers and facilities. Provides centralized data extraction, maintenance, and anlysis services for the Office of Reimbursement Policy. Provides data and/or analysis to other HCFA components on request.

3. Delete the functional statement for Section FQ.20.A.4.f., Division of Dialysis and Transplant Payment Policy and replace it with the revised functional statement.

f. Division of Dialysis and Transplant Payment Policy (FQA59).

Formulates and evaluates policies for reimbursing services under the EndStage Renal Disease (ESRD) program. Establishes policies and procedures for reimbursing ESRD services, transplantation, physician reimbursement, kidney acquisition including payments, organ procurement, histocompatibility services, home and self-dialysis training, and other medical items and services related to the ESRD program. Serves as the focal point in HCFA for coordinating ESRD policies that frequently cross Bureau lines. Prepares regulations, manuals, program guidelines, and other general instructions in these policy areas. Formulates and evaluates accounting policy for payments through ESRD delivery systems. Establishes policies, procedures, and criteria from reimbursing payment exceptions for ESRD facilities. Processes such requests and determines which ESRD facilities should be granted exceptions to national payment rates. Analyzes reimbursement data, develops payment rates for ESRD services, and updates rates. Develops and performs professional evaluation of reimbursement data for rate setting, exceptions processing, and program evaluation. Provides technical assistance in the development of cost reporting and audit programs for ESRD facilities. Provides liasion with the Veterans Administration and other insurers of dialysis and transplant services. Conducts special studies and reviews of ESRD reimbursement as necessary for rate setting and program evaluation purposes. Maintains continuing liaison with ESRD provider groups, industry associations, patient organizations, medical associations, and related parties. Reviews policies developed by other components for their impact on the ESRD program. Provides interpretations of established policies to regional offices, State agencies, fiscal intermediaries, suppliers of services, congressional staff, and other Department of Health and Human Services offices. Provides technical assistance to regional offices, States, and intermediaries. Participates in the development and evaluation of proposed legislation pertaining to the ESRD program and organ transplant issues. Formulates and evaluates national policies governing reimbursement of ambulatory surgical centers under the health insurance program and the medical assistance plans. Develops policies pertaining to determining the reasonable costs and charges, where appropriate, for the services of these facilities. Prepares and evaluates regulations, program guidelines, and instructions for providers, Medicare contractors, and State agencies related to reimbursement for the services of these facilities. Formulates the basic principles and policies for developing and applying limitations to the costs of health care. Reviews policies and operational guidelines and instructions developed by other components for their inpact on reimbursement and cost containment policies for these facilities. Provides interpretations of established policies and technical asistance on the application of reimbursement and cost limits policies to regional offices, State agencies, Medicare contractors, providers of services and health care facilities, congressional staffs, and other DHHS offices. Maintains continuing liaison with provider associations and others. Participates in the development and evaluation of proposed legislation pertaining to reimbursement and cost containment for these facilities.

Dated: October 3, 1985.

Bartlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 85-24424 Filed 10-10-85; 8:45 am]

BILLING CODE 4120-01-M

Food and Drug Administration

Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Ophthalmic Devices Panel to reflect a change in the agenda and the meeting date. The panel will meet on October 17, 1985 only. The announcement of the Ophthalmic Devices Panel meeting, which was published in the **Federal Register** of September 27, 1985 (50 FR 39178), is revised to read as follows:

Ophthalmic Devices Panel

Date, time, and place. October 17, 1985, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12:30 p.m.; closed committee deliberations, 12:30 p.m. to 5 p.m.; Mary Elizabeth Jacobs, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

General function of the committee. The committee reviews and evaluates available data on the safety and

effectiveness of devices currently in use and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person. Those desiring to make formal presentations should notify the contact person before October 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's) and neodymium:yttrium-aluminum-garnet (Nd:YAG) lasers and specific PMA's for these devices. The committee will also discuss PMA's for contact lenses, other ophthalmic devices, and requirements for PMA approval.

Closed committee deliberations. The committee will review trade secret or confidential commercial information regarding PMA's for IOL's and Nd:YAG laser PMA's. This portion of the meeting will be closed to permit discussion of this information.

(5 U.S.C. 552b(c)(4))

Dated: October 4, 1985.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-24359 Filed 10-10-85; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the meeting of the Immunology Devices Panel scheduled for October 24 and 25, 1985. The meeting was announced by notice in the Federal Register of September 27, 1985 (50 FR 39176).

FOR FURTHER INFORMATION CONTACT: Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

Dated: October 7, 1985.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-24361 Filed 10-10-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0452]

Public Health Service Implementation Plans for Attaining the Objectives for the Nation; Nutrition Goals; Announcement of Study; Notice of Meetings and Request for Data and Information

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB) is (1) undertaking a study of the scientific community's views on the progress that the Public Health Service (PHS) has made in implementing its plans for attaining its nutrition goals for 1990 of promoting health and preventing disease; (2) inviting submission of scientific data, information, and views on this topic; (3) providing an opportunity for presentation of written and oral views, information, and data at the open meetings of the ad hoc Review Panel on Nutrition Goals, and (4) providing notice of closed meetings of the ad hoc Review Panel on Nutrition Goals.

DATES: The meetings of the ad hoc Review Panel on Nutrition Goals will be held on Thursday, October 31, and Friday, November 1 (open meetings); and on Thursday, November 14, and Friday, November 15 (closed meetings). All meetings will begin at 9 a.m.

Written comments, data, and information from organizations or individuals about PHS's progress toward achieving the nutrition goals set forth in the PHS implementation plans may be submitted until November 8, 1985. Requests to make oral presentations at the open meetings must be made in writing, be postmarked before October 18, 1985, and be received by FASEB and by the Dockets Management Branch by October 25, 1985.

ADDRESSES: Data and information should be submitted as follows: two copies to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and five copies to Kenneth D. Fisher, Life Sciences Research Office of the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Written requests to make oral presentations should be directed to both addresses above. The open and closed meetings will be held at the Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814 301-530-7030.

SUPPLEMENTARY INFORMATION: FDA is announcing that FASEB, under its contract with FDA (No. 223-83-2020), will undertake a study of the scientific community's views on the progress that PHS has made in implementing its plans for attaining its nutrition goals for 1990 of promoting health and preventing disease. In response to a request from FDA, the Scientific Steering Group that FASEB established under the contract recommended that the Life Sciences Research Office appoint an ad hoc panel to study this matter. As a result, the Life Sciences Research Office has established the ad hoc Review Panel on Nutrition Goals (ad hoc Review Panel).

A public conference, convened in Atlanta in 1979, focused on PHS's goal to improving the quality of the health of the U.S. population. The difference between this conference and those that had preceded it was that the emphasis of this conference, as reflected in the publication that grew out of it, "Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention," was on health promotion and disease prevention rather than on the cure of existing diseases. As a result of this meeting, PHS established a number of major target areas for its programmatic efforts to increase the role of individuals in improving the quality of their lives. One of these target areas was nutrition.

In a publication that it issued in 1983, "Promoting Health, Preventing Disease: Public Health Service (PHS) Implementation Plans for Attaining the Objectives for the Nation," PHS listed its 15 major nutrition goals. These goals included reducing the prevalence of those diseases that could be affected by nutrition (e.g., hypertension, iron deficiency anemia, elevated cholesterol, and obesity); increasing consumer knowledge about nutrition and its impact on health (e.g., knowledge about the relationships between components of foods and disease/syndrome states and about the balance that must be achieved between food intake and

exercise to effect a loss in body weight); and improving the quality of information on nutrition available to the public (e.g., in physicians' offices, cafeterias, and schools). Each nutrition goal was presented in the form of a 10-year plan, with an end-point designed to permit measurement of success or failure.

The Office of the Assistant Secretary for Health (OASH) designated FDA's Center for Food Safety and Applied Nutrition (CFSAN) to monitor PHS activities that are intended to achieve these goals.

The year 1985 marks the mid-point in the 10-year plan for achievement of these goals. CFSAN has been asked to report to OASH on the status of PHS's efforts to achieve these goals.

The purpose of FASEB's study is to provide an objective assessment of PHS's efforts. The report of the ad hoc Review Panel will provide CFSAN with a synopsis of the opinions of the knowledgeable scientific community on the actual status of these efforts and on the effects that these efforts have had (as measured by such indices as morbidity/mortality/birth records, hospital records, and surveys on health and nutrition). The ad hoc Review Panel will also report on whether existing nutrition goals should be modified to make their attainment more reasonable or realistic.

The ad hoc Review Panel will be composed of members of the Scientific Steering Group and other experts in the matters that will be studied, which are outlined above. A list of the members of the Panel may be obtained by writing to the contact person (address above). In accordance with 21 CFR 14.15(b)(1), notice is given that the ad hoc Review Panel will hold open public meetings at which opportunity will be provided for organizations and individuals to present written and oral views, information, and data on progress in attaining the nutrition goals. The meeting will be held at 9 a.m. on October 31 and November 1 at the Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

This notice invites submission of scientific information, data, and reports on progress on attaining the nutrition goals for consideration by the ad hoc Review Panel. Two copies of any information and data should be submitted to FDA's Dockets Management Branch (address above) and should be identified with the docket number found in brackets in the heading of this document. Five copies of any information and data should be submitted to the Life Sciences Research Office (address above). The deadline for receipt of such information is November 8, 1985. Written requests to make oral presentations should be sent to the addresses above, must be postmarked before October 18, 1985, and be received by October 25, 1985.

The ad hoc Review Panel will meet after the conclusion of the public meeting on November 1 and again on November 14 and 15 in executive session to consider all the information and views received at the open meetings, written submissions, and all other published data and information obtained by the ad hoc Review Panel in the course of its study. These meetings are being announced as required by 21 CFR 14.15(b)(1).

Dated: October 8, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-24474 Filed 10-9-85; 10:58 am]

BILLING CODE 4160-01-M

National Institutes of Health

Recombinant DNA Advisory Committee Working Group on Gram Positive Bacteria; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Working Group on Gram Positive Bacteria at the National Institutes of Health, Building 31A, Conference Room 4, 9000 Rockville Pike, Bethesda, Maryland 20892, on December 2, 1985, from approximately 9:00 a.m. to 5:00 p.m. to discuss an exchanger list for the gram positive Eubacteriales. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. Elizabeth Milewski, Executive Secretary, Recombinant DNA Advisory Committee Working Group on Gram Positive Bacteria, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland, telephone (301) 496-6051.

Dated October 3, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number of title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual program listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 85-24391 Filed 10-10-85; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Advisory Committee Working Group on Viruses; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Working Group on Viruses at the National Institutes of Health, Building 16, Stone House, 9000 Rockville Pike, Bethesda, Maryland 20892, on November 12, 1985, from approximately 9:00 a.m. to 4:30 p.m. to discuss containment for the use of retrovirus vectors and oncogenes. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained ffom Dr. Stanley Bargan, Executive Secretary, Recombinant DNA Advisory Committee Working Group on Virsus, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland, telephone (301) 496-6051.

Dated October 3, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number of title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual

program listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 85-24392 Filed 10-10-85; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program, Board of Scientific Counselors Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U. S. Public Health Service, in the Conference Center, Building 101, South Campus National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on October 29 and 30, 1985.

The meeting will be open to the public from 9:00 a.m. until adjournment on October 29. The preliminary agenda with *approximate* times are as follows:

Review of NIEHS/NTP Chemical Pathology Branch Program:

9:00 a.m.-12:00 noon—Overview and presentations on intramural and extramural projects in tumor pathology and toxicologic pathology.

1:00 p.m.-4:30 p.m.—Presentation on intramural and extramural projects in laboratory animal management and experimental pathology. Concluding remarks.

The meeting on October 30 will be open to the public from 8:30 a.m. to 12:15 p.m. The preliminary agenda with *approximate* times are as follows:

8:30 a.m.-8:45 a.m.—Report of the Director, NTP.

8:45 a.m.-9:00 a.m.—Status Report on Reproductive and Developmental Toxicology Program Review Subcommittee Activity.

10:00 a.m.-10:00 a.m.—NIEHS/NTP Concept Reviews.

10:15 a.m.-10:45 a.m.—Discussion of Levels of Evidence of Carcinogenicity.

10:45 a.m.-12:15 p.m.—Peer Review and Priority Ranking of Chemicals Nominated for NTP Testing. (Seven chemicals will be reviewed. Two, ellagic acid and alpha-terpineol, were nominated as a result of a class study on Wood Chemicals and Associated Industries, and are listed in the **Federal Register**, Volume 50, No. 66, p. 13666, April 5, 1985. Five chemicals are members of the class of glycol ethers and acetates, being: 2-ethoxyethanol; 2-methoxyethanol; 2-butoxyethanol acetate; 2-ethoxyethanol acetate; and 2-methoxyethanol acetate.)

In accordance with the provisions set forth in section 552b(c)(6) Title 5 U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 30 from approximately 1:00 p.m. to adjournment for further evaluation of NIEHS/NTP programs in chemical pathology, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Excecutive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Traingle Park, North Carolina 27709, telephone (919) 541-3971, FTS 629-3971, will have available a roster of Board members and expert consultants and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: September 25, 1985.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 85-24393 Filed 10-10-85; 8:45 am]
BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Filing of Plats of Survey

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A supplemental plat showing subdivision or original lots 1, 2 and 3 in section 4, Township 7 North, Range 2 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1985 and was officially filed August 14, 1985.

A plat representing a survey of Tract 37 in Township 8 North, Range 15 West, Gila and Salt River Meridian, Arizona, was accepted on September 13, 1985 and was officially filed September 13, 1985.

A plat representing a survey of Tract 37 in Township 9 North, Range 13 West, Gila and Salt River Meridian, Arizona, was accepted on September 13, 1985 and was officially filed September 13, 1985.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing amended lottings in section 27, Township 4 North, Range 3 East, Gila and Salt River Meridian, Arizona, was accepted July 2, 1985 and was officially filed July 3, 1985.

A plat representing a dependent resurvey of a portion of the south boundary (First Standard Paralled South) and a portion of the subdivisional lines of Township 5 South, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted July 24, 1985 and was officially filed July 26, 1985.

These plats were prepared at the request of the Bureau of Land Management, Arizona State Office, Branch of Lands and Minerals Operations.

A plat representing a dependent resurvey of portions of the south and north boundaries and the east boundary of section 7 and a survey of the subdivision of section 7 and the metes-and-bounds survey of lot 6, Section 7, Township 39 North, Range 7 East, Gila and Salt River Meridian, Arizona, was accepted July 24, 1985 and was officially filed July 26, 1985.

This plat was prepared at the request of the Bureau of Land Management, Arizona Strip District.

A plat representing a dependent resurvey of the east boundary of Tract 37 and a survey of Tract 38 in unsurveyed Township 3 North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted July 29, 1985 and was officially filed July 31, 1985.

A supplemental plat showing a subdivision of original lot 1, section 5, Township 10 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted August 8, 1985 and was officially filed August 9, 1985.

These plats were prepared at the request of the U.S. Forest Service, Region 3.

A plat (in two sheets) representing a dependent resurvey of portions of the north and west boundaries, and subdivisional lines, and a survey of the subdivisions in sections 5 and 30, Township 17 North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted September 23, 1985 and was officially filed September 25, 1985.

A plat representing a dependent resurvey of a portion of the north and east township boundaries and subdivisional lines, and a survey of the subdivisions in section 1, Township 18 North, Range 6 West, Gila and Salt River Meridian, Arizona, was accepted August 2, 1985 and was officially filed August 6, 1985.

These plats were prepared at the request of the U.S. Forest Service, Coconino National Forest and Prescott National Forest, respectively.

2. These plats will immediately become the basic records for describing

the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Mangement, P.O. Box 16563.

Jerrold E. Knight,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 85-24417 Filed 10-10-85; 8:45 am]

BILLING CODE 4310-32-M

Nevada; Filing of Plats of Survey and Order Providing for Opening of Lands

October 2, 1985.

1. The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on November 12, 1985.

Mount Diablo Meridian, Nevada

T. 34 N., R. 54½ E.

2. The above township is situated about 3 miles W. of Elko, Nevada and the elevation varies from 5,100 to 5,400 feet above sea level. The soil consists of sandy clay and gravel. Vegetation consists of scattered sagebrush and cheatgrass. There is no timber within the township.

Access into the area is provided by numerous desert trail roads.

Principal users of the area are cattlemen.

No mineral formations of consequence were noted during the survey.

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m., on November 12, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

4. The Plats of Survey of lands described below were accepted August 21, 1985 and were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on September 9, 1985.

Mount Diablo Meridian, Nevada

T. 35 N., R. 38 E.,
Supplemental Plat.
T. 34 N., R. 54 E.,
Dependent Resurvey.
T. 33 N., R. 55 E.,
Dependent Resurvey.
T. 34 N., R. 55 E.,
Dependent Resurvey.
T. 31 N., R. 56 E.,
Dependent Resurvey and Section Subdivision.
T. 32 N., R. 56 E.,
Dependent Resurvey.
T. 31 N., R. 57 E.,
Dependent Resurvey and Section Subdivision.
T. 32 N., R. 57 E.,
Dependent Resurvey.

The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning the surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Lacel E. Bland,

Acting Deputy State Director, Operations.

[FR Doc. 85-24418 Filed 10-10-85; 8:45 am]

BILLING CODE 4310-HC-M

[OR 26329 et al.]

Realty Action Direct Sale of Public Land in Lake County, OR

The following lands are suitable for sale under section 203 (and 209) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (and 1719), at no less than the appraised fair market value.

Serial No.	Legal description	Acreage	Value	Minimum bid deposit (percent)	Bidding procedure
OR 26329	T. 26S., R. 14E., Willamette Meridian, Oregon Sec. 5: Lots 14 and 15	10	$500.00	30	Direct.
OR 26408	T. 26S., R. 17E., Willamette Meridian, Oregon Sec. 28: E½ SW¼ SE¼ NE¼, W½ SE¼ SE¼ NE¼	10	500.00	30	Do.
OR 39049	T. 39S., R. 25E., Willamette Meridian, Oregon Sec. 33: SW¼ NW¼ NE¼, N½ NW¼ SW¼ NE¼	15	(1)	30	Do.
OR 39050	T. 36S., R. 24E., Willamette Meridian, Oregon Sec. 30: NE¼ NE¼ NW¼.	10	(1)	30	Do.

[1]To be determined.

The above described land(s) are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

The sale will be held on Wednesday, December 18, 1985, at the Bureau of Land Management, Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630. These parcels represent four (4) existing landfill sites which are currently under authorization to and operated by Lake County. These parcels are not suitable for management by another Federal agency and no significant resource values will be affected by this disposal. The sale is in conformance with BLM's planning for the land involved and the public interest will be best served by offering this land for sale.

Bidders Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state in which the land is located.

Direct Sale Procedures

Direct sale procedures are being used since a competitive sale is not appropriate and the public interest would be best served by the direct sale because it would ensure continued landfill operation.

The identified parcels are being offered to Lake County using direct sale procedures authorized under 43 CFR 2711.3-3. The land will be sold at fair market value to Lake County without competitive bidding.

The prospective purchaser is required to render a minimum deposit of thirty (30) percent of the purchase price of each parcel by Wednesday, December 18, 1985, and the balance within 180 days of the above date. If the deposit is not submitted or the full purchase price not rendered within 180 days of the sale date, the preference right is cancelled, and the deposit will be forfeited.

Terms and Conditions of the Sale

The terms, conditions and reservations applicable to the sale are as follows:

1a. As to parcel #OR 26329, all minerals in lot 15 will be reserved to the

United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

1b. As to parcels #OR 26408, or 39049 and OR 39050, the mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estates, (*with the exception of the oil and gas, geothermal steam and associated geothermal resources which will be reserved to the United States*), in accordance with Section 209 of the Federal Land Policy and Management Act, 43 U.S.C. 1719. All qualified bidders must include with their bid deposit(s), a non-refundable $50.00 filing fee, per parcel, for the conveyance of the mineral estates.

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patients will be issued subject to all valid existing rights and reservations of record.

4. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not fully consistent with the Federal Land Policy and Management Act or other applicable laws.

Unsold Parcels

If any of the parcels identified in this notice are not sold on Wednesday, December 18, 1985, the parcels will remain available to the county until sold or withdrawn from the market.

Comments

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, Lakeview, Oregon. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: October 2, 1985.

Dana Shuford,

Acting District Manager.

[FR Doc. 85-24416 Filed 10-10-85; 8:45 am]

BILLING CODE 4310-33-M

National Public Lands Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for National Public Lands Advisory Council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the Bureau of Land Management's National Public Lands Advisory Council.

The Council consists of 21 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1981, the terms of seven members on the Council will expire on December 31, 1985. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for 3 years, beginning January 1, 1986, and expiring December 31, 1988.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATE: Nominations should be received by the Bureau of Land Management by November 15, 1985.

ADDRESS: Persons wishing to nominate individuals to serve on the Council should send biographical data that includes name, address, profession, and other relevant information about the candidate's qualifications to: Director (150), Bureau of Land Management, Room 5558 MIB, Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

The function of the Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Mangement, on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the Bureau of Land Management.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expenses a rates prevailing for Government employees.

FOR FURTHER INFORMATION: Karen Slater, Bureau of Land Management (150), Room 5558 MIB, Department of the Interior, Washington, DC 20240, Telephone: (202) 343-2054.

Robert F. Burford,

Director.

October 1, 1985.

[FR Doc. 85-24445 Filed 10-10-85; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Intention to Extend Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969,970; 16 U.S.C. 20d), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession permit with The Piscataway Company, Inc., authorizing it to continue to provide boat slip rental, boat repairs, sailboat rental and instructions, and restaurant facilities and services for the public at Fort Washington Marina, National Capital Parks-East, for a period of nine (9) months from January 4, 1986, through October 3, 1986.

This extension is being prepared to allow additional time for the National Park Service to consider a potential transfer of this operation to the State of Maryland. If the transfer to the State of Maryland is not approved by December 31, 1985, an additional 3 months will be added to the extension proposed, in order to allow the National Park Service time to prepare its contract proposal for a longer term concession contract.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner is performing its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on January 3, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the extension of the contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, National Capital Region, 1100 Ohio Drive SW., Washington, DC 20242, for information as to the requirements of the contract extension.

Dated: September 13, 1985.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 85-24442 Filed 10-10-85; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service Interior.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: October 18, 1985, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764-0159. (717) 719-7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discusssion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with The Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764-0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1-¾ miles north of Narrowsburg, NY, Damascus Township, Pennsylvania.

Dated: September 30, 1985.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 85-24443 Filed 10-10-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-253X]

Bear Creek Mainline Railroad, Abandonment Exemption; Grant County, OR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment of 2.57 miles of line by Bear Creek Mainline Railroad at or near Seneca, OR.

DATES: This exemption is effective on October 10, 1985. Petitions to reopen must be filed by October 30, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. AB-253X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Hy Addison, 200 South Michigan Ave., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229 Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5400.

Decided: September 27, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Sterrett did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-24464 Filed 10-10-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 271X)]

Burlington Northern Railroad Company Abandonment, In Marshall County, OK; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.80-mile line of railroad between milepost 603.70 and milepost 604.50 near Madill, in Marshall County, OK.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 12, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by October 21, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 31, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 1, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-24463 Filed 10-10-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-255X]

Frankfort & Cincinnati Railroad—Abandonment Exemption—in Franklin County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Frankfort & Cincinnati Railroad of its 7.0 miles of track: (a) beginning at Frankfort, KY (milepost 0.00) and extending to Stagg, KY (milepost 2.0).

and (b) beginning at Frankfort, KY (milepost 0.00) and extending to Elsinore, KY (milepost 5.0), in Franklin County, KY.

DATES: This exemption will be effective on November 11, 1985. Petitions to stay must be filed by October 21, 1985, and petitions for reconsideration must be filed by October 31, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB–255X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's Representative: M. P. Silver, Frankfort & Cincinnati Railroad, One Post Office Square, Boston, MA 02109

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: October 3, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Sterrett did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85–24465 Filed 10–10–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–43 (Sub–No. 129)]

Illinois Central Gulf Railroad Company—Abandonment—in Monroe, Randolph, and St. Clair Counties, IL: Findings

The Commission has issued a certificate authorizing the Illinois Central Gulf Railroad Company to abandon its 32.0–mile rail line between Red Bud (milepost 610.0) and Tolson (milepost 642.0) in Monroe, Randolph, and St. Clair Counties, IL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85–24467 Filed 10–10–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84–37]

Donald S. Kavanagh, Jr., D.D.S.; Partial Revocation of Registration; Grant of Application

On August 31, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Donald S. Kavanagh, Jr., D.D.S. of 1407 Pine Street, Martinez, California 94553 (Respondent), an Order to Show Cause proposing to revoke his DEA Certificate of Registration, AK1458795, and to deny Respondent's renewal application, executed on November 28, 1983, for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated upon the respondent's controlled substance-related felony conviction on May 18, 1983, in the Superior Court of the State of California, County of Contra Costa. The Respondent timely requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in San Francisco, California on February 13, 1985. Administrative Law Judge Francis L. Young presided. On June 6, 1985, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. On June 26, 1985 Government counsel filed exceptions to Judge Young's recommended ruling pursuant to 21 CFR 1316.66. On August 1, 1985, the Administrative Law Judge transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in 1982 the California Bureau of Narcotic Enforcement (BNE) Office in San Francisco received phone calls from pharmacies in the area where Respondent was practicing, expressing concern about the prescription writing practices of Respondent with regard to the drug Demerol. Agents of the California BNE obtained copies of prescriptions for Demerol written by Respondent. The agents then attempted to interview the individuals whose names and addresses were written on the prescriptions as the patient. Five "patients" who could be located were interviewed. Of the five "patients" interviewed, all stated that they had not gone to Respondent for treatment on or near the date on which the prescriptions for Demerol had supposedly been written for them. They all stated that, either they had never received any treatment from Respondent, or had been treated on some occasion, but had not received any special medication like Demerol.

Subsequently the agents attempted to interview Respondent. The agents spoke briefly with Respondent and asked for his prescribing records. Respondent said he would get them and left the room. He never returned to speak to the agents. The agents however, remained at Respondent's office and reviewed his patient charts. The agents determined that there was no notation in the patient charts that the patients for whom Demerol prescriptions had supposedly been written had seen Respondent for treatment on or near the dates of the prescriptions for Demerol bearing their names. Many of the patient charts showed that the individuals had never seen the Respondent for treatment or received any medication from him. Some of the records remained in the files from the dentist from whom Respondent had bought the practice in 1979.

During the course of the investigation the agents of the California BNE determined that in addition to obtaining Demerol by writing false prescriptions, Respondent had also obtained large quantities of Demerol and Dexedrine from May 1979 through June 1982 from drug wholesalers. Respondent had obtained about 264 vials of Demerol and about 17,000 tablets of Dexedrine from wholesalers using DEA order forms. Demerol and Dexedrine are Schedule II controlled substances.

Based on the evidence submitted, the Administrative Law Judge concluded that all of the Demerol and Dexedrine obtained by Respondent was used by himself in an abusive fashion. None of it was sold or given to anyone else. Respondent had been abusing controlled substances since 1972.

On or about May 31, 1983, the District Attorney for the County of Contra Costa, California, filed a two-count information charging Respondent with violations of California Health and Safety Code Section 11350, the unlawful, will ful and felonious possession of a controlled substance. On May 18, 1983, Respondent pled guilty to the information. On June 1, 1983, Respondent was sentenced to three years probation, 180 days in the Contra Costa County Jail which was suspended, a $1,500 fine, and 600 hours of volunteer professional community service. Dr. Kavanagh was also ordered to submit to drug and alcohol testing. Therefore, there is a lawful basis for the revocation of Respondent's registration and for the denial of his renewal application. 21 U.S.C. 824(a)(2).

Subsequently, an Accusation was filed against Respondent with the California Board of Dental Examiners seeking to suspend or revoke his license to practice dentistry. In an order dated May 31, 1985, effective June 3, 1985, the Board of Dental Examiners adopted an agreement that had been reached between Respondent and that Board in which Respondent's dental practice license was placed on probation for five years. Dr. Kavanagh was required to surrender his DEA Schedule II controlled substance privilege and to participate in a drug rehabilitation program approved by the Dental Board.

The Administrative Law Judge found that Respondent suffers from a "chemical dependency" which was the cause of his conduct. He concluded that this illness is treatable in appropriate treatment programs and one can attain recovery which involves complete abstinence from mind-altering substances and a change in one's way of life and thinking about drugs.

In 1982, Respondent entered a treatment program for his drug abuse problem. At the hearing in this matter Respondent admitted that his sole motivation for entering the program was "to look good" since there was a State Board Investigation pending. At that time, Respondent did not have a sincere commitment to control his problem.

Judge Young determined that Respondent entered a bona fide chemical dependency treatment program in November, 1984, and since that time he has been "in recovery." The Administrative Law Judge concluded that Respondent no longer denies his illness and has completely abstained from all mind-altering substances since November 1984.

It was established at the hearing that in order for Respondent to practice his profession effectively, he needs to be able to prescribe pain medication and occasionally something for pre-appointment anxiety. Testimony at the hearing indicated that it is extremely important for this Respondent to maintain his professional status as a dentist. Respondent is aware that should be violate his recovery agreement, he will lose his dental license as well as his DEA registration.

Judge Young was impressed with Respondent's sincerity and his recovery record thus far. He recommended that Dr. Kavanagh be registered in Schedules III, IV and V. Although Respondent applied for registration in Schedule II, he cannot be registered by DEA to prescribe, dispense or administer Schedule II controlled substances since he is not authorized to do so by the State of California. *James A Brown, M.D.*, 50 FR 21150 (1985); *George P. Gotsis, M.D.*, Docket No. 83-19, 49 FR 33750 (1984); *Kenneth E. Wilson, D.D.S.*, 46 FR 25018 (1981).

The Administrator has considered the record of this proceeding and adopts the Administrative Law Judge's opinion and recommended ruling, findings of fact and conclusions of law in its entirety. The Administrator believes that Respondent is well on the road to rehabilitation. Registration at this time will give the Respondent an opportunity to demonstrate that he can handle controlled substances responsibly.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 CFR 0.100(b), hereby orders that DEA Certificate of Registration AK1458795, previously issued to Donald S. Kavanagh, Jr., D.D.S., be, and it hereby is, revoked as to Schedule II controlled substances. The Administrator further orders that Dr. Kavanagh's renewal application be granted as to Schedules III, IV and V substances only. This order is effective immediately upon publication.

Dated: October 7, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-24407 Filed 10-10-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB

reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics
Survey of displaced workers
CPS 1
Other—one-time survey, to be conducted as a special supplement to the January 1986 Current Population Survey
individuals or households.

Survey universe includes approximately 60,000 households; respondents burden is estimated at approximately 1,450 hours; supplement will utilize available space on regular CPS questionnaire. The Current Population Survey (CPS) is the monthly household survey that provided the basic data on the labor force, total employment, and unemployment. The special CPS supplement on displaced workers, proposed for January 1986, would provide data on the persons who lost jobs over the 1981–85 period due to plant closing, companies going out of business, or layoffs from which they were not recalled. A similar survey was conducted in January 1984.

Revision

Employment and Training Administration
ETA Summaries—Unemployment Trust Fund Activities
1205–0154; ETA 2112, 8401, 8405, 8413, 8414
Monthly
State or local governments
106 respondents; 15,263 hours; 5 forms
Information is used to monitor State Employment Security Agencies Trust Fund Transactions and activities.

Revision

Employment and Training Administration
Implementing Regulations for Programs under Title IV of the Job Training Partnership Act
1205–0213, No forms
Biennially; As needed
State or local governments
Varying respondents; 2800 burden hours; no form.

This implements the Master Plan for Indian and Native American Programs under Title IV, Part A, labor market information programs under Title IV, Part E and changes in Job Corps under Title IV, Part B of the JTPA. The information, guidelines and requirements are critical for the national administration of programs operated by eligible recipients.

Revision

Employment and Training Administration
ETA Validation Handbook, No. 361, Chapter IV A
1205–0055; ETA Handbook No. 361
Annually
State or local governments
53 respondents; 33,920 hours; no forms.

The ETA Management information system must provide sufficiently credible information upon which management can make policy decisions, insure credible reports to the Congress and the President, and in the case, of UI, insure fair distribution of funds. The validation process attempts to insure the accuracy and comparability of reported data to the system.

Extension

Occupational Safety and Health Administration
Respiratory Protection
1218–0099; OSHA 274
Recordkeeping; labeling
Businesses or other for profit; federal agencies or employees;
Small businesses or organizations
160,507 respondents; 3,342,831 hours, 0 forms.

Information is to be collected by employers to assure that employees who must wear respiratory protection devices are properly protected and issued the type of devices appropriate to the hazard.

Extension

Occupational Safety and Health Administration
Assured Equipment Grounding Conductor Program Records
1218–0062; OSHA 227
On occasion
Businesses or others for profit; small businesses or organizations
225,000 respondents; 4,675 hours; 0 forms.

Construction employers are required to use one of two different compliance methods, one of which is the assured grounding program. These records are needed so that compliance with the requirements of the assured grounding program can be checked. The records consist of a written description of the employer's program.

Reinstatement

Employment and Training Administration
Administrative Procedures—20 CFR Part 601
1205–0222
As needed
State or local governments
52 respondents, 52 hours; 1 form.

Requires States to submit copies of their unemployment compensation laws for approval by the Secretary of Labor, as well as all relevant State materials which allow the Secretary to make findings required by the Internal Revenue Code, Social Security Act, and Wagner-Peyser Act.

Signed at Washington, DC, this 8th day of October 1985.

Harry E. Echols, Jr.,

Acting Departmental Clearance Officer.

[FR Doc. 85–24436 Filed 10–10–85; 8:45 am]
BILLING CODE 4510–30–M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Alaska

This notice announces the ending of the Extended Benefit Period in the State of Alaska, effective on September 21, 1985.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of

insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Alaska on January 20, 1985, and has now triggered off.

Determination of an "Off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on August 31, 1985, and the immediatley preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending September 21, 1985.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC, on October 3, 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

[FR Doc. 85-24375 Filed 10-10-85; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The annual list of labor surplus areas is effective on October 1, 1985.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, United States Employment Service (Attention: TEESS), 601 D Street, NW., Washington, DC 202-376-6191.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus ares. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981, (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas.

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

Pursuant to those regulations the Assistant Secretary of Labor is publishing the annual list of labor surplus areas for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC, on October 7, 1985.

Robert T. Jones,

Acting Deputy Assistant Secretary of Labor.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986

Eligible labor surplus areas	Civil jurisdictions included
Alabama:	
Autauga County	Autauga County.
Baldwin County	Baldwin County.
Barbour County	Barbour County.
Bibb County	Bibb County.
Birmingham City	Birmingham City in Jefferson County.
Blount County	Blount County.
Bullock County	Bullock County.
Butler County	Butler County.
Calhoun County	Calhoun County.
Cherokee County	Cherokee County.
Chilton County	Chilton County.
Choctaw County	Choctaw County.
Clarke County	Clarke County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Colbert County	Colbert County.
Conecuh County	Conecuh County.
Covington County	Covington County.
Crenshaw County	Crenshaw County.
Cullman County	Cullman County.
Dallas County	Dallas County.
De Kalb County	Ke Kalb County.
Dothan City	Dothan City in Houston County.
Escambia County	Escambia County.
Etowah County	Etowah County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Greene County	Greene County.
Hale County	Hale County.
Henry County	Henry County.
Jackson County	Jackson County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Limestone County	Limestone County.
Lowndes County	Lowndes County.
Macon County	Macon County.
Marengo County	Marengo County.
Marion County	Marion County.
Marshall County	Marshall County.
Mobile City	Mobile City in Mobile County.
Balance of Mobile County	Mobile County less Mobile City.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
Perry County	Perry County.
Pickens County	Pickens County.
Pike County	Pike County.
Randolph County	Randolph County.
Russell County	Russell County.
Shelby County	Shelby County.
St. Clair County	St. Clair County.
Sumter County	Sumter County.
Talladega County	Talladega County.
Tallapoosa County	Tallapoosa County.
Tuscaloosa City	Tuscaloosa City in Tuscaloosa County.
Walker County	Walker County.
Washington County	Washington County.
Wilcox County	Wilcox County.
Winston County	Winston County.
Alaska:	
Bethel Census Area	Bethel Census Area.
Fairbanks North Star Borough	Fairbanks North Star Borough.
Haines Borough	Haines Borough.
Kenai Peninsula Borough	Kenai Peninsula Borough.
Ketchikan Gateway Borough	Ketchikan Gateway Borough.
Kobuk Census Area	Kobuk Census Area.
Matanuska-Susitna Borough	Matanuska-Susitna Borough.
Nome Census Area	Nome Census Area.
Prince of Wales Outer Ketchikan Area	Prince of Wales Outer Ketchikan Area.
Sitka Borough	Sitka Borough.
Skagway Yakutat Angoon Census Area	Skagway Yakutat Angoon Census Area.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Southeast Fairbanks Census Area.	Southeast Fairbanks Census Area.
Valdez Cordova Census Area.	Valdez Cordova Census Area.
Wade Hampton Census Area.	Wade Hampton Census Area.
Wrangell-Petersburg Census Area.	Wrangell-Petersburg Census Area.
Yukon-Koyukuk Census Area.	Yukon-Koyukuk Census Area.
Arizona:	
Apache County	Apache County.
Gila County	Gila County.
Graham County	Graham County.
La Paz County	La Paz County.
Mohave County	Mohave County.
Navajo County	Navajo County.
Pinal County	Pinal County.
Santa Cruz County	Santa Cruz County.
Yuma County	Yuma County.
Arkansas:	
Ashley County	Ashley County.
Chicot County	Chicot County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Cleveland County	Cleveland County.
Conway County	Conway County.
Crittenden County	Crittenden County.
Cross County	Cross County.
Desha County	Desha County.
Drew County	Drew County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Grant County	Grant County.
Hot Spring County	Hot Spring County.
Jackson County	Jackson County.
Lafayette County	Lafayette County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Mississippi County	Mississippi County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Nevada County	Nevada County.
Newton County	Newton County.
Perry County	Perry County.
Phillips County	Phillips County.
Pike County	Pike County.
Pine Bluff City	Pine Bluff City in Jefferson County.
Poinsett County	Poinsett County.
Polk County	Polk County.
Prairie County	Prairie County.
Randolph County	Randolph County.
Searcy County	Searcy County.
Balance of Sebastian County.	Sebastian County less Fort Smith City.
Sharp County	Sharp County.
St. Francis County	St. Francis County.
Stone County	Stone County.
Van Buren County	Van Buren County.
White County	White County.
Woodruff County	Woodruff County.
California:	
Amador County	Amador County.
Baldwin Park City	Baldwin Park City in Los Angeles County.
Butte County	Butte County.
Calaveras County	Calaveras County.
Colusa County	Colusa County.
Compton City	Compton City in Los Angeles County.
Del Norte County	Del Note County.
El Monte City	El Monte City in Los Angeles County.
Fairfield City	Fairfield City in Solano County.
Fresno City	Fresno City in Fresno County.
Balance of Fresno County	Fresno County Less Fresno City.
Glenn County	Glenn County.
Humboldt County	Humboldt County.
Huntington Park City	Huntington Park City in Los Angnles County.
Imperial County	Imperial County.
Balance of Kern County	Kern County less Bakersfield City.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Kings County	Kings County.
Lake County	Lake County.
Lassen County	Lassen County.
Lynwood City	Lynwood City in Los Angeles County.
Madera County	Madera County.
Mariposa County	Mariposa County.
Mendocino County	Mendocino County.
Merced City	Merced County.
Modesto City	Modesto City in Stanislaus County.
Modoc County	Modoc County.
Mono County	Mono County.
Balance of Monterey County.	Monterey County less Salinas City.
Napa City	Napa City in Napa County.
National City	National City in San Diego County.
Nevada County	Nevada County.
Oakland City	Oakland City in Alameda County.
Oxnard City	Oxnard City in Ventura County.
Pico Rivera City	Pico Rivera City in Los Angeles County.
Plumas County	Plumas County.
Pomona City	Pomona City in Los Angeles County.
Richmond City	Richmond City in Contra Costa County.
Riverside City	Riverside City in Riverside County.
Balance of Riverside County.	Riverside County less Riverside City.
Sacramento City	Sacramento City in Sacramento County.
Salinas City	Salinas City in Monterey County.
San Benito County	San Benito County.
San Bernardino City	San Bernardino City in San Bernardino County.
Balance of San Joaquin County.	San Joaquin County less Stockton City.
Shasta County	Shasta County.
Sierra County	Sierra County.
Siskiyou County	Siskiyou County.
Balance of Solano County	Solano County less Fairfield City, Vallejo City.
Balance of Stanislaus County.	Stanislaus County less Modesto City.
Stockton City	Stockton City in San Joaquin County.
Sutter County	Sutter County.
Tehama County	Tehama County.
Trinity County	Trinity County.
Balance of Tulare County	Tulare County less Visalia City.
Tuolumne County	Tuolumne County.
Yolo County	Yolo County.
Yuba County	Yuba County.
Colorado:	
Archuleta County	Archuleta County.
Chaffee County	Chaffee County.
Conejos County	Conejos County.
Costilla County	Costilla County.
Delta County	Delta County.
Garfield County	Garfield County.
Lake County	Lake County.
Las Animas County	Las Animas County.
Mesa County	Mesa County.
Moffat County	Moffat County.
Montezuma County	Montezuma County.
Montrose County	Montrose County.
Ouray County	Ouray County.
Pueblo City	Pueblo City in Pueblo County.
Balance of Pueblo County	Pueblo County less Pueblo City.
Saguache County	Saguache County.
San Juan County	San Juan County.
Connecticut:	
Winchester Town	Winchester Town.
District of Columbia:	
Washington, DC City	District of Columbia.
Florida:	
Bay County	Bay County.
Calhoun County	Calhoun County.
Collier County	Collier County.
Glades County	Glades County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Gulf County	Gulf County.
Hardee County	Hardee County.
Hendry County	Hendry County.
Hialeah City	Hialeah City in Dade County.
Indian River County	Indian River County.
Lafayette County	Lafayette County.
Lake County	Lake County.
Lakeland City	Lakeland City in Polk County
Miami Beach City	Miami Beach City in Dade County.
Miami City	Miami City in Dade County.
Okeechobee County	Okeechobee County.
Balance of Polk County	Polk County less Lakeland City.
Putnam County	Putnam County.
St. Lucie County	St. Lucie County.
Sumter County	Sumter County.
Washington County	Washington County.
Georgia:	
Brantley County	Brantley County.
Chattooga County	Chattooga County.
Dodge County	Dodge County.
Evans County	Evans County.
McIntosh County	McIntosh County.
Meriwether County	Meriwether County.
Polk County	Polk County.
Pulaski County	Pulaski County.
Taliaferro County	Taliaferro County.
Terrell County	Terrell County.
Turner County	Turner County.
Twiggs County	Twiggs County.
Warren County	Warren County.
Wayne County	Wayne County.
Wilkes County	Wilkes County.
Worth County	Worth County
Idaho:	
Adams County	Adams County.
Benewah County	Benewah County.
Boise County	Boise County.
Bonner County	Bonner County.
Boundary County	Boundary County.
Camas County	Camas County.
Canyon County	Canyon County.
Clearwater County	Clearwater County.
Fremont County	Fremont County.
Gem County	Gem County.
Idaho County	Idaho County.
Kootenai County	Kootenai County.
Lemhi County	Lemhi County.
Shoshone County	Shoshone County.
Valley County	Valley County.
Illinois:	
Adams County	Adams County.
Alexander County	Alexander County.
Aurora City	Aurora City in Du Page County, Kane County.
Bond County	Bond County.
Boone County	Boone County.
Bureau County	Bureau County.
Calhoun County	Calhoun County.
Cass County	Cass County.
Chicago City	Chicago City in Cook County.
Christian County	Christian County.
Cicero City	Cicero City in Cook County.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Crawford County	Crawford County.
Cumberland County	Cumberland County.
De Witt County	De Witt County.
Decatur City	Decatur City in Macon County.
Des Plaines City	Des Plaines City in Cook County.
East St. Louis City	East St. Louis City in St. Clair County.
Edgar County	Edgar County.
Edwards County	Edwards County.
Effingham County	Effingham County.
Fayette County	Fayette County.
Ford County	Ford County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamilton County	Hamilton County.
Hancock County	Hancock County.
Hardin County	Hardin County.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1985 Through Sept. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Henderson County	Henderson County.
Henry County	Henry County.
Iroquois County	Iroquois County.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jersey County	Jersey County.
Jo Daviess County	Jo Daviess County.
Johnson County	Johnson County.
Joliet City	Joliet City in Will County.
Kankakee County	Kankakee County.
Knox County	Knox County.
La Salle County	La Salle County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Logan County	Logan County.
Macoupin County	Macoupin County.
Madison County	Madison County.
Marion County	Marion County.
Marshall County	Marshall County.
Mason County	Mason County.
Massac County	Massac County.
McDonough County	McDonough County.
Mercer County	Mercer County.
Montgomery County	Montgomery County.
Moultrie County	Moultrie County.
Ogle County	Ogle County.
Peoria City	Peoria City in Peoria County.
Balance of Peoria County	Peoria County less Peoria City.
Perry County	Perry County.
Piatt County	Piatt County.
Pike County	Pike County.
Pope County	Pope County.
Pulaski County	Pulaski County.
Putnam County	Putnam County.
Randolph County	Randolph County.
Richland County	Richland County.
Rock Island County	Rock Island County.
Rockford City	Rockford City in Winnebago County.
Saline County	Saline County.
Schuyler County	Schuyler County.
Scott County	Scott County.
Shelby County	Shelby County.
Balance of St. Clair County	St. Clair County less East St. Louis City.
Stark County	Stark County.
Tazewell County	Tazewell County.
Union County	Union County.
Vermilion County	Vermilion County.
Wabash County	Wabash County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
White County	White County.
Whiteside County	Whiteside County.
Williamson County	Williamson County.
Woodford County	Woodford County.
Indiana:	
Anderson City	Anderson City in Madison County.
Bartholomew County	Bartholomew County.
Blackford County	Blackford County.
Cass County	Cass County.
Clark County	Clark County.
Crawford County	Crawford County.
Daviess County	Daviess County.
Dearborn County	Dearborn County.
Evansville City	Evansville City in Vanderburgh County.
Fayette County	Fayette County.
Fountain County	Fountain County.
Franklin County	Franklin County.
Ft. Wayne City County	Ft. Wayne City in Allen County.
Gary City	Gary City in Lake County.
Grant County	Grant County.
Greene County	Greene County.
Hammond City	Hammond City in Lake County.
Henry County	Henry County.
Jackson County	Jackson County.
Jasper County	Jasper County.
Jay County	Jay County.
Jefferson County	Jefferson County.
Jennings County	Jennings County.
La Porte County	La Porte County.
Balance of Lake County	Lake County less Gary City, Hammond City.
Lawrence County	Lawrence County.
Martin County	Martin County.
Miami County	Miami County.
Muncie City	Muncie City in Delaware County.
Ohio County	Ohio County.
Orange County	Orange County.
Owen County	Owen County.
Parke County	Parke County.
Perry County	Perry County.
Pike County	Pike County.
Porter County	Porter County.
Randolph County	Randolph County.
Ripley County	Ripley County.
Scott County	Scott County.
Spencer County	Spencer County.
Starke County	Starke County.
Sullivan County	Sullivan County.
Switzerland County	Switzerland County.
Terre Haute City	Terre Haute City in Vigo County.
Union County	Union County.
Vermillion County	Vermillion County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
White County	White County.
Iowa:	
Appanoose County	Appanoose County.
Balance of Black Hawk County.	Black Hawk County less Waterloo City.
Buchanan County	Buchanan County.
Chickasaw County	Chickasaw County.
Clinton County	Clinton County.
Davenport City	Davenport City in Scott County.
Davis County	Davis County.
Des Moines County	Des Moines County.
Dubuque City	Dubuque City in Dubuque County.
Emmet County	Emmet County.
Floyd County	Floyd County.
Jackson County	Jackson County.
Lee County	Lee County.
Louisa County	Louisa County.
Monroe County	Monroe County.
Sac County	Sac County.
Wapello County	Wapello County.
Waterloo City	Waterloo City in Black Hawk County.
Kansas:	
Montgomery County	Montgomery County.
Kentucky:	
Ballard County	Ballard County.
Bath County	Bath County.
Bell County	Bell County.
Boyd County	Boyd County.
Bracken County	Bracken County.
Breathitt County	Breathitt County.
Breckinridge County	Breckinridge County.
Butler County	Butler County.
Caldwell County	Caldwell County.
Carlisle County	Carlisle County.
Carter County	Carter County.
Casey County	Casey County.
Clay County	Clay County.
Clinton County	Clinton County.
Crittenden County	Crittenden County.
Edmonson County	Edmonson County.
Elliott County	Elliott County.
Estill County	Estill County.
Fleming County	Fleming County.
Floyd County	Floyd County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Garrard County	Garrard County.
Graves County	Graves County.
Grayson County	Grayson County.
Greenup County	Greenup County.
Hancock County	Hancock County.
Harlan County	Harlan County.
Hart County	Hart County.
Henderson County	Henderson County.
Hickman County	Hickman County.
Hopkins County	Hopkins County.
Jackson County	Jackson County.
Balance of Jefferson County.	Jefferson County less Louisville City.
Johnson County	Johnson County.
Knott County	Knott County.
Knox County	Knox County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Leslie County	Leslie County.
Letcher County	Letcher County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Livingston County	Livingston County.
Logan County	Logan County.
Magoffin County	Magoffin County.
Marion County	Marion County.
Marshall County	Marshall County.
McCreary County	McCreary County.
McLean County	McLean County.
Menifee County	Menifee County.
Mercer County	Mercer County.
Metcalfe County	Metcalfe County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
Muhlenberg County	Muhlenberg County.
Nelson County	Nelson County.
Ohio County	Ohio County.
Owensboro City	Owensboro City in Daviess County.
Owsley County	Owsley County.
Pendleton County	Pendleton County.
Perry County	Perry County.
Pike County	Pike County.
Powell County	Powell County.
Pulaski County	Pulaski County.
Robertson County	Robertson County.
Russell County	Russell County.
Simpson County	Simpson County.
Spencer County	Spencer County.
Todd County	Todd County.
Union County	Union County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Whitley County	Whitley County.
Wolfe County	Wolfe County.
Louisiana:	
Acadia Parish	Acadia Parish.
Allen Parish	Allen Parish.
Ascension Parish	Ascension Parish.
Assumption Parish	Assumption Parish.
Avoyelles Parish	Avoyelles Parish.
Beauregard Parish	Beauregard Parish.
Bienville Parish	Bienville Parish.
Balance of Bossier Parish	Bossier Parish less Bossier City, Shreveport City.
Balance of Calcasieu Parish.	Calcasieu Parish less Lake Charles City.
Caldwell Parish	Caldwell Parish.
Catahoula Parish	Catahoula Parish.
Concordia Parish	Concordia Parish.
De Soto Parish	De Soto Parish.
East Carroll Parish	East Carroll Parish.
Evangeline Parish	Evangeline Parish.
Franklin Parish	Franklin Parish.
Grant Parish	Grant Parish.
Iberia Parish	Iberia Parish.
Jefferson Davis Parish	Jefferson Davis Parish.
Balance of Jefferson Parish.	Jefferson Parish less Kenner City.
Lafourche Parish	Lafourche Parish.
Lake Charles City	Lake Charles City in Calcasieu Parish.
Livingston Parish	Livingston Parish.
Madison Parish	Madison Parish.
Monroe City	Monroe City in Ouachita Parish.
Morehouse Parish	Morehouse Parish.
Pointe Coupee Parish	Pointe Coupee Parish.
Red River Parish	Red River Parish.
Richland Parish	Richland Parish.
Sabine Parish	Sabine Parish.
St. Bernard Parish	St. Bernard Parish.
St. Charles Parish	St. Charles Parish.
St. Helena Parish	St. Helena Parish.
St. James Parish	St. James Parish.
St. John Baptist Parish	St. John Baptist Parish.
St. Landry Parish	St. Landry Parish.
St. Martin Parish	St. Martin Parish.
St. Mary Parish	St. Mary Parish.
Tangipahoa Parish	Tangipahoa Parish.
Tensas Parish	Tensas Parish.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Terrebonne Parish	Terrebonne Parish.
Union Parish	Union Parish.
Vermilion Parish	Vermilion Parish.
Vernon Parish	Vernon Parish.
Washington Parish	Washington Parish.
Webster Parish	Webster Parish.
West Carroll Parish	West Carroll Parish.
Winn Parish	Winn Parish.
Maine:	
Aroostook County	Aroostook County.
Somerset County	Somerset County.
Waldo County	Waldo County.
Washington County	Washington County.
Maryland:	
Allegany County	Allegany County.
Dorchester County	Dorchester County.
Garrett County	Garrett County.
Somerset County	Somerset County.
Washington County	Washington County.
Worcester County	Worcester County.
Massachusetts:	
Athol Town	Athol Town in Worcester County.
Blandford Town	Blandford Town in Hampden County.
Chester Town	Chester Town in Hampden County.
Chesterfield Town	Chesterfield Town in Hampshire County.
Dighton Town	Dighton Town in Bristol County.
Erving Town	Erving Town in Franklin County.
Florida Town	Florida Town in Berkshire County.
Hancock Town	Hancock Town in Berkshire County.
Harwich Town	Harwich Town in Barnstable County.
Hubbardston Town	Hubbardston Town in Worcester County.
Marion Town	Marion Town in Plymouth County.
Middlefield Town	Middlefield Town in Hampshire County.
Millville Town	Millville Town in Worcester County.
New Bedford City	New Bedford City in Bristol County.
North Adams Town	North Adams Town in Berkshire County.
Orange Town	Orange Town in Franklin County.
Peru Town	Peru Town in Berkshire County.
Plainfield Town	Plainfield Town in Hampshire County.
Provincetown Town	Provincetown Town in Barnstable County.
Rehoboth Town	Rehoboth Town in Bristol County.
Royalston Town	Royalston Town in Worcester County.
Savoy Town	Savoy Town in Berkshire County.
Seekonk Town	Seekonk Town in Bristol County.
Tolland Town	Tolland Town in Hampden County.
Truro Town	Truro Town in Barnstable County.
Wales Town	Wales Town in Hampden County.
Wareham Town	Wareham Town in Plymouth County.
Warwick Town	Warwick Town in Franklin County.
Washington Town	Washington Town in Berkshire County.
Wellfleet Town	Wellfleet Town in Barnstable County.
Wendell Town	Wendell Town in Franklin County.
Williamsburg Town	Williamsburg Town in Hampshire County.
Winchendon Town	Winchendon Town in Worcester County.
Michigan:	
Alcona County	Alcona County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Alger County	Alger County.
Allegan County	Allegan County.
Alpena County	Alpena County.
Antrim County	Antrim County.
Arenac County	Arenac County.
Baraga County	Baraga County.
Barry County	Barry County.
Battle Creek City	Battle Creek City in Calhoun County.
Bay County	Bay County.
Benzie County	Benzie County.
Berrien County	Berrien County.
Branch County	Branch County.
Balance of Calhoun County.	Calhoun County less Battle Creek City.
Cass County	Cass County.
Charlevoix County	Charlevoix County.
Cheboygan County	Cheboygan County.
Chippewa County	Chippewa County.
Clare County	Clare County.
Clinton Township	Clinton Township in Macomb County.
Crawford County	Crawford County.
Delta County	Delta County.
Detroit County	Detroit City in Wayne County.
Dickinson County	Dickinson County.
Emmet County	Emmet County.
Flint City	Flint City in Genesee County.
Balance of Genesee County.	Genesee County Less Flint City.
Gladwin County	Gladwin County.
Gogebic County	Gogebic County.
Grand Rapids City	Grand Rapids City in Kent County.
Grand Traverse County	Grand Traverse County.
Gratiot County	Gratiot County.
Hillsdale County	Hillsdale County.
Houghton County	Houghton County.
Huron County	Huron County.
Ionia County	Ionia County.
Iosco County	Iosco County.
Iron County	Iron County.
Jackson County	Jackson County.
Kalamazoo City	Kalamazoo City in Kalamazoo County.
Kalkaska County	Kalkaska County.
Keweenaw County	Keweenaw County.
Lake County	Lake County.
Lansing City	Lansing City in Eaton County, Ingham County.
Lapeer County	Lapeer County.
Leelanau County	Leelanau County.
Lenawee County	Lenawee County.
Livingston County	Livingston County.
Luce County	Luce County.
Mackinac County	Mackinac County.
Balance of Macomb County.	Macomb County less Clinton Township, Roseville City, St Clair Shores City, Sterling Heights City, Warren City.
Manistee County	Manistee County.
Marquette County	Marquette County.
Mason County	Mason County.
Mecosta County	Mecosta County.
Menominee County	Menominee County.
Midland County	Midland County.
Missaukee County	Missaukee County.
Monroe County	Monroe County.
Montcalm County	Montcalm County.
Montmorency County	Montmorency County.
Muskegon County	Muskegon County.
Newaygo County	Newaygo County.
Balance of Oakland County.	Oakland County less Farmington Hills City, Pontiac City, Royal Oak City, Southfield City, Troy City, Waterford Township.
Oceana County	Oceana County.
Ogemaw County	Ogemaw County.
Ontonagon County	Ontonagon County.
Osceola County	Osceola County.
Oscoda County	Oscoda County.
Otsego County	Otsego County.
Pontiac City	Pontiac City in Oakland County.
Presque Isle County	Presque Isle County.
Roscommon County	Roscommon County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Roseville City	Roseville City in Macomb County.
Saginaw County	Saginaw City in Saginaw County.
Balance of Saginaw County.	Saginaw County less Saginaw City.
Sanilac County	Sanilac County.
Schoolcraft County	Schoolcraft County.
Shiawassee County	Shiawassee County.
St. Clair Shores City	St. Clair Shores City in Macomb County.
St. Clair County	St. Clair County.
St. Joseph County	St. Joseph County.
Sterling Heights City	Sterling Heights City in Macomb County.
Taylor City	Taylor City in Wayne County.
Tuscola County	Tuscola County.
Van Buren County	Van Buren County.
Warren City	Warren City in Macomb County.
Balance of Washtenaw County.	Washtenaw County less Ann Arbor City.
Waterford Township	Waterford Township in Oakland County.
Balance of Wayne County	Wayne County less Dearborn City, Dearborn Heights City, Detroit City, Livonia City, Redford Township, Taylor City, Westland City.
Westland City	Westland City in Wayne County.
Wexford County	Wexford County.
Minnesota:	
Aitkin County	Aitkin County.
Becker County	Becker County.
Carlton County	Carlton County.
Cass County	Cass County.
Clearwater County	Clearwater County.
Cook County	Cook County.
Crown Wing County	Crown Wing County.
Duluth County	Duluth City in St. Louis County.
Hubbard County	Hubbard County.
Itasca County	Itasca County.
Kanabec County	Kanabec County.
Koochiching County	Koochiching County.
Lake County	Lake County.
Mahnomen County	Mahnomen County.
Marshall County	Marshall County.
Meeker County	Meeker County.
Morrison County	Morrison County.
Pine County	Pine County.
Red Lake County	Red Lake County.
Roseau County	Roseau County.
Balance of St. Louis County.	St. Louis County less Duluth City.
Wadena County	Wadena County.
Mississippi:	
Adams County	Adams County.
Alcorn County	Alcorn County.
Amite County	Amite County.
Attala County	Attala County.
Benton County	Benton County.
Bolivar County	Bolivar County.
Calhoun County	Calhoun County.
Chickasaw County	Chickasaw County.
Clairborne County	Clairborne County.
Clarke County	Clarke County.
Clay County	Clay County.
Coahoma County	Coahoma County.
Copiah County	Copiah County.
Covington County	Covington County.
Franklin County	Franklin County.
George County	George County.
Greene County	Greene County.
Grenada County	Grenada County.
Hancock County	Hancock County.
Harrison County	Harrison County.
Holmes County	Holmes County.
Humphreys County	Humphreys County.
Jackson County	Jackson County.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jefferson Davis County	Jefferson Davis County.
Jones County	Jones County.
Kemper County	Kemper County.
Lawrence County	Lawrence County.
Leflore County	Leflore County.
Lincoln County	Lincoln County.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1985 Through Sept. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Marion County	Marion County.
Marshall County	Marshall County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Neshoba County	Neshoba County.
Newton County	Newton County.
Noxubee County	Noxubee County.
Panola County	Panola County.
Pearl River County	Pearl River County.
Perry County	Perry County.
Pike County	Pike County.
Prentiss County	Prentiss County.
Quitman County	Quitman County.
Scott County	Scott County.
Sharkey County	Sharkey County.
Simpson County	Simpson County.
Stone County	Stone County.
Sunflower County	Sunflower County.
Tallahatchie County	Tallahatchie County.
Tate County	Tate County.
Tippah County	Tippah County.
Tishomingo County	Tishomingo County.
Tunica County	Tunica County.
Walthall County	Walthall County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Wilkinson County	Wilkinson County.
Winston County	Winston County.
Yazoo County	Yazoo County.
Missouri:	
Bollinger County	Bollinger County.
Butler County	Butler County.
Carter County	Carter County.
Clark County	Clark County.
Crawford County	Crawford County.
Dallas County	Dallas County.
Daviess County	Daviess County.
Dent County	Dent County.
Douglas County	Douglas County.
Dunklin County	Dunklin County.
Franklin County	Franklin County.
Howell County	Howell County.
Iron County	Iron County.
Lewis County	Lewis County.
Linn County	Linn County.
Madison County	Madison County.
Maries County	Maries County.
Marion County	Marion County.
Miller County	Miller County.
Mississippi County	Mississippi County.
Moniteau County	Moniteau County.
Morgan County	Morgan County.
New Madrid County	New Madrid County.
Oregon County	Oregon County.
Pemiscot County	Pemiscot County.
Pike County	Pike County.
Ralls County	Ralls County.
Reynolds County	Reynolds County.
Ripley County	Ripley County.
Scott County	Scott County.
Shannon County	Shannon County.
St. Louis City	St. Louis City.
St. Francois County	St. Francois County.
Stoddard County	Stoddard County.
Stone County	Stone County.
Texas County	Texas County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Wright County	Wright County.
Montana:	
Deer lodge County	Deer Lodge County.
Glacier County	Glacier County.
Lincoln County	Lincoln County.
Meagher County	Meagher County.
Mineral County	Mineral County.
Ravalli County	Ravalli County.
Rosebud County	Rosebud County.
Sanders County	Sanders County.
Silver Bow County	Silver Bow County.
Stillwater County	Stillwater County.
Wibaux County	Wibaux County.
Nebraska:	
Colfax County	Colfax County.
Loup County	Loup County.
McPherson County	McPherson County.
Nevada:	
Churchill County	Churchill County.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1985 Through Sept. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Esmeralda County	Esmeralda County.
Lyon County	Lyon County.
Storey County	Storey County.
White Pine County	White Pine County.
New Jersey:	
Camden City	Camden City in Camden County.
Cape May County	Cape May County.
Balance of Cumberland County.	Cumberland County less Vineland City.
Elizabeth City	Elizabeth City in Union County.
Balance of Hudson County	Hudson County less Bayonne City, Jersey City, Union City.
Jersey City	Jersey City in Hudson County.
Newark City	Newark City in Essex County.
Passaic City	Passaic City in Passaic County.
Paterson City	Paterson City in Passaic County.
Trenton City	Trenton City in Mercer County.
Union City	Union City in Hudson County.
Vineland City	Vineland City in Cumberland County.
New Mexico:	
Catron County	Catron County.
Cibola County	Cibola County.
Colfax County	Colfax County.
Eddy County	Eddy County.
Grant County	Grant County.
Guadalupe County	Guadlupe County.
Luna County	Luna County.
McKinley County	McKinley County.
Mora County	Mora County.
Rio Arriba County	Rio Arriba County.
San Juan County	San Jaun County.
San Miguel County	San Miguel County.
Taos County	Taos County.
Torrance County	Torrance County.
Valencia County	Valencia County.
New York:	
Buffalo City	Buffalo City in Erie County
Cattaraugus County	Cattaraugus County.
Cayuga County	Cayuga County.
Cortland County	Cortland County.
Essex County	Essex County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Genesee County	Genesee County.
Hamburg Town	Hamburg Town in Erie County.
Hamilton County	Hamilton County.
Jefferson County	Jefferson County.
Montgomery County	Montgomery County.
New York County	New York County.
Balance of Niagara County	Niagara County less Niagara Falls City.
Niagara Falls City	Niagara Falls City in Niagara County.
Orleans County	Orleans County.
Rochester City	Rochester City in Monroe County.
North Carolina:	
Ashe County	Ashe County.
Avery County	Avery County.
Bertie County	Bertie County.
Bladen County	Bladen County.
Brunswick County	Brunswick County.
Cherokee County	Cherokee County.
Clay County	Clay County.
Cleveland County	Cleveland County.
Columbus County	Columbus County.
Duplin County	Duplin County.
Edgecombe County	Edgecombe County.
Graham County	Graham County.
Halifax County	Halifax County.
Haywood County	Haywood County.
Hoke County	Hoke County.
Hyde County	Hyde County.
Lee County	Lee County.
Martin County	Martin County.
Mitchell County	Mitchell County.
New Hanover County	New Hanover County.
Northampton County	Northampton County.
Pender County	Pender County.
Person County	Person County.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1985 Through Sept. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Richmond County	Richmond County.
Robeson County	Robeson County.
Rockingham County	Rockingham County.
Swain County	Swain County.
Tyrrell County	Tyorell County.
Vance County	Vance County.
Warren County	Warren County.
Wilson County	Wilson County.
Yancey County	Yancey County.
North Dakota:	
Benson County	Benson County.
McHenry County	McHenry County.
Rolette County	Rolette County.
Ohio:	
Adams County	Adams County.
Akron City	Akron City In Summit County
Allen County	Allen County.
Ashland County	Ashland County.
Ashtabula County	Ashtabula County.
Athens County	Athens County.
Auglaize County	Auglaize County.
Belmont County	Belmont County.
Brown County	Brown County.
Balance of Butler County	Butler County Less Hamilton City.
Canton City	Canton City in Stark County
Carroll County	Carroll County.
Champaign County	Champaign County.
Cincinnati County	Cincinnati City in Hamilton County.
Clermont County	Clermont County.
Cleveland City	Cleveland City in Cuyahoga County.
Columbiana County	Columbiana County.
Coshocton County	Coshocton County.
Crawford County	Crawford County.
Dayton City	Dayton City in Greene County.
Defiance County	Defiance County.
Elyria City	Elyria City in Lorain County.
Erie County	Erie County.
Fayette County	Fayette County.
Fulton County	Fulton County.
Gallia County	Gallia County.
Guernsey County	Guernsey County.
Hamilton City	Hamilton City in Butler County.
Hardin County	Hardin County.
Harrison County	Harrison County.
Henry County	Henry County.
Highland County	Highland County.
Hocking County	Hocking County.
Huron County	Huron County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Knox County	Knox County.
Lake County	Lake County.
Lawrence County	Lawrence County.
Logan County	Logan County.
Lorain City	Lorain City in Lorain County
Balance of Lorain County	Lorain County less Elyria City, Lorain City.
Balance of Mahoning County.	Mahoning County less Youngstown City
Mansfield City	Mansfield City in Richland County.
Marion County	Marion County.
Meigs County	Meigs County.
Mercer County	Mercer County.
Miami County	Miami County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Morrow County	Morrow County.
Muskingum County	Muskingum County
Noble County	Noble County.
Ottawa County	Ottawa County.
Paulding County	Paulding County.
Perry County	Perry County.
Pike County	Pike County.
Portage County	Portage County.
Putnam County	Putnam County.
Ross County	Ross County.
Sandusky County	Sandusky County.
Scioto County	Scioto County.
Seneca County	Seneca County.
Shelby County	Shelby County.
Springfield City	Springfield City in Clark County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Stark County	Stark County less Canton City.
Toledo City	Toledo City in Lucas County.
Balance of Trumbull County.	Trumbull County less Warren City.
Tuscarawas County	Tuscarawas County.
Union County	Union County.
Vinton County	Vinton County.
Warren City	Warren City in Trumbull County.
Washington County	Washington County.
Williams County	Williams County.
Youngstown City	Youngstown City in Mahoning County.
Oklahoma:	
Adair County	Adair County.
Atoka County	Atoka County.
Beckham County	Beckham County.
Caddo County	Caddo County.
Choctaw County	Choctaw County.
Coal County	Coal County.
Haskell County	Haskell County.
Hughes County	Hughes County.
Latimer County	Latimer County.
Le Flore County	Le Flore County.
Lincoln County	Lincoln County.
Love County	Love County.
Mayes County	Mayes County.
McCurtain County	McCurtain County.
McIntosh County	McIntosh County.
Muskogee County	Muskogee County.
Nowata County	Nowata County.
Okfuskee County	Okfuskee County.
Okmulgee County	Okmulgee County.
Ottawa County	Ottawa County.
Pawnee County	Pawnee County.
Pittsburg County	Pittsburg County.
Pushmataha County	Pushmataha County.
Seminole County	Seminole County.
Washita County	Washita County.
Oregon:	
Baker County	Baker County.
Clatsop County	Clatsop County.
Coos County	Coos County.
Crook County	rook County.
Curry County	Curry County.
Deschutes County	Deschutes County.
Douglas County	Douglas County.
Grant County	Grant County.
Harney County	Harney County.
Hood River County	Hood River County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Josephine County	Josephine County.
Klamath County	Klamath County.
Lake County	Lake County.
Balance of Lane County	Lane County less Eugene City.
Lincoln County	Lincoln County.
Linn County	Linn County.
Malheur County	Malheur County.
Tillamook County	Tillamook County.
Umatilla County	Umatilla County.
Union County	Union County.
Wallowa County	Wallowa County.
Wasco County	Wasco County.
Wheeler County	Wheeler County.
Yamhill County	Yamhill County.
Pennsylvania:	
Adams County	Adams County.
Balance of Alelgheny County.	Allegheny County less Penn Hills Township, Pittsburgh City.
Allentown City	Allentown City in Lehigh County.
Altoona City	Altoona City in Blair County.
Armstrong County	Armstrong County.
Beaver County	Beaver County.
Bedford County	Bedford County.
Bensalem Townwhip	Bensalem Township in Bucks County.
Bethlehem City	Bethlehem City in Lehigh County, Northampton County.
Balance of Blair County	Blair County less Altoona City.
Bradford County	Bradford County.
Bristol Township	Bristol Township in Bucks County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Butler County	Butler County.
Cambria County	Cambria County.
Cameron County	Cameron County.
Carbon County	Cabron County.
Clarion County	Clarion County.
Clearfield County	Clearfield County.
Clinton County	Clinton County.
Columbia County	Columbia County.
Crawford County	Crawford County.
Elk County	Elk County.
Erie City	Erie City in Erie County.
Balance of Erie County	Erie County less Erie City.
Fayette County	Fayette County.
Forest County	Forest County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Greene County	Greene County.
Huntingdon County	Huntingdon County.
Indiana County	Indiana County.
Jefferson County	Jofferson County.
Juniata County	Juniata County.
Balance of Lackawanna County.	Lackawanna County less Scranton City.
Lawrence County	Lawrence County.
Luzerne County	Luzerne County.
Lycoming County	Lycoming County.
McKean County	McKean County.
Mercer County	Mercer County.
Mifflin County	Mifflin County.
Balance of Northhampton County.	Northampton County less Bethlehem City.
Northumberland County	Northumberland County.
Penn Hills Township	Penn Hills Township in Allegheny County.
Pittsburgh City	Pittsburgh City in Allegheny County.
Potter County	Potter County.
Reading City	Roeding City in Berks County
Schuylkill County	Schuylkill County.
Somerset County	Somerset County.
Sullivan County	Sullivan County.
Tioga County	Tioga County.
Venango County	Venango County.
Warren County	Warren County.
Washington County	Washington County.
Westmoreland County	Westmoreland County.
Pureto Rico:	
Adjuntas Municipio	Adjuntas Municipio.
Aguada Municipio	Aguada Municipio.
Aguadilla Municipio	Aguadilla Municipio.
Agues Buenas Municipio	Agues Buenas Municipio.
Albonito Municipio	Albonito Municipio.
Anasco Municipio	Anasco Municipio.
Arecibo Municipio	Arecibo Municipio.
Arroyo Municipio	Arroyo Municipio.
Barceloneta Municipio	Barceloneta Municipio.
Barranquitas Municipio	Barranquitas Municipio.
Bayamon Municipio	Bayamon Municipio.
Cabo Rojo Municipio	Cabo Rojo Municipio.
Caguas Municipio	Caguas Municipio.
Camuy Municipio	Camuy Municipio.
Canovanas Municipio	Canovanas Municipio.
Carolina Municipio	Carolina Municipio.
Catano Municipio	Cantano Municipio.
Cayey Municipio	Cayey Municipio.
Ceiba Municipio	Ceiba Municipio.
Ciales Municipio	Ciales Municipio.
Cidra Municipio	Cidra Municipio.
Coamo Municipio	Coamo Municipio.
Comerio Municipio	Comerio Municipio.
Corozal Municipio	Corozal Municipio.
Culebra Municipio	Culebra Municipio.
Dorado Municipio	Dorado Municipio.
Fajardo Municipio	Fajardo Municipio.
Florida Municipio	Florida Municipio.
Guanica Municipio	Guanica Municipio.
Guayama Municipio	Guayama Municipio.
Guayanilla Municipio	Guayanilla Municipio.
Guarabo Municipio	Guarabo Municipio.
Hatillo Municipio	Hatillo Municipio.
Hormigueros Municipio	Hormigueros Municipio.
Humacao Municipio	Humacao Municipio.
Isabela Municipio	Isabela Municipio.
Jayuya Municipio	Jayuya Municipio.
Juana Diaz Municipio	Juana Diaz Municipio.
Juncos Municipio	Juncos Municipio.
Lajas Municipio	Lajas Municipio.
Lares Municipio	Lares Municipio.
Las Marias Municipio	Las Marias Municipio.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Las Piedras Municipio	Las Piedras Municipio.
Loiza Municipio	Loiza Municipio.
Luquillo Municipio	Luquillo Municipio.
Manati Municipio	Manati Municipio.
Maricao Municipio	Maricao Municipio.
Maunabo Municipio	Maunabo Municipio.
Mayaguez Municipio	Mayaguez Municipio.
Moca Municipio	Moca Municipio.
Morovis Municipio	Morovis Municipio.
Naguabo Municipio	Naguabo Municipio.
Naranjito Municipio	Naranjito Municipio.
Orocovis Municipio	Orocovis Municipio.
Patillas Municipio	Patillas Municipio.
Penuelas Municipio	Penuelas Municipio.
Ponce Municipio	Ponce Municipio.
Quebradillas Municipio	Quebradillas Municipio.
Rincon Municipio	Rincon Municipio.
Rio Grande Municipio	Rio Grande Municipio.
Sabana Grande Municipio	Sabana Grande Municipio.
Salinas Municipio	Salinas Municipio.
San German Municipio	San German Municipio.
San Juan Municipio	San Juan Municipio.
San Lorenzo Municipio	San Lorenzo Municipio.
San Sebastian Municipio	San Sebastian Municipio.
Santa Isabel Municipio	Santa Isabel Municipio.
Toa Alta Municipio	Toa Alta Municipio.
Toa Baja Municipio	Toa Baja Municipio.
Trujillo Alto Municipio	Trujillo Alto Municipio.
Utuado Municipio	Utuado Municipio.
Vega Alta Municipio	Vega Alta Municipio.
Vega Baja Municipio	Vega Baja Municipio.
Vieques Municipio	Vieques Municipio.
Villalba Municipio	Villalba Municipio.
Yabucoa Municipio	Yabucoa Municipio.
Yauco Municipio	Yauco Municipio.
Rhode Island:	
New Shoreham Town	New Shoreham Town.
South Carolina:	
Abbeville County	Abbeville County.
Aiken County	Aiken County.
Allendale County	Allendale County.
Bamberg County	Bamberg County.
Chester County	Chester County.
Clarendon County	Clarendon County.
Colleton County	Colleton County.
Darlington County	Darlington County.
Dillon County	Dillon County.
Georgetown County	Georgetown County.
Greenwood County	Greenwood County.
Hampton County	Hampton County.
Lancaster County	Lancaster County.
Laurens County	Laurens County.
Lee County	Lee County.
Marion County	Marion County.
Marlboro County	Marlboro County.
McCormick County	McCormick County.
North Charleston City	North Charleston City in Charleston County.
Oconee County	Oconee County.
Saluda County	Saluda County.
Union County	Union County.
Williamsburg County	Williamsburg County.
South Dakota:	
Buffalo County	Buffalo County.
Shannon County	Shannon County.
Tennessee:	
Anderson County	Anderson County.
Bedford County	Bedford County.
Benton County	Benton County.
Bledsoe County	Bledsoe County.
Blount County	Blount County.
Bradley County	Bradley County.
Campbell County	Campbell County.
Cannon County	Cannon County.
Carroll County	Carroll County.
Carter County	Carter County.
Chester County	Chester County.
Clairborne County	Clairborne County.
Clarksville City	Clarksville City in Montgomery County.
Cocke County	Cocke County.
Coffee County	Coffee County.
Crockett County	Crockett County.
Cumberland County	Cumberland County.
De Kalb County	De Kalb County.
Decatur County	Decatur County.
Dickson County	Dickson County.
Dyer County	Dyer County.
Fayette County	Fayette County.

Labor Surplus Areas Eligible for Federal Procurement Preference From Oct. 1, 1985 Through Sept. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Fentress County	Fentress County.
Franklin County	Franklin County.
Gibson County	Gibson County.
Grainger County	Grainger County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamblen County	Hamblen County.
Hancock County	Hancock County.
Hardeman County	Hardeman County.
Hardin County	Hardin County.
Haywood County	Haywood County.
Henderson County	Henderson County.
Henry County	Henry County.
Hickman County	Hickman County.
Houston County	Houston County.
Humphreys County	Humphreys County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Johnson County	Johnson County.
Knoxville City	Knoxville City in Knox County.
Lake County	Lake County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Loudon County	Loudon County.
Macon County	Macon County.
Marion County	Marion County.
Maury County	Maury County.
McMinn County	McMinn County.
McNairy County	McNairy County.
Meigs County	Meigs County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Overton County	Overton County.
Perry County	Perry County.
Pickett County	Pickett County.
Polk County	Polk County.
Putnam County	Putnam County.
Rhea County	Rhea County.
Roane County	Roane County.
Scott County	Scott County.
Sequatchie County	Sequatchie County.
Sevier County	Sevier County.
Smith County	Smith County.
Stewart County	Stewart County.
Trousdale County	Trousdale County.
Unicoi County	Unicoi County.
Union County	Union County.
Van Buren County	Van Buren County.
Warren County	Warren County.
Wayne County	Wayne County.
White County	White County.
Texas:	
Angelina County	Angelina County.
Baytown City	Baytown City in Harris County.
Beaumont City	Beaumont City in Jefferson County.
Brownsville City	Brownsville City in Cameron County.
Calhoun County	Calhoun County.
Balance of Cameron County.	Cameron County less Brownsville City.
Camp County	Camp County.
Cass County	Cass County.
Dimmit County	Dimmit County.
El Paso City	El Paso City in El Paso County.
Balance of El Paso County	El Paso County less El Paso City.
Galveston City	Galveston City in Galveston County.
Balance of Galveston County.	Galveston County less Galveston City.
Garza County	Garza County.
Harlingen City	Harlingen City in Cameron County.
Balance of Hidalgo County	Hidalgo County less McAllen City.
Jasper County	Jasper County.
Jim Hogg County	Jim Hogg County.
Killeen City	Killeen City in Bell County.
La Salle County	La Salle County.
Laredo City	Laredo City in Webb County.
Longview City	Longview City in Gregg County, Harrison County.
Marion County	Marion County.
Matagorda County	Matagorda County.
Maverick County	Maverick County.
McAllen City	McAllen City in Hidalgo County.
Morris County	Morris County.
Newton County	Newton County.
Balance of Nueces County	Nueces County less Corpus Christi City.
Orange County	Orange County.
Port Arthur City	Port Arthur City in Jefferson County.
Presidio County	Presidio County.
Reeves County	Reeves County.
Sabine County	Sabine County.
San Augustine County	San Augustine County.
San Jacinto County	San Jacinto County.
Starr County	Starr County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Uvalde County	Uvalde County.
Val Verde County	Val Verde County.
Willacy County	Willacy County.
Zapata County	Zapata County.
Zavala County	Zavala County.
Utah:	
Carbon County	Carbon County.
Duchesne County	Duchesne County.
Emery County	Emery County.
Garfield County	Garfield County.
Grand County	Grand County.
Juab County	Juab County.
Kane County	Kane County.
Ogden City	Ogden City in Weber County.
Piute County	Piute County.
San Juan County	San Juan County.
Sanpete County	Sanpete County.
Uintah County	Uintah County.
Wasatch County	Wasatch County.
Wayne County	Wayne County.
Virgina:	
Bland County	Bland County.
Buchanan County	Buchanan County.
Buena Vista City	Buena Vista City.
Craig County	Craig County.
Dickenson County	Dickenson County.
Giles County	Giles County.
Highland County	Highland County.
Lancaster County	Lancaster County.
Lee County	Lee County.
Lunenburg County	Lunenburg County.
Northumberland County	Northumberland County.
Page County	Page County.
Patrick County	Patrick County.
Russell County	Russell County.
Smyth County	Smyth County.
Sussex County	Sussex County.
Tazewell County	Tazewell County.
Waynesboro City	Waynesboro City.
Wise County	Wise County.
Wythe County	Wythe County.
Washington:	
Adams County	Adams County.
Benton County	Benton County.
Chelan County	Chelan County.
Clallam County	Clallam County.
Clark County	Clark County.
Columbia County	Columbia County.
Cowlitz County	Cowlitz County.
Douglas County	Douglas County.
Everett City	Everett City in Snohomish County.
Ferry County	Ferry County.
Franklin County	Franklin County.
Grant County	Grant County.
Grays Harbor County	Grays Harbor County.
Jefferson County	Jefferson County.
Kittitas County	Kittitas County.
Klickitat County	Klickitat County.
Lewis County	Lewis County.
Mason County	Mason County.
Okanogan County	Okanogan County.
Pacific County	Pacific County.
Pend Oreille County	Pend Oreille County.
Balance of Pierce County	Pierce County less Tacoma City.
Skagit County	Skagit County.
Skamania County	Skamania County.
Stevens County	Stevens County.
Tacoma City	Tacoma City in Pierce County.
Thurston County	Thurston County.
Wahkiakum County	Wahkiakum County.
Whatcom County	Whatcom County.
Yakima County	Yakima County.
West Virginia:	
Barbour County	Barbour County.
Berkeley County	Berkeley County.
Boone County	Boone County.
Braxton County	Braxton County.
Brooke County	Brooke County.
Balance of Cabell County	Cabell County less Huntington City.
Calhoun County	Calhoun County.
Charleston City	Charleston City in Kanawha County.
Clay County	Clay County.
Doddridge County	Doddridge County.
Fayette County	Fayette County.
Gilmer County	Gilmer County.
Grant County	Grant County.
Greenbrier County	Greenbrier County.
Hampshire County	Hampshire County.
Hancock County	Hancock County.
Hardy County	Hardy County.
Harrison County	Harrison County.
Huntington City	Huntington City in Cabell County, Wayne County.
Jackson County	Jackson County.
Balance of Kanawha County.	Kanawha County less Charleston City.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Marion County	Marion County.
Marshall County	Marshall County.
Mason County	Mason County.
McDowell County	McDowell County.
Mercer County	Mercer County.
Mineral County	Mineral County.
Mingo County	Mingo County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Nicholas County	Nicholas County.
Ohio County	Ohio County.
Pendleton County	Pendleton County.
Pleasants County	Pleasants County.
Pocahontas County	Pocahontas County.
Preston County	Preston County.
Putnam County	Putnam County.
Raleigh County	Raleigh County.
Randolph County	Randolph County.
Ritchie County	Ritchie County.
Roane County	Roane County.
Summers County	Summers County.
Taylor County	Taylor County.
Tucker County	Tucker County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Balance of Wayne County	Wayne County less Huntington City.
Webster County	Webster County.
Wetzel County	Wetzel County.
Wirt County	Wirt County.
Wood County	Wood County.
Wyoming County	Wyoming County.
Wisconsin:	
Ashland County	Ashland County.
Bayfield County	Bayfield County.
Balance of Calumet County.	Calumet County less Appleton City.
Clark County	Clark County.
Columbia County	Columbia County.
Door County	Door County.
Douglas County	Douglas County.
Forest County	Forest County.
Green Lake County	Green Lake County.
Iron County	Iron County.
Jackson County	Jackson County.
Janesville City	Janesville City in Rock County.
Juneau County	Juneau County.
Kewaunee County	Kewaunee County.
Lincoln County	Lincoln County.
Manitowoc County	Manitowoc County.
Marathon County	Marathon County.
Marquette County	Marquette County.
Menominee County	Menominee County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1985 THROUGH SEPT. 30, 1986—Continued

Eligible labor surplus areas	Civil jurisdictions included
Milwaukee City	Milwaukee City in Milwaukee County.
Oconto County	Oconto County.
Oshkosh City	Oshkosh City in Winnebago County.
Pepin County	Pepin County.
Price County	Price County.
Racine County	Racine City in Racine County.
Richland County	Richland County.
Rusk County	Rusk County.
Sauk County	Sauk County.
Sawyer County	Sawyer County.
Taylor County	Taylor County.
Trempealeau County	Trempealeau County.
Vilas County	Vilas County.
Washburn County	Washburn County.
Waushara County	Waushara County.
Wyoming:	
Fremont County	Fremont County.
Lincoln County	Lincoln County.

[FR Doc. 85-24376 Filed 10-10-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Music Advisor Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice as hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater New American Works Prescreening Section) to the National Council on the Arts will be held on October 28-30, 1985, from 9:00 am-6:00 pm in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC.

This meeting is for the purpose of Panel Review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Council and Panel Specialist, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-24435 Filed 10-10-85 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biochemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting.

Name: Advisory Panel for Biochemistry.

Date: Thursday and Friday, October 24 and 25, 1985, from 9:00 am to 5 pm.

Place: Room 1141, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Persons: Ira Wool or H.T. Huang, Program Directors, Biochemistry Program, Room 329—Telephone: (202) 357-7945

Purpose of Advisory Panel: To provide advice and recommendations concerning support for Biochemistry research proposals.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 463. The Committee Management Officer was designated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: October 8, 1985.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-24439 Filed 10-10-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Subpanel for Psychobiology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, National Science Foundation announces the following meeting:

Name: Advisory Panel for Psychobiology.

Date and Time: October 30-November 1, 8:30 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Room 1141, Washington, DC.

Type of Meeting: Part Open—

Open October 31, 3:00 p.m.-4:00 p.m.

Closed October 30, 8:30 a.m.-5:00 p.m.

Closed October 31, 8:30 a.m.-3:00 p.m., 4:00 p.m.-5:00 p.m.

Closed November 1, 8:30 a.m.-5:00 p.m.

Contact Person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7949.

Summary Minutes: May be obtained from the contact person as listed

Purpose of Subpanel: To provide advice and recommendations concerning support for research in psychobiology.

Agenda: Open—October 31, 3:00 p.m.-4:00 p.m. General discussion of small grants for psychobiological research.

Closed—to review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information; concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: October 8, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-24440 Filed 10-10-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Science and Engineering Education (ACSEE); Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Science and Engineering Education (ACSEE).

Date and Time: Monday, October 28, 1985, 9:00 a.m.-5:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street NW, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Bassam Z. Shakhashiri, Assistant Director, Science and Engineering Education, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9522.

Summary Minutes: May be obtained from Dr. W. Frederick Oettle, Executive Secretary, ACSEE, National Science Foundation, Room 516, Washington, DC 20550.

Purpose of Committee: To provide advice and recommendations concerning NSF

support for science and engineering education.

Agenda: *October 28, 1985—*

A.M.—Full Committee Review of FY 85 Activities and Discussion of Upcoming Activities and Initiatives

P.M.—Subcommittee Discussion of Division and Office Status and Program Plans

—Full Committee Review of Subcommittee Discussions.

Dated: October 8, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-24438 Filed 10-10-85; 8:45 am]

BILLING CODE 7555-01-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: Tracy Spencer, (202) 632-6817.

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 September 10, 1985 (50 FR 36936). Individual authorities established or revoked under Schedules A, B, or C between August 1, 1985 and August 31, 1985 appear in a listing below. Future notices will published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception is established:

Department of the Air Force

Two hundred positions of Criminal Investigator, GS-5/15, in the Air Force Office of Special Investigations. Effective August 17, 1985.

Schedule B

No Schedule B exceptions were established or revoked during August.

Schedule C

The following exceptions are established:

Department of Agriculture

One Private Secretary to the Administrator, Agricultural Stabilization and Conservation Service. Effective August 20, 1985.

One Southeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective August 20, 1985.

One Confidential Assistant to the Secretary for Natural Resources and Environment. Effective August 22, 1985.

One Private Secretary to the Deputy Assistant Secretary for Economics. Effective August 26, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective August 30, 1985.

Department of Commerce

One Private Secretary to the Under Secretary for International Trade, International Trade Administration. Effective August 2, 1985.

One Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective August 7, 1985.

One Private Secretary to the Director, Minority Business Development Agency. Effective August 20, 1985.

One Special Assistant to the Deputy Assistant Secretary for Economic Development. Effective August 20, 1985.

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Services, International Trade Administration. Effective August 22, 1985.

One Confidential Assistant to the Director General, U.S. Foreign Commercial Service, International Trade Administration. Effective August 22, 1985.

One Deputy Director, Office of Business Liaison, to the Director, Office of Business Liaison, Office of the Secretary. Effective August 22, 1985.

On Supervisory Public Affairs Specialist to the Director of Public Affairs, Office of the Secretary. Effective August 22, 1985.

One Confidential Assistant to the Special Assistant to the Secretary. Effective August 23, 1985.

Department of Defense

One Assistant Deputy Under Secretary to the Deputy Under Secretary of Defense (Policy). Effective August 20, 1985.

One Special Assistant to the Principal Deputy Assistant Secretary of Defense (Public Affairs). Effective August 20, 1985.

One Staff Assistant to the Principal Deputy Assistant Secretary of Defense (Public Affairs). Effective August 20, 1985.

Department of Education

One Special Assistant to the Director, Special Education Programs, Office of the Assistant Secretary for Special Education and Rehabilitative Services. Effective August 8, 1985.

One Personal Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective August 14, 1985.

One Special Assistant to the Secretary. Effective August 15, 1985.

One Secretary's Regional Representative to the Director, Regional Liaison Office, Atlanta, Georgia. Effective August 16, 1985.

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective August 20, 1985.

One Special Assistant to the Executive Assistant to the Under Secretary. Effective August 20, 1985.

One Special Assistant to the Assistant Secretary for Postsecondary Education. Effective August 26, 1985.

Department of Energy

One Director, Division of Public Affairs, to the Director, Office of Communications, Office of the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective August 7, 1985.

One Staff Assistant to the General Counsel. Effective August 9, 1985.

One Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy. Effective August 20, 1985.

One Staff Assistant to the General Counsel. Effective August 20, 1985.

Department of Health and Human Services

One Confidential Assistant to the Executive Administrative Assistant to the Secretary. Effective August 7, 1985.

One Confidential Assistant to the Executive Secretary. Effective August 7, 1985.

One Special Assistant to the Executive Secretary. Effective August 7, 1985.

One Special Assistant to the Executive Secretary. Effective August 20, 1985.

One Confidential Assistant to the Chief of Staff. Effective August 23, 1985.

One Director, Office of Adolescent Pregancy Programs to the Deputy Assistant Secretary for Population Affairs, Office of the Assistant

Secretary for Health, Public Health Service. Effective August 23, 1985.

One Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services). Effective August 30, 1985.

Department of Housing and Urban Development

One Special Assistant to the Regional Administrator/Regional Housing Commissioner, Fort Worth, Texas. Effective August 16, 1985.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective August 20, 1985.

One Special Assistant to the Regional Administration/Regional Housing Commissioner, Kansas City, Missouri. Effective August 20, 1985.

One Confidential Assistance to the President, Government National Mortgage Association. Effective August 21, 1985.

Department of the Interior

One Congressional Liaison Specialist to the Director, Office of Surface Mining. Effective August 7, 1985.

One Secretary (Stenography) to the Assistant Secretary for Policy, Budget and Administration. Effective August 12, 1985.

One Staff Assistant (Public Affairs and Congressional Liaison) to the Assistant Secretary for Water and Science. Effective August 13, 1985.

Department of Justice

One Staff Assistance to the Director, Office of Public Affairs. Effective August 2, 1985.

One Special Assistant (Deputy Associate Director for Presidential Personnel) to the Assistant Attorney General, Civil Division. Effective August 7, 1985.

One Special Assistant to the Commissioner, Immigration and Naturalization Service. Effective August 16, 1985.

One Confidential Assistant to the Director of Public Affairs. Effective August 20, 1985.

Department of Labor

One Executive Assistant to the Assistant Secretary for Policy. Effective August 7, 1985.

One Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective August 7, 1985.

One Associate Deputy Under Secretary to the Deputy Under Secretary for Congressional Affairs. Effective August 16, 1985.

One Executive Assistant to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs. Effective August 16, 1985.

One Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective August 20, 1985.

Department of State

One Special Assistant to the United States Representative, Office of the U.S. Ambassador to the United Nations. Effective August 2, 1985.

One Foreign Affairs Officer to the U.S. Permanent Representative to the Organization of American States (OAS). Effective August 26, 1985.

One Legislative Officer to the Assistant Secretary for Legislation and Intergovernmental Affairs. Effective August 26, 1985.

Department of Transporation

One Special Assistant to the Deputy Secretary. Effective August 9, 1985.

One Deputy Director, Office of Community and Consumer Affairs. Effective August 12, 1985.

One Executive Assistant to the Administrator, Maritime Administration. Effective August 12, 1985.

One Special Assistant to the Administrator, Federal Aviation Administration. Effective August 30, 1985.

Department of the Treasury

One Staff Assistant to the Deputy Assistant Secretary for Administration. Effective August 7, 1985.

One Special Assistant to the Assistant Secretary for Management. Effective August 22, 1985.

One Director of Scheduling to the Assistant Secretary for Public Affairs and Public Liaison. Effective August 27, 1985.

Agency for International Development

One Public Affairs Assistant to the Director, Office of Interbureau Affairs and Special Projects, Bureau of External Affairs. Effective August 15, 1985.

Environmental Protecting Agency

One Assistant to the Deputy Administrator. Effective August 26, 1985.

One Confidential Assistant to the Deputy Administrator. Effective August 26, 1985.

Equal Employment Opportunity Commission

One Confidential Assistant to the Chairman. Effective August 20, 1985.

One Media Contact Officer to the Chairman. Effective August 20, 1985.

One Media Contact Specialist to the Chairman. Effective August 20, 1985.

Federal Communication Commission

One Special Assistant to the Director of Congressional and Public Affairs. Effective August 9, 1985.

General Services Administration

One Confidential Assistant to the Deputy Commissioner, Public Buildings Service. Effective August 20, 1985.

Office of Personnel Management

One Confidential Assistant to the Director. Effective August 5, 1985.

President's Commission on Executive Exchange

One Confidential Assistant (Typing) to the Executive Director. Effective August 15, 1985.

One Staff Assistant (Typing) to the Executive Director. Effective August 15, 1985.

Small Business Administration

One Special Assistant to the Administrator. Effective August 22, 1985.

One Special Assistant to the Regional Administrator, Kansas City, Missouri. Effective August 22, 1985.

One Staff Assistant to the Associate Administrator for Minority Business and Capital Ownership Development. Effective August 22, 1985.

One Confidential Assistant to the Associate Administrator for Management Assistance. Effective August 23, 1985.

One Staff Assistant to the Administrator. Effective August 30, 1985.

Veterans Administration

One Confidential Assistant to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs. Effective August 20, 1985.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 85-24366 Filed 10-10-85; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF STATE

[Delegation of Authority No. 145-3; Public Notice 946]

Delegation of Authority to the Director of the United States International Development Cooperation Agency; Foreign Assistance Act of 1961 and Certain Related Acts

By virtue of the authority vested in me by the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq.*,

Executive Order No. 12163 of September 19, 1985, concerning certain authorities vested in the President by the Foreign Assistance and Related Programs Appropriations Act, 1985, as amended, the functions vested in the President by the paragraph entitled "Population, Development Assistance" of the Foreign Assistance and Related Programs Appropriations Act, as amended by the paragraph of the same title in Title I, Chapter V, of Pub. L. 99–88, and delegated by the President to the Secretary of State in the aforesaid Memorandum of the President of September 19, 1985, are hereby redelegated to the Director of the United States International Development Cooperation Agency.

Dated: September 21, 1985.

George P. Shultz,

Secretary of State.

[FR Doc. 85–24413 Filed 10–10–85; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 147—Traffic Alert and Collision Avoidance System; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert and Collision Avoidance System to be held on October 23–25, 1985, the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Meeting Held on July 9–10, 1985; (3) Review of TCAS I Working Group Activities; (4) Review of Pilot Working Group Activities; (5) Review of TCAS III Activities; (6) Consideration of Additional Changes to RTCA Document DO–185, "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment"; (7) Assignment of New Tasks; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 26, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–24390 Filed 10–10–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Privacy Act of 1974; Revised System of Records

AGENCY: Customs Service, Treasury.

ACTION: Notice of a Revised System of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury, United States Customs Service, gives notice of a revision to an existing system of records, the Bank Secrecy Act Reports File, Treasury/Customs 00.067.

The Department of the Treasury, the Customs Service, and the Internal Revenue Service have responsibility for the collection, storage, utilization, analysis and dissemination of the information required to be reported on three Bank Secrecy Act forms: Currency and Monetary Instruments Report (Form 4790) (31 U.S.C 5316 and 31 CFR 103.23), Currency Transaction Report (Form 4789) (31 U.S.C. 5313 and 31 CFR 103.22), and Foreign Bank Account Report (Form 90.22–1) (31 U.S.C. 5314 and 31 CFR 103.24).

Customs' existing system of records, "Bank Secrecy Act Reports File," Treasury/Customs 00.067, which currently includes information reported on Forms 4790, Forms 4789 and Forms 90.22–1, is being expanded to include data reported on Forms 8362 or, when authorized, equivalent state reporting forms. The routine uses also have been revised. The revised system consists of the four forms and abstracts of information contained on the forms. Historically, Forms 4789 have been included in both IRS and Customs systems of records and Form 4790 and 90.22–1 have been included in Customs' systems of records. Forms 8362 and equivalent state reporting forms will be included in the IRS systems of records.

A report on the proposal to revise the existing system of records has been filed with the Office of Management and Budget, the Speaker of the House, and the President of the Senate.

DATES: This proposed system will become effective on or before December 10, 1985, unless notice is given by this Department prior to that time.

ADDRESS: Department of the Treasury, Office of the Assistant Secretary, Enforcement and Operations, Room 1458, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Robert J. Stankey, Jr., Financial Crimes and Fraud Advisor, (Enforcement and Operations) 1500 Pennsylvania Avenue, NW, Washington, DC 20220, (202) 566–8022.

Dated: October 1, 1985.

John F. W. Rogers,

Assistant Secretary of the Treasury (Management).

Treasury/Custom 00.067

SYSTEM NAME:

Bank Secrecy Act Reports File.

SYSTEM LOCATION:

Computerized Records: U.S. Customs Service, Financial Law Enforcement Center, 1301 Constitution Avenue, NW, Washington, D.C. 20229; Treasury Enforcement Communications System, San Diego, California, with computer terminal access in various Customs and IRS regional offices. Originals: 4790's—Customs ports of entry or departure; 4789's—Internal Revenue Service, Detroit Data Center, Detroit, Michigan; 90.22–1's—Customs Headquarters, Washington, D.C. (forms filed for calendar year 1982 and prior years), Internal Revenue Service Center, Memphis, Tennessee (forms filed for calendar year 1983 to the present), Internal Revenue Service Data Center, Detroit, Michigan (forms filed after 1984); 8362's and when authorized by the Assistant Secretary (Enforcement & Operations), the equivalent state reporting forms—Internal Revenue Service Data Center, Detroit, Michigan.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Listing of individuals who filed Form 4790 (Currency and Monetary Instrument Report), Form 4789, 8362 (Currency Transaction Report), and Form 90.22–1 (Foreign Banking Account Report).

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes information such as the names of individuals and other entities filing the above-referenced forms, reports of the owners of monetary instruments, the amounts and kinds of currency or other monetary instruments transported, reported, or in foreign

banking accounts, account numbers, addresses, personal identifiers, dates of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 5311 *et seq.*; 31 CFR Part 103, 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) In the event that this system of records includes information which indicates a violation or potential violation of law, or which may be relevant to such violation or potential violation, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto in response to a request for disclosure consistent with dissemination guidelines of the Treasury Department or on the initiative of either the Customs Service or Treasury Department; (b) The disclosure of records and the information in these records may be used:

(1) To assist appropriate Federal, state, local, or foreign agencies responsible for identifying, investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, treaty, formal or informal international agreement, order, or license, where there is an indication of a violation or potential violation of civil or criminal law or regulation;

(2) To assist a Federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, or contract;

(3) To provide relevant, necessary and compatible information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings;

(4) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media (original 4790's are stored at the appropriate Customs port of entry or departure, original 4789's, 8362's and authorized state forms are stored by IRS at the Internal Revenue Service, Detroit Data Center, Detroit, Michigan; and original 90–22.1's are stored at Customs Headquarters in Washington, D.C. and the Internal Revenue Service Center, Memphis, Tennessee).

RETRIEVABILITY:

By name and other identifiers.

SAFEGUARDS:

Procedural and Physical safeguards are utilized, such as accountability and receipt access, guards patrolling the area, restricted access and alarm protection systems, special communication security, etc.

RETENTION AND DISPOSAL:

Retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Enforcement, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record petaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material complied for law enforcement purposes whose sources need not be reported.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The provision of 5 U.S.C 552a from which this system of records is exempt and the justification for the exemptions are contained in a general notice which appears in 31 CFR 1.36.

[FR Doc. 85–24433 Filed 10–10–85; 8:45 am]
BILLING CODE 4810–22–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 198
Friday, October 11, 1985

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).

CONTENTS

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CIVIL RIGHTS COMMISSION

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC.

DATE AND TIME: Wednesday, October 16, 1985, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Proposed Executive Session
IV. Staff Director's Report (July and August)
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
V. Selection of Commission Meeting Dates for 1986
VI. Resolution to Hold Consultation/Hearing on "Issues in Housing Discrimination"
VII. Selection of Topics for 1986 Hearings
VIII. Review of Project Proposals
IX. Action on SAC Reports From Connecticut, Idaho, Illinois, Kansas, Nebraska, Virginia, and the Mid-Atlantic Region
X. Appointments to State Advisory Committees
XI. Civil Rights Developments in the Northwestern Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376–8314.

Lawrence B. Glick,
Solicitor.

[FR Doc. 85-24505 Filed 10-9-84; 12:47 pm]
BILLING CODE 6335-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, October 15, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs there:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to convert to a non-FDIC-insured institution:

The Business Bank, Vienna, Virginia.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: October 8, 1985.
Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 85-24507 Filed 10-9-85; 12:47 pm]
BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 11:30 a.m. on Monday, October 7, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of The South Carolina National Bank, Charleston, South Carolina, for consent to transfer certain assets to First Federal Savings and Loan Association of South Carolina, Greenville, South Carolina, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in the Columbia and North Charleston Branches of The South Carolina National Bank and the Columbia and Summerville Branches of the former First National Bank of South Carolina (now merged with The South Carolina National Bank).

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: October 7, 1985.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-24508 Filed 10-9-85; 8:45 am]
BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, October 15, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and establish one branch:

Bank of Danville, Danville, Kentucky, an insured State nonmember bank, for consent to merge, under its charter and title, with the Old Bank, Perryville, Kentucky, and for consent to establish the sole office of The Old Bank as a brach of the resultant bank.

Application for consent to assume deposit liabilities:

The Boston Five Cents Savings Bank FSB, Boston, Massachusetts, an FDIC-insured Federal savings bank, for consent to assume the liablity to pay deposits made in New Bedford-Acushnet Co-Operative Bank, New Bedford, Massachusetts, a non-federally-insured institution.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,339-L
Guaranty State Bank of Saint Paul, St. Paul, Minnesota

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of new Part 353, to be entitled "Reports of Crimes Affecting Insured Nonmember Bank; Notification of Change in Fidelity Bond Coverage," which would (1) require insured nonmember banks to report, on a prescribed form, criminal violations of the United States Code that involve or affect such banks to the appropriate investigatory and prosecuting authorities, as well as to the Corporation; and (2) require, in the interest of reducing losses, that an insured nonmember bank notify the Corporation if its fidelity bond against defalcations and similar losses is cancelled or if the coverage is changed significantly.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: October 8, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson;
Executive Secretary.
[FR Doc. 85-24509 Filed 10-9-85; 12:47 p.m.]
BILLING CODE 6714-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 7, 1985, 49 FR 40946.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 9, 1985, 10:00 a.m.

CHANGE IN THE MEETING: The following docket number has been added:

Item No. and Docket No. and Company

CAG-2—RP85-150-000, Natural Gas Pipeline Company of America

Kenneth F. Plumb,
Secretary.
[FR Doc. 85-24476 Filed 10-9-85; 11:30 am]
BILLING CODE 6717-02-M

6

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: Thursday, October 17, 1985 at 3:00 p.m. and Friday, October 25, 1985, at 10:30 a.m.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open Meetings.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (377-6679).

MATTERS TO BE CONSIDERED: The following items will be on the Bank Board meeting of Thursday, October 17, 1985 at 3:00 p.m.:

Criminal Referrals
Loans to One Borrower
Applicability of Conversion Regulations to Certain Multistep Transactions
Supervisory Conversions

The following items will be on the Bank Board meeting of Friday, October 25, 1985 at 10:30 a.m.:

Receivership and Conservatorship Regulations
Prepayment Penalties in the "Due on Sale" Context

Jeff Sconyers,
Secretary.
October 9, 1985.
[FR Doc. 85-24553 Filed 10-9-85; 3:53 pm]
BILLING CODE 6720-01-M

7

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 16, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 8, 1985.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 85-24457 Filed 10-9-85; 9:01 am]
BILLING CODE 6210-01-M

8

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 3:00 p.m., Thursday, October 17, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and

salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–24544 Filed 10–9–85; 3:39 pm]

BILLING CODE 6210–01–M

9

NATIONAL CREDIT UNION ADMINISTRATION

Change in Time

The previously announced closed meeting of the National Credit Union Administration scheduled for 9:30 a.m., Wednesday, October 2, 1985 was changed to 10:45 a.m.

The previously announced items were:

1. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Reports to the Board. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 10:45 a.m., in the Filene Board Room, 1776 G Street, NW., Washington, DC.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–24460 Filed 10–9–85; 9:46 am]

BILLING CODE 7535–01–M

10

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:00 a.m., Wednesday, October 16, 1985.

PLACES: 1776 G Street, NW., Washington, D.C. 20456, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Central Liquidity Facility Reserving Policy for Fiscal Year 1986.
4. Central Liquidity Facility Agent Reimbursement Policy.
5. Insurance Fund Report.
6. National Credit Union Share Insurance Fund Dividend Rate and Insurance Premium Waiver.
7. Share Insurance Fund Transfer Rate for Fiscal Year 1986.
8. Operating Fee for Calendar Year 1986.

RECESS: 10:15 a.m.

TIME AND DATE: 10:30 a.m., Wednesday, October 16, 1985.

PLACE: 1776 G Street, NW., Washington, D.C., Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. approval of Minutes of Previous Closed Meetings.
2. appeal of Regional Director's Denial of Federal Share Insurance Coverage. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Central Liquidity Facility Lines of Credit for State Credit Union Share Insurance Corporations. Closed pursuant to exemption (8).
4. administrative action Under Section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).
5. Personnel Actions. Closed pursuant to exemptions (2) and (6).

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–24461 Filed 10–9–85; 9:46 am]

BILLING CODE 7535–01–M

11

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

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 meetings during the week of October 14, 1985.

An open meeting will be held on Tuesday, October 15, 1985, at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to 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).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, October 15, 1985, at 10:00 a.m., will be:

1. Consideration of whether to adopt an amendment to Rule 22c–1 under the Investment Company Act of 1940. The amendment permits variable annuity separate accounts to price initial purchase payments in accordance with a two-day/five-day procedure. For further information, please contact Karen L. Skidmore at (202) 272–3017.

2. Consideration of whether to adopt revisions to Form ADV and conforming amendments to rules 0–7 and 204–1 under the Investment Advisers Act of 1940. The revisions to Form ADV would make it consistent with the uniform Form ADV adopted by the North American Securities Administrators Association, Inc. on September 29, 1985. The revised Form ADV will serve as a uniform investment adviser registration form for the Commission and the jurisdictions which require investment advisers to register as such. For further information, please contact Jay B. Gould at (202) 272–2810.

3. Consideration of whether to issue an order authorizing the Central and South West Fuels, Inc. ("CSWF"), and its parent companies, Central Power and Light Company, Southwestern Electric Power Company, Public Service Company of Oklahoma, and West Texas Utilities Company, electric utility subsidiaries of Central and South West Corporation ("CSW"), a registered holding company, for CSWF to be dissolved and its personnel and continuing activities be positioned as a fuels department within Central and South West Services, Inc. a wholly owned subsidiary of CSW. This proposed transaction was noticed by the Commission on April 5, 1984 (HCAR No. 23275) and the City of Brownsville, Texas, Mid-Tex Electric Cooperative, Inc., and Northeast Texas Electric Cooperative, Inc. have intervened and requested a hearing. For further information, please contact Robert Wason at (202) 272–7684.

4. Consideration of whether to issue a release for public comment a proposal to adopt amendments to Securities Exchange Act Rule 15c3–1 that would expand the types of instruments that could be used to create a hedged position in highly rated corporate debt securities. The amendments would also lower the deductions from net worth in arriving at net capital for hedged corporate debt securities positions and would redefine the criteria for determining whether the maturities of two offsetting positions are close enough to consider the combined corporate debt securities position as hedged for purposes of Rule 15c3–1. For further information, please contact Michael P. Jamroz at (202) 272–2398.

5. Consideration of whether to adopt: (1) Amendments to Rule 14b–1 relating to brokers' obligation in connection with forwarding communications to beneficial owners; (2) new Rule 14a–13 a registrant-related corollary to Rule 14b–1; and (3) corresponding amendments to Rule 14c–7. The proposed amendments are intended to allow for the most advantageous implementation of the system of direct communication provided under those rules. For further information, please contact Sarah A. Miller at (202) 272–2589.

The subject matter of the closed meeting scheduled for Tuesday, October 15, 1985, following the 10:00 a.m. open meeting, will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alan Dye at (202) 272–2014.

John Wheeler,
Secretary.
October 8, 1985.

[FR Doc. 85-24506 Filed 10-9-85; 12:47 pm]
BILLING CODE 6010-01-M

12

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, section 4 of the Corporation's By-laws, section 116(f) of the said Act and Sections 4 and 5 of the said policy.

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Approval of Board Minutes
III. Union Oil Parachute Creek Project—Consideration of Financial Assistance Award
IV. Seep Ridge Project—Status of Negotiations
V. Resolution to Close Meeting

Closed Session

VI. Status report—Eastern Coal Solicitiation Projects
VII. Status report—Tar Sands Solicitiation Projects

TIME AND DATE: 9:30 a.m., October 16, 1985.

PLACE: 2121 K Street, NW., Rooms 503 and 403, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchison, Director-Media Relations, at (202) 822–6455.

United States Synthetic Fuels Corporation.
March Coleman,
Assistant General Counsel-Corporate and Litigation.
October 9, 1985.

[FR Doc. 85-24549 Filed 10-9-85; 3:53 pm]
BILLING CODE 0000-00-M

federal register

Friday
October 11, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Pennsylvania:	
PA84–3035	Sept. 21, 1984.
PA84–3002	Feb. 10, 1984.
PA84–3003	Feb. 10, 1984.
PA84–3037	Oct. 5, 1984.
PA83–3051	Nov. 25, 1983.
PA85–3012	Mar. 8, 1985.
PA85–3017	Apr. 5, 1985.
California:	
CA85–5036	Sept. 20, 1985.
CA85–5035	Sept. 6, 1985.
CA85–5034	Aug. 23, 1985.
Michigan:	
MI85–5001	June 14, 1985.
MI83–2018	Mar. 11, 1983.
Delaware:	
DE85–3021	Apr. 19, 1985.
Wisconsin:	
WI84–5016	June 22, 1984.
Rhode Island:	
RI84–3043	Nov. 30, 1984.
Arizona:	
AZ84–5005	Mar. 9, 1984.

Supersedeas Decision to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Pennsylvania:	
PA84–3017 (PA85–3054)	June 15, 1985.
Washington:	
WA84–5040 (WA85–5039)	Nov. 16, 1984.

Signed at Washington, DC this 4th day of October 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. PA84-3035 - MOD. NO. 7 (49 FR 27243 - Sept. 21, 1984) Lackawanna, Susquehanna, Wayne & Wyoming Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS		
Lackawanna, Susequehanna, Wayne Counties, and Wyoming County: East of Susquehanna River	14.46	2.90
ELECTRICIANS:		
Lackawanna, Susquehanna, Wayne Counties, and Wyoming County: East of Susquehanna River	15.55	3.40+ 3%
Wyoming County: West of Susquehanna River	16.30	3.40+ 3%
ELEVATOR CONSTRUCTORS	15.45	3.58+ a+b
ELEVATOR CONSTRUCTORS HELPERS	10.815	3.58+ a+b
ELEVATOR CONSTRUCTORS HELPERS (Prob.)	7.725	
MILLWRIGHTS:		
Lackawanna, Susquehanna, Wayne Counties, and Wyoming County: East of Susquehanna River	15.04	2.90
PAINTERS		
Brush & Roller	13.65	1.80
Spray	15.15	1.80
Steel	14.65	1.80
		(3)

DECISION NO PA84-3002 - MOD. #10 (49 FR 5295 - February 10, 1984) Adams & York Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	18.26	2.04
ELECTRICIANS:		
Franklin, Carrol, Monoghan, and Fairview Townships in York County	15.91	1.83+3 1/4%
GLAZIERS	13.91	1.96
LINE CONSTRUCTION		
Linemen, Cable Splicers	15.56	.80+3 3/8%
Winch truck operator	10.89	.80+3 3/8%
Groundman	9.34	.80+3 3/8%
SPRINKLER FITTERS	17.75	3.40

DECISION NO. PA84-3003 - MOD. #5 (49 FR 5297 - February 10, 1984) Lancaster County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	18.26	2.04
ELEVATOR CONSTRUCTORS	16.38	3.58+ a+b
ELEVATOR CONSTRUCTORS HELPERS	11.47	3.58+ a+b
ELEVATOR CONSTRUCTORS HELPERS (Prob.)	8.19	
IRON WORKERS:		
Eastern part of County		
Structural, Ornamental Reinforcing Steel, Mesh Machinery & Rebar work	17.45	4.75
All Pre-Eng. Bldg. one exevation of 25 ft. or less, Overhead Doors, Chainlink type fences	16.58	4.75
All other types fences	14.83	4.75
	17.45	4.75

MODIFICATIONS P. 2

DECISION NO. PA84-3037 - MOD. #4 (49 FR 39436 - October 5, 1984) Lebanon, Lycoming, Northumberland, Schuylkill & Sullivan Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS		
Zone 1	18.26	2.04
ELECTRICIANS		
Zone 2	15.91	1.83+3 1/4%
Zone 5	17.38	2.39+ 3%
ELEVATOR CONSTRUCTORS	16.38	3.58+ a+b
ELEVATOR CONSTRUCTORS HELPERS	11.47	3.58+ a+b
ELEVATOR CONSTRUCTORS HELPERS (Prob.)	8.19	
GLAZIERS		
Zone 3	13.91	1.96
IRONWORKERS		
Zone 2		
Structural, Ornamental Reinforcing Steel, Mesh Machinery & Rebar Work	17.45	4.75
All Pre-Eng. Bldg. one exevation of 25 ft. or less, Overhead Doors, Chainlink type fences	16.58	4.75
All other types fences	14.83	4.75
LINE CONSTRUCTION:	17.45	4.75
Zone 2		
Linemen & Cable Splicers	15.56	.80+3 3/8%
Winch truck operator	10.89	.80+3 3/8%
Groundman	9.34	.80+3 3/8%
PAINTERS		
Zone 2		
Brush	12.80	2.45
Structural Steel	13.85	2.45
Spray	13.85	2.45
Zone 3		
Brush	12.47	1.30
Structural Steel	12.92	1.30
Spray	13.22	1.30
PLASTERERS		
Zone 4	14.21	2.01
SPRINKLER FITTERS	17.75	3.40
		(4)

DECISION NO. PA83-3051 - MOD. #9 (48 FR 51264 - Nov. 25, 1983) Franklin County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	18.26	2.04
ELECTRICIANS	15.91	1.83+3 1/4%
LINE CONSTRUCTION:		
Linemen	15.56	.80+3 3/8%
Winch truck operator	10.89	.80+3 3/8%
Groundman	9.34	.80+3 3/8%
PAINTERS:		
Brush		
Metal, Letterkenny, Hamilton, Green, South Hampton, Lurgan, Fanett, Shipensburg, Townships and Boroughs, Washington, Antrin, Hamilton, Guilford, Montgomery, Warren, Peters, St. Thomas and Quincy, Chambersburg, Twps.	12.47	1.30

MODIFICATIONS P. 3

DECISION NO. PA85-3012 - MOD. #6 (50 FR 9568 March 8, 1985) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CEMENT MASONS		
Zone 3	14.19	2.00
ELECTRICIANS		
Zone 2		
Commercial	20.68	17.5%
Zone 3		
Commercial	19.89	19½%
Residential up to and including 3 stories	12.14	22½%
Zone 5		
Commercial	17.38	2.39+ 3%
Zone 7		
Commercial	17.40	2.04+ 3%
IRONWORKERS		
Zone 3		
Structural & Ornamental	16.75	7.80
Zone 4		
Structural, Ornamental Reinforcing Steel Mesh Machinery & Rebar Work	17.45	4.75
All Pre-Eng. Bldg. one exevation of 25 ft. or less, Overhead Doors, Chainlink type fences	14.83	4.75
All other types fences	17.45	4.75
PAINTERS		
Zone 3		
Brush	12.80	2.45
Spray	13.85	2.45
Roller	12.80	2.45
PLASTERERS		
Zone 2	14.21	2.01

DECISION NO. PA85-3017 - MOD. #3 (50 FR 13702 - April 5, 1985) Carbon, Monroe County including Tobyhanna Army Depot and Pike County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS & STONEMASONS		
Zone 1	16.50	4.02
CARPENTERS		
Zone 2	16.78	4.11
Zone 3	14.46	2.90
ELECTRICIANS:		
Zone 1	17.40	2.04+ 3%
Zone 5		
Zone A-from 0 to 50 miles from zero mile-stone marker	15.55	3.40+ 3%
Zone B-All distance over 50 miles	16.30	3.40+ 3%
ELEVATORS CONSTRUCTORS	15.45	3.58+ c+d
Helpers	70%JR	3.58+ c+d
Probationary	50%JR	
LABORERS:		
Zone 2		
Class 1	11.67	2.86
Class 2	11.92	2.86
Class 3	12.17	2.86
Class 4	12.69	2.86
Class 5	12.42	2.86
MILLWRIGHTS		
Zone 1	15.04	2.90
SPRINKLER FITTERS	17.75	3.40

(5)

MODIFICATIONS P. 4

DECISION NO. CA85-5036 - Mod. #1 (50 FR 38411 - September 20, 1985) Alameda, Alpine, etc., Counties, CA	Basic Hourly Rates	Fringe Benefits
Add:		
Tulare County to the following Area Descriptions:		
Carpenters: Area 2		
Laborers: Area 2		
Sheet Metal Workers: Area 7		
Bricklayers: Stonemasons: Area 8	$17.99	$4.31
Area 8: Tulare County		
Laborers:		
Work on single family homes and apartments not exceeding 2 stories:		
Group 1	8.00	5.36
Group 2	10.00	5.36
Hod Carriers	11.00	5.36
Group 1: All clean-up work of debris, grounds and buildings including but not limited to street cleaners, including distribution of materials; cleaning and washing of windows; gardeners; landscape and horticultural laborers		
Group 2: Concrete workers (wet or dry), operation of all pneumatic, air, gas and electric tools		
Omit:		
Truck Drivers: Group 38		

DECISION NO. CA85-5036 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians: Area 1	$23.06	$7.985 +3%
Line Construction: Area 8	23.06	7.985 +3%
Tile Finishers: Area Descriptions to read as follows: Area 1: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Siskiyou, Solano, Sonoma & Trinity Area 2: Alpine, Amador, Calaveras, Fresno, Kings, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tulare and Tuolumne Counties		

DECISION NO. AZ84-5005 MOD #9 (49 FR 9059-March 9, 1984) Statewide, Arizona	Basic Hourly Rates	Fringe Benefits
ADD:		
Laborers:		
Area 1: Flagger	$12.30	$2.77
Area 2: Flagger	9.80	2.77
Under Group Descriptions: Laborers Group 1 ADD: Flaggers		

(8)

DECISION NO. CA85-5034 -
Mod. #2
(50 FR 34341 - August 23, 1985)
San Diego County, CA

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons:		
Cement Masons	$15.36	$8.27
Color Work: Composition, Mastic or Epoxy; Finishing Machine; Curb Machine	15.66	8.27
Drywall Installers/Lathers:		
Drywall Installers/Lathers	20.485	3.77
Drywall Stocker, Scrapper and Clean-up	9.57	1.37
Laborers:		
Group 1	14.95	6.62
Group 2	15.25	6.62
Tunnel Laborers:		
Group 1	15.25	6.62
Group 2	15.45	6.62
Group 3	15.70	6.62
Plaster Tenders:		
Single family homes and apartments up to and including 3 stories	12.99	6.44
All other work	15.99	6.44
Plasterers:		
Single family homes and apartments up to and including 3 stories	15.47	4.49
All other work	18.47	4.49
Power Equipment Operators:		
Group 1	18.05	7.34
Group 2	18.33	7.34
Group 3	18.62	7.34
Group 4	18.76	7.34
Group 5	18.98	7.34
Group 6	19.09	7.34
Group 7	19.21	7.34
Group 8	19.38	7.34
Group 9	19.51	7.34

(7)

Decision No. WI84-5016
Mod #6
(48-FR-25829-June 22, 1984)
Statewide, Wisconsin

	Basic Hourly Rates	Fringe Benefits
ADD:		
Laborers:		
Zone 1:		
Group 9	$7.99	$3.92
Zone 2		
Group 9	8.63	2.68
Zone 3		
Group 9	9.60	3.58
Zone 4		
Group 7	8.45	1.88
Zone 5		
Group 7	7.84	3.92
Zone 6		
Group 7	8.45	2.03
Under Labor Classifications		
ADD:		
Group 9: Zones 1, 2, & 3 Flaggers		
Group 7: Zones 4, 5, & 6 Flaggers		

DECISION NO. RI84-3043 -
MOD. #8
(49 FR 47171 Nov- 30, 1984)
Statewide Rhode Island

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS		
Tivertom & Little Compton	16.00	2.60+ 18¾%
Remainder of the State	17.60	30%
SPRINKLERFITTER	19.57	3.30

DECISION NO. CA85-5035 -
Mod. #3
(50 FR 36519 - September 6, 1985)
Imperial, Inyo, Kern, etc., Counties, CA

	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 7:		
Contracts over $500,000:		
Electrician	$23.00	$3.88 +3%
Cable Splicer	25.30	3.88 +3%
Contracts $500,000 or less:		
Electrician	17.50	3.88 +3%
Cable Splicer	19.25	3.88 +3%
Residential Electrician	11.40	3.88 +3%
Line Construction:		
Area 6:		
Ground	17.25	3.58 +3%
Line worker; Line truck and equipment operator	23.00	3.88 +3%
Cable Splicers	25.30	3.88 +3%

(6)

DECISION NO. MI85-5001 -
Mod. #1
(50 FR 24991 - June 14, 1985)
Allegan, Barry, Berrien, etc., Counties, MI

	Basic Hourly Rates	Fringe Benefits
Add:		
Cement Masons and Plasterers:		
Area 4	$13.15	$2.12
Area 4: Alegan County (eastern and southeastern portion); Barry County; Calhoun County; Kalamazoo County; Van Buren County (eastern half)		

DECISION NO. DE85-3021 -
MOD. #4
(50 FR 15693 - April 19, 1985)
Statewide Delaware

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
MILLWRIGHTS		
New Castle & Kent	19.05	4.39
SPRINKLERFITTERS	17.35	3.40

DECISION NO. MI83-2018 -
Mod. #5
(48 FR 10582 - March 11, 1983)
Alcona, Alpena, etc., Counties, Michigan

	Basic Hourly Rates	Fringe Benefits
OMIT:		
Crawford, Kalkaska and Otsego Counties for building construction:		

SUPERSEDEAS DECISION

STATE: PENNSYLVANIA

COUNTIES: BERKS, LEHIGH & NORTHAMPTON

DECISION NO. PA85-3054

DATE: Date of Publication

Supersedes Decision No. PA84-3017, dated June 15, 1984 in 49 FR 24859.

DESCRIPTION OF WORK: Building Erection and Foundation excavation, (does not include single family homes or apartments up to and including 4 stories), (excluding Sewage and Water Treatment Plant Projects.)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKER	18.26	2.04
BOILERMAKERS	18.88	2.865
BRICKLAYERS & STONEMASONS		
Zone 1	13.35	2.35
Zone 2	15.95	4.57
Zone 3	18.20	2.17
CARPENTERS		
Zone 1	13.68	2.47
Zone 2	16.78	4.11
CEMENT MASONS		
Zone 1	14.19	2.00
Zone 2	17.78	2.55
Zone 3	18.15	2.17
ELECTRICIANS		
Zone 1	17.40	2.04+ 3%
Zone 2	15.91	1.83+ 3 1/4%
Zone 3	17.38	2.39+ 3%
Zone 4	17.61	1.59+ 10%
ELEVATOR CONSTRUCTORS	16.92	3.29+ a+b
ELEVATOR CONSTRUCTORS HELPERS	11.84	3.29+ a+b
ELEVATOR CONSTRUCTORS HELPERS (Prob.)	8.46	
GLAZIERS	14.04	1.465
IRONWORKERS		
Zone 1		
Structural, Ornamental Reinforcing Steel, Mesh Machinery & Rebar Work	17.54	4.75
All Pre-Eng. Bldg. one exevation of 25 ft. or less, Overhead Doors, Chainlink type fences	16.58	4.75
All other types fences	14.83	4.75
Zone 2	17.45	4.75
LATHERS	18.45	4.20
Zone 1	15.40	2.22
Zone 2	16.21	3.31
LEAD BURNERS	10.75	.66+c

	Basic Hourly Rates	Fringe Benefits
LABORERS		
Zone 1		
Class 1	10.95	1.25
Class 2	11.18	1.25
Class 3	11.23	1.25
Class 4	11.34	1.25
Class 5	11.38	1.25
Class 6	11.40	1.25
Zone 2		
Class 1	11.67	2.86
Class 2	11.92	2.86
Class 3	12.42	2.86
Class 4	12.19	2.86
Class 5	12.69	2.86
LINE CONSTRUCTION:		
Zone 1		
Journeyman lineman	17.32	.80+3 3/8%
Winch Truck op.	12.12	.80+3 3/8%
Truck Driver	11.26	.80+3 3/8%
Groundman	10.39	.80+3 3/8%
Zone 2		
Lineman & Cable Splicers	18.16	2.00+ 10 3/8%
Groundman	10.90	2.00+ 10 3/8%
MARBLE SETTERS	14.30	4.55
MILLWRIGHTS:		
Zone 1	17.18	4.11
Zone 2	14.20	2.47
PAINTERS		
Zone 1		
Brush & Roller	12.15	2.45
Spray & Steel	13.20	2.45
Zone 2		
Brush	15.25	3.98
Steel	17.25	3.98
Spray	16.25	3.98
Zone 3		
Brush	13.80	2.63
Structural Steel	14.40	2.63
Spray	14.40	2.63

(9)

DECISION NO. PA85-3054

	Basic Hourly Rates	Fringe Benefits
PILEDRIVERMEN	15.97	7.76+d
PLASTERERS		
Zone 1	14.21	2.01
Zone 2	18.31	1.91
Zone 3	18.04	2.17
PLUMBERS	19.38	3.94
POWER EQUIPMENT OPERATORS:		
Group 1	16.52	26.6% +e
Group 2	16.23	26.6% +e
Group 3	15.17	26.6% +e
Group 4	14.52	26.6% +e
Group 5	13.26	25.6% +e
Group 6	12.36	26.6% +e
ROOFERS:		
Shingle, slate & Tile	14.15	2.42
Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; cleanup debris	6.25	2.42
All other Work	20.12	2.83+f
Mechanic II (for all other work) - Handles and transports all materials, tools and equipment; clean-up debris	8.25	2.83+f
SHEETMETAL WORKERS	16.73	4.92
SOFT FLOOR LAYERS		
Zone 1	13.68	2.47
Zone 2	15.29	4.11
SPRINKLER FITTERS	17.75	3.40
STEAMFITTERS		
Zone 1	19.16	4.16
Zone 2	19.38	3.94
TERRAZZO WORKERS		
Zone 1	14.55	4.55
Zone 2	15.60	2.17
TILE SETTERS		
Zone 1	12.75	2.15
Zone 2	14.30	4.55
Zone 3	12.50	4.14
TRUCK DRIVERS		
Zone 1		
Class 1	10.80	g+h+j
Class 2	10.70	g+h+j
Class 3	11.10	g+h+j
Class 4	11.25	g+h+j
Zone 2		
Class 1	13.57	
Class 2	13.64	
Class 3	14.13	
Zone 3		
Truck Driver (Building)	12.13	k+l
Wrecking	10.80	1.89

WELDERS: Rate for craft to which welding is incidental.

*Unlisted classification needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

(10)

DECISION NO. PA85-3054

AREA COVERED BY BRICKLAYERS & STONEMASONS ZONES

Zone 1 - Berks County
Zone 2 - Lehigh County
Zone 3 - Northampton County

AREA COVERED BY CARPENTERS ZONES

Zone 1 - Berks County
Zone 2 - Lehigh and Northampton Counties

AREA COVERED BY CEMENT MASONS ZONES

Zone 1 - Berks County
Zone 2 - Lehigh County
Zone 3 - Northampton County

AREA COVERED BY ELECTRICIANS ZONES

Zone 1 - Lehigh County: Townships in Berks County; Heford, Longswamp & Washington Twps., portion of Maxatowney; east of Saccony Creek Towhships in Northampton County: Allen, Hanover, Lehigh, Bath, Freemansburg, Hellertown and Bethlehem
Zone 2 - Berks County; Marion, Tulpehocken & Bethel Twps.
Zone 3 - Remainder of Berks County
Zone 4 - Remainder of Northampton County

AREA COVERED BY IRONWORKERS ZONES

Zone 1 - Berks County
Zone 2 - Lehigh & Northampton Counties

AREA COVERED BY LABORERS ZONES

Zone 1 - Berks County
Zone 2 - Lehigh & Northampton Counties

AREA COVERED BY LATHERS ZONES

Zone 1 - Berks County
Zone 2 - Lehigh & Northampton Counties

AREA COVERED BY LINE CONSTRUCTION

Zone 1 - Berks & Lehigh Counties
Zone 2 - Northampton County

AREA COVERED BY MILLWRIGHTS ZONES

Zone 1 - Lehigh & Northampton Counties
Zone 2 - Berks County

DECISION NO. PA85-3054

AREA COVERED BY PAINTERS ZONES

Zone 1 - Berks County
Zone 2 - Lehigh County; Bethlehem in Northampton County
Zone 3 - Eastern; Northampton County

AREA COVERED BY PLASTERERS ZONES

Zone 1 - Berks County
Zone 2 - Lehigh County

AREA COVERED BY SOFT FLOOR LAYERS

Zone 1 - Berks County
Zone 2 - Lehigh & Northampton Counties

AREA COVERED BY STEAMFITTERS ZONES

Zone 1 - Berks & Lehigh Counties
Zone 2 - Northampton County

AREA COVERED BY TERRAZZO WORKERS

Zone 1 - Berks & Lehigh Counties
Zone 2 - Northampton County

AREA COVERED BY TILE SETTERS ZONES

Zone 1 - Berks County
Zone 2 - Lehigh County
Zone 3 - Northampton County

AREA COVERED BY TRUCK DRIVERS ZONES

Zone 1 - Lehigh County
Zone 2 - Northampton County
Zone 3 - Berks County

LABORERS CLASSIFICATIONS DEFINITIONS

Zone 1 - Berks County
Class 1 - General Laborers
Class 2 - Operators of jackhammer, paving breaking and other pneumatic, electrical and mechanical tools comming under the jurisdiction of laborers, laying of all clay terra cotta, ironstone vitrified concrete or non-metallic pipe and the making of joints for same, wagon drill operators and concrete power boggies.
Class 3 - Cofferdam, (below 10'), tunnel free air muckers

LABORERS CLASSIFICATION (CONT'D)

Class 4 - Handling and using cutting or borning torches in the wrecking of buildings, plasterer tenders, scaffold builders, and removal for plasterers
Class 5 - Mason Tenders, scaffold builders, removal for mason and power buggies
Class 6 - Blaster
Zone 2 - Lehigh & Northampton Counties
Class 1 - General Laborers
Class 2 - Operator of jackhammer, paving breaking and other pneumatic and mechanical Tools comming under the jurisdiction of laborers, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe and the making of joints for same and cofferdam (below 10')
Class 3 - Wagon drills and men handling burning torches in the wrecking of buildings
Class 4 - Plaster and Mason Tenders, scaffold builders and handling of all materials to be used by plasterers and masons, brick and block loaded on pallets, cement finishers and sandblaster helpers, power buggies, all floor hardner and "cure" application shall be the work of the mason tender. All pumps such as the concrete, plaster, mortar and water, installing plastic or other non-solid refractory materials in connection with boiler work.
Class 5 - Barko Tamper operator

POWER EQUIPMENT OPERATORS CLASSIFICATIONS DEFINITIONS

Group 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helocopters, machines similar to the above

Group 2: All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist with two towers, paver 21E and over, all types overhead crances, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, pipin type backhoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

Group 3: Coveyors, building hoist (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt plant engineers, roller (high grade finishing), ditch witch typetrencher, all loaders under 3-½ cu. yds., mechanic-welders, motor patrols, drill helpers self-contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

POWER EQUIPMENT OPERATOR CLASSIFICATION (CONT'D)

Group 4: Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishing machines concrete breaking machines, rollers, seam pulverzing mixer, power broom, seeding spreader, tireman (for power equipment) machines similar to above

Group 5: Fireman, grease truck

Group 6: Oilers and deck hands (personnel boats), core drill helper

TRUCK DRIVERS CLASSIFICATIONS DEFINITIONS

Zone 1
Class 1 - Truck Drivers
Class 2 - Helpers and Warehousemen
Class 3 - Trailer Drivers
Class 4 - Euclid Drivers
Zone 2
Class 1 - Helper, Stake Body Truck (single axle), Dumpster
Class 2 - Dump Trucks, Tandem & Batch Trucks, Semi-Trailers, Agitator Mixer and Trucks, Ready Mix and Dumpcrete Type Vehicles Asphalt Distributors, Farm Tractor when used Body Truck (Tandem)
Class 3 - Euclid Type, Off Highway Equipment - Back or Belly Dump Trucks and Double Hitched Equipment Straddle (Ross) Carrier, Low Bed Trailers

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day E-Thanksgiving Day and F-Christmas Day

FOOTNOTES:

a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years as vacation pay credit.

b. Paid Holidays: A through F, plus the Friday after Thanksgiving Day.

c. 9 paid holidays, A through F and Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday, and is available for work the days preceeding and following the holiday.

d. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veterans Day; Thanksgiving Day and Christmas Day.

DECISION NO. PA85-3054

FOOTNOTES CONT'D

e. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

f. Paid Holiday: Election Day.

g. Employer contributes $127.03 to a Health and Welfare fund per month.

h. Employer contributes $108.34 to a Health and Welfare fund per month.

j. When an employee has been employed for one year, but less than five years, he shall receive one weeks vacation pay.

k. Employer contributes $135.00 per employee per month.

l. Employer contributes $134.34 per employee per month.

STATE: WASHINGTON
DECISION NUMBER: WA85-5039
Supersedes Decision Number WA84-5040 dated November 16, 1984, in 49 FR 45532
DESCRIPTION OF WORK: Heavy and Highway projects and Dredging

COUNTIES: Statewide
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Area 1:		
Projects under $2,000,000 exclusive of mechanical and electrical subcontracts:		
Carpenters	$13.37	$3.67
Piledrivers:		
Piledriver	13.49	3.67
Boom Man	13.57	3.67
Creosote	13.69	3.67
Millwrights	13.77	3.67
All Other Work:		
Carpenters & Lathers	16.82	3.67
Piledriver, saw filer, stationary power woodworking tool operator	16.97	3.67
Boom men, Carpenters working on burned, charred, creosoted or similarly treated material	17.07	3.67
Piledriver, creosoted material	17.22	3.67
Millwright, Machine Erector	17.32	3.67
Area 2:		
Carpenters	17.32	2.96
Carpenter on Creosoted material	17.42	2.96
Sawfilers, stationary power saws & woodworking tools	17.45	2.96
Millwright & Machine Erector	17.82	2.96
Piledriver, bridge, dock and wharf builder	17.52	2.96
Area 3:		
(See Footnote "a" regarding cost of project):		
Carpenters, automatic nailing machine, form stripper, manhole builder	16.31	4.02
Stationary power saw operator	16.46	4.02
Millwright & Machine Erector		
Certified Welder	16.71	4.02
Piledriverman, bridge, dock, and wharf builder	16.41	4.02
Boom men	16.51	4.02

	Basic Hourly Rates	Fringe Benefits
CARPENTERS (CONT'D):		
Area 4:		
Carpenters	16.57	3.42
Piledriver, sawfiler, stationary power woodworking tools	16.72	3.42
Boom men, carpenters working on burned, charred, or similarly treated material	16.82	3.42
Piledriver, creosote	16.93	3.42
Millwright, Machine erector	17.07	3.42
Area 5:		
Carpenters, lathers, sawfiler stationary power saws and wood working tools	14.00	2.96
Piledriver, bridge, dock, and wharf builders	17.52	2.96
CEMENT MASONS:		
Area 1:		
Group 1	15.62	3.80
Group 2	16.12	3.80
Group 3	16.62	3.80
Area 2:		
Cement Masons	17.86	3.45
Composition, color, mastic, trowel machine, grinder, power tool, gunnite nozzle	18.11	3.45
Area 3:		
Cement masons	16.95	3.00
Composition, color, mastic, trowel machine, grinder, power tools, gunnite nozzle	17.20	3.00
Area 4:		
Cement Masons	16.19	4.72
Composition workers, power machinery	16.51	4.72
Area 5:		
Group 1	15.88	3.20
Grou 2	16.38	3.20
Group 3	16.88	3.20
ELECTRICIANS:		
Area 1:		
Electricians	18.00	3%+2.46
Cable Splicer	18.40	3%+2.46
Area 2:		
Electricians	18.76	3%+3.61
Cable Splicers	19.70	3%+3.61

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (CONT'D):		
Area 3:		
Electricians	20.03	3%+2.56
Cable Splicers	22.03	3%+2.56
Area 4:		
Electricians	17.62	3%+3.385
Cable Splicers	19.38	3%+3.385
Area 5:		
Electricians	18.80	3%+3.50
Cable Splicers	19.95	3%+3.50
Area 6:		
Electricians	18.06	9%+3.32
Cable Splicers	19.87	9%+3.32
Area 7:		
Electricians	18.70	3%+2.38
Cable Splicers	20.57	3%+2.38
Area 8:		
Electricians	21.00	3%+3.20
Cable Splicers	23.10	3%+3.20
IRONWORKERS:	18.26	4.71
PAINTERS:		
Area 1:		
Brush	15.97	2.59
Steel Painter, spray, steam cleaning	16.47	2.59
Swing stage or high work over 30 ft	16.67	2.59
Bituminastic, sandblasting, bridge, tanks on legs, tower, stacks, steeples	16.77	2.59
TV, radio and electrical transmission towers	17.47	2.59
Area 2:		
Brush	12.87	2.66
Spray	13.37	2.66
Bridges, high work over 50 ft (brush)	13.62	2.66
Bridges, high work over 50 ft (spray)	14.12	2.66
Highway & parking lot painter	17.64	1.05
Area 3:		
General painters	17.24	2.72
Industrial Painters	17.64	2.72
Area 4:		
Striper	16.65	1.83
Area 5:		
Journeyman Painter	15.97	2.46
Spray painter, steel painter, steam cleaning, acid etching	16.47	2.46
Swing stage or high work over 30 ft	16.67	2.46
Bituminastic, Sandblasting, bridges, towers, stacks, steeples, tank on legs	16.77	2.46

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	Basic Hourly Rates	Fringe Benefits
Painters (Cont'd):		
(Area 5 (cont'd):		
TV, Radio and Electrical Transmission Towers	17.47	2.46
IRRIGATION & LANDSCAPE CONSTRUCTION:		
Laborers	8.46	3.30
Plumbers	10.62	2.31
Power Equipment Operators	11.18	3.80
LABORERS:		
Area 1:		
(See Footnote "b" regarding cost of Project):		
All Counties & parts thereof East of the 120th Meridian except DOE Hanford Site:		
Group 1	10.98	3.37
Group 2	13.72	3.37
Group 3	13.97	3.37
Group 4	14.22	3.37
Group 5	14.47	3.37
Area 2:		
(See Footnote "c" regarding cost of project):		
All Counties & parts thereof lying West of the 120th Meridian except those in Areas 3 & 5:		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	12.69	3.43
Group 4	13.20	3.43
Group 5	13.40	3.43
All other work not covered by Footnote "c":		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	14.96	3.43
Group 4	15.44	3.43
Group 5	15.80	3.43
Sewer & Water Construction:		
Laborers Area 2:		
Laborer	13.80	3.31
Topman	14.14	3.31
Pipelayer	14.20	3.31
Area 3:		
(See Footnote "a" regarding cost of project):		
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum, and Southern part of Pacific		
Group 1	13.59	4.10
Group 2	13.94	4.10
Group 3	14.24	4.10
Group 4	14.49	4.10
Group 5	10.87	4.10

	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D):		
Area 3 (Cont'd):		
Zone Differential (add to basic hourly rates):		
Zone 2 $0.65		
Zone 3 1.15		
Zone 4 1.70		
Zone 5 2.75		
Area 4:		
D.O.E. Hanford Site in Benton and Franklin Counties		
Group 1	$14.10	$3.12
Group 2	14.35	3.12
Group 3	14.60	3.12
Group 4	14.85	3.12
Group 5	15.10	3.12
Area 5:		
Kittitas County and the areas of Chelan, Douglas, and Okanogan Counties which lie West of the 120th Meridian (See Footnote "d" regarding cost of project):		
Group 1	8.46	3.43
Group 2	9.60	3.43
Group 3	9.60	3.43
Group 4	9.98	3.43
Group 5	10.27	3.43
All other work not covered in Footnote "d":		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	12.00	3.43
Group 4	12.48	3.43
Group 5	12.84	3.43
LINE CONSTRUCTION:		
Cable splicer, leadman Pole Sprayer	20.03	3.5%+3.25
Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder	18.11	3.5%+3.25
Tree Trimmer	16.35	3.5%+3.25
Line Equipment Man	15.61	3.5%+2.55
Head Groundman, Powderman, Jackhammer man	13.66	3.5%+2.55
Head Groundman (chipper)	13.66	3.5%+2.55
Groundman	12.84	3.5%+2.55
Zone Differential (add to basic hourly rates):		
Zone 2 $2.40		
Zone 3 3.15		
Zone 4 3.90		
Zone 5 5.15		

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Area 1:		
All Counties & parts of counties East of the 120th Meridian except DOE Hanford Site in Benton & Franklin Counties:		
Group 1	14.70	4.35
Group 2	15.00	4.35
Group 3	15.55	4.35
Group 4	15.70	4.35
Group 5	15.85	4.35
Group 6	16.10	4.35
Group 7	16.35	4.35
Group 8	17.35	4.35
Area 2:		
All Counties and parts of Counties West of the 120th Meridian except those in areas 3 & 5. (See Footnote "d" regarding cost of project). On projects as described in Footnote "d" the rate for each group shall be 85% of the basic hourly rate plus full fringes..		
All other work not covered in Footnote "d" :		
Group 1	18.73	4.16
Group 2	18.23	4.16
roup 3	17.79	4.16
Group 4	17.43	4.16
Group 5	17.13	4.16
Group 6	15.33	4.16
Area 3:		
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern part of Pacific. (See Footnote "a" regarding cost of project):		
Group 1	15.59	5.15
Group 2	15.77	5.15
Group 3	15.93	5.15
Group 4	16.13	5.15
Group 5	16.17	5.15
Group 6	16.29	5.15
Group 7	16.35	5.15
Group 8	16.49	5.15
Group 9	16.58	5.15
Group 10	16.66	5.15
Group 11	16.68	5.15
Group 12	16.78	5.15
Group 13	16.88	5.15
Group 14	17.12	5.15
Group 15	17.31	5.15
Group 16	17.56	5.15

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Area 3 (Cont'd):		
Group 17	$17.76	$5.15
Group 18	18.01	5.15
Group 19	18.19	5.15
Zone Differential (Add to basic hourly rates):		
Zone 2 $0.65		
Zone 3 1.15		
Zone 4 1.70		
Zone 5 2.75		
Area 4:		
D.O.E. Hanford Site in Benton and Franklin Counties:		
Group 1	14.28	4.10
Group 2	14.58	4.10
Group 3	15.13	4.10
Group 4	15.28	4.10
Group 5	15.43	4.10
Group 6	15.68	4.10
Group 7	15.93	4.10
Group 8	16.93	4.10
Group 9	18.68	4.10
Area 5:		
Kittitas, and the parts of Chelan, Douglas, and Okanogan that lie West of the 120th Meridian. (See Footnote "d" regarding cost of project) On projects as described in Footnote "d" the rate for each group shall be 65% of the basic hourly rate plus full fringes. On work not covered by Footnote "d", the following rates apply:		
Group 1	16.73	4.16
Group 2	16.23	4.16
Group 3	15.74	4.16
Group 4	15.43	4.16
Group 5	15.11	4.16
Group 6	13.33	4.16
SEWER AND WATER CONSTRUCTION:		
Backhoe 790 Case & larger with attachments, ditching machine, side boom (all Cat, D-3 and larger, motor grader, back filler, front-end loader 2 yds & over, mechanic, clam, dragline, crane, screed, mechanic welder, shovel 3 yds & under	16.92	4.01
Backhoe 680 Case & smaller with attachments, side boom smaller than Cat D-3, Dozer smaller than Cat D-3, Front-end loader under 2 yds, gin truck, boring (this group continued next column)		

	Basic Hourly Rates	Fringe Benefits
SEWER & WATER (CONT'D):		
machine, bending machine, boom truck (stationary), pot fireman (engine operated above 3 bbl), service plow, mechanical greaser, large grease truck, drills Leroi type, Tractair, well point system, paving machines, rollers and compactors	16.425	4.01
Oiler, air compressor, pump, oil-greaser, chain type ditcher (Ditch Witch) concrete saw, welding machine	14.46	4.01
DREDGING:		
Area 1:		
All Counties & parts of Counties East of the 120th Meridian:		
Group 1	16.63	4.35
Group 2	16.73	4.35
Group 3	17.07	4.35
Group 4	17.12	4.35
Group 5	17.49	4.35
Area 2:		
All Counties and parts of Counties West of the 120th Meridian except those in Area 3:		
Group 1	16.75	3.96
Group 2	16.85	3.96
Group 3	17.19	3.96
Group 4	17.12	3.96
Group 5	17.49	3.96
Area 3:		
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern part of Pacific		
Group 1	16.97	3.87
Group 1A	17.66	3.87
Group 2	16.43	3.87
Group 3	16.02	3.87
Group 4	15.67	3.87
TRUCK DRIVERS:		
Area 1:		
All Counties & parts of Counties East of the 120th Meridian except DOE Hanford Site in Benton & Franklin:		
Group 1	13.43	4.10
Group 2	15.87	4.10
Group 3	15.91	4.10
Group 4	15.97	4.10
Group 5	16.06	4.10
Group 6	16.27	4.10
Group 7	16.31	4.10
Group 8	16.37	4.10

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	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (CONT'D):		
Area 1 (Cont'd):		
Group 9	$16.41	$4.10
Group 10	16.52	4.10
Group 11	16.56	4.10
Group 12	16.87	4.10
Group 13	17.01	4.10
Group 14	17.17	4.10
Group 15	17.31	4.10
Area 2:		
All Counties and parts of Counties that lie West of the 120th Meridian except those in Area 3. All of Kittitas & Yakima are included. (See Footnote "d" regarding cost of project) On projects as described in Footnote "d" the rate for each group shall be 85% of the base rate plus full fringe benefits. On work not covered by Footnote "d" the following rates apply:		
Group 1	17.06	3.64
Group 2	17.11	3.64
Group 3	17.16	3.64
Group 4	17.27	3.64
Group 5	17.33	3.64
Group 6	17.37	3.64
Group 7	17.38	3.64
Group 8	17.44	3.64
Group 9	17.49	3.64
Group 10	17.51	3.64
Group 11	17.54	3.64
Group 12	17.64	3.64
Group 13	17.66	3.64
Group 14	17.70	3.64
Group 15	17.82	3.64
Group 16	17.86	3.64
Group 17	17.98	3.64
Group 18	18.03	3.64
Group 19	18.19	3.64
Group 20	18.35	3.64
Group 21	18.51	3.64
Group 22	12.00	3.64
Group 23	15.25	3.64
Area 3:		
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum, and the Southern part of Pacific County. (See Footnote "a" regarding cost of project). On work not covered by Footnote "a" the following rates apply:		
Group 1	15.24	4.77
Group 2	15.29	4.77
Group 3	15.34	4.77
Group 4	15.39	4.77
Group 5	15.44	4.77

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (CONT'D):		
Area 3 (Cont'd):		
Group 6	15.54	4.77
Group 7	15.64	4.77
Group 8	15.74	4.77
Group 9	15.84	4.77
Group 10	16.01	4.77
Group 11	16.11	4.77
Group 12	16.21	4.77
Group 13	16.31	4.77
Group 14	16.41	4.77
Zone Differential (Add to basic hourly rates):		
Zone 2 $0.65		
Zone 3 1.15		
Zone 4 1.70		
Zone 5 2.75		
Area 4:		
D.O.E. Hanford Site in Benton & Franklin Counties:		
Group 1	15.19	3.48
Group 2	15.23	3.48
Group 3	15.29	3.48
Group 4	15.38	3.48
Group 5	15.59	3.48
Group 6	15.63	3.48
Group 7	15.69	3.48
Group 8	15.73	3.48
Group 9	15.84	3.48
Group 10	15.88	3.48
Group 11	16.19	3.48
Group 12	16.33	3.48
Group 13	16.49	3.48
Group 14	16.63	3.48

WELDERS receive rate prescribed for craft performing operation to which welding is incidental.

PACIFIC COUNTY AREA DEFINITIONS:
Northern portion of Pacific County - the area North of the Wahkiakum County northern boundary extended westward to the Pacific Ocean.
Southern portion of Pacific County - the area South of the Wahkiakum County northern boundary extended westward to the Pacific Ocean.

UNLISTED CLASSIFICATIONS NEEDED FOR WORK NOT INCLUDED WITHIN THE SCOPE OF THE CLASSIFICATIONS LISTED MAY BE ADDED AFTER AWARD ONLY AS PROVIDED IN THE LABOR STANDARDS CONTRACT CLAUSES (29 CFR, 5.5(a)(1)(ii))

FOOTNOTES:

a. Employees shall be paid 80% of the basic hourly rate plus full fringes on projects with a total value, including the cost of utilities, of less than $1,000,000; or on projects which involve work on bridges or docks and which meet both of the following criteria:
   (1) The total cost of the project is less than $1,500,000 excluding the cost of underground utilities which are located 5 ft or more outside or away from the bridge or dock and which are incidental or subordinate to it. "Utilities" are facilities for electricity water, gas, sewerage (including storm), and communications
   (2) Work on bridges or docks shall constitute 20% or more of the cost of the project.

b. on projects involving one or more of the components listed below, where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 80% of the base rate plus full fringe benefits. Work on any other components or on components with dollar values in excess of the amounts shown shall be paid at the full base rate plus the full fringe benefit rate.

PAVING	Includes fine grading and final laydown of surface material including asphalt, bituminous surface treatments, and emulsion seal coats.	$ 75,000
CRUSHING	Includes delivery to job site	200,000
GRADING & CLEARING	Highway only	350,000
BRIDGES	Includes related work such as approaches and landscaping	500,000
UTILITIES	Includes storm, sanitary sewerage and facilities for the delivery of electricity gas, communications and domestic water	UNLIMITED
EXCEPTION	Paving within a 45 mile radius of Spokane or Lewiston shall receive the full rate	

c. Reduced rates as indicated in the wage decision may be paid on projects which which have a total value of less than $3,000,000, excluding the cost of electrical, mechanical, and utilities. Utilities include sanitary and storm sewerage and facilities for the delivery of water, electricity, gas, and communications.

d. Reduced rates as indicated in the wage decision may be paid on the following:
   1. Projects involving work on bridges and structures whose total value is less than $1,500,000 excluding mechanical, electrical, and utility portions of the contract. Utilities include sanitary & storm sewerage and facilities for the delivery of water, gas, electricity, and communications.
   2. Projects of less than $1,000,000 where no structures are involved such as surfacing and paving. Utilities are excluded from the cost of project.
   3. Marine type projects such as docks & wharfs under $150,000

AREA DESCRIPTIONS

CARPENTERS:
Area 1: All Counties and parts of Counties East of the 120th Meridian except those included in Areas 4 and 5
Area 2: All Counties and parts of Counties West of the 120th Meridian except those included in Area 3.
Area 3: Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties, and the Southern portion of Pacific County.
Area 4: D.O.E. Hanford site in Benton and Franklin Counties.
Area 5: Chelan, Kittitas, Yakima, Okanogan and the Western parts of Douglas and Grant Counties.

CEMENT MASONS:
Area 1: Adams, Asotin, Benton and Franklin except D.O.E. Hanford Site, Chelan, Douglas, Columbia, Ferry, Garfield, Grant, Kittitas (except Western portion one mile West of Easton), Lincoln, Okanogan, Pend-Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima Counties
Area 2: Clallam, Grays Harbor, Jefferson, King (Southern part), Kitsap, Kittitas (Western part one mile West of Easton), Lewis, Mason, Pacific County (Northern portion), Pierce, and Thurston Counties.
Area 3: Island, San Juan, Skagit, Snohomish, King (northern portion) & Whatcom
Area 4: Clark, Cowlitz, Klickitat, Skamania, Wahkiakum, and the Southern part of Pacific County.
Area 5: D.O.E. Hanford Site in Benton and Franklin Counties.

ELECTRICIANS:
Area 1: Adams, Ferry, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman
Area 2: Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, and Yakima Counties
Area 3: Chelan, Douglas, Grant, and Okanogan Counties
Area 4: Clallam, Jefferson, King, and Kitsap Counties
Area 5: Clark, Klickitat, and Skamania Counties
Area 6: Cowlitz and Wahkiakum Counties
Area 7: Grays Harbor, Lewis, Mason, Pierce, Pacific, and Thurston Counties
Area 8: Island, San Juan, Skagit, Snohomish, and Whatcom Counties

PAINTERS:
Area 1: Adams, Asotin, Benton & Franklin (Except Hanford Site),Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend-Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima
Area 2: Clark, Cowlitz, Klickitat, Skamania, Wahkiakum, Southern part of Pacific
Area 3: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom, North part Pacific
Area 4: Statewide except Clark, Cowlitz, Klickitat, South part of Pacific, Skamania, and Wahkiakum
Area 5: D.O.E. Hanford Site in Benton and Franklin Counties

ZONE DEFINITIONS - LINE CONSTRUCTION:
Zone 1: 0 to 3 miles radius from geographical center of Seattle, Tacoma, Portland
Zone 2: 3 to 20 miles radius from center of Seattle, Tacoma, Portland and 0 to 20 miles radius from the cities listed below
Zone 3: 20 to 35 miles radius from all cities
Zone 4: 35 to 50 miles radius from all cities
Zone 5: More than 50 Miles radius from all cities

BASE POINTS: Bellingham, Ellensburg, Ephrata, Everett, Kennewick, Longview, Olympia, Spokane, Walla Walla, Wenatchee, Wilbur, Yakima, Astoria, The Dalles, Pendleton, Umatilla, Coeur D'Alene, Lewiston, and Sandpoint

ZONE DEFINITIONS

(LABORERS - Area 3, POWER EQUIPMENT OPERATORS - Area 3, TRUCK DRIVERS - Area 3):

BASE POINTS: Astoria, Bingen, Goldendale, The Dalles, Longview, Portland, and Vancouver.

ZONE 1: Projects within 30 miles of the respective city hall

ZONE 2: More than 30 miles but less than 40 miles from the respective city hall.

ZONE 3: More than 40 miles but less than 50 miles from the respective city hall.

ZONE 4: More than 50 miles but less than 80 miles from the respective city hall.

ZONE 5: More than 80 miles from the respective city hall

GROUP DESCRIPTIONS

CEMENT MASONS - AREAS 1 and 5:

Group 1: Journeyman cement mason, includes but not limited to: Rodding, tamping, floating, troweling, patching, stoning, rubbing, sack rubbing, all exposed aggregate finishing, setting of screeds, screed forms, curb and gutter and sidewalk forms, preparation of all concrete for caulking of the joints and expansion joints, preparation of concrete for the application of hardeners, sealers and curing compounds and their application, grouting and dry packing of machine base, removal of snap ties and she-bolts prior to patching of concrete

Group 2: Power troweling machine operator, troweling of magnesite, torroganal or material with epoxy base or oxychloride base; all power grinders, brushing hammer, chipping gun, gunnite nozzleman, all sandblasting for architectural finishes and exposing of aggregate for finish; concrete sawing and cutting for expansion joints and scoring for decorative patterns, operating of Clary-type floats, longitudinal floats, rodding machines and belting machines, scarifiers

Group 3: Grinding, brushing or chipping of toxic materials or high density concrete, operating power tools on a scaffold

DREDGING - AREAS 1 and 2:

Group 1: Assistant Mate (Deckhand)

Group 2: Oiler

Group 3: Assistant Engineer (Electric, Diesel, Steam of Booster Pump), Mates and Boatmen

Group 4: Crameman, Engineer Welder

Group 5: Leverman, Hydraulic

DREDGING - AREA 3:

Group 1: Leverman, Hydraulic

Group 1A: Leverman, Dipper

Group 2: Assistant Engineer, including Watch Engineer, Mechanic and Machinist, and Mate

Group 3: Tenderman (Boatman, attending Dredging Plant); Firemen

Group 4: Assistant Mate (Deckhand); Oiler

LABORERS (AREA 1)

GROUP 1 : Flagman

GROUP 2 : Brush Hog Feeder; Carpenter Tender; Concrete Crewman (to include: Stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, Pumpcrete Machine, Signaling, handling the nozzle of Squeezecrete or similar machine - 6 in. and smaller); Crusher Feeder; Demolition (to include: clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence Erector (to include: Guard Rail, Guide and Reference Post, Sign Posts, and Right-of-way Markers); General Laborer; Grout Machine Header Tender; Nippers; Riprap Man; Scaffold Erector, wood or steel; Scaleman; Stake Jumper; Structural Mover (to include: separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber Bucker and Faller (by hand); Truck Loader; Well-point Man; Window Cleaner; Miner Class "A" - Bull Gang, Pump Crete Crewman including Distribution Pipe, Assembling and Dismantle and Nipper; Track Laborer; Railroad Equipment, power driven; Dual Mobile Power Spiker or Puller

GROUP 3 : Asphalt Raker; Asphalt Roller, walking; Cement Finisher Tender; Cement Handler; Concrete Saw, walking; Demolition Torch; Dope Pot Fireman, non-mechanical; Driller Tender (when required to move and position machine); Form Cleaning Machine Feeder; Stacker; Form Setter, paving; Grade Checker using level; Jackhammer Operator; Nozzleman (to include: Squeeze and Flow-crete Nozzle); Nozzleman, water, air or steam; Pavement Breaker; Pipelayer, corrugated metal culvert; Pipelayer, multi-section; Pot Tender; Powderman Tender; Power Buggy Operator; Power Tool Operator, gas, electric, pneumatic; Rodder and Spreader; Sandblast Tailhoseman; Tamper (to include: operation of Barco, Essex and similar Tampers, and Pavement Breakers); Trencher, Shawnee; Tugger Operator; Vibrator, under 4 inches; Wagon Drills; Water Pipe Liner; Wheelbarrow, power driven; Miner Class "B" - Brakeman, Finisher, Vibrator and Form Setter

GROUP 4 : Air Track Drill; Brush Machine (to include: Horizontal Construction Joint Clean-up Brush Machine, power propelled); Caisson Worker, free air, Chain Saw Operator and Faller; Concrete Stack (to include: Laborers when 40 ft. high); Gunnite (to include: operation of machine and nozzle); High Scaler; Hod Carrier; Laser Beam Operator (to include: Grade Checkers and Elevation control); Monitor Operator (track or similar mounting); Mortar Mixer; Nozzleman (to include: Jet Blasting Nozzleman, over 1,200 lbs., Jet Blast Machine, power propelled, Sandblast Nozzle); Pipelayer (to include: working Topman, Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker, Shorer, Valve or meter Installer); Pipewrapper; Vibrator, 4 inches and over; Miner Class "C" - Miner and Nozzleman for concrete and Laser Beam Operator in Tunnels

GROUP 5 : Drills with dual masts; Powderman; Miner Class "D" - Raise and Shaft Miner and Laser Beam Operator on Raises and Shafts; Powderman receives $0.25 an hour additional

LABORERS

(AREAS 2 and 5)

Group 1: Fence Laborer, Window Washer
Group 2: Batch Weighman, Crusher Feeder, Pilot Car, Toolroom Man (at job site), and Flagmen
Group 3: General Laborer; Air, Gas or Electric Vibrating Screed; Ballast Regulator Machine; Carpenter Tender; Chipping Gun; Chuck Tender; Concrete Form Stripper; Cement Finisher Tender; Curing Labor; Demolition, Wrecking and Moving including Charred Material, Epoxy Technician; Gabian Basket Builders; Grinders; Pot Tender; Powderman's Tender; Stake Hopper; Topman-Tailman; Tugger Operator
Group 4: Cement Dumper-Paving; Clary Power Spreader; Concrete Saw Operator; Faller and Bucker Chain Saw; Grade Checker; High Scaler; Jackhammer; Manhole Builder; Mortarman and Hodcarrier; Nozzleman (concrete pump, green cutter when using combination of high pressure air & water on concrete and rock, sandblast, gunnite, shotcrete) water blaster; Pavement Breaker; Pipe Layer & Caulker; Pipe reliner (not insert type); Railroad Spike Puller (Power); Raker - Asphalt; Spreader (concrete); Timberman-Sewer (lagger, shorer & cribber); Track Liner (power); Tamper (multiple and self-propelled); Tamper & Similar Electric, Air & Gas operated tools; Vibrator; Wagon Driller & Air Track Operator; Well Point Laborer
Group 5: Caisson Worker; Miner; Powderman; Re-Timberman

LABORERS (Cont'd)
AREA 3

Group 1: General Laborer; Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutter; Car and Truck Loaders; Carpenter Tender; Changehouse Man or Dry Shack Man; Choke Setter; Clean-up Laborers; Concrete Laborers; Culvert, hand labor; Curing, concrete; Demolition, wrecking and moving Laborers; Drillers' Tenders; Dumpers, road oil crew; Dumpman (for grading crew); Fine Graders; Form Strippers (not swinging stages); Guard Rail, Median Rail, Reference Post, Guide Post, Right-of-Way Marker; Leverman or Aggregate Spreader (Flaherty and similar types); Loading Spotters; Material Yard Man (including electrical); Powderman Tender; Pittsburgh Chipper Operator or similar types; Ribbon Setters (including steel forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipman; Slopers; Spraymen; Stake Chaser; Stockpiler; Timber Faller and Bucker (hand labor); Toolroom Man (at job site); Tunnel Bull Gang (above ground); Weighman - Crusher (aggregate when used); Railroad Track Laborers, and Flagmen
Group 2: Applicator (including Pot Tender for same) applying protective material by hand or nozzle on utility lines or storage tanks on project; Brush Cutters (power saw); Burners; Choker Spiller; Clary, power spreader and similar types; Cleanup Nozzleman-Greencutter (concrete, rock, etc.); Concrete power Buggyman; Crusher Feeder; Demolition and wrecking charred materials; Grade Checker; Gunite Nozzleman Tender; Gunite and Sandblasting Pot Tender; Handlers or Mixers of all materials of an irritating nature (including cement and lime); Power Tool Operators, includes but not limited to: Dry Pack Machine, Jackhammer, Chipping Guns, Paving Breakers, Vibrators (less than 4" in diameter); Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers; Ribbon Setter, head; Rip Rap Man, head, hand placed; Sand Blasting (wet); Stake Setter; Tunnel-Muckers; Brakeman; Concrete Crew; Bull Gang (underground)
Group 3: Asphalt Rakers; Bit Grinder; Drill Doctor; Drill Operators; Air Tracks; Cat Drills; Wagon Drills; Rubber - mounted Drills and other similar types; Concrete Saw Operator; Gunite Nozzleman; High Scalers; Strippers and Drillers (covers work in swinging stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down or sloping and stripping); Laser Beam (pipe laying); Applicable when employee assigned to move, set up, align Laser Beam; Manhole Builder; Powderman; Power Saw Operators (bucking and falling); Punpcrete Nozzleman; Sandblasting (dry); Sewer (Pipe Layers); Sewer Timberman; Track Liners; Anchor Machines, Ballast Regulators, multiple Tampers, Power Jacks; Tugger Operator; Tunnel Chuck Tenders; Nippers and Timbermen; Vibrators (4" and larger); Water Blaster; Welder
Group 4: Laser Beam (tunnel) - Tunnel Miners; Tunnel Powderman
Group 5: Fence Builder

LABORERS (Cont'd)
AREA 4

Group 1: Brush Hog Feeder; Carpenter Tender; Concrete Crewman (to include: Stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, Pumpcrete Machine, Signaling, handling the Nozzle of Squeezecrete or similar machine - 6 in. and smaller); Crusher Feeder; Demolition (to include: clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence Erector (to include: Guard Rail, Guide and reference Post, Sign Posts, and Right-of-way Markers); General Laborer; Grout Machine Header Tender; Nippers; Riprap Man; Scaffold Erector, wood or steel; Scaleman; Stake Jumper; Structural Mover (to include: separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber Bucker and Faller (by hand); Truck Loader; Wellpoint Man; Window Cleaner; Miner Class "A" - Bull Gang, Pump Crete Crewman including Distribution Pipe, Assembling and Dismantle and Nipper

Group 2: Asphalt Raker; Asphalt Roller, walking; Cement Finisher Tender; Cement Handler; Concrete Saw, walking; Demolition Torch; Dope Pot Fireman, non-mechanical; Driller Tender (when required to move and position machine); Form Cleaning Machine Feeder; Stacker; Form Setter, paving; Grade Checker using level; Jackhammer Operator; Nozzleman (to include: Squeeze and Flow-crete Nozzle); Nozzleman, water, air or steam; Pavement Breaker; Pipelayer, corrugated metal culvert; Pipelayer, multi-section; Pot Tender; Powderman Tender; Power Buggy Operator; Power Tool Operator, gas, electric, pneumatic; Rodder and Spreader; Sandblast Tailhoseman; Tamper (to include: operation of Barco, Essex and similar Tampers, and Pavement Breakers); Trencher, Shawnee; Tugger Operator; Vibrator, under 4 inches; Wagon Drills; Water Pipe Liner; Wheelbarrow, power driven; Miner Class "B" - Brakeman, Finisher, Vibrator and Form Setter

Group 3: Air Track Drill; Brush Machine (to include: Horizontal Construction Joint Clean-up Brush Machine, power propelled); Caisson Worker, free air, Chain Saw Operator and Faller; Concrete Stack (to include: Laborers when 40 ft. high); Gunnite (to include: operation of machine and nozzle); High Scaler; Hod Carrier; Laser Beam Operator (to include: Grade Checkers and Elevation control); Monitor Operator (track or similar mounting); Mortar Mixer; Nozzleman (to include: Jet Blasting Nozzleman, over 1,200 lbs., Jet Blast Machine, power propelled, Sandblast Nozzle); Pipelayer (to include: working Topman, Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker, Shorer, Valve or meter Installer); Pipewrapper; Vibrator, 4 inches and over; Miner Class "C" - Miner and Nozzleman for concrete and Laser Beam Operator in Tunnels

Group 4: Drills with dual masts; Miner Class "D" - Raise and Shaft Miner and Laser Beam Operator on Raises and Shafts

Group 5: Powderman

POWER EQUIPMENT OPERATORS
(AREA 1)

Group 1: Bit Grinder; Bolt Threading Machine; Compressor, under 2,000 cu. ft. per minute, gas, diesel or electric power; Crusher Feeder (mechanical); Deckhand; Driller's Tender; Fireman and Heater Tender; Grade Checker; Tender (Mechanic, H.D.); Oiler, Oiler and Cable Tender, Mucking Machine; Pumpman; Rollers, all types on subgrade (farm type, Case, John Deere and similar - or Compacting or Vibrator) except when pulled by Dozer with operable blade; Steam Cleaner; Welding Machine; Hydro-seeder

Group 2: A-Frame Truck (single-drum); Assistant Refrigeration Plant (under 1,000 tons); Assistant Plant Operator; Fireman or Pugmixer (asphalt); Bagley or Stationary Scraper; Belt Finishing Machine; Blower Operator (cement); Cement Hog; Compressor (2,000 cu. ft. or over, 2 or more, gas, diesel or electric power); Concrete Saw multiple cut); Distributor Leverman; Elevator hoisting materials; Dope Pots (power agitated); Fork lift or Lumber Stacker; Hydralift and similar; Gin Trucks (Pipeline); Hoist, single drum; Loader (Bucker, Elevator and Conveyors); Longitudinal Float; Mixer (portable - concrete); Pavement Breaker; Hydra Hammer and similar; Power Broom; Spray Curing Machine (concrete); Spreader Box (self-propelled); Straddle Buggy (Ross and similar on construction job site); Tractor (farm type R/T with attachments except Backhoe); Tugger Operator; Ditch Witch or similar

Group 3: A-Frame Truck (2 or more drums); Assistant Refrigeration Plant and Chiller Operator (over 1,000 tons); Backfillers (Cleveland and similar); Beltcrete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Batch Plant and Wet Mix Operator, single unit (concrete); Bending Machine; Boring Machine (earth); Boring Machine (rock under 8" bit) (Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Lining Machine (concrete); Chipper (without crane); Cleaning and Doping Machine (Pipeline); Elevating Belt-type Loader (Euclid, Barber Green or similar); Elevating Grader-type Loader (Dumor, Adams or similar); Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Mixermobile; Mucking Machines; Soil Stabilizer (P & H or similar); Spreader Machine; Pump; Tractor to D-6 or equivalent and Traxcavator; Transverse Finish Machine, Turnhead Operator

Group 4: Blade Operator (Motor Patrol and attachments); Concrete Pump (Squeeze-crete, Flow-crete, Pump-crete, Whitman and similar); Drills (Churn, Core, Calyx, or Diamond); Equipment Serviceman, Greaser and Oiler; Hoist (2 or more drums or Tower Hoist); Loaders Overhead and Front-end, under 4 yds. R/T); Pave or Curb Extruders (asphalt or concrete); Refrigeration Plant Engineers (under 1,000 tons); Rubber-tired Skidders (R/T with or without attachments); Surface Heater and Planer Machine; Trenching Machines (under 7 ft. depth capacity); Turnhead (with no screening); Vacuum Drill (Reverse Circulation Drill, under 5" bit)

POWER EQUIPMENT OPERATORS
AREA 1 (Cont'd)

Group 5: Backhoe (under 1 yard); Crane (25 tons and under); Derrick and Stifflegs (under 65 tons); Drilling Equipment (8" bit and over) (Robbins, Reverse Circulation and similar); Hoe Ram; Piledriving Engineers; Paving (dual drum); Refrigeration Plant Engineer (1,000 tons and over); Signalman (Whirleys, Highline, Hammerheads or similar)

Group 6: Asphalt Plant Operator; Automatic Subgrader (Ditches and Trimmers (Autograde, ABC, R.A. Hansen and similar on grade wire); Backhoes (1 yard to 3 yards); Batch Plant (over 4 units); Batch and Wet Mix Operator (multiple units, 2 and including 4); Blade (finish and Bluetop) (Automatic, CMI, ABC, and similar when used as automatic); Boat Operator; Boom Cats (side); Cableway Controller (Dispatcher); Clamshell Operator (under 3 yds.); Concrete Slip Form Paver; Cranes (over 25 tons including 45 tons); Crusher, Grizzle and Screening Plant Operator; Draglines (under 3 yards); Drill Doctor; H.D. Mechanic; H.D. Welder; Loader Operator (Front-end and Overhead, 4 yards including 8 yards); Multiple Dozer Units with single blade; Quad-track or similar equipment; Rollerman (finishing pavement); Rubber-tired Scrapers (one motor with one scraper, under 40 yards); Rubber-tired Scrapers, Multi-engine power with one Scraper (Euclid, TS 24 and similar); Rubber-tired Scrapers, one motor with one scraper (40 yards and over); Rubber-tired Scraper, multiple engines with two scrapers; Scraper Operator; Shovels (under 3 yards); Tractors (D-6 and equivalent and over); Trenching Machines (7 feet depth and over, and screed operator

Group 7: Backhoe (3 yards and over); Cableway Operators; Clamshell Operator (3 yards and over); Cranes (over 45 tons to 85 tons); Derricks and Stifflegs (65 tons and over); Draglines (3 yards and over); Elevating Belt (Holland type); Loader 360 degrees revolving Koehring Scooper or similar; Loaders (Overhead and Front-end, over 8 yards to 10 yards); Rubber-tired Scrapers (multiple engine with three or more Scrapers); Shovels (3 yards and over); Whirleys and Hammerheads, all

Group 8: Cranes (85 tons and over, and all climbing, rail and tower); Loaders (Overhead and Front-end, 10 yards and over); Helicopter Pilot

(AREAS 2 and 5)

Group 1: Cranes, 100 tons and over or 200' of boom including jib and over; Loaders, 8 yds. and over; Shovels and attachments, 6 yds. and over

Group 2: Cableways; Cranes, over 45 tons up to 100 tons or over 150' including jib; Rollagon; Tower Crane; Helicopter, Winch; Remote Control Operator; Loader, Overhead, 6 yds. up to 8 yds.; Shovels, Backhoes, over 3 yds. to 6 yds.; Slipform Pavers; Scrapers, self-propelled, 45 yds. and over; Quad 9, HD 41, D-10

POWER EQUIPMENT OPERATORS (Cont'd)
(AREA 2) (Cont'd)

Group 3: Concrete Batch Plant Operator; Bump Cutter; Cranes, 20 tons through 45 tons; Hydralifts; Chipper; Crushers; Derrick; Drilling Machine; Finishing Machine; Loaders, Overhead, under 6 yds.; Mechanics; Mixers, Asphalt Plant; Motor Patrol Graders, finishing; Pump Truck mounted Concrete Pump with boom attachment; Piledriver Operator; Screed Man; Shovels, Backhoes 3 yds. and under; Subgrader, Trimmer; Tractors, Backhoes, over 60 HP; Scrapers, Self-propelled, under 45 yds.

Group 4: Brooms; Dozers, D-9 and under; Paydozers; A-Frame Crane; Cranes up to 20 tons; Conveyors; Hoists, Air Tugger; Loaders, elevating type; Fork Lifts; Motor Patrol Grader, non-finishing; Mucking Machine; Concrete Pumps; Roller, Plant Mix or Multi-lift materials; Saws, Concrete; Scrapers, Carryall; Spreaders, Blaw Knox; Trenching Machines; Equipment Service Engineer; Oiler Driver on Truck Cranes over 45 tons; Tractor, Backhoe, 60 HP and under

Group 5: Oiler Driver on Truck Cranes, 45 tons and under; Oil Distributors, blower; Assistant Engineer (formerly Oiler classification); Pavement Breaker; Posthole Digger, mechanical; Power Plant; Wheel Tractors, Farmall type; Compressor; Pumps, water; Rollers, other than plant mix;

Group 6: Gradecbecker and Stakeman

AREA 3

Group 1: Oiler, including Plant, Crane, Crusher, Guardrail equipment, and Trenching Machine; Assistant Conveyor Operator; Crusher Feederman; Deckhand; Self-propelled Scaffolding Operator; Guardrail Punch Oiler; Pump Operator, under 4"; Brakeman; Switchman; Parts Man (tool room)

Group 2: Blade Operator, pulled type; Truck Crane Oiler - driver, 25 ton capacity or over; Crane Fireman (all equipment except floating); A-Frame Truck Operator, single drum; Tugger or Coffin type Hoist Operator; Driller Tender; Auger; Oiler; Boatman; Fork Lift or Lumber Stacker Operator (on job site); Oiler, combination Guardrail Machines; Temporary Heating Plant Operator; Grade Oiler, required to check grade; Grade Checker; Tar Pot Fireman; Tar Pot Fireman (power agitated); H.D. Repairman Tender; Helicopter Radioman (ground); Roller Operator, grading of base rock (not asphalt)

Group 3: Asphalt Plant Fireman; Pugmill Operator (any type); Truck mounted Asphalt Spreader, with Screed; Compressor Operator (any power), under 1,250 cu. ft. total capacity; Conveyor Operator; Mixer Box Operator (C.T.B., Dry Batch, etc.); Cement Hog; Concrete Saw; Concrete Curing Machine (riding type); Wire Mat or Brooming Machine; Ross Carrier Operator (on job site); Bucket Elevator Loader, Barber Greene and similar types; Hydraulic Pipe Press; Pump Operator (any power), 4" and over; Hydrostatic Pump; Motorman; Ballast Jack Tamper; Bell Boy, phones, etc.; Tamping Machine, mechanical self-propelled; Hydrographic Seeder Machine, straw, pulp or seed; Broom Operator, self-propelled (on job site); Air Filtration Equipment; Welding Machine Operator

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 3 (Cont'd)

Group 4: Screed Operator; Compactor, including Vibratory; Compressor (any power) over 1,250 cu. ft. total capacity; Combination Mixer and Compressor, Gunnite Work; Concrete Mixer Operator, single drum, under five bag capacity; Helicopter Hoist Operator; Floating Equipment Fireman; Lull Hi-lift Operator or similar type; Fork Lift, over 5 ton; Serivce Oiler (Greaser); Hydra Hammer or similar types; Pavement Breaker; Pump Operator, more than 5 (any size); Roller Operator, Oiling, C.T.B.

Group 5: Extrusion Machine; Wagner Pactor or similar type (without blade); Concrete Batch Plant Quality Control Operator; Power Jumbo, Setting Slip Forms, etc. in tunnels; Slip Form Pumps, Power driven Hydraulic Lifting Device for concrete forms; Hoist, single drum; Elevator Operator; Pulva-mixer or similar types; Chip Spreading Machine Operator; Lime Spreading (on job site); Sweeper (Wayne type) Self-propelled (on job site); Tractor, rubber-tired 50 H.P. Flywheel and under; Trenching Machine, maximum digging capacity 3 ft. depth

Group 6: Asphalt Burner and Reconditioner; Pavement Grinder and/or Grooving Machine (riding type); Cast-in-place Pipe Laying Machine; Maginnis Internal Full Slab Vibrator; Concrete Finishing Machine, Clary, Johnson, Bidwell, Burgess Bridge Deck or similar type; Curb Machine, Mechanical Berm, Curb and/or Curb and Gutter; Concrete Joint Machine; Concrete Planer; Concrete Paving Machine; Concrete Spreader; Loaders, rubber-tired type, 2½ cu. yds. and under; Rock Spreaders, self-propelled

Group 7: Roller (any asphalt mix); Beltcrete; Pumpcrete Operator (any type); Fuller-Kenyon and similar; Concrete Pump; Grouting Machine; Concrete Mixer, single drum, five bag capacity and over; Tower Mobile Operator; A-Frame Truck, double drum; Boom Truck; Churn Drill and Earth Boring Machine; Hydraulic Backhoe, wheel type 3/8 cu. yds. and under with or without Front End attachments 2½ cu. yds. and under (Ford, John Deere, Case type); Elevating Grader, Tractor towed requiring Operator or Grader; Pot Rammer

Group 8: Diesel-electric Engineer, Plant, Crusher, Generator, Floating; Batch Plant and/or wet mix, one and two drum; Generator Operator; Belt Loader, Kolman and Ko Cal types; Asphalt Paver Operator

Group 9: Bulldozer; Drill Cat Operator; Side-boom Cat; Compactor, with blade; Concrete Cooling Machine; Chicago Boom and similar types; Lift Slab Machine; Boom type lifting device, 5 ton capacity or less; Cherry Picker or similar type Crane-hoist, 5 ton capacity or less; Grizzley Crusher; Crusher Plant; Drill Doctor; Boring Machine; Guardrail Punch and Auger (all types); Surface Heater and Planer; Hydraulic Backhoe, track type 3/8 cu. yds.; Loader, Front End and Overhead, 2½ cu. yds. and under 4 cu. yds.; Hammer Operator; Pipe Cleaning, Doping, Bending and Wrapping Machines; Bolt-threading Machine; Drill Doctor (bit grinder); H.D. Mechanic Machine Tool Operator; Stationary Drag Scraper; Tractor, rubber-tired over 50 H.P. Flywheel; Tractor with boom attachment; Trench Machine, maximum digging capacity over 3 ft. depth; Asphalt Plant Operator

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 3 (Cont'd)

Group 10: Bulldozer, twin engine (TC 12 and similar); Cable Plow (any type); Compactor, multi-engine; Jack Operator, Elevating Barges; Barge Operator, self-unloading; Rubber-tired Dozers and Pushers (Michigan, Cat, Hough type); Driller - Percussion, Diamond, Core, Cable, Rotary and similar type

Group 11: Mixer Mobile; Concrete Breaker; Crane Operator, 25 tons and under; Combination Guardrail Machines, i.e., Punch, Auger, etc.; Shovel; Dragline; Clamshell, Hoe, etc., under 1 cu .yd.; Grade-alls, under 1 cu. yd.; Mucking Machine (tunnel)

Group 12: Blade Operator; Batch Plant and/or Wet Mix, 3 units or more; Reinforced Tank Banding Machine (K-17 or similar); Hoist, two or more drums; Elevating Loader, Athey and similar; Piledriver (not crane type); Rubber-tired Scraper, single and twin engine; Single Scraper, with Push-pull attachments, self-loader; Paddle Wheel, auger type; Blade mounted Spreaders Ulrich and similar types; Shield Operator

Group 13: Blade Operator, finish; Blade, externally controlled by electronic, mechanical hydraulic means; Blade, multi-engine; Concrete Paving Road Mixer; Derrick, under 100 tons; Hoist, Stiff Leg, Guy Derrick or similar, 50 tons and over; Cableway Operator 25 ton and over; Crane, over 25 ton and including 40 tons; Piledriver Operator; Floating Clamshell, etc., under 3 cu. yds.; Floating Crane (Derrick Barge), less than 30 ton; Elevating Grader, operated by tractor operator, Sierra, Euclid, or similar; Back Filling Machine; Shovel, etc. 1 cu. yd. and less than 3 cu. yds.; Grade-all, 1 cu. yd. and over; Bridge Crane Operator

Group 14: Tower Crane Operator; Rubber-tired Scraper, with Tandem Scrapers, self-loading, Paddle Wheel, auger type, finish and/or 2 or more units

Group 15: Rock Hound Operator; Loader, 4 cu. yds., but less than 6 cu. yds.

Group 16: Autograder or "Trimmer"; Tandem Bulldozer, Quad-nine and similar; Automatic Concrete Slip Form Paver; Concrete Canal Line; Cableway, 25 ton and over; Crane, over 40 ton and including 100 ton; Whirley, 80 ton and under; Floating Clamshell, etc., 3 cu. yds. and over; Floating Crane (Derrick Barge) 30 ton but less than 80 ton; Loader, 6 cu. yds., but less than 12 cu. yds.; Rubber-tired Scraper, with Tandem Scrapers, multi-engine; Shovel, etc., 3 cu. yds. but less than 5 cu. yds.; Wheel Excavator, under 750 cu yds. per hour

Group 17: Crane over 100 ton and including 200 ton; Whirley, over 80 ton and including 150 ton; Floating Crane (Derrick Barge), 80 ton, but less than 150 ton; Loader, 12 cu. yds. and over; Shovel, etc., 5 cu. yds. and over; Canal Trimmer

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 3 (Cont'd)

Group 18: Crane, over 200 ton; Whirley, 150 ton and over; Floating Crane, 150 ton but less than 250 ton; Wheel Excavator, over 750 cu. yds. per hour; Band Wagons, in connection with Wheel Excavator

Group 19: Helicopter, when used in erecting work; Floating Crane, 250 ton and over; Remote contolled earth moving equipment; Underwater equipment, remote or otherwise

DREDGING

AREA 1 - All Counties and portions of Counties East of the 120th Meridian

AREA 2 - All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and the Northern part of Pacific County

Group 1: Assistant Mate (Deckhand)

Group 2: Oiler

Group 3: Assistant Engineer (Electric, Diesel, Steam of Booster Pump); Mates and Boatmen

Group 4: Craneman, Engineer Welder

Group 5: Leverman, Hydraulic

AREA 3- DREDGING
Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

Group 1: Leverman, Hydraulic

Group 2-A: Leverman, Dipper

Group 2: Assistant Engineer (including Watch Engineer, Mechanic, and Machinist) and Mate

Group 3: Tenderman (Boatman, attending Dredging Plant); Fireman

Group 4: Assistant Mate (Deckhand); Oiler

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 4

Group 1: Bit Grinders; Bolt Threading Machine; Compressors (under 2,000 CFM, gas, diesel or electric power); Crusher Feeder (mechanical); Deck Hand; Driller Tender; Fireman and Heater Tender; Grade Checker; Mechanic or Welder, H.D.; Hydro-seeder, Mulcher, Nozzleman; Oiler; Oiler and Cable Tender, Mucking Machine; Pumpman; Rollers, all types on subgrade (farm type, Case, John Deere and similar, or Compacting Vibrator), except when pulled by Dozer with operable blade; Steam Cleaner; Welding Machine

Group 2: A-Frame Truck (single drum); Assistant Refrigeration Plant (under 1,000 ton); Assistant Plant Operator, Fireman or Pugmixer (asphalt); Bagley or Stationary Scraper; Belt Finishing Machine; Blower Operator (cement); Cement Hog; Compressor (2,000 CFM or over, 2 or more, gas, diesel or electric power); Concrete Saw (multiple cut); Distributor Leverman; Ditch Witch or similar; Elevator, hoisting materials; Dope Pots (power agitated); Fork Lift or Lumber Stacker, Hydra-lift and similar; Gin Trucks (pipeline); Hoist, single drum; Loaders (bucket, elevators and conveyors); Longitudinal Float; Mixer (portable - concrete); Pavement Breaker, Hydra-hammer and similar; Power Broom; Spray Curing Machine (concrete); Spreader Box (self-propelled); Straddle Buggy (Ross and similar on construction job only); Tractor (Farm type R/T with attachments, except Backhoe); Tugger Operator

Group 3: A-Frame Truck (2 or more drums); Assistant Regrigeration Plant and Chiller Operator (over 1000 ton); Backfillers (Cleveland and similar); Batch Plant and Wet Mix Operator, single unit (concrete); Belt-crete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Bend Machine; Bob Cat; Boring Machine (earth); Boring Machine (rock under 8" bit) (Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginau or similar); Canal Lining Machine (concrete); Cleaning and Doping Machine (pipeline); Deck Engineer; Elevating Belt-type Loader (Euclid, Barber Green and similar); Elevating Grader-type Loader (Dumor, Adams or similar); Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Mixermobile; Postbole Auger or Punch; Pump (Grout or Jet); Soil Stabilizer (P & H or similar); Spreader Machine; Tractor (to D-6 or equivalent) and Traxcavator; Traverse Finish Machine; Turnhead Operator

Group 4: Blade Operator (Motor Patrol and attachments); Concrete Pumps (Squeeze-crete, Flow-crete, Pump-crete, Whitman and similar); Curb Extruder (asphalt or concrete); Drills (Churn, Core, Calyx, or Diamond); Equipment Serviceman, Greaser and Oiler; Hoist (2 or more drums or Tower Hoist); Loaders (Overhead and Front-end, under 4 yds. R/T); Refrigeration Plant Engineers (under 1000 ton); Rubber-tire Skidders (R/T with or without attachments); Screed Operator; Surface Beater and Planer Machine; Trenching Machines (under 7 ft. depth capacity); Turnhead (with re-screening); Vacuum Drill (Reverse Circulation Drill under 8" bit)

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 4 (Cont'd)

Group 5: Drilling Equipment (8" bit and over) (Robbins, Reverse Circulation and similar); Hoe Ram; Paving (dual drum); Refrigeration Plant Engineer (1000 tons and over); Signalman (Whirleys, Highline, Hammerheads or similar)

Group 6: Automatic Subgrader (Ditches and Trimmers)(Autograde, ABC, R.A. Hansen and similar on grade wire); Backhoe (under 1 yd.); Batch Plant (over 4 units); Batch and Wet Mix Operator (multiple units, 2 and including 4); Boat Operator; Cableway Controller (Dispatcher); Cranes (25 tons and under); Derricks and Stifflegs (under 65 tons); Drill Doctor; Multiple Dozer Units with single blade; Paving Machine (asphalt and concrete); Piledriving Engineers; Quad-track or similar equipment; Rollerman (finishing pavement); Trenching Machines (7 ft. depth and over)

Group 7: Asphalt Plant Operator (Backhoes (1 yd. to 3 yds.); Blade (finish and Bluetop) Automatic, CMI, ABC and similar when used as automatic; Boom Cats (side); Cableway Operators; Clamshell Operators (under 3 yds.); Concrete Slip Form Paver; Cranes (over 25 tons, including 45 tons); Crusher, Grizzle and Screening Plant Operator; Draglines (under 3 yds.); Elevating Belt (Holland type); H.D. Mechanic; H.D. Welder; Loader Operator (Front-end and Overhead, 4 yards, including 8 yards); Mucking Machine; Quad-track or similar equipment; Rubber-tired Scrapers; Shovels (under 3 yds.); Tractors (D-6 and equivalent and over)

Group 8: Backhoes (3 yds. and over); Cranes (over 45 tons, to 85 tons); Cranes (85 tons and over, all climbing, rails and tower); Clamshell Operator (3 yds. and over); Derricks and Stifflegs (65 tons and over); Draglines (3 yds. and over); Loader (360 degrees revolving Koehring Scooper or similar); Loaders (Overhead and Front-end, over 8 yds.); Helicopter Pilot; Shovels (3 yds. and over); Whirleys and Hammerheads, all

Group 9: Transi-lift

TRUCK DRIVERS (AREA 1)

Group 1: Escort Driver or Pilot Car, pickup hauling employees or material
Group 2: Flat Bed Truck, single rear axle; Fork Lift, 3,000 lbs. and under; Tender and Swamper; Leverperson loading Trucks at Bunkers; Pick-up hauling material; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber tired pulling trailer or similar equipment); Water Tank Truck, 1,800 gallons
Group 3: Bus Driver or Employeehaul Driver; Flat Bed Truck, dual rear axle; Power Boat hauling employees or material); Tireperson No. 1

TRUCK DRIVERS (Cont'd)
AREA 1 (Cont'd)

Group 4: Buggy Moolle and similar; Bulk Cement Tanker; Oil Tank Driver; Power operated Sweeper; Straddle Carrier (Ross Hyster and similar); Transit Mixers and Trucks hauling concrete (3 yards and under); Trucks, side, end, and bottom dump (under 6 yards); Water Tank Truck, 1,801 - 4,000 gallons

Group 5: Auto Crane, 2,000 lbs. capacity; Bulk Cement Spreader; Dumptor (6 yds. and under); Flat Bed Truck (with hydarulic system); Fork Lift (3,001 - 16,000 lbs.); Rubber-tired Tunnel Jumbo; Scissor Truck; Slurry Truck Driver; Transit Mixers and Trucks, 4,001 to 6,000 gallons; Wrecker and Tow Trucks; Fuel Truck Driver; Steam Cleaner and Washer; Flaherty Spreader

Group 6: Service Greaser; Tireperson No. 2; Truck, side, end, and bottom Dump (over 6 yds. to 12 yds.); Oil Distributor Driver (Road, Boot Person, Lever Person, Tender)

Group 7: A-Frame; Water Tank Truck, 6,001 to 8,000 gallons

Group 8: Dumptor (over 6 yds.); Transit Mixers and Trucks hauling concrete (6 yds. to 10 yds.); Trucks, side, end, and bottom dump (over 12 yds. including 20 yds.); Semi Truck and Trailer 50 tons and under; Lowboy

Group 9: Low Boy (over 50 tons); Water Tank Trucks, 8,001 to 10,000 gallons; Tractor with Steer Trailer; Truck mounted Crane with load bearing surface, either mounted or pulled

Group 10: Transit Mixer and Trucks hauling concrete (10 yds. to 15 yds.); Trucks, side, end, and bottom dump (over 20 yds. including 30 yds.); Water Tank Truck (10,001 to 12,000 gallons); Fork Lift, over 16,000 lbs.; Flaherty Spreader Box Driver; Plow Boys; Semi-end Dumps

Group 11: Mechanic, Field

Group 12: Tournarocker, D. W.'s and similar, with 2 to 4 wheel power tractor with trailer, gallonage or yardage scale, whichever is greater; Transit Mixers and Trucks hauling concrete (15 yds. to 20 yds.); Trucks, side, end, and bottom dump (over 30 yds. to 40 yds.); Water Tank Truck, 12,001 to 14,000 gallons

Group 13: Transit Mixers and Trucks hauling concrete (over 20 yds.); Trucks, side, end, and bottom dump (over 40 yds. to 50 yds.)

Group 14: Trucks, side, end, and bottom dumps (over 50 yds. to 100 yds.)

Group 15: Helicopter Pilot hauling employees or material; Trucks, side, end, and bottom dump (over 100 yards)

TRUCK DRIVERS (Cont'd)
AREA 2

Group 1: Leverman and Loaders at Bunkers and Batch Plants; Swampers; and Checkers

Group 2: Team Drivers

Group 3: Bull Lifts and similar equipment used in loading and unloading trucks, transporting materials on job site (warehousing); Dumpsters and similar equipment (including Tournarockers, Tournawagon, Turnatrailer, Cat DW series, Terra Cobra, LeTourneau, Westinghouse, Athey Wagon, Euclid, two and four-wheeled power tractor with trailer and similar top-loaded equipment transporting material: Dump Trucks, side, end and bottom dump, including Semi-trucks and Trains or combinations thereof) - up to and including 5 yds.; Flatbed, single rear axle; Fuel Truck; Grease Truck; Greaser, Battery Service Man and/or Tire Service Man; Scissor Truck; Spreader, Flaherty; Tractor (small, rubber-tired); Vacuum Truck; Water Wagon and Tank Trucks, up to 1,600 gallons; Winch Truck, single rear axle; Wrecker, Tow Truck and similar equipment

Group 4: Flatbed, dual rear axle

Group 5: Buggymobile; Hyster Operators; Straddle Carrier (Ross, Hyster, and similar equipment); Water Wagon and Tank Trucks, 1,6000 gallons to 3,000 gallons

Group 6: Transit-mix, 0 to and including 4½ yards

Group 7: Dumpsters and similar equipment (as listed in Group 3) - over 5 yds. to and including 12 yds.; Explosive Truck (field mix) anmilar equipment; Lowbed and Heavy Duty Trailer, under 50 tons gross; Road Oil Distributor Driver; Slurry Truck; Sno-go and similar equipment; Winch Truck, dual rear axle

Group 8: Dumpster and similar equipment (as listed in Group 3) - over 12 yards to and including 16 yards

Group 9: Bulk Cement Tankers; Dumpsters and similar equipment (as listed in Group 3) - over 16 yds. to and including 20 yds.; Water Wagon and Trank Truck, over 3,000 gallons

Group 10: Bull Lifts or similar equipment used in loading or unloading trucks transporting materials on job site, other than warehousing

Group 11: Transit-mix, over 4 yds. to and including 6 yds.

Group 12: "A" Frame or Hydralift Trucks or similar equipment

TRUCK DRIVERS (Cont'd)
AREA 2 (Cont'd)

Group 13: Dumpster and similar equipment (as listed in Group 3) - over 20 yds. to and including 30 yds.; Lowbed and Heavy Duty Trailer, over 50 tons gross to and including 100 tons gross

Group 14: Transit-mix, over 6 yds. to and including 8 yds.

Group 15: Dumpsters and similar equipment (as listed in Group 3) - over 30 yds. to and including 40 yds.; Lowbed and Heavy Duty Trailer, over 100 tons gross

Group 16: Transit-mix, over 8 yds. to and including 10 yds.

Group 17: Dumpsters and similar equipment (as listed in Group 3) - over 40 yds. to and including 55 yds.

Group 18: Transit-mix, over 10 yds. to and including 12 yds.

Group 19: Transit-mix, over 12 yds. to and including 16 yds.

Group 20: Transit-mix, over 16 yds. to and including 20 yds.

Group 21: Transit-mix, over 20 yds.

Group 22: Escort or Pilot Car

Group 23: Flat bed (single rear axle); pickup truck

AREA 3

Group 1: Battery Rebuilders; Bus or Manhaul Driver; Concrete Buggies (power operated); Dump trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: 6 cu. yds. and under, Lift Jitneys, Fork Lifts (all sizes in loading, unloading and transporting material on job site); Loader and/or Leverman on Concrete Dry Batch Plant (manually operated); Pilot Car; Solo Flat Bed and misc. Body Trucks, 0-10 tons; Truck Tender; Truck Mechanic Tender; Warehouseman (warehouse parts, tool men and parts chaser, checkers and receivers); Water Wagons (rated capacity) - up to 1,600 gallons

Group 2: "A" Frame or Hydra-lift Truck with load bearing surface; Lubrication Man, Fuel Truck Driver, Tireman, Wash Rack, Steam Cleaner or combinations; Team Drivers

TRUCK DRIVERS (Cont'd)
AREA 3 (Cont'd)

Group 3: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 6 cu. yds. and including 10 cu. yds.; Slurry Truck Driver or Leverman; Transit Mix, and Wet or Dry Mix Trucks: 5 cu. yds. and under; Tireman (full-time basis); Water Wagons (rated capacity) - 1,600 to 3,000 gallons

Group 4: Flaherty Spreader Driver or Leverman; Lowbed Equipment, Flat Bed Semi-trailer, Truck and Trailers or doubles transporting equipment or wet or dry materials; Lumber Carrier Driver - Straddle Carrier (used in loading, unloading and transporting of materials on job site); Oil Distributor Driver or Leverman; Water Wagons (rated capacity) - 3,000 to 5,000 gallons

Group 5: Dumpsters or similar equipment, all sizes; Transit Mix and Wet or Dry Trucks, over 5 cu. yds. and including 7 cu. yds.

Group 6: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 10 cu. yds. and including 20 cu. yds.; Transit Mix and Wet or Dry Mix Truck, over 7 cu. yds. and including 9 cu. yds.; Truck Mechanic - Welder - Body Repairman; Water Wagons (rated capacity) - 5,000 to 7,000 gallons

Group 7: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 20 cu. yds. and including 30 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 9 cu. yds. and including 11 cu. yds.; Water Wagons (rated capacity) over 7,000 gallons to 10,000 gallons

Group 8: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 30 cu. yds. and including 40 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 11 cu. yds. and including 13 cu. yds.; Water Wagon (rated capacity) over 10,000 gallons to 15,000 gallons

Group 9: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 40 cu. yds. and including 50 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 13 cu. yds. and including 15 cu. yds.

Group 10: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 50 cu. yds. and including 60 cu. yds.

Group 11: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 60 cu. yds. and including 70 cu. yds.

Group 12: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 70 cu. yds. and including 80 cu. yds.

TRUCK DRIVERS (Cont'd)
AREA 3 (Cont'd)

Group 13: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 80 cu yds. and including 90 cu. yds.

Group 14: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 90 cu. yds. and including 100 cu. yds.

AREA 4

Group 1: Flat Bed Truck, single rear axle; Fork Lift, 3,000 lbs. and under; Tender and Swamper; Leverperson loading Trucks at Bunkers; Pick-up hauling material; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber tired Pulling trailer or similar equipment); Water Tank Truck, 1,600 gallons

Group 2: Bus Driver or Employeehaul Driver; Flat Bed Truck, dual rear axle; Power Boat hauling employees or material; Tireperson No. 1

Group 3: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank Driver; Power Operated Sweeper; Straddle Carrier (Ross Hyster and similar); Transit Mixers and Trucks hauling concrete (3 yds. and under); Trucks, side, end, and bottom dump (under 6 yds.); Water Tank Truck, 1,801 - 4,000 gallons

Group 4: Auto Crane, 2,000 lbs. capacity; Bulk Cement Spreader; Dumptor (6 yds. and under); Flat Bed Trock (with hydraulic system); Fork Lift (3,001 - 16,000 lbs.); Rubber-tired Tunnel Jumbo; Scissor Truck; Slurry Truck Driver; Transit Mixers and Trucks, 4,001 to 6,000 gallons; Wrecker and Tow Trucks; Fuel Truck Driver; Steam Cleaner and Washer; Flaherty Spreader

Group 5: Service Greaser; Tireperson No. 2; Truck, side, end, and bottom Dump (over 6 yds. to 12 yds.); Oil Distributor Driver (road, Boot Person, Lever Person, Tender)

Group 6: A-Frame; Water Tank Truck, 6,001 to 8,000 gallons

Group 7: Dumptor (over 6 yards); Transit Mixers and Trucks hauling concrete (6 yards to 10 yards); Trucks, side, end, and bottom dump (over 12 yards including 20 yards); Semi Truck and Trailer; Lowboy 50 tons and under

Group 8: Low Boy (over 50 ton); Water Tank Trucks, 8,001 to 10,000 gallons; Tractor with Steer Trailer; Truck mounted Crane with load bearing surface, either mounted or pulled

Group 9: Transit Mixer and Trucks hauling concrete (10 yds. to 15 yds.); Trucks, side, end, and bottom dump (over 20 yds. including 30 yds.); Water Tank Truck (10,001 to 12,000 gallons); Fork Lift, over 16,000 lbs.; Flaherty Spreader Box Driver; Flow Boys; Semi-end Dumps

TRUCK DRIVERS (Cont'd)
AREA 4 (Cont'd)

Group 10: Mechanic, Field

Group 11: Tournarocker, D.W.'s and similar, with 2 or 4 wheel power tractor with trailer, gallonage or yardage scale, whichever is greater; Transit Mixers and Trucks hauling concrete (15 yds. to 20 yds.); Trucks, side, end, and bottom dump (over 30 yds. to 40 yds.); Water Tank Truck, 12,001 to 14,000 gallons

Group 12: Transit Mixers and Trucks hauling concrete (over 20 yds.); Trucks, side, end, and bottom dump (over 40 yds. to 50 yds.)

Group 13: Trucks, side, end, and bottom dumps (over 50 yds. to 100 yds.)

Group 14: Helicopter Pilot hauling employees or material; Trucks, side, end, and bottom dump (over 100 yards)

Drivers and Tenders (hauling sacked cement - add $.15 per hour)

Winch Truck - takes classification of Truck on which Winch is mounted.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

(41)

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Part III

Small Business Administration

13 CFR Part 117

Nondiscrimination in Financial Assistance Programs of the Small Business Administration—Effectuation of the Age Discrimination Act of 1975; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 117

Nondiscrimination in Financial Assistance Programs of the Small Business Administration—Effectuation of the Age Discrimination Act of 1975, As Amended

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final regulation implements the provisions of the Age Discrimination Act of 1975, as amended (hereinafter referred to as the Act). The Act prohibits discrimination on the basis of age by recipients of Federal financial assistance in the rendering of services to persons of all ages, unless an age designation for such service is sanctioned by the exceptions set forth in the Act. This regulation is designed to guide the actions of recipients of SBA's financial assistance by incorporating the basic standards for determining what is age discrimination, and discussing the responsibilities of SBA's recipients, and the investigation, conciliation and enforcement procedures SBA will use to ensure compliance with the Act.

On October 17, 1979, the Small Business Administration published in the **Federal Register** at 44 FR 60032–36 notice of this proposed Part concerning the implementation of the Age Discrimination Act of 1975, as amended. Interested parties were given 60 days to submit comments, suggestions or objections to this proposed Part. Two comments were received. One dealt mainly with the meaning of the word "person" as it is used in this Part. Since the word "person" is used in the legal sense to designate a partnership, corporate entity, or proprietorship, as well as to designate an individual human being, the word "person" as it applies to this part is defined at § 117.3. The other comment dealt with the fact that we had inadvertently lumped all of the exceptions together instead of separating them in the same manner as set forth in the government-wide regulation at 45 CFR Part 90. This error was corrected.

By letter dated July 13, 1984, SBA received conditional approval from the Department of Health and Human Services to publish this regulation. We were required to revise all sections of our regulation to conform to their agency regulation published at 47 FR 57850–57880 on December 28, 1982. SBA has made such revisions and is publishing this as a final rule.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Doris A. Dockett, Acting Chief, Office of Civil Rights Compliance, Small Business Administration, 1441 L Street NW., Rm. 501, Washington, DC 20416, (202) 653–6054.

SUPPLEMENTARY INFORMATION:

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 Act prohibits discrimination on the basis of age in all programs and activities receiving Federal financial assistance. In October 1978, Congress amended the Act (Pub. L. 95–478) as follows: (1) Added a private right of action to the Age Discrimination Act; (2) provided a mechanism for the disbursal to alternate recipients of funds that have been held under the Age Discrimination Act; (3) added a requirement that the Department of Health, Education and Welfare (now HHS) approve the final regulations of other Federal agencies; (4) made the effective date of regulations implementing the Act no earlier than July 1, 1979; (5) required annual reports to the Congress on progress in implementing the Act; and (6) removed the word "unreasonable" from the Act's statement of purpose. The 1978 amendments left intact the exceptions to the general prohibition against age discrimination contained in the 1975 Act. The amended Act continues to apply to persons of all ages.

As set forth in the general, governmentwide regulation published in the **Federal Register** on June 12, 1979, codified at 45 CFR Part 90, the regulation states that no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subject to discrimination under, any program or activity receiving Federal financial assistance.

SBA certifies that this regulation is not a major rule within the meaning of Executive Order 12291. The rule will not result in an annual economic effect of $100 million or more, and is not likely to result in a major increase in costs or prices or have a significant adverse effect on the United States economy. Consequently, a regulatory impact analysis has not been prepared.

In addition, SBA certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore an analysis under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., is not required.

The reporting and data collection requirements on recipients that require Office of Management and Budget clearance pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 have been identified.

The following paragraphs summarize the text of the final SBA age discrimination regulation. Appendix A is a listing of all Agency programs to which this regulation applies.

Overview of the Regulation

The purpose of the Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age by all federally assisted programs and activities, and by all recipients of Federal financial assistance. The purpose of this regulation is to set out SBA's policies and procedures under the Act. It should be noted that the Act does 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 this regulation. (§ 117.1)

The Act and this regulation apply to each program or activity in which there is an intermediary (recipient) standing between the Federal financial assistance and the ultimate beneficiary of that assistance, and which is federally assisted, whether or not listed in Appendix A, and to all recipients of Federal funds who render services to persons of all ages. This regulation does not apply to the employment practices of recipients. The Age Discrimination in Employment Act (ADEA), administered by the Equal Employment Opportunity Commission (EEOC) is the Federal statute that prohibits employment discrimination against most persons between the ages of 40 and 70 years old. (§ 117.2)

Section 117.3 defines the terms used in this regulation. The regulation provides definitions for two terms that are essential to an understanding of these exceptions: "normal operation" and "statutory objective." In response to a comment, the legal definition of the word "person" was included to prevent any misunderstanding of its usage in this part. (§ 117.3)

As a general rule, separate or different treatment which denies or limits service from, or participation in, a program receiving Federal funds will be prohibited by this regulation. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. (§ 117.4)

This regulation adopts the four-part test established in the general regulations (45 CFR 90.14) to determine

when an explicit age distinction is necessary to the normal operation of a program or to the achievement of a statutory objective of a program. All parts of the test must be met for an explicit age distinction to satisfy any one of the exceptions and to continue in use in a federally assisted program. This four-part test will be used to scrutinize age distinctions that are imposed by recipients in the administration of federally assisted programs, when the recipient alleges the distinction is necessary to the normal operation of the business or achievement of a program. The test requires that: (1) The age distinction be used as a measure of another characteristic(s); (2) the other characteristic(s) must be measured in order for the program to continue to operate normally or to meet a statutory objective; (3) the other characteristic(s) can reasonably be measured by age; and (4) the other characteristic(s) is impractical to measure directly on an individual basis. (§ 117.4)

Recipients of Federal funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." In that event, the action may be taken even though it has a disproportionate effect on persons of different ages. The regulation requires, however, that the factor bear a direct and substantial relationship to the program's normal operation or statutory objective. This regulation places on the recipient of SBA's funds the burden of proving that age distinction or other action falls within the exceptions discussed above. (§ 117.4)

Section 117.5 contains illustrative applications of discriminatory actions prohibited by the Act and this part. Recipients of SBA's financial assistance have primary responsibility to ensure that their programs and activities are in compliance with the Act. (§ 117.5)

Recipients may use age distinctions that would otherwise be prohibited by the Act and this regulation to take remedial or voluntary affirmative action to overcome the effects of conditions that have resulted in limited participation in the recipient's program on the basis of age. Recipients serving persons of all ages may give special benefits to the elderly or to children, providing such benefit does not exclude otherwise eligible persons. (§ 117.6)

Each applicant and recipient of financial assistance from SBA must sign an assurance that it will comply with the Act and this regulation. (§ 117.7)

All applicants, recipients and subrecipients must be notified of their obligations under the Act and this regulation. Recipients must also inform beneficiaries about the protections provided by the Act and this regulation. (§ 117.8)

All recipients are required to keep records, and make available information necessary to establish whether the recipient is in compliance with the Act and this regulation. Recipients must also allow SBA reasonable access to books and records to the extent necessary to determine compliance with the Act and this part. (§ 117.9)

SBA may conduct reviews to ascertain the compliance status of its recipients with the Act and this part. As a part of such review, HHS may require recipients employing the equivalent of 15 or more fulltime employees to examine their use of age distinctions under the Act as part of a compliance review or a complaint investigation conducted by SBA.

This self-evaluation requirement has been revised from the provision contained in the government-wide regulation and the Notice of Proposed Rule Making. The prior versions would have required all recipients employing 15 or more employees to complete a written self-evaluation. Section 117.10 states that such recipients may be required to undertake a self-evaluation as part of a compliance review and complaint investigation conducted by SBA. The change is based upon SBA's determination that to be consistent with the requirements of the Paperwork Reduction Act of 1980, enacted after the publication of the NPRM, the paperwork burden associated with the self-evaluation must be limited to recipients where circumstances indicate, in connection with a compliance review or complaint investigation, the need for the self-evaluation. A finding of noncompliance or refusal by the recipient to permit a review may subject the recipient to sanctions contained in § 117.15. (§ 117.10)

Complaints of age discrimination may be filed with SBA by an individual, a class or by a third party. The complaint must allege discrimination occurring on or after July 1, 1979, and the complaint must be filed within 180 days from the date the complainant first knew of the alleged act of discrimination. SBA may extend this time limit for good cause. The filing date of a complaint will be the date upon which the complaint is deemed sufficient to be processed. To be sufficient, a complaint must identify the parties involved, the date the complainant first had knowledge of the alleged violation, describe generally the practice complained of, and be signed by the complainant. SBA will notify the recipient and the complainant of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the process. SBA will permit a complainant to add information to a complaint when necessary to meet the requirements of a sufficient complaint. SBA will return to the complainant any complaint that does not fall within the jurisdiction of the Act and will explain the reason(s) why the complaint is outside the jurisdiction of the Act. (§ 117.11)

SBA will refer to mediation all sufficient complaints that fall within the coverage of the Act, unless the age distinction complained of is clearly an exception (see § 117.4 (d), (e), and (f)). The mediation process will be handled by the Federal Mediation and Conciliation Service (FMCS). Complainants and recipients are required to participate in the effort to reach a mutually satisfactory settlement of the complaint, although they need not meet with the mediator at the same time. Generally, mediation may last no more than 60 days from the date a complaint is filed with SBA. The mediator has the authority to terminate the mediation at any time before the end of the 60 day period if the process appears to have broken down, or to extend the 60 day mediation period where settlement is likely. (§ 117.12)

When the mediation process is successful, a settlement agreement based on terms satisfactory to both parties will be put in writing, signed by the complainant and the recipient and a copy sent to SBA. SBA will take no further action on a complaint that has been successfully mediated. The mediator will protect the confidentiality of all information obtained during the course of the mediation. (§ 117.12)

When the mediation does not lead to a voluntary settlement, SBA will investigate complaints where additional information is needed to determine the unresolved noncompliance after mediation, or those issues in noncompliance which cause a complaint to be reopened because the mediation agreement is violated. During the investigation, both the complainant and recipient will be notified that the matter may be resolved informally. Any agreement reached during an informal investigation will be signed by both parties and by an SBA official. Such settlement is not to be construed as a finding of discrimination against a recipient. If informal efforts to achieve voluntary compliance do not succeed, SBA will take further action as prescribed in § 117.15. (§ 117.13)

A recipient may not initimidate or retaliate against any person who

attempts to exercise a right protected by the Act or who participates in any aspect of the process used to resolve allegations of age discrimination. (§ 117.14)

Noncompliance with this part may result in suspension, termination, refusal to disburse financial assistance which has been approved, refusal to make further disbursements of approved financial assistance, referral to the Department of Justice, or acceleration of the maturity of a loan. A determination of noncompliance will be made only after an opportunity for a hearing on the record by an administrative law judge or any other applicable proceeding under State or local law. (§ 117.15)

When the noncompliance is caused by refusal to sign the assurance form or refusal to allow SBA to conduct a review of the applicant's or recipient's records, financial assistance may not be deferred for more than 60 days after the receipt of a notice of hearing, unless the hearing has already started or the time for hearing has been extended. A deferral may not extend more than 30 days after the hearing unless the applicant or recipient has been determined to be in noncompliance. (§ 117.15)

No sanction shall be imposed until SBA has advised the applicant or the recipient of the noncompliance, and has determined that voluntary compliance cannot be obtained, the record of the hearing shows a finding of noncompliance, the Administrator has approved the sanction, and 30 days have elapsed since the SBA has filed a written report with the appropriate House and Senate committees of the circumstances and grounds for the proposed action. (§ 117.15)

No sanction may be taken until SBA has notified the applicant or recipient: Of its determination of noncompliance, that voluntary compliance cannot be obtained, what action it proposes to take to effect compliance, that the hearing record contains a finding of noncompliance, the Administrator has approved the action, that 30 days has expired following SBA's notification to the House and Senate committees, and that an additional 10 days has expired following the notice during which time additional efforts were made to persuade the applicant or recipient to voluntarily comply with this regulation. (§ 117.16)

Notification of an opportunity for hearing shall be given to the applicant or recipient. Such notice shall include: the proposed action which SBA intends to take, special provisions for such proposed action, the basis of the action, and the date, time and place of the hearing. Hearings may be waived by the applicant or recipient in lieu of written information. The failure of an applicant or recipient to appear at a hearing shall be construed as a waiver and consent for a decision to be made on the available information. (§ 117.16)

Hearings, decisions and administrative reviews will be conducted in conformance with the Administrative Procedures Act and 13 CFR Part 134. The applicant or recipient has the right to be represented by counsel in all noncompliance proceedings. All parties shall be entitled to introduce all relevant evidence at the outset or during the hearing. All documents and other evidence shall be open for examination by the parties to the proceeding, and such parties shall have an opportunity to refute any facts or arguments. A transcript of the hearing will be made of the oral evidence. All written findings and decisions shall be based on the hearing record. (§ 117.16)

Hearings concerning noncompliance with this part affecting two or more forms of financial assistance or in which one or more other Federal agencies are involved shall, by agreement, be held at the same time. Final decisions shall be in accordance with the provisions set forth in § 117.17 (§ 117.16)

After a hearing before an Administrative Law Judge (ALJ), the ALJ will either (1) make an initial decision, or (2) certify the case, including the recommended findings and a proposed decision to the Administrator for a final decision. Copies of either the initial decision or the certification will be sent to the applicant or recipient and complainant, if any. If an initial decision is made by the ALJ, the applicant or recipient has 30 days to file exceptions with the Administrator. The Administrator will then review the initial decision and make a decision. If no exceptions are filed, the Administrator may serve a notice to review to the applicant or recipient within 45 days, or allow the initial decision to constitute the final decision. If the ALJ certifies the record to the Administrator, the applicant or recipient will have an opportunity to file briefs or other written statements with the Administrator prior to his final decision. If a hearing is waived, the Administrator will make a decision on the record. In all instances, the final decision of the Administrator will be sent to the applicant or recipient, and complainant, if any. All decisions will identify the area of noncompliance, set forth the ruling on each finding and the proposed sanction. Applicants or recipients who are adversely affected by the decision of an ALJ or the Administrator shall be fully restored to an in-compliance status following their compliance with all provisions of this part. (§ 117.17)

Complainants may file civil actions when administrative remedies are exhausted. Administrative remedies are exhausted if either 180 days have elapsed since the complainant filed the complaint and SBA has made no finding, or if SBA issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. district court where the recipient is found or transacts business. The complainant may indicate, at the time the suit is filed, if attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same recipient is the subject of a pending action in any U.S. court. Complainants who wish to file an action must give 30 days notice to the Attorney General, the Administrator, and the recipient. (§ 117.18)

Sanctions imposed under § 117.15 for failure to comply with the Act shall not be deemed to supersede or relieve any person of any assumed or imposed obligation for any violation of 13 CFR Parts 112 and 113. (§ 117.19)

The Administrator may assign to SBA officials or to officials of other agencies responsibilities for coordination and enforcement of this part (other than for the making of a final decision). Unless otherwise assigned, responsibility for the administration and enforcement of this part is assigned to the Office of Civil Rights Compliance of the Small Business Administration. (§ 117.20)

List of Subjects in 13 CFR Part 117

Aged, Civil rights.

For the reasons set forth in the preamble, and pursuant to the authority of the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, of Chapter 1 of Title 13 of the Code of Federal Regulations is amended by adding the following new Part 117:

PART 117—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF THE AGE DISCRIMINATION ACT OF 1975, AS AMENDED

Sec.

Sec.

Authority: Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*

§ 117.1 Purpose.

The purpose of this part is to effectuate the provisions of The Age Discrimination Act of 1975, as amended (hereinafter referred to as the "Act"), to the end that 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 programs receiving financial assistance or any financial activities of the Small Business Administration to which this Act applies. The Act also permits recipients of Federal funds to continue to use certain age distinctions and other factors other than age which meet the requirements of the Act and these regulations in the conduct of programs and the provision of services to the public.

§ 117.2 Application of this part.

(a) This part applies to all recipients of assistance under programs administered by the Small Business Administration and to programs of financial assistance by the Small Business Administration, whether or not listed in Appendix A.

(b) For the purposes of this part, the prohibition against age discrimination applies to natural persons of all ages.

(c) This part does not apply to the employment practices of any recipients.

§ 117.3 Definitions.

As used in this part:

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

(b) The term "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) The term "age" means how old a person is, or the number of years from the date of a person's birth.

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

(e) The term "age-related" 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) The term "agency" means a Federal department or agency that is empowered to extend financial assistance.

(g) The term "applicant" means one who applies for Federal financial assistance.

(h) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(i) The term "normal operation" means the operation of a business or activity without significant changes that would impair its ability to meet its objectives.

(j) The term "recipient" means one who receives any Federal financial assistance under any program administered by the Small Business Administration. (See Appendix A.) The term "recipient" also shall be deemed to include "subrecipients" of SBA financial assistance.

(k) The term "SBA" means the Small Business Administration.

(l) The term "subrecipient" means any business concern that receives Federal financial assistance from the primary recipient of such 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) The term "statutory objective" means the purposes of the legislation as stated in an act, statute or ordinance or can be shown in the legislative history of any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 117.4 Discrimination prohibited and exceptions.

(a) *General.* To the extent that this part applies, 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 business or activity receiving Federal financial assistance.

(b) *Specific discriminatory actions prohibited.* To the extent that this part applies, a recipient business or other activity may not, directly or through contractual arrangements, on the ground of age:

(1) Deny an individual any services, financial aid or other benefit provided by the business or other activity, except where sanctioned by one of the exceptions stated in § 117.4 (d), (e) or (f) of this section.

(2) Provide any service, financial aid or other benefit, except as sanctioned by one of the exceptions stated below, in such a way as to deny or limit persons in their efforts to participate in federally-assisted programs;

(3) Treat an individual differently from others, except as sanctioned by an exception stated below, in determining whether the person satisfied any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid or other benefit provided by the business or activity.

(c) The specific forms of prohibited discrimination in paragraph (b) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(d) *Exception 1.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section, 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 business 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 business 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 business or activity to continue, or to achieve any statutory objective of the business 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.

Note.—All of the above factors must be met in order to exclude a business activity from the provisions of this part.

(e) *Exception 2.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section 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 if the factor bears a direct and substantial relationship to the normal operation of the business or activity or to the achievement of a statutory objective.

(f) *Exception 3.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section if an age distinction is contained in that part of a Federal, State or local statute or ordinance adopted by an elected general purpose legislative body which provides any benefits or assistance to, establishes criteria for participation in, or describes intended beneficiaries or target groups in age-related terms.

(g) The burden of proving that an age distinction or other action falls within the exceptions outlined in (d), (e), and (f) of this section on the recipient of Federal financial assistance.

§ 117.5 Illustrative applications.

(a) *Discrimination in providing financial assistance.* Development companies and small business investment companies, which apply for or receive any financial assistance may not discriminate on the ground of age in providing financial assistance to small business concerns. Such discrimination prohibited by § 117.4 includes but is not limited to the failure or refusal, because of the age of the applicant, or the age of the applicant's principal owner or operating official to extend a loan or equity financing to any business concern; or, in the case of financing which has actually been extended, the failure or refusal because of the age of the recipient, or the age of recipient's principal owner or operating official to accord the recipient fair treatment and the customary courtesies regarding such matters as default, grace periods and the like.

(b) *Discrimination in accommodations or services.* Small Business Concerns and others who or which apply for or receive any financial assistance in a program administered by the Small Business Administration, such as but not limited to physicians, dentists, hospitals, schools, libraries, and other individuals or organizations may not discriminate in the treatment, accommodations or services they provide to their patients, students, members, passengers, or members of the public, except when the normal operation or statutory objective of the business or activity of the intended beneficiary is designated in age-related terms, whether or not operated for profit. Action by such business or activity to be excluded from compliance with this regulation must fall within the exceptions enumerated in § 117.4 (d), (e), and (f) of this part.

(c) The discrimination prohibited by § 117.5(b) includes, but is not limited to the failure or refusal, because of age, to accept a patient, student, member, customer, client, or passenger, except when the imposition of this prohibition would interfere with the normal operation of the business, e.g., pediatricians, nursery schools, geriatric clinics.

§ 117.6 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the Agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) 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 business or program on the basis of age.

(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 117.7 Assurances required.

An application for financial assistance under any program administered by the Small Business Administration shall, as a condition of its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. SBA shall specify the form of the foregoing assurance for each program, and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors, and other participants in the program.

§ 117.8 Responsibilities of SBA recipients.

(a) Each SBA recipient has the 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 SBA access to its records to the extent SBA finds necessary to determine whether the recipient is in compliance with the Act and these regulations. (OMB No. 3245 0076)

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

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

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

§ 117.9 Compliance information.

(a) Cooperation and assistance. SBA shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Record Keeping. Each recipient shall keep records in such form, and containing such information which SBA determines may be necessary to ascertain whether the recipient has complied or is complying with this part (OMB No. 3245 0076). In the case of a small business concern which receives financial assistance from a development company or from a small business investment company, the small business concern shall also keep such records and information as may be necessary to enable SBA to determine if the small business concern is complying with this part.

(c) Each recipient shall provide to SBA, upon request, information and reports which SBA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(d) Access to sources of information. Each recipient shall permit reasonable access by SBA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of an applicant or recipient is in the exclusive possession of any other agency, institution or person and that agency, institution or person shall fail or

refuse to furnish the information, the recipient shall so certify and shall set forth what efforts it has made to obtain the required information. The recipient will be held responsible for submitting the information. Failure to submit information or permit access to sources of information required by SBA will subject the recipient to enforcement procedure as provided in § 117.15 of this part.

(The information collection requirements contained in paragraph (c) approved by the Office of Management and Budget under OMB Control No. 3245-0076.)

§ 117.10 Review procedures.

(a) SBA shall from time to time review the practices of recipients to determine whether they are complying with this part. As part of a compliance review or complaint investigation, SBA may require a recipient employing 15 or more full-time employees to complete a written self-evaluation, in a manner specified by the Agency, of any age distinction imposed in its program or activity receiving Federal financial assistance.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, SBA will attempt to achieve voluntary compliance with the Act. If voluntary compliance with the recipient cannot be achieved, such recipient will be subject to the enforcement procedure contained in § 117.15 of these regulations. A refusal to permit an on-site compliance review during normal working hours may constitute noncompliance with this part.

§ 117.11 Complaint procedures.

(a) Any person who believes that he/she or any specific class of individuals is being or has been subjected to discrimination by SBA, a recipient, or an applicant for assistance, prohibited by this part may, by himself/herself or by a representative, file with SBA a written complaint. The complainant has the right to have a representative at all stages of the complaint procedure.

(b) A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time filing is extended by SBA. The Adminstrator, the Director, Office of Equal Employment Opportunity and Compliance, and the Chief, Office of Civil Rights Compliance, are the only officials who may waive the 180-day time limit for filing complaints under this part. SBA will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(c) Each complaint will be reviewed to ensure that it falls within the coverage of the Act and contains all information necessary for further processing.

(d) SBA will attempt to facilitate the filing of complaints wherever possible, including taking the following actions:

(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.

(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 the Chief, Office of Civil Rights Compliance, for information and assistance regarding the complaint resolution process.

(e) SBA will return to the complainant any complaint filed under the jurisdiction of this regulation, but found to be outside the jurisdiction of this regulation, and will state the reason(s) why it is outside the jurisdiction of this regulation.

§ 117.12 Mediation.

(a) SBA shall, after ensuring that the complaint falls within the coverage of this Act and all information necessary for further processing is contained therein, unless the age distinction complained of is clearly within an exception, promptly refer the complaint to the Federal Mediation and Conciliation Service (FMCS).

(b) SBA shall, to the extent possible, require the participation of the recipient and the complainant in the mediation process in an effort to reach a mutually satisfactory settlement of the complaint or make an informed judgment that an agreement is not possible. Both parties need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach a mutually satisfactory resolution of the complaint during the mediation period, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it.

(d) A copy of the written mediation agreement will be referred to SBA, and no further action will be taken unless it appears that either the complainant or the recipient (or other alleged discriminator subject to this part) fails to comply with the agreement.

(e) If at the end of 60 days after the receipt of a complaint by SBA, or at any time prior thereto, an agreement is reached or the mediator determines an agreement cannot be reached through mediation, the agreement or complaint will be returned to SBA.

(f) This 60-day period may be extended by the mediator, with the concurrence of SBA for not more than 30 days if the mediator determines that an agreement will likely be reached during the extended period.

(g) The mediator 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 during the course of the mediation process without prior approval of the head of the agency appointing the mediator.

§ 117.13 Investigation and resolution of matters.

(a) SBA will make a prompt investigation whenever a compliance review indicates a possible failure to comply with this part by the recipient and additional information is needed by SBA to assure compliance with this part, or when an unresolved complaint has been returned by the FMCS, or when it appears that the complainant or the recipient is failing to comply with a mediation agreement. The investigation shall include a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient is complying, is not complying, or has failed to comply with this part.

(b) Resolution of matters. If an investigation indicates a failure to comply with this part, SBA will so inform the complainant, if applicable, and the recipient that the matter will be resolved by informal means that are mutually agreeable to the parties, whenever possible.

(1) If, during the course of an investigation, the matter is resolved by informal means, SBA will put any agreement in writing and have it signed by the parties and an authorized official of SBA.

(2) If investigation indicates a violation of the Act or these regulations, SBA will attempt to achieve voluntary compliance. If SBA cannot achieve voluntary compliance, it will begin enforcement as described in § 117.15.

(3) If an investigation does not warrant action, SBA will so inform the complainant, if applicable, and the recipient in writing.

§ 117.14 Intimidating or retaliatory acts prohibited.

No complainant, recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part or because an individual or group has made a complaint, testified, assisted, or participated in any manner in an investigation, review, enforcement process, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, mediation, or judicial proceeding.

§ 117.15 Procedure for effecting compliance.

(a) *General.*

(1) If there appears to be a failure or threatened failure to comply with this part by an applicant or recipient and if the noncompliance or threatened noncompliance cannot be resolved by informal means, compliance with this part may be effected by suspending, terminating, or refusing any financial assistance approved but not yet disbursed to an applicant. In the case of loans partially or fully disbursed, compliance with this part may be effected by calling, canceling, terminating, accelerating repayment, or suspending in whole or in part the Federal financial assistance provided. 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) In addition, compliance may be effected by any other means authorized by law. Such other means may include, but are not limited to:

(i) Action by SBA to accelerate the maturity of the recipient's obligation;

(ii) Referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States or obligations of the recipient created by the Act or this part; and

(iii) 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.

(3) If there appears to be a failure or threatened failure to comply with this part by an SBA program office or official, the Chief, Office of Civil Rights Compliance, through the Director, Office of Equal Employment Opportunity and Compliance, will recommend appropriate corrective action to the Administrator. Any resulting adverse action against an SBA employee shall follow Office of Personnel Management and SBA procedures for such action.

(b) Noncompliance with §§ 117.7 and 117.9. If an applicant fails or refuses to furnish an assurance required under § 117.7, or fails to provide information or allow SBA access to information under § 117.9 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to those sections, Federal financial assistance may be deferred for a period not to exceed 60 days after the applicant has received a notice for an opportunity for hearing under § 117.16, or 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 Agency, for purposes of determining what constitutes mutual consent, the Agency shall be deemed to have consented to any extension requested by the recipient and granted by the administrative law judge (hearing officer), whether or not the Agency initially approved the extension. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the applicant or recipient.

(c) SBA will not take action toward accelerating repayment, suspending, terminating, or refusing financial assistance until:

(1) SBA has advised the applicant or recipient of the failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after an opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Administrator of SBA pursuant to § 117.17; and

(4) The expiration of 30 days after SBA has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the form of financial assistance involved, a full written report of the circumstances and the grounds for such action.

(d) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until:

(1) SBA has determined that compliance cannot be secured by voluntary means;

(2) The action has been approved by the Administrator or designee;

(3) The expiration of 30 days after SBA has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the form of financial assistance involved, a full written report of the circumstances and the grounds for such action;

(4) The applicant or recipient has been notified of the failure to comply, and of the action to be taken to effect compliance; and

(5) The expiration of at least 10 days from the mailing of such notice to the applicant or recipient or other person. During this period of at least 10 days from the mailing of such notice to the applicant or recipient or other person, additional efforts shall be made to persuade the applicant or recipient to comply with this part and to take such corrective action as may be appropriate.

§ 117.16 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 117.15, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request the Office of Hearings and Appeals (OHA) that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing and as consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at OHA in Washington, DC, at a time fixed by OHA unless that office determines that the convenience of the complainant, applicant, recipient or SBA requires that another place be selected. Hearings shall be held before an administrative

law judge designated in accordance with the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and SBA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearings, decisions, and any administrative review shall be conducted in conformity with the Administrative Procedure Act and 13 CFR Part 134. Such rules of procedure should be consistent with this section, relate to the conduct of the hearing, provide for giving of notices to those referred to in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, request for findings and other related matters. SBA, the complainant, if any, and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing, or as determined by the administrative law judge conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence may be waived by the administrative law judge conducting a hearing pursuant to this part, but rules or principles designed to assure production of the most credible evidence available, and subject testimony to test by cross-examination shall be applied where reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance or threatened noncompliance with this part, with respect to two or more forms of financial assistance to which this part applies, or noncompliance with this part and the regulations of one or more other Federal agencies issued under the Act, the Administrator may, by agreement with such other agencies, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules and procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 117.17.

§ 117.17 Decisions and notices.

(a) *Decision by an administrative law judge.* If the hearing is held by an administrative law judge, such administrative law judge shall either make an initial decision, if so authorized, or certify the entire record, including recommended findings and proposed decision, to the Administrator for a final decision and a copy of such initial decision or certification shall be mailed to the applicant or recipient and the complainant. Where the initial decision is made by the administrative law judge, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision, file with the Administrator exceptions to the initial decision, with the reasons therefor. In the absence of exceptions, the Administrator may, by motion within 45 days after the initial decision, serve on the applicant or recipient a notice that he/she will review the decision. Upon the filing of such exceptions or of such notice of review, the Administrator shall review the initial decision and issue his/her decision thereon, including the reasons therefor. The decision of the Administrator shall be mailed promptly to the applicant or recipient, and the complainant, if any. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the Administrator.

(b) *Decisions on record or review by the Administrator.* Whenever a record is certified to the Administrator for decision or the Administrator reviews the decision of an administrative law judge pursuant to paragraph (a) of this section, or whenever the Secretary of the Department of Health and Human Services or the Department of Justice conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file briefs or other written statements of its contentions and a copy of the final decision of the Administrator shall be given in writing to the applicant or recipient and the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 117.16, a decision shall be made by the Administrator on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of an administrative law judge or the Administrator shall set forth the ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Decision by the Administrator.* The Administrator shall make any final decision which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, acceleration repayment or the imposition of any other sanction available under the regulations or taken under other means authorized by law.

(f) *Content of orders.* The final decision may provide for accelerating of repayment, suspension or termination of, or refusal to approve, disburse, or continue Federal financial assistance, in whole or in part, under the programs involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will, thereafter, be extended under such program to the applicant or recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Administrator that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance only if it satisfies the terms and conditions of that order for such eligibility and it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Administrator to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Administrator determines that those requirements have been satisfied, he/she shall restore such eligibility.

(3) If the Administrator denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the denial to have been in error. It shall there upon be given an expeditious hearing, with a decision on the record, in accordance with rules and procedures issued by the Administrator. The applicant or recipient shall be restored to such eligibility if it proves at such

hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 117.18 Judicial review.

(a) The 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 the Agency has made no finding with regard to the complaint; or

(2) The Agency has issued a finding in favor of the recipient.

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

(1) Advise the complainant of this fact;

(2) Advise the complainant of the right to file a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant 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 the Department of Health and Human Services, the Attorney General of the United States 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 attorney'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.

§ 117.19 Effect on other regulations.

(a) All regulations, orders or like directions heretofore issued by SBA which impose requirements designed to prohibit any discrimination against individuals on the grounds of age and which authorize the suspension or termination of or refusal to grant or to continue financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Order 11246, as amended, and regulations issued thereunder;

(2) Title VI of the Civil Rights Act of 1964, as amended;

(3) The Equal Credit Opportunity Act, as amended and Regulation B of the Board of Governors of the Federal Reserve System, (12 CFR Part 202);

(4) Section 504 of the Rehabilitation Act of 1973, as amended;

(5) Title VIII of the Civil Rights Act of 1968;

(6) Title IX of the Educational Amendments of 1972;

(7) Section 633(b) of the Small Business Act;

(8) Part 113 of Title 13 of the Code of Federal Regulations (13 CFR 113); or

(9) Any other statute, order, regulation or instruction, insofar as such order, regulations, or instruction prohibits discrimination on the grounds of age in any program or situation to which this part is inapplicable on any other ground.

§ 117.20 Supervision and coordination.

The Administrator may from time to time assign to officials of SBA or to officials of other agencies of the Government with the consent of such agencies, responsibilities in connection with the effectuation of the purpose of the Act and this part (other than responsibility for final decision as provided in § 117.17), including the achievement of effective coordination and maximum uniformity within SBA and within the Executive Branch of the Government in the application of the Act and this part to similar programs and in similar situations. Responsibility for administering and enforcing this part is assigned by the Administrator, to the Office of Civil Rights Compliance, Office of Equal Employment Opportunity and Compliance of the Small Business Administration.

APPENDIX A[1]

Name of program	Authority
Business Loans	Small Business Act, section 7(a).
Debtor State Development companies (501) and their small business concerns.	Small Business Investment Act, Title V.
Debtor State Development companies (502) and their small business concerns.	Small Business Investment Act, Title V.
Debtor certified development companies (503) and their small business concerns.	Small Business Investment Act, Title V.
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, Title III.
Pollution Control	Small Business Investment Act, Title IV, Part A.
Disaster Loans:	
Physical, including riot	Small Business Act, section 7(b)(1).
Economic Injury (EIDL)	Small Business Act, section 7(b)(2).
Federal Action Loan Program.	Small Business Act, section 7(b)(3).
Small Business Institute	Small Business Act, section 8(b)(1).
Small Business Development Centers.	Small Business Act, section 21.
International Trade Program.	Small Business Act, section 22.
Technical and Management Assistance.	Small Business Act, section 7(j).

[1] None of the programs administered have any age distinctions except as statutorily required.

(Catalog of Federal Domestic Assistance Programs Nos. 59.001 through 59.031)

Note.—All programs listed above are also covered by Parts 112 and 113 of Title 13 of the Code of Federal Regulations.

Dated: September 18, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-24276 Filed 10-10-85; 8:45 am]

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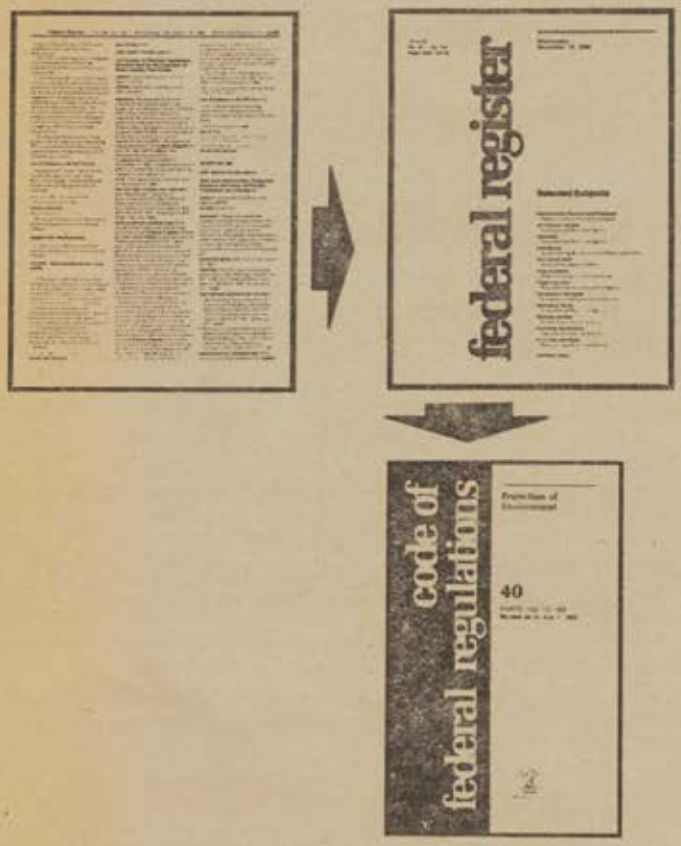

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